



Australian Capital Territory

# Justice and Community Safety Legislation Amendment Act 2005 (No 4)

A2005-60

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended—sch 1	2
4 Legislation repealed	3
<b>Schedule 1</b>	
<b>Legislation amended</b>	<b>4</b>
<b>Part 1.1</b>	
<b>Administration and Probate Act 1929</b>	<b>4</b>
<b>Part 1.2</b>	
<b>Business Names Act 1963</b>	<b>4</b>
<b>Part 1.3</b>	
<b>Children and Young People Act 1999</b>	<b>5</b>
<b>Part 1.4</b>	
<b>Civil Law (Wrongs) Act 2002</b>	<b>6</b>

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J2005-152

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## Contents

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		Page
<b>Part 1.5</b>	<b>Classification (Publications, Films and Computer Games) (Enforcement) Act 1995</b>	7
<b>Part 1.6</b>	<b>Confiscation of Criminal Assets Act 2003</b>	8
<b>Part 1.7</b>	<b>Consumer Credit Act 1995</b>	8
<b>Part 1.8</b>	<b>Consumer Credit Regulation 1996</b>	11
<b>Part 1.9</b>	<b>Coroners Act 1997</b>	12
<b>Part 1.10</b>	<b>Court Procedures Act 2004</b>	14
<b>Part 1.11</b>	<b>Crimes (Child Sex Offenders) Act 2005</b>	17
<b>Part 1.12</b>	<b>Crimes (Restorative Justice) Act 2004</b>	19
<b>Part 1.13</b>	<b>Criminal Code (Administration of Justice Offences) Amendment Act 2005</b>	19
<b>Part 1.14</b>	<b>Evidence Act 1971</b>	20
<b>Part 1.15</b>	<b>Evidence Regulation 1992</b>	24
<b>Part 1.16</b>	<b>Fair Trading Act 1992</b>	25
<b>Part 1.17</b>	<b>Guardianship and Management of Property Act 1991</b>	31
<b>Part 1.18</b>	<b>Magistrates Court (Civil Jurisdiction) Rules 2004</b>	31
<b>Part 1.19</b>	<b>Magistrates Court Act 1930</b>	32
<b>Part 1.20</b>	<b>Notaries Public Act 1984</b>	32
<b>Part 1.21</b>	<b>Public Trustee Act 1985</b>	35
<b>Part 1.22</b>	<b>Remuneration Tribunal Act 1995</b>	36
<b>Part 1.23</b>	<b>Residential Tenancies Act 1997</b>	37
<b>Part 1.24</b>	<b>Residential Tenancies Regulation 1998</b>	40
<b>Part 1.25</b>	<b>Supreme Court Act 1933</b>	40
<b>Part 1.26</b>	<b>Supreme Court Rules 1937</b>	42
<b>Part 1.27</b>	<b>Unclaimed Moneys Act 1950</b>	43



Australian Capital Territory

# **Justice and Community Safety Legislation Amendment Act 2005 (No 4)**

**A2005-60**

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An Act to amend laws relating to justice and community safety

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

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J2005-152

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

**1 Name of Act**

This Act is the *Justice and Community Safety Legislation Amendment Act 2005 (No 4)*.

**2 Commencement**

- (1) Schedule 1, part 1.2 (Business Names Act 1963) commences on the later of—
  - (a) the commencement of the *Statute Law Amendment Act 2005 (No 2)*, amendment 3.95 (which remakes the *Business Names Act 1963*, section 27); and
  - (b) 21 days after this Act's notification day.
- (2) Schedule 1, part 1.9 (Coroners Act 1997) commences on the later of—
  - (a) the commencement of the *Criminal Code Harmonisation Act 2005*; and
  - (b) 21 days after this Act's notification day.
- (3) Schedule 1, part 1.13 (Criminal Code (Administration of Justice Offences) Amendment Act 2005) is taken to have commenced on the day the *Criminal Code (Administration of Justice Offences) Amendment Act 2005* commenced.
- (4) The remaining provisions commence 21 days after this Act's notification day.

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

**3 Legislation amended—sch 1**

This Act amends the legislation mentioned in schedule 1.

**4            Legislation repealed**

The following regulations are repealed:

- *Evidence Regulation 1992* SL1992-9
- *Fair Trading Regulation 1995* SL1995-1.

## **Schedule 1            Legislation amended**

(see s 3)

### **Part 1.1                    Administration and Probate Act 1929**

**[1.1]            Section 5 (1), definition of *seal of the court***  
*omit*

**[1.2]            Section 7B heading**  
*substitute*

**7B            Signature stamp**

**[1.3]            Section 7B (1) and (2)**  
*omit*

**[1.4]            Section 7B (3) and (4)**  
*renumber as section 7B (1) and (2)*

### **Part 1.2                    Business Names Act 1963**

**[1.5]            Section 27 heading**  
*substitute*

**27            Effect of certain contraventions of Business Names Act  
on legal proceedings**

**[1.6] Section 27 (1)**

*omit*

this Act

*substitute*

the *Business Names Act 1963*

**[1.7] Section 27 (1) (c)**

*omit*

section 12

*substitute*

that Act, section 12

**[1.8] New section 27 (4)**

*insert*

- (4) A term defined in the *Business Names Act 1963* has the same meaning in this section.

