



Law and Justice Legislation Amendment Act 1997

No. 34, 1997

**An Act to amend various Acts relating to law and
justice, and for related purposes**

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Law and Justice Legislation Amendment Act 1997

No. 34, 1997

An Act to amend various Acts relating to law and justice, and for related purposes

[Assented to 17 April 1997]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Law and Justice Legislation Amendment Act 1997*.

2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

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- (2) Items 1, and 3 to 6, of Schedule 1, items 4, 5, and 9 to 16, of Schedule 14 and items 1 to 6, and 8 to 11, of Schedule 16 commence on a day or days to be fixed by Proclamation.
 - (3) If the items mentioned in subsection (2) do not commence under that subsection within the period of 6 months beginning on the day on which this Act receives the Royal Assent, those items commence on the first day after the end of that period.
 - (4) Items 1 to 4 of Schedule 8 commence immediately after the commencement of item 19 of Schedule 16 to the *Workplace Relations and Other Legislation Amendment Act 1996*.
 - (5) Schedule 17 commences immediately after the commencement of item 75 of Schedule 16 to the *Workplace Relations and Other Legislation Amendment Act 1996*.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Administrative Appeals Tribunal Act 1975

1 Subsection 3(1)

Insert:

Small Taxation Claims Tribunal means the Taxation Appeals Division of the Tribunal when that Division is required under Part IIIAA to be known as the Small Taxation Claims Tribunal.

2 Subsection 21A(1)

Repeal the subsection, substitute:

- (1) At any time during the hearing of a proceeding before the Tribunal (other than a proceeding in which the Tribunal is constituted by a presidential member who is a Judge and 2 other members), a party to the proceeding may apply to the Tribunal as constituted for the purposes of the proceeding requesting that the Tribunal be reconstituted for the purposes of the proceeding.

3 After Part III

Insert:

Part IIIAA—Small Taxation Claims Tribunal

24AA Definitions

In this Part:

determined amount means:

- (a) subject to paragraph (b)—\$5,000; or
- (b) if a higher amount is determined by the regulations—the higher amount.

lower application fee means the fee payable in respect of an application for the review of a relevant taxation decision where

subsection 24AC(1) applies in respect of the hearing and determination of the application.

relevant taxation decision means:

- (a) a reviewable objection decision under Part IVC of the *Taxation Administration Act 1953*; or
- (b) a decision refusing a request for an extension of time within which to make a taxation objection under section 14ZL of the *Taxation Administration Act 1953*.

standard application fee means the fee payable in respect of an application for the review of a relevant taxation decision where subsection 24AC(1) does not apply in respect of the hearing and determination of the application.

24AB Reviews of relevant taxation decisions to be heard before the Taxation Appeals Division

Subject to this Part, an application for the review of a relevant taxation decision is to be heard in the Taxation Appeals Division of the Tribunal.

24AC Small Taxation Claims Tribunal to hear certain tax disputes

- (1) Subject to section 24AD, if an application is made for the review of a relevant taxation decision and:
 - (a) either:
 - (i) the application states the amount that the applicant considers to be the amount of tax in dispute and the amount so stated is less than the determined amount; or
 - (ii) the application does not state as mentioned in subparagraph (i) but, before the start of the hearing of the application, the applicant notifies the Tribunal in writing of the amount that the applicant considers to be the amount of tax in dispute and the amount so notified is less than the determined amount; or
 - (b) the decision is a decision refusing a request for an extension of time;

the Taxation Appeals Division, when hearing and determining the application, is to be known as the Small Taxation Claims Tribunal.

- (2) A notification may be given to the Tribunal under subparagraph (1)(a)(ii) in respect of any application for the review of a relevant taxation decision, whether the application was made before, or is made after, the commencement of this section.
- (3) Subject to section 24AD, if subparagraph (1)(a)(ii) applies, the applicant is entitled to a refund of so much of the application fee paid as exceeds the lower application fee.

24AD What happens if the Small Taxation Claims Tribunal considers that the tax in dispute is not less than the determined amount

- (1) If:
 - (a) an application is before the Small Taxation Claims Tribunal under paragraph 24AC(1)(a); and
 - (b) the Tribunal considers that the amount of tax in dispute is not less than the determined amount;the Tribunal may make an order declaring that subsection 24AC(1) is not to apply.
- (2) If such an order is made:
 - (a) the Taxation Appeals Division, when hearing and determining the application, is not to be known as the Small Taxation Claims Tribunal; and
 - (b) the Tribunal must not proceed to hear and determine the application until the applicant pays an additional fee in respect of the application equal to the difference between the standard application fee and the lower application fee; and
 - (c) if the additional fee is not paid within the period directed by the Tribunal or, if no such direction is given, within the prescribed period, the Tribunal may dismiss the application but:
 - (i) if the additional fee is paid after the application is dismissed, the applicant may apply to the Tribunal for reinstatement of the application; and
 - (ii) if the Tribunal considers it appropriate to do so, the Tribunal may reinstate the application and give any

directions that appear to it to be appropriate in the circumstances.

