



AUSTRALIAN CAPITAL TERRITORY

Justice and Community Safety Legislation Amendment Act 2002

Act 2002 No 27

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AUSTRALIAN CAPITAL TERRITORY

Justice and Community Safety Legislation Amendment Act 2002

Act 2002 No 27

An Act to amend the law relating to justice and community safety, and for other purposes

*Notified under the Legislation Act 2001 on 9 September 2002
(see www.legislation.act.gov.au)*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Justice and Community Safety Legislation Amendment Act 2002*.

2 Commencement

- (1) Parts 2, 4, 5, 7, 10 and 12 commence on the day after the Act's notification day.

Note The naming and commencement provisions automatically commence on the notification day (see *Legislation Act 2001*, s 75).

- (2) The remaining provisions commence on the 28th day after the notification day.

Part 2 Administration and Probate Act 1929

3 Act amended—pt 2

This part amends the *Administration and Probate Act 1929*.

4 Executors etc may be allowed commission Section 70 (2)

substitute

- (2) A commission or percentage allowed by the registrar under subsection (1) must not exceed 5% (plus any GST payable in relation to the commission or percentage).

5 Limits of professional charges for obtaining probate etc Section 71 (3)

substitute

- (3) The following are not included in the amounts mentioned in subsections (1) and (2) and must be allowed and paid out of the estate:
- (a) necessary disbursements;
 - (b) GST payable for the supply of the services;
 - (c) the charges for preparing and passing the statement for duty or the payment of duty.

Part 3 Agents Act 1968

6 Act amended—pt 3

This part amends the *Agents Act 1968*.

7 Sections 12, 13 and 14

substitute

12 Ending of appointments

The Minister may end the appointment of a member—

- (a) if the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
- (b) for misbehaviour; or
- (c) for physical or mental incapacity; or
- (d) if the member is convicted in Australia of an offence the maximum punishment for which is imprisonment for at least 1 year; or
- (e) if the member is absent, except on leave granted by the chairperson, from 3 consecutive meetings of the board; or
- (f) if the member, without reasonable excuse, contravenes section 16A (Disclosure of interests).

Note A person's appointment also ends if the person resigns (see *Legislation Act 2001*, s 210)

8 Meetings of the board Section 16 (8)

omit

9 New section 16A

insert

16A Disclosure of interests

- (1) A member who has a relevant interest in an issue being considered, or about to be considered, by the board must, as soon as practicable after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the board.
- (2) The disclosure must be recorded in the board's minutes and, unless the board otherwise decides, the member must not—
 - (a) be present when the board considers the issue; or
 - (b) take part in a decision of the board on the issue.
- (3) Any other member who also has a relevant interest in the issue must not—
 - (a) be present when the board is considering its decision under subsection (2); or
 - (b) take part in making the decision.
- (4) Within 7 days after the end of each financial year, the chairperson must give the Minister a statement of any disclosure of interest made under this section during the financial year.
- (5) The Minister must give a copy of a statement received under subsection (4) to the relevant committee of the Legislative Assembly within 14 days after the day the Minister receives the statement.
- (6) In subsection (5):

relevant committee means—

 - (a) a standing committee of the Legislative Assembly nominated by the Speaker for subsection (5); or

- (b) if no nomination under paragraph (a) is in effect—the standing committee of the Legislative Assembly responsible for the scrutiny of public accounts.

relevant interest means—

- (a) a direct or indirect financial interest; or
- (b) a direct or indirect interest of any other kind if the interest could conflict with the proper exercise of the member's functions in relation to the board's consideration of an issue.

10 Duties of board in relation to unclaimed moneys in trust account
Section 57D

omit

registrar-general

substitute

public trustee

11 Application to recover moneys
Section 57E

omit

registrar-general

substitute

public trustee

12 Determination of applications
Section 57F

omit

registrar-general

substitute

public trustee

Part 4 Children and Young People Act 1999

13 Act amended—pt 4

This part amends the *Children and Young People Act 1999*.

14 Sections 52 and 53

substitute

52 Arrangement of business of Childrens Court

The Chief Magistrate is responsible for ensuring the orderly and prompt discharge of the business of the Childrens Court and accordingly may, subject to appropriate and practicable consultation with the magistrates, make arrangements about—

- (a) the magistrate who is to be the Childrens Court Magistrate; and
- (b) the assignment under section 51 of magistrates to act as Childrens Court Magistrate; and
- (c) the assignment under section 53A of magistrates to deal with matters.

53 Childrens Court

- (1) The Magistrates Court is known as the Childrens Court when it is constituted by the Childrens Court Magistrate exercising the jurisdiction given under section 54.
- (2) The Childrens Court Magistrate is responsible for dealing with all matters within the jurisdiction of the Childrens Court.
- (3) Subsection (2) is subject to—
 - (a) section 53A (Assignment of other magistrates to deal with Childrens Court matters); and

(b) section 53B (Completion of part-heard matters).

Note A magistrate assigned to act as Childrens Court Magistrate under s 51 is the Childrens Court Magistrate for this Act (see s 51(2)).

53A Assignment of other magistrates to deal with Childrens Court matters

- (1) If the Childrens Court Magistrate is unable to deal with a matter because of a conflict of interest, or a perceived conflict of interest, the Chief Magistrate may assign another magistrate to deal with the matter.
- (2) Also, if the Childrens Court Magistrate is unable to deal with a matter or matters without a delay that is likely to prejudice the wellbeing of a child or young person, the Chief Magistrate may assign another magistrate to deal with the matter or matters.
- (3) A magistrate may be assigned under subsection (2) only if the Chief Magistrate is satisfied the assignment is necessary having regard to—
 - (a) the circumstances mentioned in that subsection; and
 - (b) the best interests principle; and
 - (c) the degree of urgency of the matter or matters to be dealt with by the assigned magistrate; and
 - (d) the views (if any) of the Childrens Court Magistrate on the proposed assignment.
- (4) The Magistrates Court is also known as the Childrens Court when it is constituted by a magistrate assigned under this section who is exercising the jurisdiction given under section 54.
- (5) This section does not create a right in relation to the assignment of a matter under this section.
- (6) Without limiting subsection (5), the decision to assign or not to assign a matter under this section—

- (a) may not be challenged or called into question in any court; and
 - (b) is not subject to prohibition, mandamus or injunction in any court.
- (7) This section is in addition to, and does not limit, section 51 (Restriction on assignment to act as Childrens Court Magistrate).

53B Completion of part-heard matters

- (1) This section applies if—
 - (a) a magistrate begins to deal with a Childrens Court matter under this chapter; and
 - (b) the magistrate ceases to be the Childrens Court Magistrate or to hold an assignment under section 51 or 53A before the matter is finally decided.
- (2) The magistrate may continue to deal with the matter until it is finally decided.
- (3) The Magistrates Court is also known as the Childrens Court when it is constituted by a magistrate who is acting under subsection (2).

Part 5 Consumer Credit (Administration) Act 1996

15 Act amended—pt 5

This part amends the *Consumer Credit (Administration) Act 1996*.

16 Commissions Section 35 (2)

substitute

- (2) A finance broker must not demand, receive or accept any commission for a finance broking transaction in excess of the maximum prescribed by the regulations (plus any GST payable in relation to the commission).

Maximum penalty: 50 penalty units.

Part 6 Crown Proceedings Act 1992

17 Act amended—pt 6

This part amends the *Crown Proceedings Act 1992*.

18 Section 13

substitute

13 Enforcement of judgments against Territory Crown

- (1) A writ or similar process must not be issued out of any court to enforce a judgment against the Territory Crown.
- (2) If—
 - (a) a final judgment is given against the Territory Crown; and
 - (b) the judgment has not been paid; and
 - (c) the judgment has not been appealed against or stayed (or, if it has, the appeal has been disallowed or discontinued or the stay has been removed); and
 - (d) at least 21 days have elapsed since the judgment was given;the party in whose favour the judgment was given may give a copy of the judgment to the Treasurer.
- (3) If the Treasurer receives a copy of a final judgment under subsection (2), the Treasurer must give directions about how the judgment is to be paid unless the Treasurer is satisfied that the judgment can be, or has been, paid in another way.
- (4) A direction under this section that requires payment of public money of the Territory operates to authorise payment of the money.