**[1.9] Section 27 (as amended)**

*relocate to Court Procedures Act 2004, division 7.8 as section 99*

## **Part 1.3 Children and Young People Act 1999**

**[1.10] New section 53 (4)**

*insert*

- (4) The Childrens Court must have a seal.

## Part 1.4                      Civil Law (Wrongs) Act 2002

### [1.11]      Section 50 (3) and (4)

*substitute*

- (3) Also, this chapter does not apply to a claim for damages for personal injury if a claim for compensation has been made under the *Workers Compensation Act 1951* in relation to the injury.
- (4) Despite subsection (3), part 5.2 (Claims procedures) applies to a claim for damages for personal injury, even though a claim for compensation may have been made under the *Workers Compensation Act 1951* in relation to the injury, if—
  - (a) the *Road Transport (General) Act 1999*, part 10 applies to the claim; or
  - (b) the claim is made against a person who is not an employer or insurer in relation to the injury under the *Workers Compensation Act 1951*, chapter 6 (Claims) even though it is also made against such a person.

### [1.12]      Section 205

*omit*

On or before 31 October

*substitute*

Within 5 sitting days after 1 October



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## **Part 1.5**                      **Classification (Publications, Films and Computer Games) (Enforcement) Act 1995**

### **[1.13] Section 64**

*substitute*

#### **64 Starting prosecutions for offences**

- (1) A prosecution for an offence against this Act in relation to a film, publication or computer game that is unclassified at the time of the offence—
  - (a) must not be started until the film, publication or computer game has been classified; but
  - (b) may be started not later than 1 year after the day the film, publication or computer game is classified.
- (2) Subsection (1) (a) does not apply to a prosecution for an offence against any of the following provisions:
  - section 7 (1)
  - section 16
  - section 19 (2)
  - section 20 (1) or (2)
  - section 27 (1) or (3)
  - section 34 (1)
  - section 38 (1)
  - section 44 (2)
  - section 45 (1) or (2)
  - section 50 (1) or (2) (d)
  - section 53C (1)

## Part 1.6                      Confiscation of Criminal Assets Act 2003

### [1.14]      Section 244 (1) note 3

*substitute*

*Note 3* Related confiscation proceedings are taken to be an interlocutory application and started in accordance with the procedure of the relevant court (see s 245).

### [1.15]      Section 245 (b)

*substitute*

(b) may be started in accordance with the procedure of the relevant court.

## Part 1.7                      Consumer Credit Act 1995

### [1.16]      Section 1

*substitute*

#### 1              Name of Act

This Act is the *Consumer Credit Act 1995*.

### [1.17]      Section 3, definition of *short-term credit contract*

*omit*

### [1.18]      Section 3, definitions (as amended)

*relocate to dictionary*

### [1.19]      Section 3, remainder

*substitute*

## **2 Dictionary**

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

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

For example, the signpost definition ‘*annual percentage rate*, for part 3A (Maximum annual percentage rate and disclosure)—see section 8A.’ means that the term ‘annual percentage rate’ is defined in that section for part 3A.

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

## **3 Notes**

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

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

### **[1.20] Section 8A, definition of *short-term credit contract***

*omit*

### **[1.21] Section 8B**

*substitute*

#### **8B Maximum annual percentage rate**

- (1) A regulation may prescribe a maximum annual percentage rate for a credit contract to which the code applies.
- (2) A regulation may require interest charges, and all credit fees and charges, under a credit contract to be included in working out the maximum annual percentage rate under the contract.

- (3) The code, part 2, division 2 applies in relation to a prescribed maximum annual percentage rate as if the rate had been prescribed by the code.

*Note*        The effect of s (3) is that a contract is void to the extent that it imposes a monetary liability prohibited under s (1) and that any amount paid under the contract may be recovered. In addition, the credit provider commits an offence for entering into the contract.

- (4) This section does not affect the exercise of any powers under the code, part 4, division 3 in relation to a contract that is not void because of this section.

*Note*        The code, pt 4, div 3 allows (among other things) the reopening of unjust transactions.

- (5) This section applies to a credit contract whether the credit contract was established before, or is established after, the commencement of this section.

**[1.22]        Section 8C (1)**

*omit*

**[1.23]        Section 8C (2) to (4)**

*renumber as section 8C (1) to (3)*

**[1.24]        New section 8C (4)**

*insert*

- (4) The requirements of this section are additional to any other requirements of the code, section 14 or section 15.

**[1.25]        Sections 9 and 11**

*omit*

**[1.26] New dictionary**

*insert*

## Dictionary

(see s 2)

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

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- Executive
- territory law
- the Territory.

## Part 1.8 Consumer Credit Regulation 1996

**[1.27] Section 5**

*substitute*

### **5 Maximum annual percentage rate—Act, s 8B**

- (1) The prescribed maximum annual percentage rate is 48% per annum for all credit contracts to which the code applies.
- (2) Interest charges, and all credit fees and charges, under a credit contract must be included in working out the maximum annual percentage rate under all credit contracts to which the code applies.
- (3) Despite subsection (2), any credit fees or charges arising from the establishment or maintenance of a temporary credit facility are not required to be included for working out the maximum annual percentage rate if—
  - (a) the credit provider is an authorised deposit-taking institution; and

- (b) the debtor has or had an existing credit contract or debit account with the authorised deposit-taking institution when the temporary credit facility is or was established; and
- (c) the temporary credit facility is related to the existing credit contract or debit account.