- (3) If the Tribunal waives the whole or a part of the additional fee:
- (a) if the whole of the fee is waived—paragraphs (2)(b) and (c) do not apply; or
 - (b) if part of the fee is waived—references in those paragraphs to the additional fee are taken to be references to the part of the fee that is not waived.
- (4) If:
- (a) an application is, or 2 or more applications by the same applicant are, before the Small Taxation Claims Tribunal under subsection 24AC(1); and
 - (b) another application is before the Administrative Appeals Tribunal that:
 - (i) is made by the same applicant; and
 - (ii) may, in the opinion of the Registrar, a District Registrar or a Deputy Registrar, be conveniently heard before the Administrative Appeals Tribunal at the same time as the first-mentioned application or applications;

the following provisions apply:

- (c) the applications are to be heard and determined before the Taxation Appeals Division;
- (d) that Division, when hearing and determining the applications, is not to be known as the Small Taxation Claims Tribunal;
- (e) the Registrar, a District Registrar or a Deputy Registrar may order that only one standard application fee is payable for the applications.

4 After subsection 34A(1)

Insert:

- (1A) In respect of a proceeding before the Small Taxation Claims Tribunal:
- (a) the Registrar, a District Registrar or a Deputy Registrar must give to the applicant:

- (i) if the proceeding relates to an application to which subparagraph 24AC(1)(a)(i) or paragraph 24AC(1)(b) applies—when the application is made; or
 - (ii) if the proceeding relates to an application to which subparagraph 24AC(1)(a)(ii) applies—when the notification referred to in that subparagraph is given;
- a statement setting out the procedures to be followed by the Tribunal and the mediation processes that are available under this Act; and
- (b) if the Tribunal considers at any time that it may assist in the resolution of the dispute between the parties if the proceeding, or any part of the proceeding, or any matter arising out of the proceeding, were dealt with by mediation, the Tribunal must:
 - (i) recommend to the parties that the proceeding, part of the proceeding or matter be the subject of mediation; and
 - (ii) if the parties consent, direct that the proceeding, part of the proceeding or matter be referred to a mediator for mediation.

5 Paragraph 45(1)(a)

Omit “or” (last occurring), substitute “and”.

6 At the end of subsection 45(1)

Add:

- ; and (c) in respect of a proceeding before the Small Taxation Claims Tribunal—in so referring a question, the interests of the applicant seeking review of a relevant taxation decision must be taken into account.

Schedule 2—Amendment of the Classification (Publications, Films and Computer Games) Act 1995

1 Section 5 (definition of *contentious material*)

Repeal the definition, substitute:

contentious material, in relation to a film or a computer game, means material in the film or computer game that a reasonable adult would consider unsuitable for viewing, or for viewing or playing, as the case may be, by a person under 15.

2 Section 5 (after paragraph (e) of the definition of *decision*)

Add:

or (f) referred to in subsection 21A(1);

3 At the end of section 14

Add:

(4) If:

- (a) an application is made for classification of a film that comprises a recording from which a computer generated image can be produced; and
- (b) the recording enables a person using it to choose from 2 or more visual images the image that will be viewed;

the application must include particulars of any contentious material in the film and of the means by which access to that material may be gained.

4 Subsection 21(3)

Repeal the subsection.

Note: The heading to section 21 is replaced by the heading “**Declassification of classified films or computer games that are modified**”.

5 After section 21

Insert:

21A Declassification of classified films or computer games that are found to contain contentious material

- (1) This section applies if the Board decides:
- (a) that a classified film to which subsection 14(4) applies or a classified computer game (including a film or game classified before the commencement of this section) contains contentious material (whether through use of a code or otherwise) that was not brought to the Board's attention and made available for viewing or demonstration before the classification was made; and
 - (b) that, if the Board had been aware of the material before the classification was made, it would have given the film or game a different classification.
- (2) If a decision referred to in subsection (1) is made, the Board's decision to classify the film or game is taken never to have been made.

6 Paragraph 29(4)(b)

Repeal the paragraph, substitute:

- (b) depicts or describes, in a way that is likely to cause offence to a reasonable adult, a person who is, or looks like, a child under 16 (whether the person is engaged in sexual activity or not); or

7 Section 94 (paragraph (c) of the definition of censor)

Repeal the paragraph, substitute:

- (c) a classification officer appointed under the Indecent Articles and Classified Publications Act 1975 of New South Wales, the *Classification of Publications Ordinance 1983* of the Australian Capital Territory or the *Classification of Publications and Films Act* of the Northern Territory; or

Schedule 3—Amendment of the Complaints (Australian Federal Police) Act 1981

1 Subsections 7(8), 41(5), 44(1), 50(8) and 74(3), section 82, subsections 83(1) and (2) and section 85

Omit “imprisonment”, substitute “Imprisonment”.

