



AUSTRALIAN CAPITAL TERRITORY

Justice and Community Safety Legislation Amendment Act 2003

A2003–2

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AUSTRALIAN CAPITAL TERRITORY

Justice and Community Safety Legislation Amendment Act 2003

A2003–2

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

*Notified under the Legislation Act 2001 on 3 March 2003
(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 2003*.

2 Commencement

- (1) The following parts commence on the day after this Act's notification day:
 - part 6 (Fire Brigade Act 1957)
 - part 7 (Fire Brigade Regulations 1958)
 - part 11 (Leases (Commercial and Retail) Act 2001)
 - part 15 (Magistrates Court (Civil Jurisdiction) Act 1982).
- (2) The remaining provisions commence on the 28th day after this Act's notification day.

Part 2 Administration and Probate Act 1929

3 Act amended—pt 2

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

4 Interpretation for Act Section 5 (1), new definition of *administration bond*

insert

administration bond means a bond or guarantee, with or without sureties, prescribed under the rules.

5 Sections 14 to 19

omit

6 Administration pendente lite and receiver Section 23 (1)

omit

, and with or without a bond or sureties,

7 Section 60

substitute

60 Proceedings under s 59 not to affect other proceedings

A proceeding under section 59 does not—

- (a) affect the right to proceed against the executor or administrator of the estate for an account and administration; or
- (b) stop the Supreme Court from making an order under the rules about the administration bond for the estate.

**8 Duties of registrar
Section 76 (2)**

substitute

- (2) The registrar may swear the applicant and each person making an affidavit.

9 New sections 79A and 79B

in part 5, insert

79A Orders to collect and administer estates for pt 5

For this part, a reference to an order to collect and administer an estate includes a reference to an exemplification of an order to collect and administer.

79B Inclusion of orders to collect and Scottish confirmation

For this part, a reference to probate or administration includes a reference to—

- (a) an order to a curator or someone else to collect and administer an estate; and
- (b) a confirmation of the executor or someone else granted in a sheriff court in Scotland.

10 Section 80

substitute

80 Reseal of grant made in reciprocating jurisdiction

Note Section 80A contains qualifications on the registrar's power under this section.

- (1) This section applies if a court of competent jurisdiction in a reciprocating jurisdiction has granted probate of a will,

administration of an estate or an order to collect and administer an estate.

- (2) The registrar may seal the probate, administration or order if the relevant person—
- (a) produces the probate, administration or order to the registrar; and
 - (b) deposits a copy with the registrar; and
 - (c) applies to the registrar to have it sealed with the seal of the Supreme Court.
- (3) The registrar may, at any time, refer an application under this section to the Supreme Court.
- (4) For subsection (2), each of the following is a *relevant person*:
- (a) for a probate of a will—
 - (i) the executor to whom the probate was granted; or
 - (ii) a person authorised by the executor, under a power of attorney, to make the application; or
 - (iii) the executor, by representation, of the will;
 - (b) for administration of an estate—
 - (i) the administrator to whom the administration was granted; or
 - (ii) the person authorised by the administrator, under a power of attorney, to make the application;
 - (c) for an order to collect and administer an estate—a public trustee in the reciprocating jurisdiction to whom the order was granted.
- (5) In this section:
- reciprocating jurisdiction* means—

- (a) a State; or
- (b) a Commonwealth country; or
- (c) a country, or part of a country, prescribed under the regulations.

80A Registrar not to seal

- (1) If a caveat against the sealing of a probate or administration has been lodged with the registrar, the registrar must not seal the probate or administration under section 80 unless the Supreme Court otherwise orders.
- (2) If the registrar refers an application to the Supreme Court under section 80 (3), the registrar must not seal the probate, administration or order to collect and administer an estate to which the application relates unless the court otherwise orders.

80B Supreme Court may require security

The Supreme Court may, before or after sealing a probate, administration or order to collect and administer an estate under section 80 (Reseal of grant made in reciprocating jurisdiction), require the applicant to give security for the proper administration of the estate to which it relates.

80C Effect of sealing

- (1) If a probate or administration is sealed under section 80 (Reseal of grant made in reciprocating jurisdiction)—
 - (a) the probate or administration has the same effect as if it had been originally granted by the Supreme Court; and
 - (b) the person who applied under section 80 must exercise the same functions, and is subject to the same liabilities, as if the person had been originally granted the probate or administration by the court.

- (2) If an order to collect and administer an estate is sealed under section 80, the person who applied under that section has the same functions, and is subject to the same liabilities, as if the person was the public trustee and the order was an order to collect and administer the estate granted to the public trustee under section 88.

