

# **ACTS INTERPRETATION AMENDMENT BILL 1996**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

#### **Objectives of the Legislation**

The objective of this legislation is to clarify the provision that deals with service by particular postal methods.

The legislation also corrects some minor errors in the *Acts Interpretation Act 1954*.

#### **Means of Achieving Policy Objectives**

From 31 October 1960, when the *Acts Interpretation Act Amendment Act 1960* commenced, to 1 July 1991, when the *Acts Interpretation Amendment Act 1991* commenced, section 39(2) of the Act provided that certified mail could be used to serve a document where any Act authorised any document to be served by registered post.

The amendments to section 39, which commenced on 1 July 1991, removed the reference to the specific description of the postal services “registered post” and “certified mail”. Section 39A(2) was inserted, which provided that if an Act required or permitted a document to be served by a particular postal method, the requirement or permission was taken to be satisfied if posted by that method, or if that method was not available, by the equivalent, or nearest equivalent, method provided for the time being by Australia Post.

On 13 November 1996, in *R v. Queensland Corrective Services Commission; ex parte Robertson* (No. 8744/1996, Supreme Court, Brisbane, 13 November 1996, unreported), it was held by Ambrose J that the nearest equivalent to registered post was security post, and not certified mail.

However, following the 1991 amendments to section 39, and the insertion of section 39A(2), the practice of serving documents by certified mail in circumstances where an Act authorised service by registered post continued. This practice continued because it was not clear that the 1991 amendments were intended to change the law as it stood for the previous thirty years, and was consistent with the law in other Australian jurisdictions.

The decision of Ambrose J highlights the unintended consequence of the 1991 amendments. This is that the service of documents by certified mail, where an Act authorised service by registered post, was invalid between 1 July 1991, when the *Acts Interpretation Amendment Act 1991* commenced, to 1 October 1996, when Australia Post combined the certified mail and security post services under the title “registered post”. As security post was the nearest equivalent to registered post during this time, security post should have been used to serve the documents instead of certified mail.

It is essential that this amendment have retrospective effect to remedy the unintended consequence of the 1991 amendments, and to validate service by certified mail during this time.

The amendment to section 39A makes it clear that postal service can be effected and could always be effected by certified mail.

### **Administrative cost to Government of implementation**

Nil.

### **Fundamental legislative principles**

The Bill operates retrospectively. As noted above, this is essential to correct the unintended consequences brought about by the *Acts Interpretation Amendment Act 1991*.

Section 4(3)(g) of the *Legislative Standards Act 1992* provides that one of the fundamental legislative principles is whether legislation adversely affects rights and liberties, or imposes obligations, retrospectively.

Retrospective laws are generally passed to validate past actions, correct defects in legislation or confer benefits retrospectively. This Bill corrects a

defect in the Act, and also validates past actions which took place on the assumption that the 1991 amendments to the Act did not change the law as it stood from 1960 to 1991.

### **Consultation**

Australia Post was consulted in relation to its postal services.

## **NOTES ON PROVISIONS**

*Clause 1* sets out the Act's Short Title.

*Clause 2* provides that the *Acts Interpretation Act 1954* is amended by this Act and the Schedule.

*Clause 3* inserts a new section 39A(4) which provides that posting by certified mail comes within the postal methods specified in section 39A(2), and has always done so.

This clause has the effect of validating the service of all documents which were served by certified mail between 1 July 1991 and 1 October 1996.

## **SCHEDULE**

### **MINOR AMENDMENTS**

*Clauses 1 to 4* correct errors in cross references contained in section 20 and section 20A.

*Clause 5* removes a reference to a definition of a word that does not appear in section 20C, and is unnecessary.