2 Subsection 59(1)

Repeal the subsection, substitute:

(1) A member of the Disciplinary Tribunal, other than a member who is the holder of:

(a) a judicial office; or

(b) an office of Magistrate of a State or Territory;

in respect of which the member receives remuneration that is based upon his or her holding the office on a full-time basis, is to be paid such remuneration as the Remuneration Tribunal determines. If no determination of that remuneration by that Tribunal is in operation, the member is to be paid such remuneration as is prescribed.

3 Saving

Any determination of, or regulation prescribing, remuneration that, immediately before the commencement of item 2, was in force for the purposes of the subsection repealed by that item continues in force as if it had been made for the purposes of the subsection substituted by that item.

Schedule 4—Amendment of the Crimes Act 1914

1 Subsection 3B(2)

Omit “18A”, substitute “, 15A”.

Note: This amendment corrects an incorrect cross-reference.

Schedule 5—Amendment of the Death Penalty Abolition Act 1973

1 Subsection 3(2)

Omit “Subject to subsection (3), this”, substitute “This”.

2 Subsection 3(3)

Repeal the subsection.

Schedule 6—Amendment of the Evidence Act 1995

1 Paragraph 20(3)(a)

Omit “defacto”, substitute “de facto”.

2 Paragraph 20(4)(b)

Omit “defacto”, substitute “de facto”.

3 Subsection 43(3)

Omit “the party”, substitute “a party”.

4 At the end of subsection 68(4)

Add:

Note: Subsection (4) differs from subsection 68(4) of the NSW Act.

5 Subsection 70(2) (note 1)

Omit “section 57”, substitute “section 70”.

6 Section 102 (note)

Renumber the note as Note 1.

7 Section 102 (note)

Omit “, 104 and 107”, substitute “and 104”.

8 At the end of section 102

Add:

Note 2: Section 108A makes provision as to the admission of evidence that is relevant only to the credibility of a person who has made a previous representation.

9 Section 107

Repeal the section.

10 Subsection 108(2)

Omit “or 107”.

11 At the end of Part 3.7

Add:

108A Admissibility of evidence of credibility of person who has made a previous representation

(1) If:

- (a) because of a provision of Part 3.2, the hearsay rule does not apply to evidence of a previous representation; and
- (b) evidence of the representation has been admitted; and
- (c) the person who made the representation has not been called, and will not be called, to give evidence in the proceeding;

evidence that is relevant only to the credibility of the person who made the representation is not admissible unless the evidence has substantial probative value.

(2) Without limiting the matters to which the court may have regard in deciding whether the evidence has substantial probative value, it is to have regard to:

- (a) whether the evidence tends to prove that the person who made the representation knowingly or recklessly made a false representation when the person was under an obligation to tell the truth; and
- (b) the period that elapsed between the doing of the acts or the occurrence of the events to which the representation related and the making of the representation.

12 Subsection 120(2)

Repeal the subsection.

13 At the end of subsection 128(7)

Add:

Note: Subsection 128(7) differs from subsection 128(7) of the NSW Act. The NSW provision refers to a *NSW Court* instead of an *Australian Court*.

14 At the end of section 128 (before the notes)

Add:

- (10) If a person has been given a certificate under a prescribed State or Territory provision in respect of evidence given by the person in a proceeding in a State or Territory court, the certificate has the same effect, in a proceeding to which this subsection applies, as if it had been given under this section.
- (11) The following are prescribed State or Territory provisions for the purposes of subsection (10):
- (a) section 128 of the *Evidence Act 1995* of New South Wales;
 - (b) a provision of a law of a State or Territory declared by the regulations to be a prescribed State or Territory provision for the purposes of subsection (10).
- (12) Subsection (10) applies to:
- (a) a proceeding in relation to which this Act applies because of section 4; and
 - (b) a proceeding for an offence against a law of the Commonwealth or for the recovery of a civil penalty under a law of the Commonwealth, other than a proceeding referred to in paragraph (a).
- (13) Until the day fixed under subsection 4(6), subsection (10) applies to a proceeding for an offence against a law of the Australian Capital Territory or for the recovery of a civil penalty under such a law, other than a proceeding referred to in paragraph (12)(a).

Note: The NSW Act does not contain provisions corresponding to subsection (10) to (13).

15 Section 154 (note 1)

Repeal the note.