-
- (5) The *Financial Management Act 1996*, section 6 (Necessity for appropriation) does not apply to a payment made in accordance with a direction under this section.
- (6) A direction under this section that requires payment of an amount from the funds of a Territory authority or instrumentality provides sufficient authority for the payment.
- (7) In this section:
Territory Crown—see section 12 (3).

13A Enforcement of judgments against Crown in right of a State or another Territory

- (1) A writ or similar process must not be issued out of any ACT court to enforce a judgment against the Crown in right of a State or another Territory.
- (2) If a final judgment is given by an ACT court against the Crown in right of a State or another Territory, the court must give a copy of the judgment to the Governor or Administrator of the State or Territory.

19 Dictionary, new notes

insert

Note 1 The *Legislation Act 2001* contains definitions and other provisions relevant to this Act.

Note 2 In particular, the *Legislation Act 2001*, dict, pt 1, defines the following terms:

- Territory authority
- Territory instrumentality

Part 7 Legal Practitioners Act 1970

20 Act amended—pt 7

This part amends the *Legal Practitioners Act 1970*.

21 Issue of certificates—generally Section 26, new note

insert

Note Section 147H (1) also contains restrictions on the issue of practising certificates to applicants required to comply with s 147E (Solicitor to have fidelity cover for regulated mortgages).

22 Suspension Section 36, new note

insert

Note Section 147H (2) also contains provisions allowing the suspension of practising certificates of solicitors required to comply with s 147E (Solicitor to have fidelity cover for regulated mortgages).

23 Statutory interest account Section 128 (4) (d) and (e)

substitute

- (d) to pay or reimburse the amount of any costs and disbursements incurred by the law society in relation to—
- (i) an inquiry before the professional conduct board or proceedings before the Supreme Court under part 8 (including deciding whether an inquiry should be made or a proceeding should be instituted); or
 - (ii) other action taken before the court in relation to a legal practitioner or an unqualified person practising as a legal

practitioner (including deciding whether such action should be taken); and

- (e) to pay or reimburse the amount of any costs and disbursements incurred by the law society in relation to—
 - (i) the law society making an objection to an application for admission or enrolment (including deciding whether an objection should be made); or
 - (ii) the law society assisting the court in relation to an application for admission or enrolment; and

24 New part 12A

insert

Part 12A Mortgage practices and managed investment schemes

Division 12A.1 Preliminary

147A Definitions for pt 12A

In this part:

ASIC exemption means an exemption from the Corporations Act given by the Australian Securities and Investments Commission under that Act.

approved policy of fidelity insurance—see section 147E (Solicitor to have fidelity cover for regulated mortgages).

associate, in relation to a solicitor—see section 113.

borrower means a person who borrows from a lender or contributor money that is secured by a mortgage.

client, of a solicitor, means a person who—

- (a) receives the solicitor's advice about investment in a regulated mortgage or managed investment scheme; or
- (b) gives the solicitor instructions to use money for a regulated mortgage or managed investment scheme.

contributor means a person who lends, or proposes to lend, money that is secured by a contributory mortgage arranged by a solicitor.

contributory mortgage means a mortgage to secure money lent by 2 or more contributors as tenants in common or joint tenants, whether or not the mortgagee is a person who holds the mortgage in trust for the contributors.

financial institution means—

- (a) an authorised deposit-taking institution; or
- (b) a friendly society under the *Life Insurance Act 1995* (Cwlth); or
- (c) a trustee company mentioned in the *Trustee Companies Act 1947*, schedule 1; or
- (d) a property trust or other corporation established by or in respect of a church that may invest money in accordance with an Act; or
- (e) an entity prescribed under the regulations for this definition.

lender means a person who lends, or proposes to lend, a borrower money that is secured by a mortgage.

managed investment scheme—see the Corporations Act, section 9 (Dictionary).

member, of a managed investment scheme—see the Corporations Act, section 9 (Dictionary).

mortgage means an instrument under which an interest in real property is charged, encumbered or transferred as security for the payment or repayment of money, and includes—

- (a) an instrument prescribed under the regulations for this definition; and
- (b) a proposed mortgage.

professional misconduct—see section 37.

regulated mortgage means a mortgage (including a contributory mortgage) other than—

- (a) a mortgage under which the lender is a financial institution; or
- (b) a mortgage under which the lender or contributors nominate the borrower, but only if the borrower is not a person introduced to the lender or contributors by the solicitor who acts for the lender or contributors or by—
 - (i) an associate of the solicitor; or
 - (ii) an agent of the solicitor; or
 - (iii) a person engaged by the solicitor to introduce the borrower to the lender or contributors; or
- (c) a mortgage prescribed under the regulations as exempt from this definition.

responsible entity—see the Corporations Act, section 9 (Dictionary).

run-out mortgage means a regulated mortgage entered into before the date this part commences, that is not—

- (a) a Territory regulated mortgage; or
- (b) a mortgage that forms part of a managed investment scheme that is required to be operated by a responsible entity under the Corporations Act (as modified by any ASIC exemption or the regulations under that Act).

solicitor—see part 11.

Territory regulated mortgage—a regulated mortgage is a ***Territory regulated mortgage*** in relation to a solicitor if—

- (a) the solicitor's practice is a Territory regulated mortgage practice; and
- (b) the regulated mortgage does not form part of a managed investment scheme or, if it does form part of a managed investment scheme, the managed investment scheme is not required to be operated by a responsible entity under the Corporations Act (as modified by any ASIC exemption or the regulations under that Act).

Territory regulated mortgage practice means a solicitor's practice for which a nomination under section 147C is in force.

Division 12A.2 Mortgage practices

147B Conduct of mortgage practices

- (1) A solicitor must not, in the solicitor's capacity as solicitor for a lender or contributor, negotiate the making of or act in relation to a regulated mortgage unless—
 - (a) the mortgage is a Territory regulated mortgage; or
 - (b) the mortgage is a run-out mortgage; or
 - (c) the mortgage forms part of a managed investment scheme that is operated by a responsible entity.
- (2) A solicitor must not, in the solicitor's capacity as solicitor for a lender or contributor, negotiate the making of or act in relation to a regulated mortgage except in accordance with—
 - (a) the Corporations Act, or that Act as modified by any ASIC exemption or the regulations under that Act; and

(b) this Act.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see *Legislation Act 2001*, s 104).

- (3) A solicitor must not, in the solicitor's capacity as solicitor for a lender or contributor, negotiate the making of or act in relation to a regulated mortgage that forms part of a managed investment scheme unless the solicitor complies with any ASIC exemption that applies to managed investment schemes that—
- (a) have more than 20 members; and
 - (b) are operated under the supervision of the law society in accordance with that exemption.
- (4) Subsection (3) applies even if the regulated mortgage forms part of a managed investment scheme that has no more than 20 members.
- (5) Subsection (3) does not apply if the managed investment scheme is operated by a responsible entity.
- (6) A solicitor who knows that an associate has contravened subsection (1), (2) or (3) must give written notice to the law society of that fact within 21 days after becoming aware of the contravention.
- (7) A solicitor who contravenes this section commits professional misconduct.

Note The law society or the council may take action under division 8.3 (Conciliation) or division 8.4 (Complaints) in relation to professional misconduct by a solicitor.

147C Nomination of practice as Territory regulated mortgage practice

- (1) A solicitor who, in the solicitor's capacity as solicitor for a lender or contributor, negotiates the making of or acts in relation to a regulated mortgage, or who proposes to do so, may, by written

notice given to the law society, nominate the solicitor's practice as a Territory regulated mortgage practice.

- (2) A nomination may, if the law society approves, be made for a solicitor by another solicitor.

Example

A nomination could be made by a solicitor on behalf of members of a firm of solicitors.