## Part 1.9                      Coroners Act 1997

### [1.28]      Section 1

*substitute*

#### 1              Name of Act

This Act is the *Coroners Act 1997*.

### [1.29]      Section 3 heading

*substitute*

#### 2              Dictionary

### [1.30]      Section 3 (1), definitions

*relocate to dictionary*

### [1.31]      Section 3 (1), remainder

*substitute*

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

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

For example, the signpost definition ‘*death in custody*—see section 3.’ means that the term ‘death in custody’ is defined in that section.

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

### **3**      **References to *death in custody***

#### **[1.32]      Section 3 (2)**

*omit*

(2)

#### **[1.33]      New section 101**

*insert*

### **101**      **Court seal**

The Coroner's Court must have a seal.

#### **[1.34]      New dictionary**

*insert*

## **Dictionary**

(see s 2)

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

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACT
- individual
- Minister
- property
- public servant
- Territory.

***death in custody***—see section 3.

## **Part 1.10            Court Procedures Act 2004**

### **[1.35]    New part headings**

*after section 52, insert*

### **Part 6                    Publication of evidence**

### **Part 7                    Examination of witnesses outside the ACT but in Australia**

### **Part 8                    Taking evidence for foreign and Australian courts**

#### **[1.36]    Part 6**

*renumber as part 9*

#### **[1.37]    Sections 53 to 54**

*renumber as sections 80 to 82*

#### **[1.38]    Part 7**

*renumber as part 10*

#### **[1.39]    Divisions 7.1 to 7.6**

*renumber as divisions 10.1 to 10.6*

#### **[1.40]    Sections 60 to 94**

*renumber as sections 100 to 132*



**[1.41] New division 10.7 heading**

*insert*

**Division 10.7 Supreme Court**

**[1.42] New section 133**

*insert*

**133 Exercise of jurisdiction by registrar**

- (1) A person who is dissatisfied with an order of the registrar of the Supreme Court made in the exercise of jurisdiction given under the *Supreme Court Rules 1937* may appeal, in accordance with those rules, to the Supreme Court constituted by a single judge.
- (2) On an appeal under subsection (1), the Supreme Court may confirm, amend or set aside the registrar's order and may make any order that in all the circumstances it considers just.
- (3) In this section:  
*order* includes a judgment, direction or decision, whether or not final.

**[1.43] New section 139**

*insert*

**139 Expiry of div 10.7**

- (1) This division expires on the existing rules expiry day or, if the rules fix an earlier expiry day for this division, that day.
- (2) In this section:  
*existing rules expiry day*—see section 100 (3).

**[1.44]    New division 10.8 heading**

*insert*

**Division 10.8            Business names—starting legal proceedings**

**[1.45]    New section 141**

*insert*

**141        Expiry of div 10.8**

- (1) This division expires on the existing rules expiry day or, if the rules fix an earlier expiry day for this division, that day.
- (2) In this section:  
*existing rules expiry day*—see section 100 (3).

**[1.46]    Part 8**

*renumber as part 11*

**[1.47]    Section 104 heading**

*substitute*

**150        Modification of pt 11's operation**

**[1.48]    Section 105 heading**

*substitute*

**151        Expiry of pt 11**

**[1.49]    Dictionary, note 2**

*insert*

- property

**[1.50] Dictionary, new definitions**

*insert*

*examination*, for part 7 (Examination of witnesses outside the ACT but in Australia)—see section 57.

*inferior court*, for part 7 (Examination of witnesses outside the ACT but in Australia)—see section 57.

*judicial authority*, for part 7 (Examination of witnesses outside the ACT but in Australia)—see section 57.

*request*, for part 8 (Taking of evidence for foreign and Australian courts)—see section 64.

*requesting court*, for part 8 (Taking of evidence for foreign and Australian courts)—see section 64.

**Part 1.11 Crimes (Child Sex Offenders) Act 2005**

**[1.51] Schedule 2, part 2.2**

*insert*

8A	<i>Criminal Code Act 1995</i> (Cwlth), section 271.4 (1) or (2)	trafficking in children	the first person (as mentioned in the subsection) intends or is reckless as to whether the other person (as mentioned in the subsection) will be used to provide sexual services or will be otherwise exploited for sexual services
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**Schedule 1**  
**Part 1.11**

Legislation amended  
Crimes (Child Sex Offenders) Act 2005

Amendment [1.51]

8B	<i>Criminal Code Act 1995</i> (Cwlth), section 271.7 (1)	domestic trafficking in children	the first person (as mentioned in the subsection) intends or is reckless as to whether the other person (as mentioned in the subsection) will be used to provide sexual services or will be otherwise exploited for sexual services
8C	<i>Criminal Code Act 1995</i> (Cwlth), section 474.19 (1)	using carriage service for child pornography material	
8D	<i>Criminal Code Act 1995</i> (Cwlth), section 474.20 (1)	possessing, producing etc child pornography material for use through carriage service	
8E	<i>Criminal Code Act 1995</i> (Cwlth), section 474.26 (1), (2) or (3)	using carriage service to procure child under 16	
8F	<i>Criminal Code Act 1995</i> (Cwlth), section 474.27 (1) (2) or (3)	using carriage service to 'groom' child under 16	