16 Section 155 (note 1)

Repeal the note, substitute:

Note 1: Subsection 155(1) differs from subsection 155(1) of the NSW Act. The NSW provision refers to evidence of a *public document* of a State or Territory rather than evidence of a *public record* of a State or Territory.

17 Section 158 (note 1)

Repeal the note.

18 At the end of subsection 170(1)

Add:

Note: The table differs from the table in subsection 170(1) of the NSW Act because that Act has no equivalent to section 182 of this Act.

19 Dictionary, Part 1 (after the definition of *confidential document*)

Add:

Note: The NSW Act includes a definition of *court*.

20 Dictionary, Part 1 (before the definition of *credibility*)

Insert:

credibility of a person who has made a representation that has been admitted in evidence means the credibility of the representation, and includes the person's ability to observe or remember facts and events about which the person made the representation.

21 Dictionary, Part 1 (note following the definition of *government or official gazette*)

Repeal the note, substitute:

Note 1: The definition of *government or official gazette* differs from the definition of the same expression in the NSW Act.

Note 2: The NSW Act includes definitions of *Governor of a State* and *Governor-General*. Those terms are not defined in this Act because they are defined in sections 16A and 16B of the *Acts Interpretation Act 1901*.

22 Dictionary, Part 1 (definition of *identification evidence*)

Omit from paragraph (a) "saw or heard", substitute "saw, heard or otherwise perceived".

23 Dictionary, Part 2, subclause 7(3)

Omit "section", substitute "clause".

24 Dictionary, Part 2, paragraph 10(1)(a)

Omit "and an", substitute "or".

Schedule 7—Amendment of the Family Law Act 1975

1 Paragraph 39(5)(d)

Omit “or 111B”, substitute “, 111B or 111C”.

2 Paragraph 39(6)(d)

Omit “or 111B”, substitute “, 111B or 111C”.

3 At the end of subsection 63C(2)

Add:

Note: If the *Child Support (Assessment) Act 1989* applies, provisions in a parenting plan dealing with the maintenance of a child (as distinct from child support under that Act) are unenforceable and of no effect (see subsection 63G(5)). A parenting plan may, however, also operate as a child support agreement (see section 63CAA).

4 At the end of subsection 63C(3)

Add:

Note: One of the other matters with which a parenting plan may deal is child support (see section 63CAA).

5 After section 63C

Insert:

63CAA Parenting plans may include child support provisions

- (1) If a parenting plan includes provisions of a kind referred to in subsection 84(1) of the *Child Support (Assessment) Act 1989*, the provisions do not have effect for the purposes of this Act.
- (2) Subsection (1) does not affect the operation of the provisions for any other purpose.
- (3) Nothing in this Division is to be taken to prevent the same agreement being both a parenting plan under this Part and a child support agreement under Part 6 of the *Child Support (Assessment) Act 1989*.

6 At the end of subsection 63G(5)

Add:

Note: This subsection does not affect the operation of provisions of a parenting plan referred to in section 63CAA (child support matters).

7 Subsection 66M(1)

Repeal the subsection, substitute:

(1) As stated in section 66D, a step-parent of a child has a duty of maintaining a child if, and only if, there is an order in force under this section.

8 Paragraph 69N(1)(a)

After “order”, insert “(other than a child maintenance order)”.

9 Subsection 110(1) (paragraph (e) of the definition of *maintenance order*)

Omit “66Z”, substitute “67D”.

10 Subsections 112AD(3), (4) and (5)

After “subsection (1)”, insert “or (1A)”.

11 At the end of paragraphs 123(1)(a) and (b) and paragraphs 123(1)(c) to (sf)

Add “and”.

12 After paragraph 123(1)(b)

Insert:

(ba) providing for and in relation to trial management; and

13 After paragraph 123(1)(sf)

Insert:

(sg) providing for and in relation to conciliation conferences; and

Schedule 8—Amendment of the Federal Court of Australia Act 1976

1 Before subsection 18AB(1)

Insert:

- (1A) The Rules of Court may delegate to the Judicial Registrars, either generally or as otherwise provided in the Rules, all or any of the Court’s powers in relation to proceedings in the Court in the exercise of the Court’s original jurisdiction, except:
- (a) proceedings in which the amount sought, or the value of the subject matter, is more than \$100,000; and
 - (b) proceedings for a prerogative writ or an order in the nature of a prerogative writ; and
 - (c) proceedings that involve a claim under the *Workplace Relations Act 1996*; and
 - (d) proceedings arising under the *Human Rights and Equal Opportunity Commission Act 1986*; and
 - (e) proceedings arising under the *Native Title Act 1993*.

Powers of the Court in relation to proceedings mentioned in any of paragraphs (a) to (e) may, however, be delegated to Judicial Registrars by the Rules of Court if this is expressly provided for by another provision of this or any other Act.

