

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

INTERPRETATION AMENDMENT BILL 2000

EXPLANATORY MEMORANDUM

Circulated by authority of
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Attorney-General

Interpretation Amendment Bill 2000

Outline

The *Interpretation Act 1967* (the Act) provides for the interpretation of ACT laws.

The *Interpretation Amendment Bill 2000* (the Bill) amends the Act so that when an Act allows fees to be determined the determination may impose a tax.

The amendment is being made:

- (a) because the Standing Committee on Justice and Community Safety has drawn attention to a possible gap in ACT laws; and
- (b) as part of the ACT's preparation for the introduction of the Goods and Services Tax (the GST).

In its Scrutiny Report No 14 of 1999 the Standing Committee commented on a number of matters concerning the *Road Transport (General) Bill 1999*. One of these matters was that clause 96(6) permitted a determination of fees, charges and other amounts made under clause 96(1) to impose a tax. The Committee pointed out that if this clause was not present there would be grounds for arguing that taxes could not be imposed. The Committee drew the Assembly's attention to a long line of cases to support this contention. The effect of these cases is that if:

- (a) it can be shown that a determined fee is not genuinely a recompense for the service that is provided; and
- (b) a court accepts that the Act did not contemplate that the determined fee could be a tax

then the determined fee would be invalid.

In theory these cases leave it open for any determined fee to be challenged on the basis it is a tax. It is understood that very few, if any, determined fees are anything more than a fair recompense for a service that is provided. Accordingly, it is considered the possibility that determinations could be held invalid is more theoretical than real. The Bill is intended to remove even this theoretical possibility.

The amendment is also relevant to the ACT's preparation for the GST. In most cases GST will not be payable when a determined fee is paid. Recently the Commonwealth Treasurer released details of a determination (the Commonwealth determination) he proposes to make under section 81-5(2) of

the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act). The effect of the Commonwealth determination will be that the payments that are listed in it will not be treated as a payment of consideration. A person who supplies a good or service becomes liable to pay GST only if the good or service is supplied for consideration. Accordingly, when the ACT supplies a good or service it will be liable to pay GST only if the determined fee is not listed in the Commonwealth determination. This outcome also applies to bodies, such as ACTEW Corporation, which collect fees that are determined under ACT laws.

When the ACT, or a body such as ACTEW Corporation, collects a fee that is not listed in the Commonwealth determination it will become liable to pay GST. The ACT could increase its fee to take account of its GST liability or it could leave the fee unchanged and pay the GST out of existing revenue. In most cases the fee will have to be increased to take account of the GST. Once the determined fees are increased to take account of the GST it will be difficult for the ACT to argue that its fee represents an amount that is a fair recompense for the service that is provided. This will, as was explained in the abovementioned Standing Committee report, leave the fee open to challenge.

Revenue/Cost Implications

If the Bill is not passed determined fees may be open to challenge.

NOTES ON CLAUSES

Formal Clauses

Clauses 1 Name of Act, 2 Commencement These clauses are formal. They name the Act and provide for commencement.

Clause 3 Insertion

This clause inserts a new section 30AC in the Act. This section provides that if an Act allows fees, charges or other amounts to be determined the determination may impose a tax.

Clause 4 Consequential amendments

This clause makes consequential amendments to the *Magistrates Court Act 1930* and the *Road Transport (General) Act 1999*. In each case the consequential amendment deletes a provision that permits a determined fee to impose a tax. These provisions will be unnecessary once the Act is amended.