**11 Seal not to be attached until duty is paid etc
Section 82 (2)**

substitute

- (2) The administration must not be sealed until the administration bond (if any) that would have been required if the administration had been originally granted by the Supreme Court has been entered into.

**12 Inclusion of orders to collect and Scotch confirmation
Section 83**

omit

Part 3 Consumer Credit (Administration) Act 1996

13 Act amended—pt 3

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

14 Section 4

substitute

4 Exemption—banks

Division 2.2 (Provision of consumer credit) and division 2.3 (Registration of consumer credit providers) do not apply to a bank.

15 New section 18A

in division 2.4, insert

18A Meaning of *credit provider* for div 2.4

In this division, to remove any doubt, a *credit provider* includes the following:

- (a) an unregistered credit provider;
- (b) a credit provider whose registration is suspended;
- (c) a bank;
- (d) an entity that pretends to be a credit provider.

16 Disciplinary action Section 24 (1) (f)

substitute

- (f) disqualify the credit provider, or a stated defined influential person in relation to the credit provider, from obtaining registration as a credit provider or as a finance broker for the period stated in the notice of disqualification under section 130.

17 New section 24 (7) and (8)

insert

- (7) If the commissioner gives a direction under subsection (1) (c), the commissioner may extend the time for complying with the direction.
- (8) The extension may be made—
 - (a) before or after the end of the time for compliance given in the direction; and
 - (b) on application by the person directed or on the commissioner's own initiative.

18 Section 24A

substitute

24A Civil penalties—credit providers

- (1) This section applies if—
 - (a) a credit provider's registration was or is suspended or cancelled under this part; and
 - (b) the credit provider provides consumer credit to a debtor while the registration is suspended or cancelled.
- (2) This section also applies if—
 - (a) a credit provider is not, or was not, registered under this part nor exempted under division 2.1 (Exemptions); and
 - (b) the commissioner has directed the credit provider to become registered within a particular time; and

- (c) the credit provider has not become registered, and not been exempted, within the time; and
 - (d) the credit provider provides consumer credit to a debtor after the time for complying with the direction while unregistered and not exempted.
- (3) If this section applies under subsection (1) or (2), the debtor is not liable to pay an amount under the credit contract that would, apart from this subsection, have been payable during the period of suspension or cancellation or while the credit provider was unregistered and not exempted.
- (4) An amount is recoverable by a debtor as a debt payable by a credit provider if—
- (a) under subsection (3), the debtor is not liable to pay the amount under a credit contract; but
 - (b) the debtor has paid the amount.
- (5) This section does not affect any liability of a person to be convicted or found guilty of an offence.
- (6) In this section, to remove any doubt, a *credit provider* is a credit provider under section 18A.

19 Section 29

omit everything before paragraph (a), substitute

29 Exemption—particular entities

Division 3.2 (Finance broking) and division 3.3 (Registration of finance brokers) do not apply to the following entities:

20 Section 30

omit everything before paragraph (a), substitute

30 Exemption—finance broking in the course of another business

Division 3.2 (Finance broking) and division 3.3 (Registration of finance brokers) do not apply to a person (the *exempt person*) who carries on a genuine business of selling land or supplying goods or services (whether as principal or agent) if—

**21 Commissions
New section 35 (6)**

insert

(6) In this section:

commission, for a finance broking transaction—

- (a) means a commission from a debtor on behalf of whom the credit to which the transaction relates is being sought; but
- (b) does not include a commission from a credit provider in relation to the transaction.

22 New section 49A

in division 3.4, insert

49A Meaning of *finance broker* for div 3.4

In this division, to remove any doubt, a *finance broker* includes the following:

- (a) an unregistered finance broker;
- (b) a finance broker whose registration is suspended;
- (c) an entity exempted under section 29 (Exemption—particular entities) or section 30 (Exemption—finance broking in the course of another business);
- (d) an entity that pretends to be a finance broker.

**23 Disciplinary action
Section 55 (1) (f)**

substitute

- (f) disqualify the finance broker, or a stated defined influential person in relation to the finance broker, from obtaining registration as a finance broker or credit provider for the period stated in the notice of disqualification under section 130 (Notification of decisions).

24 New section 55 (7) and (8)

insert

- (7) If the commissioner gives a direction under subsection (1) (c), the commissioner may extend the time for complying with the direction.
- (8) The extension may be made—
- (a) before or after the end of the time for compliance given in the direction; and
 - (b) on application by the person directed or on the commissioner's own initiative.