**[1.52] Schedule 2, part 2.2**

*renumber items when Act next republished under Legislation Act*

**Part 1.12 Crimes (Restorative Justice) Act 2004**

**[1.53] Table 22, item 5**

*substitute*

5	chief executive (children and young people)	(a)	after a court has made a sentence- related order in relation to the offender; and
	chief executive (corrections)	(b)	before the end of the term of the sentence-related order or the sentence (if any) of which it forms part (whichever is later)
	chief executive (restorative justice)		
	sentence administration board		

**Part 1.13 Criminal Code (Administration of  
Justice Offences) Amendment  
Act 2005**

**[1.54] Section 2**

*substitute*

**2 Commencement**

- (1) This Act (other than schedule 1, part 1.8 (Discrimination Act 1991)) commences on the 28th day after its notification day.

- (2) Schedule 1, part 1.8 commences on the day the *Human Rights Commission Act 2005* commences.

## Part 1.14                    Evidence Act 1971

**[1.55]            Section 6, definition of *banker's book***

*omit*

**[1.56]            Part 5**

*omit*

**[1.57]            Part 12 heading**

*omit*

**[1.58]            Section 82 heading**

*substitute*

**82            Application of pt 6**

**[1.59]            Section 84 heading**

*substitute*

**84            Noncompliance with s 54 order**

**[1.60]            Section 84**

*omit*

section 83

*substitute*

section 54

**[1.61]            Sections 82 to 84 (as amended)**

*relocate to Court Procedures Act 2004, part 6 as sections 53 to 55*

---

**[1.62] Section 85**

*omit*

**[1.63] Section 12A heading**

*omit*

**[1.64] Section 85A heading**

*substitute*

**85A Application of pt 7**

**[1.65] Section 85B heading**

*substitute*

**85B Definitions for pt 7**

**[1.66] Section 85D (1)**

*omit*

section 85C (1)

*substitute*

section 58 (1)

**[1.67] Section 85D (2)**

*omit*

sections 85C (5) (6) and (7)

*substitute*

section 58 (5) (6) and (7)

**[1.68]    Section 85D (2) (b)**

*omit*

sections 85C (5) and (7)

*substitute*

section 58 (5) and (7)

**[1.69]    Sections 85E and 85F (1)**

*omit*

85D (1)

*substitute*

59 (1)

**[1.70]    Sections 85E and 85F (1)**

*omit*

85C (1)

*substitute*

58 (1)

**[1.71]    Section 85F (2) and (3)**

*omit*

section 85E

*substitute*

section 60

**[1.72]    Sections 85A to 85H**

*relocate to Court Procedures Act 2004, part 7 as sections 56 to 63*



**[1.73] Sections 85I and 85IA**

*omit*

**[1.74] Part 12B heading**

*omit*

**[1.75] Section 85J heading**

*substitute*

**85J Definitions for pt 8**

**[1.76] Section 85J, definition of *property***

*omit*

**[1.77] Section 85J, definition of *request***

*omit*

85K (1)

*substitute*

65 (1)

**[1.78] Section 85L (1)**

*omit*

85K (1)

*substitute*

65 (1)

**[1.79]      Section 85N**

*substitute*

**85N        Rules for pt 8**

The rules may make provision in relation to—

- (a) the circumstances in which an order may be made under section 65 (1); and
- (b) how any reference mentioned in section 66 (3) is to be made.

**[1.80]      Sections 85J to 85N**

*relocate to Court Procedures Act 2004, part 8 as sections 64 to 68*

## **Part 1.15                      Evidence Regulation 1992**

**[1.81]      Section 2**

*omit everything before paragraph (a) substitute*

**2            Judicial authority—Act, s 57, def *judicial authority***

For the Act, part 7 (Examination of witnesses outside the ACT but in Australia)—

**[1.82]      Section 2 (as amended)**

*relocate to Court Procedures Regulation 2004 as section 5*

---

## Part 1.16 Fair Trading Act 1992

### [1.83] New sections 2 and 3

*insert*

#### 2 Dictionary

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

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

For example, the signpost definition ‘*consumer*—see section 6.’ means that the term ‘consumer’ is defined in that section.

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

#### 3 Notes

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

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

### [1.84] Section 5 (1), definitions of *court*, *document* and *interest*

*omit*

### [1.85] Section 5 (1), definition of *send*

*substitute*

*send* includes deliver.

**[1.86]    Section 5 (1), definition of *supply***

*omit everything after paragraph (a), substitute*

- (b) in relation to services—provide, grant, give or donate for promotional purposes.

**[1.87]    Section 5 (1), definitions (as amended)**

*relocate to dictionary*

**[1.88]    Section 5 (1), remainder**

*omit*

**[1.89]    Section 5 (2)**

*omit*

- (2) In this Act—

*substitute*

**5            Meaning of certain terms**

In this Act—

**[1.90]    Section 32, definition of *code***

*substitute*

*approved code* means a code of practice approved under section 34.

**[1.91]    Section 32A**

*omit*

---

**[1.92] Sections 34 and 35**

*substitute*

**34 Approval of codes of practice**

- (1) The Minister may approve a code of practice submitted to the Minister under section 33.

