



Australian Capital Territory

# Justice and Community Safety Legislation Amendment Act 2004 (No 2)

A2004-32

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
1	Name of Act	2
2	Commencement	2
<b>Part 2</b>	<b>Agents Act 2003</b>	
3	Legislation amended—pt 2	3
4	Eligibility for licences Section 24 (1) (d)	3
5	New section 24 (3A)	3
6	Section 24	3
7	Dealing with trust money New section 107 (3A)	4
8	Section 107	4

---

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	Page
<b>Part 3</b>	<b>Agents Regulations 2003</b>
9	Legislation amended—pt 3 5
10	Qualifications for licences, Act s 25 New regulation 6 (1A) 5
11	Regulation 6 5
<b>Part 4</b>	<b>Civil Law (Sale of Residential Property) Act 2003</b>
12	Legislation amended—pt 4 6
13	Definitions for pt 2 Section 7, new definition of <i>building and compliance inspection report</i> 6
14	Section 7, definition of <i>building inspection report</i> 6
15	Section 7, definition of <i>encumbrance</i> 6
16	Section 7, definition of <i>pest treatment certificate</i> 6
17	Section 7, definition of <i>seller</i> , paragraph (a) 7
18	Meaning of residential property New section 8 (2) (ba) 7
19	Section 8 (2) (c) 7
20	Section 8 (2) 7
21	Meaning of required documents New section 9 (1) (ba) 8
22	Section 9 (1) (f) (i) 8
23	Section 9 (1) (g) (iii) 8
24	Section 9 (1) (g) (iii) 9
25	Section 9 (1) (g) (iv) and (v) 9
26	Section 9 (1) (g) (vi) and (vii) 9
27	Section 9 (1) (g) (vii) 9
28	New section 9 (1) (h) 9
29	Section 9 (1) 10
30	Section 9 (2) (a) 10
31	Section 9 (2) (a) (iii) 10
32	Section 9 (2) (b) 10
33	New section 9 (2) (c) and (d) 10
34	Section 9 (3) 11

	Page	
35	Proposed contract etc to be available for inspection Section 10 (1)	11
36	Certain conditions to be included in contract Section 11 (1) (a) (ii)	11
37	Section 11 (1) (d)	12
38	Section 11 (1) (f) (iii)	12
39	Section 11 (1) (g) (i)	12
40	Section 11 (1) (g) (iii)	13
41	Section 11 (1) (h)	13
42	Section 11 (1) (i)	13
43	Section 11 (2)	14
44	Section 11 (2) (a)	14
45	Buyer may waive cooling-off period Section 13	14
46	Buyer to reimburse seller for cost of certain reports Section 18 (a) and (b)	14
47	Definitions for pt 3 Section 20, definition of energy efficiency rating statement, paragraph (a)	15
48	Bidders record Section 25 (4)	15
49	Bidder's name and address to be established by proof of identity Section 26 (5)	15
50	New section 31A	16
51	Auction conditions to be available before auction begins New section 32 (3)	16
52	Making false or misleading statements Section 37 (7), definition of relevant document, paragraph (b), (c) and (d)	16
53	Regulation-making power New section 40 (3) and (4)	17
54	New part 7	17
55	Schedule 1, amendment 1.1 Proposed new section 89A (1) (b) and (2) (c)	18
56	Dictionary, new definition of <i>building and compliance inspection report</i>	18
57	Dictionary, definition of <i>building inspection report</i>	19

## Contents

---

	Page
58	Dictionary, new definition of <i>developer's holding lease</i> 19
59	Dictionary, definition of <i>pest treatment certificate</i> 19
60	Dictionary, new definition of <i>unit title certificate</i> 19
<b>Part 5</b>	<b>Civil Law (Wrongs) Act 2002</b>
61	Legislation amended—pt 5 20
62	Limitation of liability for acts of terrorism Section 38 (1) 20
63	Expiry of pt 3.3 Section 39 20
64	Respondent to give documents etc to claimant Section 68 (2) (b) 20
65	Application provision for Civil Law (Wrongs) Amendment Act 2003 Section 225 21
66	Section 225 21
<b>Part 6</b>	<b>Civil Law (Wrongs) Regulations 2003</b>
67	Legislation amended—pt 6 22
68	Modification of Act, ch 16—Act, s 231 Regulation 13 22
<b>Part 7</b>	<b>Cooperatives Act 2002</b>
69	Legislation amended—pt 7 23
70	New section 451A 23
<b>Part 8</b>	<b>Crimes Act 1900</b>
71	Legislation amended—pt 8 24
72	New section 26A 24
<b>Part 9</b>	<b>Crimes (Forensic Procedures) Act 2000</b>
73	Legislation amended—pt 9 25
74	Permissible matching of DNA profiles Section 97 (1) 25
75	Section 97 30

