



Australian Capital Territory

# Justice and Community Safety Legislation Amendment Act 2003 (No 2)

A2003-47

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2003 029B

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Australian Capital Territory

# **Justice and Community Safety Legislation Amendment Act 2003 (No 2)**

**A2003-47**

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

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*Notified under the Legislation Act 2001 on 31 October 2003  
(see [www.legislation.act.gov.au](http://www.legislation.act.gov.au))*

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

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2003 029B

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Justice and Community Safety Legislation Amendment Act 2003 (No 2)*.

### 2 Commencement

This Act commences on the day after its notification day.

*Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

## Part 2 Cooperatives Act 2002

### 3 Act amended—pt 2

This part amends the *Cooperatives Act 2002*.

### 4 Transfer of engagements by direction of registrar Section 305 (2) (a)

*omit*

section 338

*substitute*

section 338A

### 5 Winding-up on registrar's certificate Section 315 (1)

*omit*

section 338

*substitute*

section 338A

### 6 Appointment of administrator Section 325 (4)

*omit*

section 338

*substitute*

section 338A

**7 New section 338A**

*in division 12.7, insert*

**338A Grounds for winding-up, transfer of engagements, appointment of administrator**

- (1) This section applies to the following actions:
  - (a) a direction by the registrar to a cooperative to transfer its engagements under section 305;
  - (b) the appointment of an administrator of a cooperative under division 12.5;
  - (c) the winding-up of a cooperative on a certificate of the registrar under section 315.
- (2) The necessary grounds for the taking of action to which this section applies exist if the registrar certifies—
  - (a) that the number of members is reduced to less than the minimum number of people allowed, as mentioned in section 69; or
  - (b) that the cooperative has not begun business within 1 year of registration or has suspended business for longer than 6 months; or
  - (c) that the registration of the cooperative has been obtained by mistake or fraud; or
  - (d) that the cooperative exists for an illegal purpose; or
  - (e) that the cooperative has intentionally, and after notice from the registrar, breached a provision of this Act or the rules of the cooperative; or
  - (f) that the board of the cooperative has, after notice from the registrar, failed to ensure that the rules of the cooperative



contain active membership provisions in accordance with part 6; or

- (g) that there are, and have been for 1 month immediately before the date of the registrar's certificate, insufficient directors of the cooperative to form a quorum as provided under the rules of the cooperative; or
  - (h) following an inquiry under the provisions of this Act into the affairs of a cooperative or the working and financial condition of a cooperative, that in the interests of members or creditors of the cooperative or the public the action should be taken.
- (3) Alternatively, the necessary grounds for the winding-up of a cooperative on a certificate of the registrar exist if the registrar certifies—
- (a) that the period (if any) fixed under the cooperative's rules for its duration has ended; or
  - (b) that a winding-up event stated in the certificate has happened.
- (4) In this section:

**winding-up event** means an event on the happening of which the regulations or the cooperative's rules provide that the cooperative must be wound up.

## Part 3 Criminal Code 2002

### 8 Act amended—pt 3

This part amends the *Criminal Code 2002*.

### 9 Delayed application of ch 2 to certain offences Section 8 (1) and (2)

*substitute*

- (1) Despite section 7, the provisions of this chapter (other than the immediately applied provisions) do not apply to a pre-2003 offence unless—
- (a) the offence is omitted and remade (with or without changes); or
  - (b) an Act or subordinate law expressly provides for the provisions to apply to the offence.

### 10 New section 8 (4A)

*insert*

- (4A) In this section:

***omitted and remade***—an offence is not ***omitted and remade*** if it is amended without being omitted and remade.

***pre-2003 offence*** means an offence in force before 1 January 2003.

### 11 Section 8

*renumber subsections when Act next republished under Legislation Act*

## Part 4 Director of Public Prosecutions Act 1990

### 12 Act amended—pt 4

This part amends the *Director of Public Prosecutions Act 1990*.

### 13 Functions New section 6 (1A)

*insert*

- (1A) To remove any doubt and without limiting subsection (1), the functions of the director include the following:
- (a) appearing before a board of inquiry under the *Crimes Act 1900*, part 20 (Inquiries into convictions);
  - (b) for civil proceedings (including appeals) connected with or arising out of the exercise by the director of a function under this Act or a proceeding in relation to which the director has a function—
    - (i) beginning proceedings; or
    - (ii) conducting proceedings, whether begun by the director or not; or
    - (iii) responding to proceedings.