*Note* Under the Legislation Act, s 46 a power to make an instrument includes the power to amend or repeal the instrument. The power to amend or repeal the instrument is exercisable in the same way, and subject to the same conditions, as the power to make the instrument (see s 46 (2)).

- (2) A code of practice submitted to the Minister under section 33 may be approved with or without amendments.

- (3) An approved code of practice is a disallowable instrument.

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

- (4) The Minister may approve an amendment of an approved code of practice if the commissioner has certified in writing that the amendment is of a minor or inconsequential nature and that compliance with section 33 is not required.

- (5) Subsection (4) has effect despite the Legislation Act, section 46 (2).

- (6) On the commencement of this section, each code of practice prescribed under this section immediately before the commencement, as in force at that time, is taken to be an approved code of practice for this part.

- (7) Subsection (6) and this subsection are laws to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

- (8) Subsections (6), (7) and this subsection expire 1 year after the day this section commences.

**[1.93]    Section 35A heading**

*omit*

**code**

*substitute*

**approved code**

**[1.94]    Section 35A**

*omit*

a code

*substitute*

an approved code

**[1.95]    Section 35A (as amended)**

*renumber as section 35*

**[1.96]    Section 36 heading**

*substitute*

**36        Undertakings following contravention of approved code**

**[1.97]    Section 36 (1)**

*omit*

a prescribed code

*substitute*

an approved code

**[1.98]    Section 36 (1) (b)**

*substitute*

(b) future compliance with the code;

---

**[1.99] Section 36 (2)**

*omit*

relevant code

*substitute*

approved code

**[1.100] Section 37 (2) (b)**

*omit*

a code

*substitute*

an approved code

**[1.101] New dictionary**

*insert*

## Dictionary

(see s 2)

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

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACT
- contravene
- document
- interest
- land
- liability
- Magistrates Court
- Minister
- month

- prescribed.

***approved code***, for part 3 (Codes of practice)—see section 32.

***conduct***—see section 5 (b).

***consumer***—see section 6.

***engaging*** in conduct—see section 5 (a).

***involved*** in a contravention, for part 4 (Enforcement and remedies)—see section 40.

***new participant***, in a pyramid selling scheme, for division 2.2—see section 25A.

***offering*** to do an act—see section 5 (d).

***participant***, in a pyramid selling scheme, for division 2.2—see section 25A.

***participate***, in a pyramid selling scheme, for division 2.2—see section 25A.

***participation payment***, for division 2.2—see section 25C (1), definition of ***pyramid selling scheme***, paragraph (a).

***payment***, to a person or received by a person for division 2.2—see section 25A.

***pyramid selling scheme***, for division 2.2—see section 25C.

***recruitment payment***, for division 2.2—see section 25C (1), definition of ***pyramid selling scheme***, paragraph (b).

***refusing*** to do an act—see section 5 (c).

***undertaking***, for part 3 (Codes of practice)—see section 32.



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## **Part 1.17                      Guardianship and Management    of Property Act 1991**

### **[1.102]    Section 27 (6)**

*substitute*

- (6) The public trustee may waive payment of all or part of an amount payable to the Territory under subsection (3) (b) or subsection (4) if the public trustee is satisfied that payment of the amount would impose hardship on a person or that other circumstances justify waiving payment of the amount.

## **Part 1.18                      Magistrates Court (Civil    Jurisdiction) Rules 2004**

### **[1.103]    Section 393**

*omit*

### **[1.104]    Section 478 (1)**

*omit*

### **[1.105]    Section 478 (4)**

*omit*

subsection (3)

*substitute*

subsection (2)

### **[1.106]    Section 478 (2) to (4) (as amended)**

*renumber as section 478 (1) to (3)*

**[1.107] Section 478 (as amended)**

*relocate to Magistrates Court Rules 1932 as section 101*

## **Part 1.19                    Magistrates Court Act 1930**

**[1.108] New section 286**

*in part 4.6, insert*

**286            Small Claims Court's seal**

The Small Claims Court must have a seal.

**[1.109] New section 308**

*in part 5.2, insert*

**308            Magistrates Court's seal**

The Magistrates Court must have a seal.

## **Part 1.20                    Notaries Public Act 1984**

**[1.110] Section 2 (1), definitions**

*relocate to dictionary*

**[1.111] Section 2, remainder**

*substitute*

**2            Dictionary**

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

*Note 1*    The dictionary at the end of this Act defines certain terms used in this Act.

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

**[1.112] Section 3**

*substitute*

**3 Notes**

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

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

**3A Terms used in Legal Practitioners Act**

A term used in the Legal Practitioners Act has the same meaning in this Act.

**[1.113] Section 4 (1)**

*omit*

(1) A person

*substitute*

A person

**[1.114] Section 4 (2)**

*omit*

**[1.115] Section 5 (6)**

*omit*

**[1.116] Section 14 (1)**

*omit*

- (1) Subject to subsection (3), a person

*substitute*

A person

**[1.117] Section 14 (2)**

*omit*

**[1.118] Section 16**

*omit*

**[1.119] New dictionary**

*insert*

## Dictionary

(see s 2)

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

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACT
- Attorney-General
- business day
- Supreme Court.