---

	Page
<b>Part 10</b>	<b>Domestic Relationships Act 1994</b>
76	Legislation amended—pt 10 31
77	Section 31 31
78	New section 33 (3), (4) and (5) 31
<b>Part 11</b>	<b>Justices of the Peace Act 1989</b>
79	Legislation amended—pt 11 32
80	Title 32
81	Section 1 32
82	Sections 3 and 3A 32
83	Register Section 4 33
84	Section 4A 33
85	Sections 5 and 6 33
86	New section 7 33
<b>Part 12</b>	<b>Leases (Commercial and Retail) Act 2001</b>
87	Legislation amended—pt 12 34
88	Expiry of pt 16 Section 171 34
<b>Part 13</b>	<b>Legislation Act 2001</b>
89	Legislation amended—pt 13 35
90	When must prosecutions begin? Section 192 (1) 35
<b>Part 14</b>	<b>Ombudsman Act 1989</b>
91	Legislation amended—pt 14 36
92	Functions New section 5 (2) (ca) 36
93	Section 5 (2) 36
<b>Part 15</b>	<b>Security Industry Act 2003</b>
94	Legislation amended—pt 15 37

## Contents

---

	Page	
95	General suitability criteria	
	Section 21 (1) (a) (iii)	37
96	Section 21 (1) (b) (ii)	37
97	Section 52 heading	37
98	Section 52 (2) (f)	37
<b>Part 16</b>	<b>Security Industry Regulations 2003</b>	
99	Legislation amended—pt 16	39
100	Regulation 7	39
<b>Part 17</b>	<b>Trade Measurement Act 1991</b>	
101	Legislation amended—pt 17	41
102	Exemptions from Act	
	New section 6 (2) (a)	41



Australian Capital Territory

# **Justice and Community Safety Legislation Amendment Act 2004 (No 2)**

**A2004-32**

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An Act to amend the law relating to justice and community safety

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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 2004 (No 2)*.

### 2 Commencement

- (1) Part 2 (Agents Act 2003), part 3 (Agents Regulations 2003) and part 12 (Leases (Commercial and Retail) Act 2001) commence on the day after this Act's notification day.
- (2) Part 4 (Civil Law (Sale of Residential Property) Act 2003) commences on 1 July 2004.
- (3) The remaining provisions commence on the 14th day after this Act's notification day.

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

## Part 2 Agents Act 2003

### 3 Legislation amended—pt 2

This part amends the *Agents Act 2003*.

### 4 Eligibility for licences Section 24 (1) (d)

*substitute*

(d) for a travel agents licence—the individual is eligible under section 26 (Additional eligibility grounds for travel agents).

### 5 New section 24 (3A)

*insert*

- (3A) However, a corporation is eligible to be licensed as a travel agent if—
- (a) the commissioner for fair trading is satisfied that no director of the corporation is disqualified from being licensed under section 27; and
  - (b) at least 1 director of the corporation satisfies the eligibility requirements of section 24 (1) (a) to (c); and
  - (c) the corporation satisfies the additional eligibility requirements of section 26 (Additional eligibility grounds for travel agents).

### 6 Section 24

*renumber subsections when Act next republished under Legislation Act*

**7 Dealing with trust money  
New section 107 (3A)**

*insert*

- (3A) A licensed agent commits an offence if the agent pays an amount out of a trust account maintained by the agent otherwise than—
- (a) by electronic transfer; or
  - (b) by using a cheque that—
    - (i) is expressed to be payable to a person specified in the cheque; and
    - (ii) clearly bears across the front of the cheque the addition of 2 parallel transverse lines with the words ‘not negotiable’ between, or substantially between, the lines.

*Note* This cheque is a ‘crossed cheque’ (see *Cheques Act 1986* (Cwlth), s 53).

Maximum penalty: 100 penalty units.

**8 Section 107**

*renumber subsections when Act next republished under Legislation Act*

## Part 3 Agents Regulations 2003

### 9 Legislation amended—pt 3

This part amends the *Agents Regulations 2003*.