- (3) A nomination of a solicitor's practice as a Territory regulated mortgage practice takes effect on the day written notice of the nomination is given to the law society.
- (4) A nomination ceases to be in force in relation to a solicitor if—
- (a) the solicitor revokes the nomination by written notice given to the law society; or
 - (b) the solicitor's practising certificate ceases to be in force; or
 - (c) the law society, by written notice given to the solicitor, rejects the nomination of the solicitor's practice.
- (5) A nomination must include the information required under the regulations or the rules of court.
- (6) In this section:

interstate legal practitioner—see section 191A.

practising certificate, for an interstate legal practitioner—see section 191A.

147D Law society to be notified of Territory regulated mortgages

- (1) A solicitor who, in the solicitor's capacity as solicitor for a lender or contributor, negotiates the making of or acts in relation to a Territory regulated mortgage must give the law society written notice of that fact in accordance with the regulations or rules of court.

Maximum penalty: 20 penalty units.

- (2) A solicitor who contravenes this section also commits professional misconduct.

147E Solicitor to have fidelity cover for regulated mortgages

- (1) A solicitor who, in the solicitor's capacity as solicitor for a lender or contributor, negotiates the making of or acts in relation to a regulated mortgage must ensure that an approved policy of fidelity insurance is in force in relation to the solicitor for the purpose of compensating people who suffer financial loss because of any dishonest failure to pay money payable under the mortgage.

- (2) A policy of fidelity insurance is an *approved policy of fidelity insurance* if:

- (a) the insurer and the terms of the policy have been approved for this division by the Attorney-General by written order given to the law society; and

- (b) any conditions imposed by the order are complied with.

- (3) A solicitor commits an offence if the solicitor, in the solicitor's capacity as solicitor for a lender or contributor, negotiates the making of or act in relation to a regulated mortgage without ensuring that an approved policy of fidelity insurance is in force in relation to the solicitor in accordance with this section.

Maximum penalty: 20 penalty units.

- (4) A solicitor who contravenes subsection (3) also commits professional misconduct.
- (5) This section does not apply in relation to a regulated mortgage that forms part of a managed investment scheme operated by a responsible entity.

Note For transitional arrangements applying to mortgages entered into before the commencement of this section, see div 12A.4.

147F Bar on claims against fidelity fund relating to regulated mortgages

- (1) A lender or contributor under a regulated mortgage is not entitled to claim against the fidelity fund to obtain compensation for a financial loss if the claim relates to a regulated mortgage for which a solicitor is required to have fidelity insurance under section 147E.
- (2) Subsection (1) does not apply if the solicitor who acts for the lender or contributor contravenes section 147E in relation to the mortgage.
- (3) However, any claim on the fidelity fund by a lender or contributor to whom subsection (2) relates—
 - (a) is to be dealt with as if the solicitor had complied with section 147E; and
 - (b) in particular, is subject to the same restrictions (including the amount of any compensation payable) as would have applied to a claim under an approved policy of fidelity insurance had such a policy had been in force in relation to the solicitor in accordance with that section.

147G Notification of insurance arrangements for regulated mortgages

- (1) If a client entrusts money to a solicitor and the money, or part of the money, is proposed to be advanced to a borrower for a regulated mortgage, the solicitor must, within 7 days after the money is entrusted to the solicitor, give the client written notice that—

- (a) tells the client about the effect of section 147F; and
 - (b) includes details of the solicitor's approved policy of fidelity insurance.
- (2) The solicitor must not advance any of the money to a borrower for a regulated mortgage unless—
 - (a) the solicitor has given the client notice under subsection (1); and
 - (b) after having been given the notice, the client has given the solicitor written authority to advance money for the mortgage.
- (3) A solicitor who contravenes this section commits professional misconduct.
- (4) A contravention of this section does not limit the operation of section 147F.
- (5) This section does not apply in relation to a regulated mortgage that forms part of a managed investment scheme operated by a responsible entity.

147H Failure to obtain fidelity insurance for regulated mortgage

- (1) The law society must not issue a practising certificate to an applicant who is or will be required to comply with section 147E (Solicitor to have fidelity cover for regulated mortgages) unless it is satisfied that—
 - (a) an approved policy of fidelity insurance is, or will be, in force in relation to the applicant; and
 - (b) the policy is, or will be, in force in relation to the applicant while the applicant's practising certificate is in force.
- (2) The law society must suspend the practising certificate of a solicitor who is required to comply with section 147E unless it is satisfied that—

- (a) an approved policy of fidelity insurance is in force in relation to the solicitor; and
 - (b) the policy will remain in force in relation to the solicitor while the solicitor's practising certificate is in force.
- (3) The law society must end the suspension of a solicitor's practising certificate under subsection (2) when it is satisfied of the matters mentioned in subsection (2) (a) and (b) in relation to the solicitor.
- (4) The law society must suspend the entitlement under part 15A (Interstate legal practitioners) to practise in the ACT of a solicitor who is required to comply with section 147E unless it is satisfied that—
- (a) an approved policy of fidelity insurance is, or will be, in force in relation to the solicitor; and
 - (b) the policy will not expire before the end of the solicitor's entitlement under part 15A to practise in the ACT.
- (5) The law society must end the suspension of a solicitor's entitlement to practise under subsection (4) when it is satisfied of the matters mentioned in subsection (4) (a) and (b) in relation to the solicitor.

Division 12A.3 Managed investment schemes

147I Involvement of solicitors in managed investment schemes

- (1) This part does not prevent a solicitor from carrying out any legal work in relation to a managed investment scheme operated by a responsible entity, or from having an interest in such a managed investment scheme or in the responsible entity for such a managed investment scheme.
- (2) However, if a client entrusts, or proposes to entrust, money to a solicitor to be invested in a managed investment scheme operated by a responsible entity, and the solicitor has a relevant interest in the

managed investment scheme, the solicitor must give the client written notice telling the client that—

- (a) the solicitor has an interest in the managed investment scheme; and
 - (b) the operation of the managed investment scheme does not form part of the solicitor's practice; and
 - (c) there is no right to claim against the fidelity fund for a financial loss arising from an investment in the managed investment scheme.
- (3) The notice must include any other information required by the regulations or the rules of court.
- (4) The solicitor must not advance the money entrusted to the solicitor to the responsible entity for the managed investment scheme or to anyone else unless the client has been given the notice.
- (5) A solicitor who knows that an associate has contravened subsection (2), (3) or (4) must give written notice to the law society of that fact within 21 days after becoming aware of the contravention.
- (6) A solicitor who contravenes this section commits professional misconduct.
- (7) In this section:
- legal work* includes the work involved in preparing an instrument that—
- (a) is a will or other testamentary disposition; or
 - (b) creates, regulates or affects rights between parties (or purports to do so); or
 - (c) affects real or personal property; or
 - (d) relates to a legal proceeding.

relevant interest—a solicitor has a **relevant interest** in a managed investment scheme if the solicitor, or an associate of the solicitor—

- (a) is a director of or concerned in the management of the responsible entity for the managed investment scheme; or
- (b) is a shareholder in the responsible entity; or
- (c) is taken to be an agent of the responsible entity under the Corporations Act, chapter 5C; or
- (d) receives any financial benefit from the managed investment scheme or the responsible entity if a client of the solicitor invests in the managed investment scheme; or
- (e) has an interest prescribed under the regulations or the rules of court in the managed investment scheme or the responsible entity.

147J Claims against fidelity fund relating to managed investment schemes connected with solicitors

- (1) This section applies to a person who entrusts money to a solicitor to be invested in a managed investment scheme operated by a responsible entity if the solicitor has a relevant interest in the scheme.
- (2) The person is not entitled to make a claim against the fidelity fund to obtain compensation for any financial loss arising from that investment if the solicitor gave notice to the person in accordance with section 147I (2) and (3).
- (3) In this section:

relevant interest—see section 147I (7).

147K Transfer of mortgages to responsible entity

- (1) A solicitor who, in the solicitor's capacity as solicitor for a lender or contributor, is responsible for the administration of a regulated

mortgage must not transfer the mortgage to a responsible entity for a managed investment scheme unless the lender or contributor has given the solicitor written authority to transfer the mortgage to the responsible entity.