25 Section 55A

substitute

55A Civil penalties—finance brokers

- (1) This section applies if—
- (a) the registration of a finance broker was or is suspended or cancelled under this part; and
 - (b) the finance broker is involved in finance broking and for that purpose enters into a contract with a debtor while the registration is suspended or cancelled.
- (2) This section also applies if—

- (a) a finance broker is or was not registered under this part nor exempted under division 3.1 (Exemptions); and
 - (b) the commissioner has directed the finance broker to become registered within a particular time; and
 - (c) the finance broker has not become registered, and not been exempted, within the time; and
 - (d) the finance broker is involved in finance broking and for that purpose enters into a contract with a debtor after the time for complying with the direction while unregistered and not exempted.
- (3) If this section applies under subsection (1) or (2), the debtor is not liable to pay any amount under the contract.
- (4) An amount is recoverable by a debtor as a debt payable by a finance broker if—
- (a) under subsection (3), the debtor is not liable to pay the amount under a contract; but
 - (b) the debtor has paid the amount.
- (5) This section does not affect any liability of a person to be convicted or found guilty of an offence.
- (6) In this section, to remove any doubt, a *finance broker* is a finance broker under section 49A.

26 Review of decisions—credit providers

Section 128 (h)

substitute

- (h) under section 24 (1) taking disciplinary action against a credit provider; or

27 Section 128 (j)

substitute

- (j) under section 24 (1) not to take disciplinary action in relation to a credit provider after inviting the credit provider to show cause why the action should not be taken.

**28 Review of decisions—finance brokers
Section 129 (h)**

substitute

- (h) under section 55 (1) taking disciplinary action against a finance broker; or

29 Section 129 (j)

substitute

- (j) under section 55 (1) not to take disciplinary action in relation to a finance broker after inviting the finance broker to show cause why the action should not be taken.

30 Further amendments, mentions of *registered credit provider*

omit

registered credit provider

substitute

credit provider

in

- section 19
- section 21
- section 22
- section 23

- section 24 (1) and (3)

31 Further amendments, mentions of *registered finance broker*

omit

registered finance broker

substitute

finance broker

in

- section 50
- section 52
- section 53
- section 54
- section 55 (1) and (3)

Part 4 Fair Trading Act 1992

32 Act amended—pt 4

This part amends the Fair Trading Act 1992.

33 New division 2.1 heading

insert

Division 2.1 False and misleading conduct

34 New division 2.2 and division 2.3 heading

after section 25, insert

Division 2.2 Pyramid selling

25A Definitions for div 2.2

In this division:

new participant, in a pyramid selling scheme, includes a person who has applied, or been invited, to participate in the scheme.

participant, in a pyramid selling scheme, means a person who participates in the scheme.

participate, in a pyramid selling scheme, means—

- (a) establish or promote the scheme (whether alone or together with another person); or
- (b) take part in the scheme in any capacity (whether or not as an employee or agent of a person who establishes or promotes the scheme, or otherwise takes part in the scheme).

participation payment—see section 25C (1), definition of *pyramid selling scheme*, paragraph (a).

payment, to a person or received by a person, means—

- (a) the provision of a financial or non-financial benefit to or for the benefit of the person; or
- (b) the provision of a financial or non-financial benefit partly to or for the benefit of the person, and partly to or for the benefit of another person.

pyramid selling scheme—see section 25C.

recruitment payment—see section 25C (1), definition of **pyramid selling scheme**, paragraph (b).

25B Pyramid selling schemes—participation prohibited

A person must not participate in a pyramid selling scheme.

25C What is a *pyramid selling scheme*

- (1) In this Act:

pyramid selling scheme means a scheme with both the following characteristics:

- (a) to take part in the scheme, some or all new participants must make a payment (a **participation payment**) to another participant or participants in the scheme;
- (b) the participation payments are entirely or substantially induced by the prospect held out to new participants that they will be entitled to a payment (a **recruitment payment**) in relation to the introduction to the scheme of further participants.

- (2) A scheme may be a pyramid selling scheme—

- (a) no matter who holds out to new participants the prospect of entitlement to recruitment payments; and
- (b) no matter who is to make recruitment payments to new participants; and

- (c) no matter who is to make introductions to the scheme of further new participants.
- (3) A scheme may be a pyramid selling scheme even if it has any or all of the following characteristics:
 - (a) the participation payments may (or must) be made after the new participants begin to take part in the scheme;
 - (b) making a participation payment is not the only requirement for taking part in the scheme;
 - (c) the holding out of the prospect of entitlement to recruitment payments does not give any new participant a legally enforceable right;
 - (d) arrangements for the scheme are not recorded in writing (whether entirely or partly);
 - (e) the scheme involves the marketing of goods or services (or both).