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## **Part 1.21                      Public Trustee Act 1985**

### **[1.120]    New section 29A**

*insert*

#### **29A            Small estates**

- (1) This section applies if—
  - (a) the public trustee holds on trust for the estate of a deceased person an amount or property the net value of which is estimated by the public trustee to be less than the amount prescribed by regulation or, if no amount is prescribed, \$15 000; and
  - (b) the public trustee has no knowledge of an application for probate of the person's will or for letters of administration of the person's estate; and
  - (c) the public trustee has given notice in a newspaper circulating in the ACT, or in another way that the public trustee considers appropriate, that the public trustee proposes to deal with the person's estate under this section.
- (2) The public trustee may—
  - (a) sell, call in and convert into money the property of the person's estate; and
  - (b) pay the person's debts and liabilities that are known to the public trustee; and
  - (c) deal with the residue as if probate of the will or letters of administration of the estate had been granted to the public trustee.

## Part 1.22                            Remuneration Tribunal Act 1995

### [1.121]    **New section 2**

*insert*

#### **2                            Dictionary**

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

*Note 1*    The dictionary at the end of this Act defines certain terms used in this Act.

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

### [1.122]    **Section 3 (1), definitions**

*relocate to dictionary*

### [1.123]    **Section 3, remainder**

*substitute*

#### **3                            Notes**

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

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

### [1.124]    **Schedule 1, part 1.2**

*insert*

- children and young people commissioner

**[1.125] New dictionary**

*insert*

## Dictionary

(see s 2)

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

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- Chief Justice
- Chief Minister
- Commonwealth
- Executive
- Territory
- writing.

**holder**, of an appointment, includes a person asked or authorised in writing to exercise functions, or provide services, either alone or together with someone else.

## Part 1.23 Residential Tenancies Act 1997

**[1.126] Section 4, note 2**

*substitute*

*Note 2* The *Aged or Disabled Persons Care Act 1954* (Cwlth) is available at [www.comlaw.gov.au](http://www.comlaw.gov.au)

**[1.127]    Section 9 heading**

*substitute*

**9            Inconsistent tenancy terms void**

**[1.128]    Section 10 heading**

*substitute*

**10          Endorsement of inconsistent tenancy terms by tribunal**

**[1.129]    Section 28**

*substitute*

**28          Interest on amounts in trust account**

- (1) Interest received from the investment of any amount paid to the credit of the trust account under this part must be paid to the interest trust account and applied for the purposes mentioned in subsection (2).
- (2) Interest may be applied for the following purposes:
  - (a) providing lessor and tenant information programs;
  - (b) providing dispute resolution services for residential tenancy disputes;
  - (c) facilitating assistance in the provision of residential accommodation, whether or not the accommodation is provided under this Act;
  - (d) researching issues of concern to lessors and tenants;
  - (e) reimbursing the costs incurred by the commissioner in instituting, defending or taking over proceedings in relation to tenancy disputes;
  - (f) reimbursing the Territory the cost of administering this Act.



- (3) In this section:

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

**interest trust account** means the trust bank account maintained by the chief executive of the administrative unit responsible for administering this Act in accordance with the *Financial Management Act 1996*, section 51.

- (4) As soon as practicable after the commencement of this section, the chief executive must determine the amount in the relevant departmental bank account that, immediately before the commencement, was available to be applied for purposes mentioned in subsection (2) (a) to (e).

- (5) The amount determined under subsection (4)—

- (a) is taken to be trust money to which the *Financial Management Act 1996*, part 7 (Trust money) applies; and  
(b) must be transferred from the relevant departmental bank account to the interest trust account.

- (6) In subsections (4) and (5):

**relevant departmental bank account** means the departmental bank account under the *Financial Management Act 1996* of the administrative unit allocated responsibility for administering this Act.

- (7) Subsections (4) to (6) and this subsection expire 3 months after the day this section commences.

**[1.130] Section 104 (f)**

*substitute*

- (f) an order restoring a residential tenancy agreement or occupancy agreement and granting the former tenant or occupant possession of premises—

- (i) from which the person was evicted in contravention of this Act; or
- (ii) that the person vacated in accordance with a termination notice that was not in the form (if any) approved under section 133 (Approved forms—Minister) for the notice;

## **Part 1.24            Residential Tenancies Regulation 1998**

### **[1.131]    Section 4**

*omit*

## **Part 1.25            Supreme Court Act 1933**

### **[1.132]    Section 10 (1)**

*omit*

- (1) For

*substitute*

For

### **[1.133]    Section 10 (2) and (3)**

*omit*

### **[1.134]    Section 23 (1)**

*omit*

The court

*substitute*

The Supreme Court

---

**[1.135] Section 23 (2)**

*omit*

the rules), the court

*substitute*

the *Supreme Court Rules 1937*), the Supreme Court

**[1.136] New section 23 (4)**

*insert*

(4) In this section:

*matter*—see the *Supreme Court Act 1933*, dictionary.

**[1.137] Section 23 (as amended)**

*relocate to Court Procedures Act 2004, division 10.7 as section 134*

**[1.138] Section 64**

*substitute*

**64 Seals**

- (1) The Court of Appeal must have a seal.
- (2) The Supreme Court must have a seal.