(2) A solicitor who contravenes this section commits professional misconduct.

(3) In this section:

scheme property—see the Corporations Act, section 9 (Dictionary).

transfer a regulated mortgage to a responsible entity—a solicitor *transfers* a regulated mortgage to a responsible entity if the solicitor does anything that results in—

- (a) a responsible entity for a managed investment scheme becoming the holder or custodian of the regulated mortgage; or
- (b) any money advanced in relation to the mortgage, or the property that is charged or encumbered by the mortgage, becoming scheme property of a managed investment scheme.

Division 12A.4 Miscellaneous

147L Law society may require information about mortgage practices

- (1) The law society may, by written notice, require a solicitor to provide information to the law society about any of the following:
 - (a) whether the solicitor, an associate of the solicitor or a person engaged by the solicitor negotiates the making of or acts in relation to regulated mortgages or has done so in the past;
 - (b) details of regulated mortgages that continue to have effect;
 - (c) whether the solicitor proposes:
 - (i) to nominate the solicitor's practice as a Territory regulated mortgage practice; or

- (ii) to transfer responsibility for any regulated mortgage; or
 - (iii) to take no further action in relation to any regulated mortgage;
 - (d) any other information, relating to regulated mortgages, prescribed under the regulations or rules of court.
- (2) A solicitor who contravenes a notice under this section commits professional misconduct.

147M Indemnity insurance

This part does not affect the terms of any policy of professional indemnity insurance approved under section 76.

147N Approved forms

- (1) The Minister may, in writing, approve forms for this part.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for the purpose.

Note For other provisions about forms, see *Legislation Act 2001*, s 255.

- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

147O Regulations and rules relating to pt 12A

- (1) The regulations and, subject to the regulations, the rules of court may make provision in relation to—
 - (a) regulated mortgages, including run-out mortgages; and
 - (b) the involvement of solicitors in managed investment schemes.
- (2) In particular, the regulations and the rules of court may make provision about, or for the purpose of, the following:
 - (a) the making of and acting in relation to regulated mortgages by solicitors;

- (b) how the law society is to be given any notice or other information under this part;
- (c) how notices are to be given under this part;
- (d) ensuring that the operation of a managed investment scheme by a responsible entity is kept separate from a solicitor's practice;
- (e) ensuring that clients of a solicitor are aware that the operation of a managed investment scheme does not form part of the solicitor's practice.

Division 12A.5 Transitional arrangements— pre-existing mortgages

147P Meaning of *commencement date*

In this division:

commencement date means the date this part commences.

147Q Part extends to pre-existing mortgages

Except as provided by this division, this part applies to mortgages that were entered into before the commencement date.

147R Requirement to obtain fidelity insurance for pre-existing mortgages

- (1) Section 147E (Solicitor to have fidelity cover for regulated mortgages) does not apply in relation to a regulated mortgage that was entered into before the commencement date.
- (2) Despite subsection (1), section 147E applies to a solicitor if money entrusted to the solicitor by a client (whether before, on or after the commencement date) is advanced or proposed to be advanced on or after the commencement date to a borrower for a regulated mortgage entered into before the commencement date.

- (3) If subsection (2) applies—
- (a) the solicitor must ensure that a policy of fidelity insurance is in force in relation to the advance in accordance with section 147E, and comply with section 147G (Notification of insurance arrangements for regulated mortgages); and
 - (b) section 147F (Bar on claims against fidelity fund relating to regulated mortgages) applies to any claim against the fidelity fund so far as it relates to such an advance; and
 - (c) for the application of section 147F to the advance, the date that money is entrusted to the solicitor by the client is taken to be the later of—
 - (i) the commencement date; and
 - (ii) the date the money is entrusted to the solicitor.
- (4) This section is subject to section 147T (Substitution of lender or contributor under run-out mortgage).

147S No further action to be taken in relation to run-out mortgages

- (1) A solicitor must not, in the solicitor's capacity as solicitor for a lender or contributor—
- (a) advance any money entrusted to the solicitor to a borrower for a run-out mortgage; or
 - (b) do anything for the purpose of extending the term of a run-out mortgage; or
 - (c) accept any money from a client for the purpose of advancing money to a borrower for a run-out mortgage; or
 - (d) do anything else in relation to a run-out mortgage in contravention of the regulations or the rules of court relating to run-out mortgages.

- (2) A solicitor who contravenes this section commits professional misconduct.

147T Substitution of lender or contributor under run-out mortgage

- (1) Despite section 147S, a solicitor may accept money from a client, and do other work that is necessary solely for the purpose of substituting a lender or contributor under a run-out mortgage.
- (2) Section 147E (Solicitor to have fidelity cover for regulated mortgages) does not apply in relation to anything done by a solicitor under subsection (1) and, accordingly, the solicitor is not required to obtain fidelity insurance to compensate the substitute lender or contributor for any financial loss.
- (3) If a client entrusts or proposes to entrust money to a solicitor for the purpose of substituting a lender or contributor under a run-out mortgage, the solicitor must give the client written notice telling the client—
- (a) about the effect of section 147U; and
 - (b) that the solicitor is not required to have fidelity insurance in relation to a run-out mortgage.
- (4) The solicitor must not advance the money to a borrower for a run-out mortgage unless the solicitor has given the client notice under subsection (3).
- (5) A solicitor who contravenes this section commits professional misconduct.

147U No claims against fidelity fund by substitute lenders

- (1) This section applies to a person who entrusts money to a solicitor to become a lender or contributor under a run-out mortgage after the commencement date.

- (2) The person is not entitled to make a claim against the fidelity fund to obtain compensation for any financial loss in relation to that mortgage if the solicitor gave notice to the person in accordance with section 147T (3).

147V Expiry of div 12A.5

- (1) This division expires 3 years after it commences.
- (2) This division is a law to which the *Legislation Act 2001*, section 88 (Repeal does not end transitional or validating effect etc) applies.

**25 Interstate legal practitioner may practise in this jurisdiction
Section 191D (2), note**

substitute

Note 1 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see *Legislation Act 2001*, s 104).

Note 2 Section 147H (3) contains provisions allowing the suspension of entitlement under this part to practise in the ACT of solicitors required to comply with s 147E (Solicitor to have fidelity cover for regulated mortgages).

Part 8 Legislation Act 2001

26 Act amended—pt 8

This part amends the *Legislation Act 2001*.

27 Dictionary, part 1, new definition of *GST*

insert

GST—see the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth), dictionary.

Part 9 Pawnbrokers Act 1902

28 Act amended—pt 9

This part amends the *Pawnbrokers Act 1902*.

Note The *Pawnbrokers Act 1902* is also amended in sch 1 (Technical amendments), pt 1.1.

29 Part 2

substitute

Part 2 Licences

5 Issue of licences

- (1) If a person applies to the commissioner for a licence, or for renewal of a licence, the commissioner must issue a licence to the person or renew the licence if—
 - (a) the application complies with this Act; and

Note If a form is approved under s 28 (Approved forms) for an application, the form must be used.

 - (b) if the person is an individual—the person is 18 years old or older; and
 - (c) the person is a suitable person; and
 - (d) if the person is a partner applying for a licence on behalf of the partnership—each other partner is a suitable person.
- (2) A licence must state each premises where the holder of the licence may carry on business as a pawnbroker.
- (3) A licence may be issued for up to 1 year.

30 New section 8 heading, part 3

insert

8 Pawnbrokers—carrying on business**31 New section 8 (1)**

insert

- (1) A licensed pawnbroker must not carry on business as a pawnbroker at a place other than premises stated in the licence.

Maximum penalty: 50 penalty units.

32 New sections 21 to 25, part 4

insert

21 Working out whether person *suitable*

- (1) This section applies in working out for this Act whether a person is a *suitable person*.
- (2) A person is a suitable person if the person is not *disqualified*.
- (3) A person is *disqualified* if the person or, if the person is a corporation, the corporation or an executive officer of the corporation—
- (a) has committed—
- (i) an offence against this Act or a corresponding law of a State or foreign country; or
 - (ii) an offence involving fraud or dishonesty in Australia or a foreign country; or
- (b) has been refused a licence, or had a licence cancelled or revoked, under this Act or a corresponding law of a State.