25D Marketing schemes—~~are they pyramid selling schemes?~~

- (1) To decide whether a scheme that involves the marketing of goods or services (or both) is a pyramid selling scheme, a court may have regard to the following matters in working out whether participation payments under the scheme are entirely or substantially induced by the prospect held out to new participants of entitlement to recruitment payments:
 - (a) the extent to which the participation payments bear a reasonable relationship to the value of the goods or services that participants are entitled to be supplied under the scheme (as assessed, if appropriate, by reference to the price of comparable goods or services available elsewhere);
 - (b) the emphasis given in the promotion of the scheme to the entitlement of participants to the supply of goods and services

by comparison with the emphasis given to their entitlement to recruitment payments.

- (2) Subsection (1) does not limit the matters to which the court may have regard in working out whether participation payments are entirely or substantially induced by the prospect held out to new participants of entitlement to recruitment payments.

Division 2.3 Other conduct

35 Pyramid selling Section 27

omit

Part 5 Fair Trading (Consumer Affairs) Act 1973

36 Act amended—pt 5

This part amends the *Fair Trading (Consumer Affairs) Act 1973*.

37 Section 29

substitute

29 Orders by commissioner

- (1) This section applies if a prescribed authority of the Commonwealth or a State has, by order or other instrument (the *interstate order*)—
 - (a) prohibited the supply of goods; or
 - (b) imposed conditions or restrictions on the supply of goods.
- (2) The commissioner may, in writing, at any time while the interstate order is in force, make a consumer product safety order—
 - (a) if the interstate order prohibits the supply of goods—prohibiting the supply of the goods in the ACT; or
 - (b) if the interstate order imposes conditions or restrictions on the supply of goods—imposing conditions or restrictions on the supply of the goods in the ACT.

Note A power to make a statutory instrument includes the power to amend or repeal the instrument (see Legislation Act, s 46).

- (3) However, the commissioner must not make a consumer product safety order under this section in relation to goods unless satisfied that it is reasonable and necessary to make the order to prevent or reduce the risk of injury to, or impairment of health of, someone because the person or someone else has or is handling or using the goods.

- (4) Also, the commissioner must not make a consumer product safety order under this section in relation to goods if the Minister has made, or refused to make, an interim safety order or consumer product safety order in relation to the goods.
- (5) A consumer product safety order made under this section may adopt an interstate order as in force from time to time.

Note 1 The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or as at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

Note 2 A notifiable instrument must be notified under the Legislation Act.

- (6) A consumer product safety order made under this section in relation to goods ends on the earlier of the following:
- (a) if the order provides for its end—at the time stated by the order for its end;
 - (b) the commencement of a consumer product safety order under section 27 in relation to the goods.
- (7) Without limiting the powers implied by subsection (2), the Minister may, in writing, amend or repeal a consumer product safety order made under this section.
- (8) A consumer product safety order made under this section is a notifiable instrument.

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

- (9) In this section:

prescribed authority means—

- (a) a Commonwealth or State Minister responsible for consumer affairs; or
- (b) a person appointed or authority established under a Commonwealth or State law with functions equivalent, or

substantially equivalent, to the functions given to the Minister or commissioner under this part.

38 Notification of decisions
Section 35 (1)

substitute

- (1) The Minister must prepare a written notice of any of the following decisions by the Minister:
 - (a) a decision under section 26 (3) to make, amend or repeal an interim safety order;
 - (b) a decision under section 26 (7) to extend the period of effect of an interim safety order;
 - (c) a decision under section 27 (1) to make, amend or repeal a consumer product safety order;
 - (d) a decision under section 29 to amend or repeal a consumer product safety order.

39 Section 35 (6)

substitute

- (6) The commissioner must prepare a written notice of a decision by the commissioner under section 29 to make, amend or repeal a consumer product safety order.

40 Section 35 (8)

substitute

- (8) The commissioner must prepare a written notice of a decision by the commissioner under section 29 to refuse to make a consumer product safety order.

41 Appeals
Section 36 (2)

omit

29 (1)

substitute

29

Part 6 Fire Brigade Act 1957

42 Act amended—pt 6

This part amends the Fire Brigade Act 1957.

43 New section 5

insert

5 Chief officer to advise

If an entity consults with the chief officer under the *Building Regulations 1972*, regulation 15 (Consultation and consent), the chief officer must give the entity written advice assessing building compliance.

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

Part 7 Fire Brigade Regulations 1958

44 Regulations amended—pt 7

This part amends the Fire Brigade Regulations 1958.