### 14 Section 6

*renumber subsections when Act next republished under Legislation Act*

## Part 5 Fair Trading Act 1992

### 15 Act amended—pt 5

This part amends the *Fair Trading Act 1992*.

### 16 Preparation of draft codes of practice New section 33 (1A) and (1B)

*insert*

- (1A) A draft code of practice may do 1 or more of the following:
- (a) require an entity to be licensed or registered and prescribe conditions on licences or registration;
  - (b) provide for fees to be imposed or collected in relation to a licensing or registration system established under the code;
  - (c) impose educational and competency requirements on entities licensed or registered, or applying to be licensed or registered, under the code;
  - (d) establish alternative dispute resolution committees and prescribe the functions the committees may exercise.

*Note* **Entity**—see Legislation Act, dict, pt 1.

- (1B) Subsection (1A) does not limit what a draft code of practice may do.

### 17 Section 33

*renumber subsections when Act next republished under Legislation Act*

---

**18 Regulations—codes of practice  
Section 34**

*omit*

The regulations may

*substitute*

- (1) The regulations may

**19 New section 34 (2) and (3)**

*insert*

- (2) To remove any doubt, a code (or a provision of a code) prescribed under this section before the commencement of section 33 (1A), is not invalid only because the code (or provision) did something mentioned in section 33 (1A).
- (3) Subsection (2) and this subsection expire 2 years after the day this subsection commences.

*Note* Transitional provisions are kept with the original provisions for a limited time to ensure people are aware of them. However, the expiry of transitional provisions does not end their effect (see Legislation Act, s 88).

**20 New section 51AA**

*after section 51, insert*

**51AA Power of Magistrates Court for pt 4**

The power of the Magistrates Court to make an order (including the power to grant an injunction) under this part includes the power to—

- (a) make preliminary and procedural orders and give interlocutory directions; and
- (b) make orders to enforce relief, redress or a remedy.

## Part 6 Fair Trading (Consumer Affairs) Act 1973

### 21 Act amended—pt 6

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

### 22 Consumer product safety standards New section 25 (3) and (4)

*insert*

- (3) A consumer product safety standard may apply, adopt or incorporate a law of another jurisdiction or an instrument, or a provision of a law of another jurisdiction or an instrument, 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 at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act 2001, s 47 (5) or (6) is not disapplied (see s 47 (7)).

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

- (4) In this section:

*law of another jurisdiction*—see the Legislation Act, section 47 (10).

### 23 Section 42

*substitute*

#### 41A Public warning statements

- (1) The Minister or the commissioner may make or issue a public statement identifying and giving warnings or information about any of the following:

- (a) goods that the Minister or commissioner reasonably considers are unsatisfactory or dangerous and people who supply the goods;
  - (b) services that the Minister or commissioner reasonably considers are supplied in an unsatisfactory way and people who supply the services;
  - (c) commercial practices that the Minister or commissioner reasonably considers are unfair and people who engage in the practices;
  - (d) anything else that the Minister or commissioner reasonably considers adversely affects or may adversely affect the interests of people in relation to the acquisition by them of goods or services from suppliers.
- (2) The statement may identify particular goods, services, business practices and people.
  - (3) The Minister or the commissioner may make or issue a statement under this section only if satisfied that it is in the public interest to do so.

#### **42 Immunity from liability for certain statements**

- (1) The Territory, the Minister, a member of an advisory committee or the product safety advisory committee, the commissioner, an investigator or a person acting under the direction or control of the commissioner is not civilly liable for a statement, notice or report made or issued honestly by a person in the exercise of functions under this Act.
- (2) This section does not deprive a person of any defence the person might have relied on apart from this section.
- (3) To remove any doubt, a statement, notice or report made or issued by the Minister, an advisory committee, the product safety advisory

committee or the commissioner for the information of the public is a **public document** for the *Civil Law (Wrongs) Act 2002*, section 61 (Publication of public document) and the *Defamation (Criminal Proceedings) Act 2001*, section 31.