2 Subsection 18AB(3)

Omit “Without limiting subsection (1), Rules of Court made in respect of that subsection”, substitute “Rules of Court made for the purposes of this section”.

3 Subsection 18AB(6)

Omit “subsection (1)”, substitute “this section”.

4 Subsection 18AB(7)

Omit “subsection (1)”, substitute “this section”.

5 At the end of subsection 18N(1)

Add:

; (e) such Marshals for the purposes of the *Admiralty Act 1988* as are necessary.

6 After subsection 24(1)

Insert:

(1AA) An appeal may not be brought to the Court from a judgment of the Supreme Court of the Australian Capital Territory given after the commencement of this subsection when that Court is known as the Court of Disputed Elections under subsection 252(1) of the *Electoral Act 1992* of that Territory.

7 Subsection 24(2)

Omit “On or after”, substitute “Subject to subsection (2A), on or after”.

8 After subsection 24(2)

Insert:

(2A) An appeal may not be brought to the High Court from a judgment of the Supreme Court of the Australian Capital Territory given after the commencement of this subsection when that Court is known as the Court of Disputed Elections under subsection 252(1) of the *Electoral Act 1992* of that Territory.

9 Subsection 30A(1)

Omit “the Attorney-General or the Director of Public Prosecutions”, substitute “an appropriate authority”.

10 Subsection 30A(5)

Omit “Attorney-General or Director of Public Prosecutions, as the case requires,”, substitute “appropriate authority who submitted the question for determination”.

11 Paragraph 30A(6)(a)

Repeal the paragraph, substitute:

(a) a report (other than a report of proceedings under this section) that refers, or draws attention, whether directly or indirectly, to an appropriate authority having, under

subsection (1), submitted a question of law for the determination of a Full Court; or

12 At the end of section 30A

Add:

(8) In this section:

appropriate authority means:

- (a) the Attorney-General of the Commonwealth; or
- (b) the Attorney-General of the Australian Capital Territory; or
- (c) the Director of Public Prosecutions of the Commonwealth; or
- (d) the Director of Public Prosecutions of the Australian Capital Territory.

13 Subsection 32W(5)

Omit “If an amount”, substitute “Subject to subsection (6), if an amount”.

14 Paragraph 32W(5)(b)

Repeal the paragraph, substitute:

- (b) in any other case—as if it were for an equivalent amount in Australian currency, based on the rate of exchange prevailing on the second business day (the *conversion day*) before the day on which the application for registration is made.

15 After subsection 32W(5)

Insert:

- (5A) For the purposes of paragraph (5)(b), the rate of exchange prevailing on the conversion day is the average of the rates at which Australian dollars may be bought in New Zealand currency at:
 - (a) 11 am; or
 - (b) if another time is prescribed for the purposes of this subsection—that other time;

on that day from 3 authorised foreign exchange dealers selected by the judgment creditor.

- (5B) The reference in paragraph (5)(b) to a business day is a reference to a day on which the authorised foreign exchange dealers selected by the judgment creditor as mentioned in subsection (5A) publish rates at which Australian dollars may be bought in New Zealand currency.

16 At the end of subsection 32W(7)

Add “and the costs of obtaining from foreign exchange dealers evidence of the rates at which Australian dollars may be bought in New Zealand currency”.

17 At the end of section 32W

Add:

- (8) In this section:

authorised foreign exchange dealer means a person authorised by a general authority issued by the Reserve Bank of Australia under regulation 38A of the Banking (Foreign Exchange) Regulations to buy and sell foreign currency.

18 Subsection 53A(1)

Omit “, with the consent of the parties to proceedings in the Court, by order refer the proceedings”, substitute “by order refer the proceedings in the Court”.

19 After subsection 53A(1)

Insert:

- (1A) Referrals under subsection (1) to a mediator may be made with or without the consent of the parties to the proceedings. However, referrals to an arbitrator may be made only with the consent of the parties.

Schedule 9—Amendment of the Foreign Judgments Act 1991

1 Subsection 6(11)

Omit “Where the amount”, substitute “Subject to subsection (12), if the amount”.

2 Paragraph 6(11)(b)

Omit “the day of the application for registration”, substitute “on the second business day (the *conversion day*) before the day on which the application for registration is made”.

3 After subsection 6(11)

Insert:

(11A) For the purposes of paragraph (11)(b), the rate of exchange prevailing on the conversion day referred to in that paragraph is the average of the rates at which Australian dollars may be bought in the currency in which the judgment is expressed at:

(a) 11 am; or

(b) if another time is prescribed for the purposes of this subsection—that other time;

on that day from 3 authorised foreign exchange dealers selected by the judgment creditor.