45 Regulation 3

substitute

3 Minister or authorised person may direct installation of fire appliances

- (1) The Minister may direct the owner of a commercial building to provide or install in the building the fire appliance stated in the direction.
- (2) The chief officer, or a person authorised in writing by the chief officer to make inspections under this regulation, may enter a building—
 - (a) to work out whether a direction under this regulation has been complied with; or
 - (b) to inspect fire appliances provided or installed in the building under a direction under this regulation.
- (3) A person commits an offence if—
 - (a) the person knows that, or is reckless about the fact that, someone else is the chief officer or a person authorised in writing by the chief officer to make inspections under this regulation; and
 - (b) the person obstructs, hinders, intimidates or resists the other person in the exercise of the person's functions under subsection (2).

Maximum penalty: 10 penalty units.

(4) Strict liability applies to subregulation (3) (b).

Part 8 Instruments Act 1933

46 Act amended—pt 8

This part amends the Instruments Act 1933.

47 Payment of determined fees Section 37A

omit

Part 9 Juries Act 1967

48 Act amended—pt 9

This part amends the *Juries Act 1967*.

49 Section 11

substitute

11 Exempt people and people who may claim exemption

- (1) A person mentioned in schedule 2, part 2.1 is exempt from serving as a juror.
- (2) A person mentioned in schedule 2, part 2.2 may claim exemption from serving as a juror.

50 New schedule 2

insert

Schedule 2 Jury service

(see s 11)

Part 2.1 Exempt people

column 1 item	column 2 exempt people
1	a person exempt from serving as a juror under— <ul style="list-style-type: none"> • the <i>Jury Exemption Act 1965</i> (Cwlth), section 4 or regulations under that section; or • the <i>Navigation Act 1912</i> (Cwlth), section 147; or • the <i>Air Navigation Regulations 1947</i> (Cwlth), regulation 150

column 1 item	column 2 exempt people
2	a magistrate or coroner
3	an employee of the government of a foreign country or of an international organisation
4	the official secretary to the Governor-General
5	a practising lawyer or an employee of a practising lawyer
6	a practising doctor
7	a practising dentist
8	a practising pharmacist
9	a practising veterinary surgeon
10	a police officer
11	a person with full-time duties as a member of the fire brigade
12	a person living in the Jervis Bay Territory
13	a judge or master of the Supreme Court
14	a member of the Legislative Assembly or a member of staff of a member of the Legislative Assembly who is an adviser or private secretary
15	a chief executive (in the public service)
16	a public servant in the staff of the following: <ul style="list-style-type: none">(a) the Supreme Court;(b) the Magistrates Court
17	a public servant providing legal professional services in the staff of any of the following: <ul style="list-style-type: none">(a) the Department of Justice and Community Safety;(b) the Legal Aid Commission (A.C.T.);(c) the Office of the Director of Public Prosecutions

column 1 item	column 2 exempt people
18	a person holding any of the following positions in the Legislative Assembly: <ul style="list-style-type: none">(a) clerk;(b) deputy clerk;(c) clerk assistant;(d) sergeant-at-arms;(e) editor of debates;(f) secretary to a committee of the Assembly
19	a public servant exercising the functions of a social worker responsible to the chief executive responsible for administering the <i>Children and Young People Act 1999</i> , chapter 2 (General objects, principles and parental responsibility)
20	a public servant holding a delegation under the <i>Children and Young People Act 1999</i> , section 34 whose principal function is to direct and control the provision of youth justice services in the ACT
21	the chief fire control officer or deputy fire control officer
22	an appointee under the <i>Remand Centres Act 1976</i> , section 6 or 6A
23	a community corrections officer under the <i>Supervision of Offenders (Community Service Orders) Act 1985</i>

column 1 item	column 2 exempt people
24	a person appointed as 1 of the following: <ul style="list-style-type: none"> <li data-bbox="531 607 1241 674">(a) a royal commission under the <i>Royal Commissions Act 1991</i>, section 5; <li data-bbox="531 696 1241 763">(b) a board of inquiry under the <i>Inquiries Act 1991</i>, section 5; <li data-bbox="531 786 1241 853">(c) a member of a judicial commission under the <i>Judicial Commissions Act 1994</i>, section 6
25	a public servant during the period the public servant is made available to a royal commission, board of inquiry or judicial commission
26	the public servant holding the position of director of corrective services
27	a public servant holding a position of manager of a detention centre under the <i>Periodic Detention Act 1995</i>
28	a public servant holding a position of a superintendent under the <i>Remand Centres Act 1976</i>
29	a public servant holding a position of a custodial officer under the <i>Remand Centres Act 1976</i> or the <i>Periodic Detention Act 1995</i>
30	an employee at a place declared to be an attendance centre, institution or shelter under the <i>Children and Young People Act 1999</i> , section 412