### 10 Qualifications for licences, Act s 25 New regulation 6 (1A)

*insert*

- (1A) However, a person has the qualifications for a real estate agents licence if, immediately before the repeal of the repealed Act, the person was eligible for the grant of a real estate agent's licence under that Act.

### 11 Regulation 6

*renumber subregulations when regulations next republished under Legislation Act*

## Part 4 Civil Law (Sale of Residential Property) Act 2003

### 12 Legislation amended—pt 4

This part amends the *Civil Law (Sale of Residential Property) Act 2003*.

### 13 Definitions for pt 2 Section 7, new definition of *building and compliance inspection report*

*insert*

*building and compliance inspection report* means a building and compliance inspection report prescribed under the regulations.

### 14 Section 7, definition of *building inspection report*

*omit*

### 15 Section 7, definition of *encumbrance*

*substitute*

*encumbrance*, in relation to residential property proposed to be sold, includes an unregistered or statutory encumbrance, but does not include an encumbrance that is to be released or discharged on or before completion of the sale.

### 16 Section 7, definition of *pest treatment certificate*

*omit*

**17 Section 7, definition of *seller*, paragraph (a)**

*after*

legal

*insert*

or equitable

**18 Meaning of *residential property*  
New section 8 (2) (ba)**

*insert*

- (ba) land or a unit subject to the Retirement Villages Industry Code of Practice prescribed under the *Fair Trading Act 1992*, section 34; or

**19 Section 8 (2) (c)**

*omit*

‘developer’s holding lease’

*substitute*

*developer’s holding lease*

**20 Section 8 (2)**

*renumber paragraphs when Act next republished under Legislation Act*

**21 Meaning of *required documents*  
New section 9 (1) (ba)**

*insert*

(ba) a copy of the deposited plan;

**22 Section 9 (1) (f) (i)**

*substitute*

- (i) if there is a registered units plan—
  - (A) the registered units plan; and
  - (B) a unit title certificate for the unit dated not earlier than 3 months before the day the property was first advertised or offered for sale or listed by an agent; and
- (ia) if there is no registered units plan—a plan showing the proposed location and dimensions of the unit in relation to other units and the common property; and

**23 Section 9 (1) (g) (iii)**

*after*

building

*insert*

and compliance

**24 Section 9 (1) (g) (iii)***after*

advertised

*insert*

or offered

**25 Section 9 (1) (g) (iv) and (v)***omit***26 Section 9 (1) (g) (vi) and (vii)***after*

advertised

*insert*

or offered

**27 Section 9 (1) (g) (vii)***omit*

agent.

*substitute*

agent;

**28 New section 9 (1) (h)***insert*

(h) any other document prescribed under the regulations.

**29 Section 9 (1)**

*renumber paragraphs and subparagraphs when Act next republished under Legislation Act*

**30 Section 9 (2) (a)**

*before*  
inspection  
*insert*  
and compliance

**31 Section 9 (2) (a) (iii)**

*omit*  
‘off-the plan purchase’  
*substitute*  
*off-the-plan purchase*

**32 Section 9 (2) (b)**

*omit*  
unit.  
*substitute*  
unit; and

**33 New section 9 (2) (c) and (d)**

*insert*  
(c) a document mentioned in subsection (1) is not required if the seller cannot obtain the document after taking all reasonable steps to obtain it; and

- (d) for a sale of vacant land under a developer's holding lease, the **required documents** are—
- (i) a copy of the holding lease; and
  - (ii) a copy of the development conditions or, if they are not finalised, the draft development conditions for the lease.

**34 Section 9 (3)**

*omit*

, (v)

**35 Proposed contract etc to be available for inspection  
Section 10 (1)**

*before*

times

*insert*

reasonable

**36 Certain conditions to be included in contract  
Section 11 (1) (a) (ii)**

*after*

possession

*insert*

on completion of the contract

**37 Section 11 (1) (d)**

*substitute*

- (d) if, before completion of the contract, the buyer becomes aware of an unapproved structure that is not disclosed in the contract, the buyer may—
- (i) ask the seller to arrange for the structure to be approved before completion of the contract; and
  - (ii) if the structure is not approved before completion—rescind the contract, or complete the contract and claim damages.