**[1.139] Section 66**

*omit*

All writs and process issued from the court

*substitute*

- (1) All process of the court issued from the Supreme Court

**[1.140]    New section 66 (2)**

*insert*

(2) In this section:

*process of the court*—see the *Supreme Court Act 1933*, dictionary.

**[1.141]    Section 66 (as amended)**

*relocate to Court Procedures Act 2004, division 10.7 as section 135*

## **Part 1.26                    Supreme Court Rules 1937**

**[1.142]    Order 61 rule 5 (1) and (2)**

*omit*

the Act, section 10 (2)

*substitute*

the *Court Procedures Act 2004*, section 133 (1)

**[1.143]    Order 66 rule 10B (2) note**

*omit*

*Supreme Court Act 1933*, s 10 (2)

*substitute*

*Court Procedures Act 2004*, s 133 (1)

---

## **Part 1.27 Unclaimed Moneys Act 1950**

### **[1.144] Title**

*omit*

moneys

*substitute*

amounts

### **[1.145] Section 1**

*substitute*

#### **1 Name of Act**

This Act is the *Unclaimed Money Act 1950*.

### **[1.146] Section 2, definition of *company***

*substitute*

***company*** means—

- (a) for part 2 (Unclaimed assets in hands of liquidators)—
  - (i) a body corporate that is a foreign company within the meaning of the Corporations Act, section 9; or
  - (ii) a body registered under the *Cooperatives Act 2002*; or
  - (iii) an association incorporated under the *Associations Incorporation Act 1991*; and
- (b) for any other provision of the Act—
  - (i) an entity mentioned in paragraph (a); and
  - (ii) a body corporate that is a company or recognised company within the meaning of the Corporations Act, section 9.

**[1.147]    Section 2, definition of *registered office***

*substitute*

*registered office*—see the Corporations Act, section 9.

**[1.148]    Section 2, definitions (as amended)**

*relocate to dictionary*

**[1.149]    Section 2, remainder**

*substitute*

**2            Dictionary**

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

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

For example, the signpost definition ‘*approved deposit fund*, for part 4 (Unclaimed superannuation benefits)—see section 16.’ means that the term ‘approved deposit fund’ is defined in that section for part 4.

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

**2A          Notes**

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

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

**[1.150] Section 4 (2) and (3) (c)**

*omit*

moneys or dividends

*substitute*

amounts

**[1.151] Section 4 (4) (c)**

*omit*

moneys

*substitute*

amount

**[1.152] Section 5 (1)**

*omit*

money

*substitute*

amount

**[1.153] Section 5 (1)**

*omit*

sum due

*substitute*

amount owing

**[1.154] Section 5 (2)**

*omit*

any money

*substitute*

an amount

**[1.155] Section 5 (2)**

*omit*

shall pay an amount equal to that money to that person

*substitute*

must pay the amount to the person

**[1.156] Section 5A**

*omit*

**[1.157] Part 3 heading**

*substitute*

## **Part 3 Unclaimed amounts payable by companies**

**[1.158] Section 6 (1)**

*omit*

in relation to moneys

*substitute*

to an amount



**[1.159] Section 6 (2)**

*substitute*

- (2) For this part, an amount to which this part applies is an ***unclaimed amount*** if—
- (a) not less than 6 years has elapsed since the day the amount became payable; and
  - (b) during the 6-year period, the company did not receive a request from a person entitled to the amount that the amount be paid to the person or someone else.

**[1.160] Section 7 heading**

*substitute*

**7 Register of unclaimed amounts to be kept**

**[1.161] Section 7 (1)**

*substitute*

- (1) If, in a year, any amounts payable by a company have become unclaimed amounts, the company must, not later than 31 January in the next year, enter particulars of the amounts in an alphabetical register kept for the year by the company at its head or principal office in the ACT.

*Note* If a form is approved under s 35 for the register, the form must be used.

**[1.162] Section 7 (3)**

*substitute*

- (3) If a company pays an amount entered in a register kept by the company under this section to the person entitled to the amount, the company may delete from the register the entry relating to the amount.

**[1.163]    Section 8**

*substitute*

**8            Notice of particulars of register to be given to public trustee**

- (1) This section applies if, under section 7 (1), particulars of unclaimed amounts have been entered in a register kept by a company for a year.
- (2) The company must prepare a written notice setting out the particulars entered in the register for the year.
- (3) Not later than 31 March in the next year, the company must—
  - (a) give the notice, verified by a statutory declaration made by an officer of the company, to the public trustee; and
  - (b) publish a notice in a newspaper circulating in the ACT—
    - (i) stating that it holds unclaimed amounts for the previous year; and
    - (ii) explaining how people can find out details of the amounts and claim them.

*Note*    If a form is approved under s 35 for a provision of this subsection, the form must be used.

**[1.164]    Section 9 (2)**

*omit*

moneys

*substitute*

amount

---

**[1.165] Section 9 (2)**

*omit*

those moneys

*substitute*

the amount

**[1.166] Section 10**

*substitute*

**10 Payment of unclaimed amounts to Territory**

- (1) This section applies if—
  - (a) particulars of an unclaimed amount have been entered in a register kept by a company under section 7 (Register of unclaimed amounts to be kept); and
  - (b) the amount has not been paid by the company to the person entitled to it within 1 year after the day the company gave the notice to the public trustee under section 8 (3) (a) that included particulars of the amount.
- (2) The company must pay the amount to the Territory not later than 1 month after the end of the 1-year period.
- (3) On payment of the amount to the Territory, the company is relieved from all further liability for the amount.