- (4) However, even if a person is disqualified, the Magistrates Court may declare that the person is a suitable person if satisfied that the person is unlikely to be disqualified again.
- (5) If a person is disqualified after being declared by the Magistrates Court to be a suitable person, the person is no longer a suitable person.

22 Cancellation and suspension of licences

- (1) The Magistrates Court may cancel a person's licence, on application by anyone claiming that—
 - (a) the person is not a suitable person; or

Note A corporation licensed as a pawnbroker is disqualified, and therefore not a suitable person, if a thing mentioned in section 21 (3) (a) or (b) (Working out whether person *suitable*) applies to the corporation or an executive officer of the corporation.

 - (b) if the person is a partner who holds the licence on behalf of a partnership—the person or any other partner is not a suitable person.
- (2) The Magistrates Court may suspend the person's licence until the application is decided.

23 Register of licences

- (1) The commissioner must keep a register of licences under this Act.
- (2) The register must be available for public inspection at reasonable times.

24 Keeping of register

- (1) The register may include information about licences given to the commissioner under this Act and any other information the commissioner considers appropriate.

- (2) The register may be kept in the form of, or as part of, 1 or more computer databases or in any form the commissioner considers appropriate.
- (3) The commissioner may correct any mistake, error or omission in the register subject to the requirements (if any) of the regulations.
- (4) This section does not limit the functions of the commissioner in relation to the register.

25 False or misleading information

A person must not, in relation to an application for a licence—

- (a) provide information that the person knows is false or misleading in a material particular; or
- (b) omit information without which the application is, to the person's knowledge, misleading in a material particular.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

33 Section 47

substitute

27 Determination of fees and charges

- (1) The Minister may, in writing, determine fees and charges for this Act.

Note The *Legislation Act 2001* contains provisions about the making of determinations and regulations relating to fees and charges (see pt 6.3).

- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

28 Approved forms

- (1) The commissioner may, in writing, approve forms for this Act.
- (2) An approved form that is an application for, or for renewal of, a licence may include a consent for a police officer to make inquiries about any criminal record of—
 - (a) the applicant; or
 - (b) if the applicant is a partner applying for a licence on behalf of the partnership—each partner; or
 - (b) if the applicant is a corporation—the applicant and each executive officer of the applicant.
- (3) If the commissioner approves a form for a particular purpose, the approved form must be used for that purpose.

Note For other provisions about forms, see *Legislation Act 2001*, s 255.

- (4) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

29 Regulation-making power

The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

34 New part 5

insert

Part 5 Transitional**30 Definitions for pt 5**

In this part:

amendment Act means the *Justice and Community Safety Legislation Amendment Act 2002*.

commencement means the commencement of the amendment Act, part 9 (Pawnbrokers Act 1902).

current Act means the *Pawnbrokers Act 1902*, as in force after the commencement.

previous Act means the *Pawnbrokers Act 1902*, as in force immediately before the commencement.

31 Existing applications for licences

An application made by a person for a licence under the previous Act, section 6 (Applications for licences) that has not been finally dealt with by the Magistrates Court before the commencement is taken, after the commencement, to be an application made by the person under the current Act, section 5 (Issue of licences).

32 Expiry of pt 5

This part expires 6 months after it commences.

Part 10 Periodic Detention Act 1995

35 Act amended—pt 10

This part amends the *Periodic Detention Act 1995*.

36 New section 42A

42A If detention centre also remand centre

- (1) This section applies if a place declared to be a detention centre under section 42 is also an area declared to be a remand centre, or a temporary remand centre, under the *Remand Centres Act 1976*, part 2.
- (2) This Act—
 - (a) applies in relation to the place only to the extent that it is used for this Act; and
 - (b) applies only in relation to a person who is a detainee under this Act.
- (3) The director must ensure that the place is used to hold detainees under this Act only when a place that is not also a remand centre is not reasonably available to hold the detainees.

Part 11 Public Trustee Act 1985

37 Act amended—pt 11

This part amends the *Public Trustee Act 1985*.

38 Section 47

substitute

47 Function of board

The function of the board is to advise the public trustee on the investment of money that is from time to time in a common fund or otherwise in the hands of the public trustee and available for investment.

Note A provision of a law that gives an entity a function also gives the entity powers necessary and convenient to exercise the function (see *Legislation Act 2001*, s 196 and dict, pt 1, def of *entity*).

39 Section 48

substitute

48 Membership of board

- (1) The board consists of—
 - (a) the public trustee; and
 - (b) at least 2 other members appointed by the Minister.

Note 1 For the making of appointments (including acting appointments), see *Legislation Act 2001*, div 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see *Legislation Act 2001*, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

Section 40

Note 3 Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see *Legislation Act 2001*, div 19.3.3).

- (2) A member mentioned in subsection (1) (b) must be appointed for a term of not longer than 3 years.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see *Legislation Act 2001*, s 208 and dict , pt 1, def of *appoint*).

**40 Meetings of board
Section 54 (4)**

substitute

- (4) If the senior member is not present, the member chosen by the members present presides.

**41 Investment of money held in common funds
Section 56 (1)**

substitute

- (1) Money in a common fund must be invested by the public trustee having regard to any advice given by the board.

Note The *Trustee Act 1925*, subdivision 2.2.1 contains provisions about the powers and duties of trustees (including the public trustee) in relation to investments.

**42 Investment of money not held in common funds
Section 57 (b)**

substitute

- (b) the public trustee must invest the money in accordance with any directions applying to it; and

**43 Withdrawal of money from common funds
Section 58 (1) (b)**

substitute

- (b) invest the amount separately for the benefit of that estate, trust or person.

44 Section 59

substitute

59 Distribution of capital and income

- (1) The public trustee must distribute any capital or income paid into the income account of a common fund to the estates, trusts or persons having an interest in the common fund.
- (2) Distributions must be made at times decided by the public trustee and having regard to any advice given by the board.

**45 Income accounts
Section 60 (4)**

omit everything after paragraph (c), substitute

the amount, or the part of the amount decided by the public trustee, must be invested by the public trustee.

46 New section 60 (4A)

insert

- (4A) In acting under subsection (4), the public trustee must have regard to any advice given by the board.

47 Section 60

renumber subsections when Act next republished under Legislation Act 2001

**48 Common fund guarantee and reserve account
Section 61 (3)**

substitute

- (3) If, after distribution of capital and income under section 59, a balance remains in an income account, the public trustee must transfer from the account to the common fund guarantee and reserve account the amount decided by the public trustee having regard to any advice given by the board.

49 Section 61 (5)

omit

, with the approval of the board,

50 Section 61 (6)

substitute

- (6) If there is an amount at credit in the common fund guarantee and reserve account that is not for the time being required to be applied for any of the purposes mentioned in subsection (5), the amount must be invested by the public trustee.

**51 Directions of board about investments
Section 62**

omit

52 Section 63

substitute

63 Application of surplus funds

- (1) This section applies if a balance remains in an income account after each amount required under this part to be paid from the account is paid.

- (2) The balance, or the part of the balance decided by the public trustee having regard to any advice given by the board, may be applied towards the costs and expenses necessarily incurred by the public trustee in the exercise of the public trustee's functions under this Act.

53 Advances from common funds
Section 64 (1)

omit

, with the approval of the board,

substitute

, having regard to any advice given by the board,

54 Section 64 (2)

substitute

- (2) An advance under subsection (1) must bear interest at the rate, and be made on any other conditions, that the public trustee from time to time decides having regard to any advice given by the board.

55 Advances to beneficiaries
Section 65 (2)

substitute

- (2) The public trustee must not make an advance to a person under subsection (1) if the advance exceeds, or the total of the advances made to the person would exceed, $\frac{1}{2}$ of the amount the public trustee estimates to be the value of the person's beneficial interest in the estate or trust against which the advance is to be made.