Part 2.2 People who may claim exemption

column 1 item	column 2 people who may claim exemption
1	a minister of religion
2	a practising member of a religious society or order the beliefs or principles of which are incompatible with jury service
3	a professor, lecturer, schoolmaster or schoolteacher engaged in full-time teaching of organised classes at a university, college or school
4	an editor of a newspaper
5	a practising nurse, including a nurse enrolled under the <i>Nurses Act 1988</i>
6	a household officer or member of staff of the Governor-General
7	a person who is 60 years old or older

Part 10 Law Officer Act 1992

51 Act amended—pt 10

This part amends the *Law Officer Act 1992*.

52 Section 4 heading

substitute

4 Functions of Attorney-General

53 Section 4 (1)

omit

(1) The functions

substitute

The functions

54 Section 4 (2)

substitute

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

55 Section 5

substitute

5 Additional functions of Attorney-General

The Attorney-General also has, in relation to the Territory, the traditional functions, prerogatives and privileges of State Attorneys-General, subject to this Act and any other Territory law.

5A Effect of Attorney-General's functions on certain litigation

To remove any doubt, the functions of the Attorney-General, including the traditional functions, prerogatives and privileges of State Attorneys-General, do not prevent, and are taken never to have prevented, a person authorised by the Territory, or under a Territory law, from instituting or conducting litigation mentioned in section 4 (d) (Functions of Attorney-General).

Part 11 Leases (Commercial and Retail) Act 2001

56 Act amended—pt 11

This part amends the Leases (Commercial and Retail) Act 2001.

57 Sections 144 and 145

substitute

144 Jurisdiction

- (1) The Magistrates Court has jurisdiction to hear and determine applications under this Act.
- (2) The jurisdiction of the Magistrates Court for this Act is not affected by the amount claimed in an application and the Magistrates Court is not limited in any amount it can order to be paid in relation to the application.
- (3) The Magistrates Court may, when acting within the jurisdiction given under this Act, exercise—
 - (a) any power that could be exercised by the court under the *Magistrates Court (Civil Jurisdiction) Act 1982* as if the court had this jurisdiction under that Act; and
 - (b) any other power necessary or convenient for the exercise of this jurisdiction.

145 Applications that may be made

- (1) An application may be made in relation to a dispute to which this Act applies.

Note Section 17 sets out the disputes to which this Act applies.

- (2) An application in relation to a dispute to which this act applies cannot be made under the *Magistrates Court (Civil Jurisdiction) Act 1982*.

58 New section 168A

insert

168A Saving of certain court orders for relief

- (1) This section applies to a Magistrates Court order in a proceeding that—
- (a) relates to a dispute under this Act; and
 - (b) commenced in the Magistrates Court before the commencement of this section.
- (2) To the extent that the order provides for something not provided for under this Act—
- (a) the order is taken to be, or have been, made under power the court could exercise under the *Magistrates Court (Civil Jurisdiction) Act 1982* if the court had jurisdiction in relation to the dispute under that Act; and
 - (b) the court is taken to have, or have had, that power.
- (3) This section is declared to be a law to which the Legislation Act, section 88 (Repeal does not end transitional or validating effect etc) applies.

Part 12 Legal Practitioners Act 1970

59 Act amended—pt 12

This part amends the *Legal Practitioners Act 1970*.

60 Section 91

substitute

91 Payment into trust bank account

- (1) A solicitor must pay all trust money received by the solicitor into—
 - (a) the general trust bank account maintained by the solicitor; or
 - (b) if the solicitor maintains 2 or more general trust bank accounts—1 of the accounts.
- (2) Trust money must be paid into the account as soon as practicable after the solicitor receives it and, in any case, not later than 5 banking days after the day the solicitor receives it.
- (3) However, if trust money is paid by direct deposit or electronic transfer into an account operated by the solicitor in relation to his or her practice, the solicitor must pay the money into the account on the next banking day after the day the solicitor becomes aware of the payment.
- (4) This section does not apply to trust money to which section 92 applies.

61 Payments from trust bank accounts Section 94 (1)

substitute

- (1) A solicitor must not pay an amount out of a trust bank account maintained by the solicitor for his or her practice except—

- (a) by electronic transfer; or
- (b) by a cheque marked 'not negotiable'.

Part 13 Liquor Act 1975

62 Act amended—pt 13

This part amends the *Liquor Act 1975*.