## **24 Regulation-making power Section 43**

*omit*

The Executive

*substitute*

- (1) The Executive

## **25 New section 43 (2)**

*insert*

- (2) The regulations may create offences for contraventions of the regulations and fix maximum penalties of not more than 20 penalty units for offences against the regulations.



## Part 7 Leases (Commercial and Retail) Act 2001

### 26 Act amended—pt 7

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

### 27 Jurisdiction Section 144 (3)

*substitute*

- (3) The Magistrates Court may, when acting within the jurisdiction given under this Act—
- (a) exercise 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) exercise any other power necessary or convenient for the exercise of this jurisdiction, including the power to—
    - (i) make preliminary and procedural orders and give interlocutory directions; and
    - (ii) make orders to enforce relief, redress or a remedy.

## Part 8 Legal Practitioners Act 1970

### 28 Act amended—pt 8

This part amends the *Legal Practitioners Act 1970*.

### 29 Unclaimed moneys Section 200 (1)

*omit*

chief executive

*substitute*

public trustee

## Part 9                      Sale of Motor Vehicles Act 1977

### 30    Act amended—pt 9

This part amends the *Sale of Motor Vehicles Act 1977*.

### 31    Schedule 3

*substitute*

## Schedule 3                On-the-spot fines

(see s 66)

column 1 item	column 2 offence provision	column 3 on-the-spot fine
1	section 7	\$500
2	section 15 (1)	\$500
3	section 16 (1)	\$500
4	section 16 (2)	\$500
5	section 16 (3)	\$500
6	section 20 (1)	\$250
7	section 20 (4)	\$750
8	section 21 (1)	\$250
9	section 26 (2)	\$125
10	section 73 (2)	\$125
11	section 73 (4)	\$125

## Part 10                      Second-hand Dealers Act 1906

### 32    Act amended—pt 10

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

### 33    Issue of licences New section 3 (1) (ba)

*insert*

- (ba) the person would not contravene a Territory law or Commonwealth law if the person carried on business as a second-hand dealer while licensed; and

### 34    Section 3 (1)

*renumber paragraphs when Act next republished under Legislation Act*

### 35    Dealers must be licensed New section 4 (3) to (6)

*insert*

- (3) The commissioner may, in writing, exempt a named entity from subsection (1) if satisfied that it is appropriate to do so because—
- (a) the entity carries on business as a second-hand dealer infrequently or irregularly; and
  - (b) exempting the entity would not undermine the purposes of this Act.
- (4) Before exempting an entity, the commissioner must consult with the chief police officer.

- (5) The power to exempt a named entity under this section does not include the power to exempt a class of entities.
- (6) An exemption under subsection (3) is a notifiable instrument.

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

**36 Name of dealer etc to be displayed on premises**  
**Section 5**

*omit*

at least 10cm high

*substitute*

not smaller than the height prescribed under the regulations

## Part 11                      Second-hand Dealers Regulations 2002

### 37    Regulations amended—pt 11

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

### 38    Exempt entities—Act, s 4 (2) Regulation 5A (1)

*insert*

*Note*    In these regulations, *exempt entity* includes an entity exempted by the commissioner under the Act, s 4 (3) (see dict).

### 39    New regulation 5B

#### 5B    Requirement for displayed lettering—Act, s 5

The height is 5cm.

### 40    Dictionary, definition of *exempt entity*

*substitute*

*exempt entity* means an entity—

- (a) exempted under regulation 5A; or
- (b) exempted by the commissioner under the Act, section 4 (3).

## Part 12 Trade Measurement (Administration) Act 1991

### 41 Act amended—pt 12

This part amends the *Trade Measurement (Administration) Act 1991*.

### 42 Penalty notices Section 13

*omit*

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## Endnotes

### Republications of amended laws

- 1 For the latest republication of amended laws, see [www.legislation.act.gov.au](http://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.

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*[Presentation speech made in Assembly on 26 June 2003]*

I certify that the above is a true copy of the Justice and Community Safety Legislation Amendment Bill 2003 (No 2) which originated in the Assembly as the Justice and Community Safety Legislation Amendment Bill 2003 and was passed by the Legislative Assembly on 21 October 2003.

Clerk of the Legislative Assembly

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