**[1.167] Section 11 heading**

*substitute*

**11 Failure to pay unclaimed amounts**

**[1.168]    Section 11 (1)**

*omit*

moneys

*substitute*

amount

**[1.169]    Section 11 (2)**

*omit*

the moneys

*substitute*

the amount

**[1.170]    Section 11 (2)**

*omit*

those moneys

*substitute*

the amount

**[1.171]    Section 12**

*omit*

**[1.172]    Section 13 heading**

*substitute*

**13            Payment of unclaimed amounts to claimants**

**[1.173] Section 13 (1)**

*omit*

any moneys

*substitute*

an amount

**[1.174] Section 13 (2)**

*omit*

to moneys

*substitute*

to an amount

**[1.175] Section 13 (2)**

*omit*

those moneys

*substitute*

the amount

**[1.176] Section 13 (3)**

*substitute*

- (3) The Territory must pay a person an amount that was paid to the Territory under section 10 if—
- (a) the Minister is satisfied that the person is entitled to the amount; or
  - (b) the Supreme Court has declared under subsection (2) that the person is entitled to the amount.

**[1.177]    Section 14**

*omit*

**[1.178]    Section 15**

*substitute*

**15        Pt 3 does not apply to certain unclaimed amounts**

This part does not apply to an amount that is required by a law in force in the ACT to be dealt with in a way different from the way provided by this part.

**[1.179]    Section 16, definition of *approved deposit fund***

*substitute*

*approved deposit fund*—see the Commonwealth Act, section 10 (1).

**[1.180]    Section 16, definitions of *regulated superannuation fund*  
and *unclaimed money***

*substitute*

*regulated superannuation fund*—see the Commonwealth Act, section 19.

*unclaimed amount* means an amount that is an unclaimed amount under section 18 (1) or (2).

**[1.181]    Section 17 (2)**

*substitute*

(2) In this section:

*corporation*—see the Corporations Act, section 57A.

*exempt public sector superannuation scheme*—see the Commonwealth Act, section 10 (1).

**[1.182] Section 18 heading**

*substitute*

**18 Unclaimed amounts for pt 4**

**[1.183] Section 18 (1)**

*omit everything after paragraph (d), substitute*

any amount payable to the member is an unclaimed amount.

**[1.184] Section 18 (2)**

*omit everything after paragraph (d), substitute*

any amount payable to the beneficiary is an unclaimed amount.

**[1.185] Section 20 heading**

*substitute*

**20 Statement of unclaimed amounts**

**[1.186] Section 20 (1)**

*omit*

money

*substitute*

amounts

**[1.187] Section 21 heading**

*substitute*

**21 Payment of unclaimed amounts to Minister**

**[1.188]    Section 23**

*omit*

money

*substitute*

amount

**[1.189]    Section 24 heading**

*substitute*

**24        Repayment of excess amounts**

**[1.190]    Section 25 heading**

*substitute*

**25        Register of amounts received by Minister**

**[1.191]    Section 25**

*omit*

money

*substitute*

amount

**[1.192]    Section 26, definitions of *holder*, *RSA* and *RSA provider***

*substitute*

***holder***—see the Commonwealth Act, section 9.

***RSA***—see the Commonwealth Act, section 8.

***RSA provider***—see the Commonwealth Act, section 12.



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**[1.193] New dictionary**

*insert*

## Dictionary

(see s 2)

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

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACT
- Commonwealth
- Corporations Act
- individual
- Minister
- property
- public trustee
- Territory.

***approved deposit fund***, for part 4 (Unclaimed superannuation benefits)—see the Commonwealth Act, section 10 (1).

***Commonwealth Act***—

(a) for part 4 (Unclaimed superannuation benefits)—see section 16; and

(b) for part 5 (Unclaimed RSA money)—see section 26.

***eligibility age***, for part 4 (Unclaimed superannuation benefits)—see the Commonwealth Act.

***fund***, for part 4 (Unclaimed superannuation benefits)—see section 16.

***holder***, for part 5 (Unclaimed RSA money)—see the Commonwealth Act, section 9.

*regulated superannuation fund*, for part 4 (Unclaimed superannuation benefits)—see the Commonwealth Act, section 19.

*RSA*, for part 5 (Unclaimed RSA money)—see the Commonwealth Act, section 8.

*RSA provider*, for part 5 (Unclaimed RSA money)—see the Commonwealth Act, section 12.

*unclaimed amount*—

(a) for part 3 (Unclaimed amounts payable by companies)—see section 6 (2); and

(b) for part 4 (Unclaimed superannuation benefits)—see section 16.

*unclaimed RSA money*, for part 5 (Unclaimed RSA money)—see section 26.

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## Endnotes

**1      Presentation speech**

Presentation speech made in the Legislative Assembly on 20 October 2005.

**2      Notification**

Notified under the Legislation Act on 1 December 2005.

**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 2005 (No 4), which originated in the Legislative Assembly as the Justice and Community Safety Legislation Amendment Bill 2005 (No 3) and was passed by the Assembly on 24 November 2005.

Clerk of the Legislative Assembly

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