63 New section 40A

insert

40A Bar-rooms

- (1) This section applies to premises—
 - (a) in relation to which a general, club, on or special licence is in force; or
 - (b) in relation to which an application for a general, club, on or special licence has been made.
- (2) The relevant decision-maker must, in writing, decide which areas of the premises are bar-rooms and which are not bar-rooms for this Act.
- (3) The relevant decision-maker is taken to have decided under this section that an area that was a bar-room for this Act immediately before the commencement of this section is a bar-room.
- (4) However, the decision need not be notified under section 174 (Notification of decisions).
- (5) Subsections (3) and (4) are laws to which the Legislation Act, section 88 (Repeal does not end transitional or validating effect etc) applies.
- (6) Subsections (3) to (5) and this subsection expire 1 year after this section commences.

**64 Application for alteration
Section 94 (3)**

omit

65 Section 94

renumber subsections when Act next republished under Legislation Act 2001

**66 Review by administrative appeals tribunal
New section 173 (ba)**

insert

(ba) deciding an area is or is not a bar-room under section 40A; or

67 Section 173

renumber paragraphs when Act next republished under Legislation Act 2001

68 Dictionary, definition of *bar-room*

substitute

bar-room, for licensed premises, means a part of the premises that the relevant decision-maker has decided under section 40A (Bar-rooms) is a bar-room.

Part 14 Magistrates Court Act 1930

69 Act amended—pt 14

This part amends the *Magistrates Court Act 1930*.

70 Regulations about infringement notice offences section 119 (1)

substitute

The regulations may prescribe an offence for the definition of *infringement notice offence* in section 117 by—

- (a) stating the offence; or
- (b) referring to the provision creating the offence; or
- (c) providing that all offences, or all offences except for stated offences, against an Act or subordinate law are infringement notice offences.

Part 15 Magistrates Court (Civil Jurisdiction) Act 1982

71 Act amended—pt 15

This part amends the *Magistrates Court (Civil Jurisdiction) Act 1982*.

72 Section 12

omit

Part 16 Public Trustee Act 1985

73 Act amended—pt 16

This part amends the *Public Trustee Act 1985*.

74 Payment of money etc to public trustee on behalf of person under disability Section 25 (7)

omit

75 Section 25

renumber subsections when Act next republished under Legislation Act 2001

76 New section 25A

insert

25A Amounts etc paid by trustee for person under disability

- (1) If an amount is paid to, or property is accepted by, the public trustee under section 25 on behalf of a person under disability, the public trustee must hold the amount or property on trust for the person.
- (2) The public trustee may, subject to any direction of the Supreme Court—
 - (a) pay an amount, or give property, to anyone the public trustee considers appropriate, for the maintenance, education, advancement or benefit of the person or a dependent of the person; and

- (b) use the amount or property for the maintenance, education, advancement or benefit of the person or a dependent of the person.
- (3) If an amount is paid under subsection (2) (a), the public trustee need not supervise the use of the amount.

Part 17 Supreme Court Act 1933

77 Act amended—pt 17

This part amends the *Supreme Court Act 1933*.

78 New section 49A

insert

49A Access to details of address

- (1) For the exercise of the registrar's functions, the registrar may, in writing, ask a relevant person to give the registrar any details held by the person about an address of a stated person who is liable to pay a fine imposed by the Supreme Court.
- (2) The relevant person must comply with the request as far as practicable.
- (3) In this section:

relevant person means—

- (a) the commissioner for housing; or
- (b) the chief police officer; or
- (c) the chief executive (however described) of a government agency.

Part 18 Trustee Act 1925

79 Act amended—pt 18

This part amends the *Trustee Act 1925*.

80 New sections 5 and 5A

in part 1, insert

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to the following offences against this Act (see Code, pt 2.1):

- s 51A (4) (Information etc for Minister).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

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

5A Treatment of unincorporated entities named in trusts

- (1) This section applies if an unincorporated entity is named in an instrument establishing a trust.
- (2) For this Act, the people who make up the entity from time to time are taken to have been individually named in the instrument.
- (3) To remove any doubt, this section does not apply to the interpretation of the instrument establishing the trust.

81 New sections 51A and 51B

insert

51A Information etc for Minister

- (1) This section applies if it appears to the Minister that a trustee may be contravening, or may have contravened—
 - (a) this Act; or
 - (b) a Territory law relevant to its activities under this Act; or
 - (c) a legal obligation as a trustee.
- (2) The Minister may, in writing, ask the trustee to give the Minister, within a stated reasonable time, stated information, or written statements, about—
 - (a) the affairs of the trust; or
 - (b) the activities of the trustee as trustee.
- (3) A requirement under this section may describe the information or statements asked for generally.
- (4) The trustee commits an offence if—
 - (a) the Minister asks the trustee for information or written statements under this section; and
 - (b) the trustee fails to give the Minister the information or written statements within the reasonable time stated in the request.