**38 Section 11 (1) (f) (iii)**

*omit*

there are no

*substitute*

the seller has no knowledge of any

**39 Section 11 (1) (g) (i)**

*after*

be

*insert*

, or be able to be,

**40 Section 11 (1) (g) (iii)**

*omit*

there are no

*substitute*

the seller has no knowledge of any

**41 Section 11 (1) (h)**

*substitute*

(h) if, before completion of the contract, the buyer becomes aware of an error in the description of the property the buyer may—

(i) ask the seller to arrange for the error to be corrected before completion of the contract; and

(ii) if the error is not corrected before completion—

(A) for an error that is material—rescind the contract, or complete the contract and claim damages; and

(B) for an error that is not material—complete the contract and claim damages;

**42 Section 11 (1) (i)**

*omit*

(g)

*substitute*

(h)

**43 Section 11 (2)**

*omit*

(g) (ii)

*substitute*

(g) (i), (ii)

**44 Section 11 (2) (a)**

*after*

property

*insert*

, or exercising a power of sale

**45 Buyer may waive cooling-off period  
Section 13**

*omit*

signing

*substitute*

entering into

**46 Buyer to reimburse seller for cost of certain reports  
Section 18 (a) and (b)**

*substitute*

- (a) a building and compliance inspection report required under section 9 (1) (g) (iii) (or, if the seller obtained more than 1 report, the latest report);
- (b) a pest inspection report required under section 9 (1) (g) (vi) (or, if the seller obtained more than 1 report, the latest report).

**47**      **Definitions for pt 3**  
**Section 20, definition of *energy efficiency rating statement*, paragraph (a)**

*substitute*

- (a) a statement prepared in accordance with the energy guidelines adopted under the Territory plan that apply to residential premises; or

**48**      **Bidders record**  
**Section 25 (4)**

*after*

in relation to

*insert*

bidders records, including

**49**      **Bidder's name and address to be established by proof of identity**  
**Section 26 (5)**

*omit*

(3)

*substitute*

(4)

**50 New section 31A**

*insert*

**31A Standard auction conditions**

A public auction of residential property must be conducted in accordance with the standard auction conditions prescribed under the regulations.

**51 Auction conditions to be available before auction begins  
New section 32 (3)**

*insert*

(3) In this section:

*conditions*, of an auction, means—

- (a) the standard auction conditions prescribed under section 31A; and
- (b) any other conditions (not inconsistent with the standard auction conditions) decided by the seller for the auction.

**52 Making false or misleading statements  
Section 37 (7), definition of *relevant document*, paragraph (b), (c) and (d)**

*substitute*

- (b) a building and compliance inspection report; or
- (c) a pest inspection report.

**53 Regulation-making power  
New section 40 (3) and (4)**

*insert*

- (3) The regulations may incorporate a law or instrument, or a provision of a law or instrument, as in force from time to time.
- (4) In this section:  
*incorporate* includes apply and adopt.

**54 New part 7**

*insert*

**Part 7 Transitional****43 Contracts entered into before 1 July 2004**

Part 2 (Sale of residential property) does not apply in relation to a contract for the sale of residential property entered into before 1 July 2004.

**44 Required documents not available before 31 October 2004**

- (1) A seller of residential property does not commit an offence against section 10 (Proposed contract etc to be available for inspection) because a required document is not available at any time before 31 October 2004 if the seller has taken all reasonable steps to obtain the document.
- (2) This section expires on 31 October 2004.

**45 Transitional regulations**

- (1) The regulations may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (2) Without limiting subsection (1), the regulations may prescribe matters necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act.
- (3) Regulations made for this section must not be taken to be inconsistent with this Act as far as they can operate concurrently with this Act.
- (4) This section is additional to, and does not limit, section 46.

**46 Modification of pt 7's operation**

The regulations may modify the operation of this part to make provision in relation to any matter that is not already, or is not (in the Executive's opinion) adequately, dealt with in this part

**47 Expiry of pt 7**

This part expires 1 year after the day it commences.

**55 Schedule 1, amendment 1.1  
Proposed new section 89A (1) (b) and (2) (c)**

*before*

times

*insert*

reasonable

**56 Dictionary, new definition of *building and compliance inspection report***

*insert*

*building and compliance inspection report*, for part 2 (Sale of residential property)—see section 7.

**57 Dictionary, definition of *building inspection report***

*omit*

**58 Dictionary, new definition of *developer's holding lease***

*insert*

*developer's holding lease*—see section 8 (2) (c).