56 Section 65 (3)

substitute

- (3) An advance under subsection (1) must bear interest at the rate, and be made on any other conditions, that the public trustee from time to time decides having regard to any advice given by the board.

Part 12 Remand Centres Act 1976

57 Act amended—pt 12

This part amends the *Remand Centres Act 1976*.

58 New section 5A

5A If remand centre also detention centre

- (1) This section applies if an area declared to be a remand centre, or a temporary remand centre, under part 2 is also a place declared to be a detention centre under the *Periodic Detention Act 1995*, section 42.
- (2) This Act—
- (a) applies in relation to the area only to the extent that it is used for this Act; and
 - (b) does not apply in relation to a person who is a detainee under the *Periodic Detention Act 1995*.

59 New section 15 (5A)

insert

- (5A) To remove any doubt, if an area that is a remand centre is also a detention centre under the *Periodic Detention Act 1995*, this section does not prevent a person who is a detainee under that Act from being held in the detention centre.

60 Section 15

renumber subsections when Act next republished under Legislation Act 2001

Part 13 Residential Tenancies Act 1997

61 Act amended—pt 13

This part amends the *Residential Tenancies Act 1997*.

62 Interest Section 28 (3)

substitute

(3) In subsection (1):

departmental bank account—see the *Financial Management Act 1996*, dictionary.

interest—see the *Financial Management Act 1996*, dictionary.

Part 14 Second-hand Dealers Act 1906

63 Act amended—pt 14

This part amends the *Second-hand Dealers Act 1906*.

Note The *Second-hand Dealers Act 1906* is also amended in sch 1 (Technical amendments), pt 1.1.

64 Dealers must be licensed Section 4

omit

A

substitute

(1) A

65 New section 4 (2)

insert

(2) The regulations may exempt an entity from subsection (1).

66 New section 10

substitute

10 Second-hand dealers—carrying on business

(1) A licensed second-hand dealer must not carry on business as a second-hand dealer at a place other than premises stated in the licence.

Maximum penalty: 50 penalty units.

(2) To remove any doubt, a licensed second-hand dealer does not commit an offence against subsection (1) only because the dealer

buys second-hand goods at a place other than premises stated in the licence.

Examples

- 1 A licensed second-hand dealer buys second-hand goods from a charity or at a trash and treasure market.
 - 2 A person advertises a piano for sale, a licensed second-hand dealer goes to the person's home to look at the piano and the dealer buys the piano while at the person's home.
- (3) A licensed second-hand dealer must not, without reasonable excuse, fail to produce his or her licence on demand made by a police officer at premises stated in the licence.

Maximum penalty: 5 penalty units.

- (4) A licensed second-hand dealer must not buy or receive second-hand goods from a person if the dealer believes or has reasonable grounds to believe that the person is under 14 years old.

Maximum penalty: 5 penalty units.

67 New section 16A

insert

16A Authority to ask for identification

A licensed second-hand dealer may ask a person to show the dealer identification—

- (a) to enable the dealer to comply with section 6 (1); or
- (b) if the dealer sells second-hand goods, or disposes of second-hand goods in another way, to the person, the goods are worth more than \$50 and the dealer believes or has reasonable grounds to believe that the name or home address given by the person is incorrect.

68 Dictionary, definition of *second-hand dealer*

after

dealing in

insert

(other than hiring out)

Part 15 Second-hand Dealers Regulations 2002

69 Regulations amended—pt 15

This part amends the *Second-hand Dealers Regulations 2002*.

70 Kinds of second-hand goods—Act, dict, def of *second-hand goods* Regulation 5 (2) and (3)

substitute

- (2) However, goods are not second-hand goods if they are taken as a trade-in by a person (other than a licensed second-hand dealer) as part of the sale of goods that are not second-hand goods.

71 New regulation 5A

insert

5A Exempt entities—Act, s 4 (2)

- (1) The following are exempt entities:
- (a) charitable organisations;
 - (b) people (other than licensed second-hand dealers) offering goods for sale at a trash and treasure market.

- (2) In this regulation:

charitable organisation means a body carried on for a religious, educational, benevolent or charitable purpose, other than a body carried on for the financial benefit of its members.

**72 Making records about goods bought or received—Act, s 6 (1)
Regulation 8 (1)**

substitute

- (1) This regulation applies if a licensed second-hand dealer buys, or receives in another way, second-hand goods from a person other than an exempt entity.

**73 Making records about goods sold or disposed of—Act, s 6 (1)
Regulation 9 (1) (a)**

omit

second-hand dealer

substitute

licensed second-hand dealer

74 Regulation 10 heading

substitute

**10 Making records—goods bought from exempt entities—
Act, s 6 (1)**

75 Regulation 10 (1) (a)

substitute

- (a) a licensed second-hand dealer buys second-hand goods from an exempt entity; and

76 Dictionary, new definition of *exempt entity*

insert

exempt entity means an exempt entity under regulation 5A

Part 16 Unclaimed Moneys Act 1950

77 Act amended—pt 16

This part amends the *Unclaimed Moneys Act 1950*.

78 Unclaimed assets in hands of liquidator Section 4

omit

registrar-general

substitute

public trustee

79 Publication of register Section 8

omit

registrar-general

substitute

public trustee

80 Examination of accounts etc Section 12

omit

registrar-general

substitute

public trustee

Part 17 Technical amendments

81 Technical amendments—sch 1

Schedule 1 amends the Acts mentioned in the schedule.

Schedule 1 Technical amendments

(see s 81)

Part 1.1 Pawnbrokers Act 1902

[1.1] Title

substitute

An Act to provide for the licensing and regulation of pawnbrokers, and for other purposes

Explanatory note

This amendment updates the long title, particularly to reflect the fact that the Act is now, for all purposes, an ACT law.

[1.2] Section 3

substitute

2 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act.

For example, the signpost definition '*suitable person*—see section 21 (Working out whether person *suitable*).' means that the expression 'suitable person' is defined in that section.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Legislation Act 2001*, s 155 and s 156 (1)).

3 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of notes.

Explanatory note

This amendment replaces the interpretation section, in line with current drafting practice. New sections 2 and 3 are standard provisions explaining the status of the dictionary and notes. A new dictionary is inserted by a later amendment in this part.

[1.3] Section 4 heading

substitute

4 Application of Act

Explanatory note

This amendment brings the section heading into line with current drafting practice.

[1.4] Section 4

omit

Nothing in this Act shall be construed to apply

substitute

This Act does not apply

Explanatory note

This amendment updates language.

[1.5] Section 4

omit

bona fide

substitute

genuine

Explanatory note

This amendment updates language.

[1.6] Section 11

substitute

6 Pawnbrokers must be licensed

A person must not carry on business as a pawnbroker unless the person is licensed as a pawnbroker.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

7 Name of pawnbroker etc to be displayed on premises

- (1) A licensed pawnbroker must clearly display on the outside of each premises where the pawnbroker carries on business, in letters at least 5cm high—
 - (a) his or her full name; and
 - (b) the words ‘licensed pawnbroker’.
- (2) A licensed pawnbroker must not, without reasonable excuse, contravene subsection (1).

Maximum penalty: 5 penalty units.

Explanatory note

This amendment remakes existing sections 5 and 11 and brings their language and structure into line with current drafting practice.

**[1.7] New section 8 (Pawnbrokers—carrying on business)
(2) and (3)**

insert

- (2) A licensed pawnbroker must not, without reasonable excuse, fail to produce his or her licence on demand made by a police officer at premises stated in the licence.

Maximum penalty: 5 penalty units.

- (3) A licensed pawnbroker must not buy, receive or take in pawn an article from a person if the pawnbroker believes or has reasonable grounds to believe that the person is—
- (a) under 14 years old; or
- (b) drunk.

Maximum penalty: 30 penalty units.

Explanatory note

This amendment brings the language of existing sections 12 and 24 into line with current drafting practice.

[1.8] Section 12

omit

Explanatory note

Section 12 is remade, in a modified form, as s 8 (2) (Pawnbrokers—carrying on business).