(11B) The reference in paragraph (11)(b) to a business day is a reference to a day on which the authorised foreign exchange dealers selected by the judgment creditor as mentioned in subsection (11A) publish rates at which Australian dollars may be bought in the currency in which the judgment is expressed.

4 Paragraph 6(15)(a)

After “court”, insert “and the costs of obtaining from foreign exchange dealers evidence of the rates at which Australian dollars may be bought in the currency in which the judgment is expressed”.

5 At the end of section 6

Add:

(16) In this section:

authorised foreign exchange dealer means a person authorised by a general authority issued by the Reserve Bank of Australia under regulation 38A of the Banking (Foreign Exchange) Regulations to buy and sell foreign currency.

Schedule 10—Amendment of the Judges' Pensions Act 1968

1 Subsection 5(1)

Repeal the subsection, substitute:

- (1) For the purposes of this Act, a Judge is taken not to have retired so long as he or she continues:
 - (a) to hold any office as a Judge; or
 - (b) to hold any judicial office in relation to a Territory that is remunerated otherwise than on a part-time basis.

Schedule 11—Amendment of the Judiciary Act 1903

1 After subsection 39B(1)

Insert:

- (1A) The original jurisdiction of the Federal Court of Australia also includes jurisdiction in any matter:
- (a) in which the Commonwealth is seeking an injunction or a declaration; or
 - (b) arising under the Constitution, or involving its interpretation; or
 - (c) arising under any laws made by the Parliament.

2 At the end of Part VIIIA

Add:

55H Lawyers employed by a State, the Australian Capital Territory or the Northern Territory

- (1) If:
- (a) services of a legal professional nature are provided to a person or body (the *client*) by an officer of, or a person employed in, a Government Department of a State, of the Australian Capital Territory or of the Northern Territory in his or her capacity as such an officer or employee in the course of acting for the client in proceedings in a federal court or in a tribunal established by a law of the Commonwealth; and
 - (b) the Department charges the client for any of the services or for disbursements incurred in connection with any of the services;
- the amount charged may be recovered by the client as costs incurred by the client in the proceedings.
- (2) If an amount charged as mentioned in paragraph (1)(b) is not an amount of disbursement then, for the following purposes:

- (a) an application to a federal court, or to a tribunal established by a law of the Commonwealth, for the award of costs;
 - (b) the taxation of those costs;
 - (c) the recovery of those costs by the client;
- the amount charged is taken to have been paid by the client.

3 Section 78AA

Repeal the section, substitute:

78AA State includes Australian Capital Territory and Northern Territory

In this Division:

State includes the Australian Capital Territory and the Northern Territory.

Schedule 12—Amendment of the Jurisdiction of Courts (Cross-vesting) Act 1987

1 Subsection 3(1) (definition of *State*)

Before “Northern”, insert “Australian Capital Territory and the”.

2 Subsection 3(1) (definition of *Territory*)

Before “Northern”, insert “Australian Capital Territory or the”.

3 Paragraph 4(1)(c)

Before “Northern”, insert “Australian Capital Territory and the Supreme Court of the”.

4 Paragraph 4(1)(d)

Before “Northern”, insert “Australian Capital Territory and the”.

Schedule 13—Amendment of the Privacy Act 1988

1 Subsection 6(1)

Insert:

guarantee includes an indemnity given against the default of a borrower in making a payment in respect of a loan.

2 At the end of subsection 11B(1)

Add:

; or (d) an agency that:

- (i) carries on a business or undertaking that involves the making of loans; and
- (ii) is determined by the Commissioner to be a credit provider for the purposes of this Act.

3 After subsection 11B(1)

Insert:

- (1A) If an agency is a credit provider because of paragraph (1)(d), Part IIIA has effect in relation to the carrying on by the agency of a business or undertaking involving the making of loans despite anything in Part III or in the *Freedom of Information Act 1982*.

4 Subsection 11B(3)

Before “is to”, insert “or subparagraph (1)(d)(ii)”.

5 After paragraph 18E(1)(b)

Insert:

- (ba) the information is a record of an overdue payment by the individual as guarantor under a guarantee given against default by a person (the *borrower*) in repaying all or any of an amount of credit obtained by the borrower from a credit provider, and the following subparagraphs apply:
- (i) the credit provider is not prevented under any law of the Commonwealth, a State or a Territory from bringing

- proceedings against the individual to recover the amount of the overdue payment;
- (ii) the credit provider has given the individual notice of the borrower's default that gave rise to the individual's obligation to make the payment;
 - (iii) 60 days have elapsed since the day on which the notice was given;
 - (iv) the credit provider has, separately from and in addition to the giving of the notice referred to in subparagraph (ii), taken steps to recover the amount of the overdue payment from the individual.

6 At the end of subsection 18E(7)

Add "or (ba)".