**59 Dictionary, definition of *pest treatment certificate***

*omit*

**60 Dictionary, new definition of *unit title certificate***

*insert*

*unit title certificate*, for a unit, means a certificate given under the *Unit Titles Act 2001*, section 75 (1).

## Part 5 Civil Law (Wrongs) Act 2002

### 61 Legislation amended—pt 5

This part amends the *Civil Law (Wrongs) Act 2002*.

### 62 Limitation of liability for acts of terrorism Section 38 (1)

*omit*

committed before 1 October 2004

### 63 Expiry of pt 3.3 Section 39

*omit*

### 64 Respondent to give documents etc to claimant Section 68 (2) (b)

*omit*

claimant's

*substitute*

respondent's

**65 Application provision for Civil Law (Wrongs) Amendment Act 2003  
Section 225**

*insert*

- (2A) Chapter 5 applies to a claim based on a cause of action that arose before 8 March 2004 and in relation to which the claimant had not consulted a lawyer as mentioned in subsection (2) as if section 51 (3) (a) (i) and (ii) read as follows:
- ‘(i) 8 March 2004; or
  - (ii) if symptoms of the injury were not immediately apparent and did not appear before 8 March 2004—the day the symptoms of the injury first appear;’

**66 Section 225**

*renumber subsections when Act next republished under Legislation Act*

## Part 6 Civil Law (Wrongs) Regulations 2003

### 67 Legislation amended—pt 6

This part amends the *Civil Law (Wrongs) Regulations 2003*.

### 68 Modification of Act, ch 16—Act, s 231 Regulation 13

*omit*

## Part 7 Cooperatives Act 2002

### 69 Legislation amended—pt 7

This part amends the *Cooperatives Act 2002*.

### 70 New section 451A

*insert*

#### 451A Contravention of s 451

- (1) If the registrar is of the opinion that a person is contravening section 451 (2), the registrar may, by written notice to the person, identify the contravention and ask the person—
  - (a) if the person is a company or society formed or incorporated elsewhere than in the ACT—to apply under section 451 (4) to become an exempt body for section 451; or
  - (b) in any other case—to become registered as a cooperative.
- (2) If the person complies with the notice within 6 months after the day the person is given the notice, the person is taken not to have contravened section 451 (2).

## Part 8 Crimes Act 1900

### 71 Legislation amended—pt 8

This part amends the *Crimes Act 1900*.

### 72 New section 26A

*insert*

#### 26A Common assault—summary offence

- (1) A person commits an offence if the person assaults someone else.  
Maximum penalty: 50 penalty units, imprisonment for 6 months or both
- (2) The Criminal Code, chapter 2 (other than the immediately applied provisions) does not apply to an offence against this section.
- (3) Subsections (2) and (4) and this subsection expire on the default application date.
- (4) In this section:  
*default application date*—see the Criminal Code, section 10.  
*immediately applied provisions*—see the Criminal Code, section 10.

## Part 9 Crimes (Forensic Procedures) Act 2000

### 73 Legislation amended—pt 9

This part amends the *Crimes (Forensic Procedures) Act 2000*.

### 74 Permissible matching of DNA profiles Section 97 (1)

*substitute*

- (1) A matching of a DNA profile on an index of the DNA database system mentioned in table 97, column 1 with a DNA profile on another index of the system mentioned in column 2, 3, 4, 5, 6, 7 or 8 is not permitted by this Act if—
- (a) ‘no’ is shown in relation to the index mentioned in column 2, 3, 4, 5, 6, 7 or 8 opposite to the index mentioned in column 1; or
  - (b) ‘only if within purpose’ is shown in relation to the index mentioned in column 2, 3, 4, 5, 6, 7 or 8 opposite the volunteers (limited purposes) index mentioned in column 1 and the matching is carried out for a purpose other than a purpose for which the DNA profile placed on the volunteers (limited purposes) index mentioned in column 1 was so placed.
- (1A) A matching of a DNA profile on an index of the DNA database system mentioned in table 97, column 1 with a DNA profile on another index of the system mentioned in column 2, 3, 4, 5, 6, 7 or 8 is permitted by this Act if—
- (a) ‘yes’ is shown in relation to the index mentioned in column 2, 3, 4, 5, 6, 7 or 8 opposite to the index mentioned in column 1; or

- (b) ‘only if within purpose’ is shown in relation to the index mentioned in column 2, 3, 4, 5, 6, 7 or 8 opposite the volunteers (limited purposes) index mentioned in column 1 and the matching is carried out for a purpose for which the DNA profile placed on the volunteers (limited purposes) index mentioned in column 1 was so placed.