[1.9] Sections 13 to 23

substitute

9 Records of pawned articles received

- (1) This section applies if a licensed pawnbroker takes in pawn an article on which money is to be lent to a person.
- (2) Before giving the money to the person, the pawnbroker must make a record for the article that contains the following information:

- (a) an accurate description of the article;
 - (b) the amount to be lent;
 - (c) the rate of interest to be charged on the amount, by the week or month;
 - (d) the date the article is pawned;
 - (e) the name and home address given by the person;
 - (f) if the period for redemption of the article is longer than 3 months—the period.
- (3) The pawnbroker must not give the money to the person unless the pawnbroker reasonably believes that the name and address given by the person is accurate.
- (4) A licensed pawnbroker must, in each calendar year, consecutively number the records for pawned articles made under this section, starting at 1 for the first pawned article.
- (5) A licensed pawnbroker who, without reasonable excuse, contravenes this section commits an offence.

Maximum penalty: 20 penalty units.

10 Duplicates of records

- (1) If a licensed pawnbroker takes in pawn an article on which money is to be lent to a person, the pawnbroker must give the person (without charge) a duplicate of the record mentioned in section 9 (2) (Records of pawned articles received) signed by the pawnbroker.

Maximum penalty: 5 penalty units.

- (2) If the person does not take the duplicate, the pawnbroker must return the article to the person.

11 Production of duplicates

- (1) A person (the *person*) who pawned an article with a licensed pawnbroker (the *pawnbroker*) must produce the duplicate for the article to redeem the article, unless the duplicate is lost or stolen.
- (2) If the person does not have the duplicate because it is lost or stolen, the person must give the pawnbroker a statutory declaration made by the person that sets out the circumstances of the loss or theft.
- (3) The pawnbroker must give a copy of the record for the article, signed by the pawnbroker, to the person if—
 - (a) the pawnbroker is satisfied that the statutory declaration gives an adequate explanation of the loss or theft; and
 - (b) the article has not been redeemed; and
 - (c) the person asks for a copy of the record.

Maximum penalty (subsection (3)): 5 penalty units.

12 Holders of duplicates taken to be owners of pawned articles

- (1) This section applies if a person—
 - (a) produces the duplicate for a pawned article to the licensed pawnbroker who gave the duplicate; and
 - (b) claims to be the owner or authorised by the owner; and
 - (c) asks to redeem the article.
- (2) The person is taken to be the owner of the article, or authorised by the owner and entitled to redeem the article.
- (3) However, subsection (2) does not apply if—
 - (a) the pawnbroker has notice from the real owner that the duplicate was lost or stolen; or

- (b) the pawnbroker reasonably believes that the article was stolen from the real owner.
- (4) If the pawnbroker refuses to give the article to the person mentioned in subsection (1), the pawnbroker must—
 - (a) tell a police officer immediately about the refusal and the reasons for it; and
 - (b) give the officer the person's name and home address or a description of the person.
- (5) A licensed pawnbroker must not, without reasonable excuse, contravene subsection (4).

Maximum penalty: 5 penalty units.

13 Period for sale or disposal of pawned articles

- (1) The period during which a pawned article may be redeemed (the *redemption period*) is—
 - (a) 3 months; or
 - (b) if a longer period is agreed to by the licensed pawnbroker and the person pawning the article—the longer period.
- (2) A pawned article that is not redeemed by the end of the redemption period for the article is forfeited to the licensed pawnbroker who has the article, and may be sold or disposed of in another way.
- (3) An agreement for the forfeiture of a pawned article before the end of 3 months is void.

14 Selling or disposing before end of redemption period

A licensed pawnbroker must not sell, or dispose of in another way, a pawned article before the end of the redemption period for the article.

Maximum penalty: 50 penalty units

15 Method of sale for certain pawned articles

- (1) This section applies to an article—
 - (a) taken in pawn by a licensed pawnbroker from a person; and
 - (b) on which more than \$500 was lent to the person by the pawnbroker; and
 - (c) that is forfeited under this Act.
- (2) The article must be sold by public auction.
- (3) On 2 separate occasions at least 4 days before the proposed sale, the pawnbroker must publish a written notice about the sale in a newspaper published and circulating in the ACT.
- (4) The notice must contain a list of the articles to be sold by auction and the date each article was pawned.
- (5) A licensed pawnbroker who sells an article otherwise than in accordance with this section must pay the owner of the article \$500.

16 Pawnbroker not to buy pawned article

If a licensed pawnbroker or a person acting on behalf of the pawnbroker buys an article pawned with the pawnbroker, the purchase is not valid against the owner.

17 Application of proceeds of sale

- (1) This section applies if—
 - (a) a pawned article is sold by the licensed pawnbroker with whom the article was pawned; and
 - (b) there is a surplus; and
 - (c) the person by or for whom the article was pawned claims the surplus within 12 months of the sale.

- (2) Within 2 days of the person's claim, the pawnbroker must pay the person the surplus, less any necessary charges relating to the sale.
- (3) A licensed pawnbroker must not, without reasonable excuse, contravene subsection (2).

Maximum penalty: 50 penalty units.

- (4) In this section:

surplus means the amount remaining after the following are subtracted from the amount paid for the article:

- (a) the amount lent by the pawnbroker on the security of the article (*the advance*);
- (b) any interest due at the time of the sale of the article in relation to the advance.

18 Records of pawned articles sold or disposed of

- (1) This section applies if a licensed pawnbroker sells or otherwise disposes of a pawned article.
- (2) The pawnbroker must make a record for the article that contains the following information:
 - (a) the record number for the article made under section 9 (4) (Records of pawned articles received);
 - (b) the date the article was pawned;
 - (c) the name given by the person who pawned the article;
 - (d) the date the article was sold or disposed of;
 - (e) the amount for which the article was sold.

Maximum penalty: 20 penalty units.

- (3) A pawnbroker must not knowingly or recklessly make a false record under this section.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

19 Inspection of records

- (1) This section applies if—
- (a) a licensed pawnbroker sells or otherwise disposes of a person's pawned article; and
 - (b) the person produces the duplicate for the article; and
 - (c) the person asks to inspect the record about the sale or disposal.
- (2) The pawnbroker must let the person inspect the record.

Maximum penalty: 5 penalty units.

Explanatory note

Existing sections 13 to 17 and 19 to 23 have been updated to bring their language and structure into line with current drafting practice.

Existing section 18 (new section 14) has been updated to bring it into line with current drafting practice. 'Cause or knowingly suffer to be sold or disposed of' is not necessary because the *Crimes Act 1900*, section 180 (Aiding and abetting) deals with complicity in a principal offence.

[1.10] Section 24

omit

Explanatory note

This section has been remade, in an updated form, as new section 8 (3) (Pawnbrokers—carrying on business).

[1.11] Section 29

renumber as section 20

Explanatory note

This amendment rennumbers section 29.

[1.12] Part 4 heading

substitute

Part 4 Miscellaneous

Explanatory note

Most of the provisions of part 4 are omitted by the following amendments. This amendment changes the part heading so that it describes the new contents of the part.

[1.13] Sections 31 to 37

omit

Explanatory note

Section 31 is no longer necessary (see *Evidence Act 1995* (Cwlth), s 155 and 156).

Section 32 is omitted because it refers to the registrar, but it is not necessary to give the power to the commissioner (see *Evidence Act 1995* (Cwlth), s 155 and 156).

Section 33 is no longer necessary. A person carrying on business as a pawnbroker without a licence would contravene new section 6 (Pawnbrokers must be licensed). If the person is not carrying on business as a pawnbroker but displays a sign saying, or a sign that makes people believe, that the person is a pawnbroker, the person would contravene the *Fair Trading Act 1992*, section 12 (Misleading or deceptive conduct).

Section 34 is no longer necessary. Establishing the identity of a person is straightforward, and a pawnbroker who lent his or her licence to another person so that the person could pretend to be a pawnbroker could be dealt with under the *Crimes Act 1900*, section 180 (Aiding and abetting). The person pretending could be dealt with under the Act, section 7.