7 Subsection 18F(1)

After "18E(1)(b)", insert "or (ba)".

8 After subsection 18F(2)

Insert:

- (2A) For the purposes of subsection (1), the maximum permissible period for the keeping of personal information of the kind referred to in paragraph 18E(1)(ba) is the period of 5 years beginning on the day when the credit reporting agency is informed of the overdue payment concerned.

9 After section 18N

Insert:

18NA Disclosure by credit providers to certain persons who gave indemnities

In respect of a disclosure by a credit provider of a report or information to a person who, on or after 7 December 1992 and before the commencement of this section, gave an indemnity against the default of a borrower in making a payment in respect of a loan given by the credit provider, subparagraph 18N(1)(bg)(ii) has effect as if the reference in sub-subparagraph 18N(1)(bg)(ii)(A)

to the commencement of paragraph 18N(1)(bg) were a reference to the commencement of this section.

10 After subsection 44(2)

Insert:

- (2A) If documents are produced to the Commissioner in accordance with a requirement under subsection (1), the Commissioner:
- (a) may take possession of, and may make copies of, or take extracts from, the documents; and
 - (b) may retain possession of the documents for any period that is necessary for the purposes of the investigation to which the documents relate; and
 - (c) during that period must permit a person who would be entitled to inspect any one or more of the documents if they were not in the Commissioner's possession to inspect at all reasonable times any of the documents that the person would be so entitled to inspect.

Schedule 14—Amendment of the Service and Execution of Process Act 1992

1 Subsection 3(1) (definition of *magistrate*)

Repeal the definition, substitute:

magistrate, except in sections 57 and 67, includes:

- (a) a justice of the peace who has power to issue warrants under a law of the State in which the justice holds that office; and
- (b) a person who is appointed under section 120 of the *Magistrates' Court Act* 1989 of Victoria as a bail justice or is a bail justice because of holding a prescribed office within the meaning of section 121 of that Act.

2 Subsection 3(1) (before paragraph (a) of the definition of *warrant*)

Insert:

- (aa) this Act; or

3 Subsection 8(4)

Repeal the subsection, substitute:

- (4) Subject to this Act, this Act applies to the exclusion of a law of a State (the *relevant State*) with respect to:
 - (a) the service or execution in another State of process of the relevant State that is process to which this Act applies; or
 - (b) the service or execution in the relevant State of process of another State that is process to which this Act applies; or
 - (c) the service or execution in another State of judgments of a court of the relevant State that are judgments to which this Act applies; or
 - (d) the service or execution in the relevant State of judgments of a court of another State that are judgments to which this Act applies; or
 - (e) the service or execution in another State of judgments to which this Act applies that are orders of a tribunal of the relevant State; or

- (f) the service or execution in the relevant State of judgments to which this Act applies that are orders of a tribunal of another State.

4 Paragraph 17(1)(a)

Repeal the paragraph, substitute:

- (a) whichever is the longer of the following periods:
 - (i) 21 days;
 - (ii) the period in which the appearance would have been required or permitted to be entered if the process had been served in the place of issue; or

5 After subsection 17(1)

Insert:

- (1A) If, under a provision (the *State provision*) of the law of the place of issue, the period in which an appearance is required or permitted to be entered in respect of process served in the place of issue varies according to the distance of the place of service from another place, the period referred to in subparagraph (1)(a)(ii) is to be calculated by reference to the longest distance mentioned in the State provision.

6 Subsection 84(1)

Omit “ascertain whether he or she is a person under restraint.”, substitute:

find out:

- (a) whether he or she is a person under restraint; and
- (b) if so, the State or States under whose law he or she is a person under restraint.

7 After subsection 84(1)

Insert:

- (1A) If the magistrate is satisfied that the person:
 - (a) is not under restraint; or
 - (b) is under restraint only under the law of the State in which the warrant was issued;the following provisions of this section do not apply.
-

8 After Division 2 of Part 5

Insert:

Division 2A—Transit through State in execution of warrant

94A Application of Division

This Division applies if:

- (a) a warrant authorises the taking of a person (the *prisoner*) to a place in the State in which the warrant was issued (the *issuing State*); and
- (b) for the purpose of taking the prisoner to that place, it is necessary or convenient for the prisoner to be taken into a State (the *transit State*) other than the issuing State.

94B Effect of warrant

The warrant has the same effect in the transit State as it has in the issuing State.

94C Applicable laws relating to escape from custody

The law in force in the issuing State relating to the liability of a prisoner who escapes from lawful custody applies to the prisoner in relation to anything done by the prisoner while the prisoner is in the transit State.

94D Powers of person executing the warrant

While the prisoner is in the transit State, the person executing the warrant:

- (a) has the same powers of detention and disposition of the prisoner as the person would have in the issuing State; and
- (b) has power to do anything else that he or she could lawfully do in the issuing State for the purpose of executing the warrant.