**Table 97 Table of permissible matching of DNA profiles**

<b>profile to be matched</b>	<b>Is matching permitted?</b>						
<b>column 1</b>	<b>column 2</b>	<b>column 3</b>	<b>column 4</b>	<b>column 5</b>	<b>column 6</b>	<b>column 7</b>	<b>column 8</b>
	<b>crime scene</b>	<b>suspects</b>	<b>volunteers (limited purposes)</b>	<b>volunteers (unlimited purposes)</b>	<b>serious offenders</b>	<b>missing persons</b>	<b>unknown deceased persons</b>
<b>crime scene</b>	yes	yes	only if within purpose	yes	yes	yes	yes
<b>suspects</b>	yes	no	only if within purpose	no	yes	no	yes

<b>profile to be matched</b>	<b>Is matching permitted?</b>						
<b>column 1</b>	<b>column 2</b>	<b>column 3</b>	<b>column 4</b>	<b>column 5</b>	<b>column 6</b>	<b>column 7</b>	<b>column 8</b>
	<b>crime scene</b>	<b>suspects</b>	<b>volunteers (limited purposes)</b>	<b>volunteers (unlimited purposes)</b>	<b>serious offenders</b>	<b>missing persons</b>	<b>unknown deceased persons</b>
<b>volunteers (limited purposes)</b>	only if within purpose	only if within purpose	only if within purpose	only if within purpose	only if within purpose	only if within purpose	only if within purpose
<b>volunteers (unlimited purposes)</b>	yes	no	only if within purpose	no	yes	yes	yes
<b>serious offenders</b>	yes	yes	only if within purpose	no	yes	yes	yes

<b>profile to be matched</b>	<b>Is matching permitted?</b>						
<b>column 1</b>	<b>column 2</b>	<b>column 3</b>	<b>column 4</b>	<b>column 5</b>	<b>column 6</b>	<b>column 7</b>	<b>column 8</b>
	<b>crime scene</b>	<b>suspects</b>	<b>volunteers (limited purposes)</b>	<b>volunteers (unlimited purposes)</b>	<b>serious offenders</b>	<b>missing persons</b>	<b>unknown deceased persons</b>
<b>missing persons</b>	yes	yes	only if within purpose	yes	yes	yes	yes
<b>unknown deceased persons</b>	yes	yes	only if within purpose	yes	yes	yes	yes

**75 Section 97**

*renumber subsections when Act next republished under Legislation Act*

## Part 10 Domestic Relationships Act 1994

### 76 Legislation amended—pt 10

This part amends the *Domestic Relationships Act 1994*.

### 77 Section 31

*substitute*

### 31 Meaning of *agreement* for pt 4

In this part:

***agreement*** means a domestic relationship agreement or a termination agreement.

### 78 New section 33 (3), (4) and (5)

*insert*

- (3) If a certificate mentioned in subsection (1) (d) is furnished before the commencement of the amendment of this section made by the *Justice and Community Safety Legislation Amendment Act 2004*, the certificate is as valid, and is taken always to have been as valid, as it would have been if it had been furnished after that commencement.
- (4) Subsection (3) is declared to be a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (5) Subsections (3) and (4) and this subsection expire on the day they commence.

## Part 11 Justices of the Peace Act 1989

### 79 Legislation amended—pt 11

This part amends the *Justices of the Peace Act 1989*.

### 80 Title

*substitute*

An Act about justices of the peace

### 81 Section 1

*substitute*

#### 1 Name of Act

This Act is the *Justices of the Peace Act 1989*.

### 82 Sections 3 and 3A

*substitute*

#### 3 Appointments

- (1) The Minister may appoint a person as a justice of the peace.

*Note 1* For the making of appointments, see Legislation Act, pt 19.3.

*Note 2* A person's appointment ends if the person resigns (see Legislation Act, s 210).

- (2) The Legislation Act, division 19.3.3 (Appointments—Assembly consultation) does not apply to an appointment under this section.

- (3) An appointment under this section is a notifiable instrument.

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

- (4) Before beginning to perform the duties of office, a justice of the peace must take an oath of office, or make an affirmation of office, before a judge, in accordance with the relevant form in schedule 1.