Sections 35 and 36 (a) are not necessary because of the *Crimes Act 1900*, division 6.4 (Forgery and use of forged instruments). Section 36 (b) is not necessary because of the *Crimes Act 1900*, section 89 (Theft).

Section 37 is no longer necessary. The Supreme Court has the power to issue a subpoena to give evidence, a subpoena for production etc (see *Supreme Court Rules* o 39 r 25 and

div 80.3), and failing to comply is contempt of court or may be dealt with under the *Supreme Court Act 1930*, section 70A (Failure to attend Supreme Court as required). The Magistrates Court has the power to issue a summons to give evidence, a summons for production etc (see *Magistrates Court Act 1930*, s 66 (Production of documents before magistrate) and s 61 (Power of magistrate to summon witnesses) and *Magistrates Court (Civil Jurisdiction) Act 1982*, div 14.3).

[1.14] Section 39

substitute

26 Magistrates Court may order return of article

- (1) This section applies if—
 - (a) a pawned article was pawned unlawfully; and
 - (b) the Magistrates Court is satisfied about the ownership of the article.
- (2) The Magistrates Court may order that the article be returned to the owner and that the person with whom the article was pawned pay compensation to the owner.

Explanatory note

This amendment renumbers the section and brings it into line with current drafting practice.

[1.15] Section 46

omit

Explanatory note

This section is obsolete. A plea of general issue denies the whole of the statement of claim, information or indictment. It is no longer open to a party to proceedings to plead the general issue.

[1.16] New dictionary

insert

Dictionary

(see s 2)

Note 1 The *Legislation Act 2001* contains definitions and other provisions relevant to this Act.

Note 2 In particular, the *Legislation Act 2001*, dict, pt 1, defines the following terms:

- commissioner for fair trading
- police officer
- statutory declaration

article includes a chattel or goods.

commissioner means the commissioner for fair trading.

disqualified—see section 21 (Working out whether person *suitable*).

duplicate, for a pawned article—see section 10 (1) (Duplicates of records).

executive officer, of a corporation, means a person, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

licence means a pawnbrokers licence under this Act.

licensed pawnbroker means a person who is licensed under this Act as a pawnbroker.

pawnbroker means a person who carries on the business of lending money on the security of an article taken by the person by way of pawn, pledge or as security.

pawned article means an article taken by a licensed pawnbroker by way of pawn, pledge or as security.

redemption period—see section 13 (1) (Period for sale of pawned articles).

suitable person—see section 21 (Working out whether person *suitable*).

Explanatory note

This amendment brings the dictionary into line with current drafting practice, updates the definitions, includes new definitions and omits unnecessary definitions (*charge, convicted, court* and *registrar*). References to ‘court’ in the Act have been changed to ‘Magistrates Court’ in line with current drafting practice.

Part 1.2 Second-hand Dealers Act 1906

[1.17] Section 2, notes

substitute

Note 1 The dictionary at the end of this Act defines certain words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act.

For example, the signpost definition ‘*suitable person*—see section 11 (Working out whether person *suitable*).’ means that the expression ‘suitable person’ is defined in that section.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Legislation Act 2001*, s 155 and s 156 (1)).

Explanatory note

This amendment updates standard notes.

[1.18] Section 3 (1) (a), new note

insert

Note If a form is approved under s 18 (Approved forms) for an application, the form must be used.

Explanatory note

This amendment inserts a standard note.

[1.19] Section 3 (1) (c)

substitute

- (c) the person is a suitable person; and
- (d) if the person is a partner applying for a licence on behalf of the partnership—each other partner is a suitable person.

Explanatory note

This amendment provides that each partner must be a suitable person, not just the applicant partner.

[1.20] Section 3 (2)

substitute

- (2) A licence must state each premises where the holder of the licence may carry on business as a second-hand dealer.

Explanatory note

This amendment update language and makes it clear that the licence must list each premises where the second-hand dealer can carry on business.

[1.21] Section 5

omit

place or

Explanatory note

This amendment omits an unnecessary word.

[1.22] Section 6 and 7 (1)

omit

second-hand dealer

substitute

licensed second-hand dealer

Explanatory note

This amendment makes it clear that these provisions apply to licensed second-hand dealers.

[1.23] Section 7 (3)

omit

, and not in substitution for,

Explanatory note

This amendment omits unnecessary words.

[1.24] Section 8 (1)

omit

second-hand dealer

substitute

licensed second-hand dealer

Explanatory note

This amendment makes it clear that these provisions apply to licensed second-hand dealers.

[1.25] Section 9 (2)

omit

licensed

Explanatory note

This amendment omits an unnecessary word. Subsection (1) states that the section applies to a licensed second-hand dealer, so 'licensed' in subsection (2) is superfluous.

[1.26] Section 11

substitute

11 Working out whether person *suitable*

- (1) This section applies in working out for this Act whether a person is a *suitable person*.
- (2) A person is a suitable person if the person is not *disqualified*.
- (3) A person is *disqualified* if the person or, if the person is a corporation, the corporation or an executive officer of the corporation—
 - (a) has committed—
 - (i) an offence against this Act or a corresponding law of a State or foreign country; or
 - (ii) an offence involving fraud or dishonesty in Australia or a foreign country; or
 - (b) has been refused a licence, or had a licence cancelled or revoked, under this Act or a corresponding law of a State.
- (4) However, even if a person is disqualified, the Magistrates Court may declare that the person is a suitable person if satisfied that the person is unlikely to be disqualified again.

- (5) If a person is disqualified after being declared by the Magistrates Court to be a suitable person, the person is no longer a suitable person.

Explanatory note

This amendment simplifies the section.

[1.27] Section 12 (1)

substitute

- (1) The Magistrates Court may cancel a person's licence, on application by anyone claiming that—
- (a) the person is not a suitable person; or

Note A corporation licensed as a pawnbroker is disqualified, and therefore not a suitable person, if a thing mentioned in section 11 (3) (a) or (b) (Working out whether person *suitable*) applies to the corporation or an executive officer of the corporation.

- (b) if the person is a partner who holds the licence on behalf of a partnership—the person or any other partner is not a suitable person.

Explanatory note

This amendment provides that each partner must be a suitable person, not just the partner who holds the licence, and is consequential on the simplification of section 11 (replacement of 'unsuitable person').

[1.28] Section 13 (4), definition of *market*

omit

(whether or not the market also deals with other goods)

substitute

(whether or not other goods are also dealt with at the market)

Explanatory note

This amendment makes it clear that goods are dealt with by people at the market, not the market itself.

[1.29] Section 18 (2)

substitute

- (2) An approved form that is an application for, or for renewal of, a licence may include a consent for a police officer to make inquiries about any criminal record of—
- (a) the applicant; or
 - (b) if the applicant is a partner applying for a licence on behalf of the partnership—each partner; or
 - (c) if the applicant is a corporation—the applicant and each executive officer of the applicant.

Explanatory note

This amendment makes it clear what type of form can contain this consent and provides for inquiries to be made about each partner, not just the applicant partner.

[1.30] Dictionary, new notes

insert

Note 1 The *Legislation Act 2001* contains definitions and other provisions relevant to this Act.

Note 2 In particular, the *Legislation Act 2001*, dict, pt 1, defines the following terms:

- chief police officer
- commissioner for fair trading
- foreign country
- individual
- police officer
- regulations
- State.

[1.31] Dictionary, definition of *commissioner*

omit

of

substitute

for

Explanatory note

This amendment corrects a minor error.

[1.32] Dictionary, definition of *executive officer*

omit

means the person

substitute

means a person

Explanatory note

This amendment corrects a minor error.

[1.33] Dictionary, definition of *unsuitable person*

omit

Explanatory note

This amendment is consequential on the amendment of section 11.

Endnotes

Republications of amended laws

- 1 For the latest republication of amended laws, see www.legislation.act.gov.au.

Penalty units

- 2 The *Legislation Act 2001*, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

[Presentation speech made in Assembly on 27 June 2002]

I certify that the above is a true copy of the Justice and Community Safety
Legislation Amendment Bill 2002 which was passed by the Legislative
Assembly on 22 August 2002.

Clerk of the Legislative Assembly

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