9 Subsection 110(1)

Insert:

enforcement officer means:

- (a) a police officer; or
- (b) in relation to a State prescribed by the regulations for the purposes of this paragraph—the Sheriff, or a Sheriff’s officer, of the State; or
- (c) in relation to a State prescribed by the regulations for the purposes of this paragraph—a bailiff of the State.

10 Paragraph 112(3)(b)

Omit “police”, substitute “enforcement”.

11 Subsection 113(1)

Omit “a police”, substitute “an enforcement”.

12 Subsections 113(2), (3) and (4)

Omit “police” (wherever occurring), substitute “enforcement”.

13 Subsection 113(5)

Repeal the subsection, substitute:

- (5) The Commissioner of the police force in the State in which the person was apprehended must ensure that the warrant of apprehension, and any copies of the warrant that are in the possession of any enforcement officer of the State, are returned to the clerk of the court within 7 days after the enforcement officer paid the whole of the unpaid amount of the fine to the clerk of the court.

14 Subsections 113(6) and (7)

Omit “police”, substitute “enforcement”.

15 Subsections 119(1) to (4)

Omit “police”, substitute “enforcement”.

16 Subsection 123(2)

Omit “a police”, substitute “an enforcement”.

17 Application

- (1) The amendment made by item 2 applies to:
 - (a) every warrant for the apprehension of a person:
 - (i) that was issued in accordance with the *Service and Execution of Process Act 1992* before the commencement of that item; and
 - (ii) under which the person had not been apprehended before that commencement; and
 - (b) every warrant for the apprehension of a person that is issued in accordance with that Act after that commencement.
- (2) The amendment made by item 10 does not apply to a warrant of apprehension (within the meaning of Part 7 of the *Service and Execution of Process Act 1992*) issued before the commencement of that item.

Schedule 15—Amendment of the Superannuation Act 1976

1 At the end of section 154

Add:

- (8) In subsection (7):
 - (a) a reference to an eligible employee includes a reference to a person who is a member of the superannuation scheme established by the Trust Deed referred to in section 4 of the *Superannuation Act 1990* as subsequently amended under section 5 of that Act; and
 - (b) a reference to a pensioner includes a reference to a person who is in receipt of a pension under that superannuation scheme.

Schedule 16—Amendment of the Taxation Administration Act 1953

1 Section 2

Insert:

Small Taxation Claims Tribunal means the Taxation Appeals Division of the Administrative Appeals Tribunal when that Division is required under Part IIIAA of the *Administrative Appeals Tribunal 1975* to be known as the Small Taxation Claims Tribunal.

2 Section 2 (at the end of the definition of *Tribunal*)

Add “or, in appropriate circumstances, the Small Taxation Claims Tribunal”.

3 Section 14ZO

Omit “AAT”, substitute “Tribunal”.

Note: The heading to section 14ZO is altered by omitting “AAT” and substituting “Tribunal”.

4 Subsection 14ZX(4)

Omit “AAT”, substitute “Tribunal”.

5 Subparagraph 14ZZ(a)(i)

Omit “AAT”, substitute “Tribunal”.

6 Paragraph 14ZZ(b)

Omit “AAT”, substitute “Tribunal”.

7 Section 14ZZE

Repeal the section, substitute:

**14ZZE Hearings before Tribunal other than Small Taxation Claims
Tribunal to be held in private if applicant so requests**

Despite section 35 of the AAT Act, the hearing of a proceeding before the Tribunal, other than the Small Taxation Claims Tribunal, for:

- (a) a review of a reviewable objection decision; or
- (b) a review of an extension of time refusal decision; or
- (c) an AAT extension application;

is to be in private if the party who made the application requests that it be in private.

8 Paragraph 14ZZH(a)

Omit “AAT”, substitute “Tribunal”.

9 Paragraph 14ZZK(a)

Omit “AAT”, substitute “Tribunal”.

10 Subsection 14ZZL(1)

Omit “AAT”, substitute “Tribunal”.

Note: The heading to section 14ZZL is altered by omitting “AAT” and substituting “Tribunal”.

11 Subsection 14ZZL(2)

Omit “AAT’s”, substitute “Tribunal’s”.

**Schedule 17—Amendment of the Workplace
Relations and Other Legislation
Amendment Act 1996**

1 Subparagraph 75(1)(b)(ii) of Schedule 16

Omit “Registrar of the Administrative Appeals Tribunal”, substitute
“Industrial Registrar of the Australian Industrial Relations
Commission”.

*[Minister’s second reading speech made in—
House of Representatives on 12 December 1996
Senate on 5 March 1997]*

(216/96)