**83 Register  
Section 4**

*omit*

shall

*substitute*

must

**84 Section 4A**

*renumber as section 5*

**85 Sections 5 and 6**

*omit*

**86 New section 7**

*insert*

**7 Application of Legislation Act, s 88**

- (1) Section 5 and section 6, as in force immediately before the commencement of this section, are declared to be laws to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (2) This section expires on the day it commences.

## **Part 12 Leases (Commercial and Retail) Act 2001**

### **87 Legislation amended—pt 12**

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

### **88 Expiry of pt 16 Section 171**

*substitute*

### **171 Expiry of pt 16**

- (1) This part expires on 30 June 2006.
- (2) However, section 169, section 170 and this subsection expire on 30 June 2004.

## Part 13                      Legislation Act 2001

### 89                      Legislation amended—pt 13

This part amends the Legislation Act.

### 90                      When must prosecutions begin? Section 192 (1)

*substitute*

- (1) A prosecution for the following offences against a Territory law may be begun at any time:
- (a) an offence by an individual punishable by imprisonment for longer than 6 months;
  - (b) an offence by a corporation punishable by a fine of more than 100 penalty units;
- Note*     See section 161 for the fines that may be imposed on a corporation for offences punishable only by imprisonment.
- (c) an aiding and abetting offence by an individual in relation to an offence by a corporation punishable by a fine of more than 100 penalty units;
  - (d) an offence against the Criminal Code, section 321 (Minor theft).

## Part 14 Ombudsman Act 1989

### 91 Legislation amended—pt 14

This part amends the *Ombudsman Act 1989*.

### 92 Functions New section 5 (2) (ca)

*insert*

- (ca) action taken by a tribunal, a member of a tribunal, or a member of the staff of a tribunal, in the exercise of the tribunal's deliberative functions; or

### 93 Section 5 (2)

*renumber paragraphs when Act next republished under Legislation Act*

## Part 15 Security Industry Act 2003

### 94 Legislation amended—pt 15

This part amends the *Security Industry Act 2003*.

### 95 General suitability criteria Section 21 (1) (a) (iii)

*substitute*

- (iii) the applicant satisfies any condition prescribed under the regulations for the licence; and
- (iv) it is otherwise in the public interest to license the applicant; and

### 96 Section 21 (1) (b) (ii)

*substitute*

- (ii) if competency standards are prescribed under the regulations—has satisfied the standards.

### 97 Section 52 heading

*substitute*

### 52 Regulation-making power

### 98 Section 52 (2) (f)

*substitute*

- (f) anything relating to licences, including—
  - (i) qualifications and conditions for licences; and

**Example**

membership of a trade or industry association

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (ii) details to be included on licences; and
- (iii) notification by licensees of any change in the details;

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## Part 16 Security Industry Regulations 2003

### 99 Legislation amended—pt 16

This part amends the *Security Industry Regulations 2003*.

### 100 Regulation 7

*substitute*

#### 7 Prescribed information to accompany licence application—Act, s 17 (3)

For an application for a master licence by a person who is not a locksmith, the prescribed information is evidence of membership of an industry association approved by the commissioner for fair trading under regulation 7A.

#### 7A Conditions for certain master licences—Act, s 21 (1) (a) (iii)

- (1) An applicant for a master licence who is not a locksmith must be a member of an approved industry association.
- (2) However, if the commissioner for fair trading believes on reasonable grounds that a person has a conscientious or religious objection to membership of an industry association, the commissioner may, in writing, exempt the person from subregulation (1).
- (3) For this regulation, the commissioner for fair trading may approve an entity as an industry association.
- (4) An approval is a notifiable instrument.

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

- (5) In this regulation, an ***approved industry association*** means an entity approved as an industry association under subregulation (3).

## Part 17 Trade Measurement Act 1991

### 101 Legislation amended—pt 17

This part amends the *Trade Measurement Act 1991*.

### 102 Exemptions from Act New section 6 (2) (a)

*insert*

- (a) a quantity of reticulated electricity, reticulated gas or reticulated water;

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### Endnotes

#### 1 Presentation speech

Presentation speech made in the Legislative Assembly on 14 May 2004.

#### 2 Notification

Notified under the Legislation Act on 29 June 2004.

#### 3 Republications of amended laws

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

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I certify that the above is a true copy of the Justice and Community Safety Legislation Amendment Bill 2004 (No 2), which originated in the Legislative Assembly as the Justice and Community Safety Legislation Amendment Bill 2004 and was passed by the Assembly on 24 June 2004.

Clerk of the Legislative Assembly

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