Maximum penalty: 200 penalty units.

- (5) An offence against this section is a strict liability offence.

51B Minister may require inquiry etc

- (1) The Minister may, in writing, authorise a stated person to do 1 or more of the following:

- (a) inquire into the activities of a trustee as trustee;
 - (b) audit a trustee's books and accounts (including books and accounts of or in relation to any estate, trust or property managed or administered by the trustee).
- (2) An authority under this section may be general or relate to a particular matter.

82 Section 70

substitute

70 New trustees

- (1) The Supreme Court may, on application by a relevant person or on its own initiative, make 1 or more of the following orders in relation to a trust:
- (a) an order removing a trustee;
 - (b) an order replacing a trustee;
 - (c) an order appointing a trustee, or an additional trustee.
- Note* Words in the singular number include words in the plural (see Legislation Act, s 145).
- (2) The Supreme Court may make any other order in relation to the trust the court considers appropriate.
- (3) The Supreme Court may make an order under this section only if satisfied the order is appropriate—
- (a) in the interests of the people (whether or not identified) who are to benefit from the trust; or
 - (b) to advance a purpose of the trust.
- (4) The Supreme Court need not find a fault or inadequacy on the part of a trustee before making an order under this section.

- (5) Each of the following is a *relevant person* to make an application under subsection (1) in relation to a trust:
- (a) the Attorney-General;
 - (b) a trustee of the trust;
 - (c) a beneficiary of the trust;
 - (d) for a trust established completely or partly for charitable purposes—
 - (i) a person named in the instrument establishing the trust as someone who must, or may, be consulted before the distribution or use of property (including money) for the purposes of the trust; or
 - (ii) a person who has received property (including money) from the trustees for the purposes of the trust; or
 - (iii) a person in a class of people the trust is intended to benefit;
 - (e) a person who satisfies the Supreme Court that the person has a relevant interest in the trust.
- (6) An order under this section, and any consequential vesting order or conveyance, does not operate further or otherwise as a discharge to a former or continuing trustee than an appointment of new trustees under a power for that purpose in an instrument would have operated.
- (7) This section does not give the Supreme Court a power to appoint an executor or administrator.

83 Section 94A

substitute

94A Applications to Supreme Court

- (1) A relevant person may apply to the Supreme Court for relief in relation to the administration of a trust for charitable purposes if—
 - (a) there is a breach, or the person suspects there is a breach, of the trust; or
 - (b) the person is satisfied that a direction or order of the court is necessary for the administration or management of the trust or to the advantage or benefit of the trust.
- (2) The application must set out—
 - (a) the breach or suspected breach and the relief sought; or
 - (b) the necessary direction or order and why it is necessary.
- (3) Each of the following is a *relevant person* for this section:
 - (a) the Attorney-General;
 - (b) a trustee of the trust;
 - (c) a beneficiary of the trust;
 - (d) a person named in the instrument establishing the trust as someone who must, or may, be consulted before the distribution or use of property (including money) for the purposes of the trust;
 - (e) a person who received property (including money) from the trustees for the purposes of the trust;
 - (f) a person in a class of people the trust is intended to benefit;
 - (g) a person who satisfies the Supreme Court that the person has a relevant interest in the trust.

84 New section 106

insert

106 Consideration of advice etc by certain trustees

- (1) This section applies to the trustee of a trust established completely or partly for charitable purposes.
- (2) The trustee must, when administering the trust, consider any relevant information, representation or advice given to the trustee in writing by a relevant person.
- (3) Each of the following is a *relevant person*:
 - (a) a person named in the instrument establishing the trust as someone entitled to, or who may, receive property (including money) for the purposes of the trust;
 - (b) a person named in the instrument establishing the trust as someone who must, or may, be consulted before the distribution or use of property (including money) for the purposes of the trust;
 - (c) a person who received property (including money) from the trustees for the purposes of the trust;
 - (d) a person in a class of people the trust is intended to benefit.

Part 19 Unclaimed Moneys Act 1950

85 Act amended—pt 19

This part amends the Unclaimed Moneys Act 1950.

86 Delegation by the Treasurer Section 3A

omit

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, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

[Presentation speech made in Assembly on 12 December 2002]

I certify that the above is a true copy of the Justice and Community Safety Legislation Amendment Bill 2003 which originated in the Assembly as the Justice and Community Safety Legislation Amendment Bill 2002 (No 2) and was passed by the Legislative Assembly on 18 February 2003.

Clerk of the Legislative Assembly

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