



Australian Capital Territory

Justice and Community Safety Legislation Amendment Act 2010 (No 3)

A2010-40

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Australian Capital Territory

Justice and Community Safety Legislation Amendment Act 2010 (No 3)

A2010-40

An Act to amend legislation about justice and community safety

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

1 Name of Act

This Act is the *Justice and Community Safety Legislation Amendment Act 2010 (No 3)*.

2 Commencement

- (1) The following provisions commence on the day after this Act's notification day:
 - (a) section 3;
 - (b) section 4 (1) and (2);
 - (c) schedule 1.

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

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

3 Legislation amended—schs 1–3

This Act amends the legislation mentioned in schedules 1 to 3.

4 Legislation repealed

- (1) The following legislation is repealed:
 - *Consumer Credit (Administration) Act 1996* (A1996-41)
 - *Consumer Credit (Administration) Regulation 1996* (SL1996-25)
 - *Consumer Credit Act 1995* (A1995-18)
 - *Consumer Credit Regulation 1996* (SL1996-24)
 - *Credit Act 1985* (A1985-5)
 - *Credit Regulation 1985* (SL1985-5).

- (2) All other legislative instruments under the Acts mentioned in subsection (1) are repealed.
- (3) The *Juries Fees Regulation 1968* (SL1968-3) is repealed.

Schedule 1 Amendments relating to repeal of consumer credit legislation

(see s 3)

Part 1.1 Civil Law (Property) Act 2006

[1.1] Section 5 (3)

omit

Part 1.2 Commercial Arbitration Act 1986

[1.2] Section 4 (4)

omit

Part 1.3 Door-to-Door Trading Act 1991

[1.3] Section 15 (2)

substitute

- (2) This section does not affect the operation of the National Credit Code in its application to a contract that is a tied loan contract within the meaning of that code.

[1.4] Dictionary, note 2

insert

- National Credit Code

Part 1.4 Fair Trading Act 1992

[1.5] Section 28A (5), definition of *continuing credit contract* and notes

substitute

continuing credit contract—see the National Credit Code, section 204 (1).

Note The National Credit Code, s 204 (1) defines a *continuing credit contract* as a credit contract under which:

- (a) multiple advances of credit are contemplated; and
- (b) the amount of available credit ordinarily increases as the amount of credit is reduced.

[1.6] Section 51C

substitute

51C Definitions—pt 4A

In this part:

annual percentage rate—see the code, section 204 (1).

contract document—see the code, section 204 (1).

credit—see the code, section 204 (1).

credit contract—see the code, section 204 (1).

credit fees and charges—see the code, section 204 (1).

[1.7] Section 51D (3)

omit

division 2

substitute

division 3

[1.8] Section 51E (1)

omit

section 15 (C)

substitute

section 17 (4)

[1.9] Section 51E (2)

omit

section 15 (E)

substitute

section 17 (6)

[1.10] Section 51E (3)

omit

section 14

substitute

section 16

[1.11] Section 51E (4)

omit

section 14 or section 15

substitute

section 16 or section 17

[1.12] Dictionary, note 2

omit

- Consumer Credit (Australian Capital Territory) Code

[1.13] Dictionary, note 2

insert

- National Credit Code

[1.14] Dictionary, definition of *code*

substitute

code means the National Credit Code.

Part 1.5 Fair Trading (Consumer Affairs) Act 1973

[1.15] Section 8 (2), definition of *consumer and trader legislation*, paragraph (a)

omit

[1.16] Section 10 (1)

omit

or the *Consumer Credit (Administration) Act 1996*

[1.17] Section 11

omit

or the *Consumer Credit (Administration) Act 1996*

[1.18] New schedule 3

insert

Schedule 3 Consumer credit transitional provisions

3.1 Definitions—sch 3

In this schedule:

ASIC means the Australian Securities and Investments Commission.

national credit legislation means—

- (a) the *National Consumer Credit Protection Act 2009* (Cwlth); and
- (b) the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* (Cwlth).

repealed credit legislation means—

- (a) the *Consumer Credit (Administration) Act 1996*; and
- (b) the *Consumer Credit (Administration) Regulation 1996*; and
- (c) the *Consumer Credit Act 1995*; and
- (d) the *Consumer Credit Regulation 1996*; and
- (e) the *Credit Act 1985*; and
- (f) the *Credit Regulation 1985*.

3.2 Transitional—financial counselling trust fund

- (1) The financial counselling trust fund established under the *Consumer Credit (Administration) Act 1996*, section 124 (the *trust fund*) continues in existence as if the repealed credit legislation had not been repealed.

- (2) Amounts payable under the repealed credit legislation continue to be payable to the trust fund as if the repealed credit legislation had not been repealed.

3.3 Transitional—provision of information and assistance to ASIC

- (1) The commissioner may, on his or her own initiative or at the request of ASIC—
- (a) provide ASIC with the documents and other information in the possession or control of the commissioner that are reasonably required by ASIC in connection with the exercise of its functions under the national credit legislation; and
 - (b) provide ASIC with other assistance that is reasonably required by ASIC to exercise a function under the national credit legislation.
- (2) This section applies despite any other territory law.

3.4 Transitional—ASIC has particular functions

- (1) The Minister, or a person authorised in writing by the Minister, may enter into an agreement or arrangement with ASIC for the exercise of functions by ASIC as an agent of the Territory, even if those functions are or may be conferred on another person under a territory law.
- (2) An agreement or arrangement of a kind mentioned in subsection (1) has effect despite any other territory law in relation to a function that is the subject of the agreement or arrangement.

Note The *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* (Cwlth), sch 1, pt 4, item 23 provides that ASIC has functions and powers in relation to appeal, review or enforcement proceedings that are expressed to be conferred on it by a law of a State or territory.

3.5 Transitional—reference to repealed legislation

- (1) To the extent permitted or required by the context or subject matter, a reference in another territory law to any of the repealed consumer credit legislation is a reference to the national credit legislation.
- (2) In this section:

repealed consumer credit legislation means—

- (a) the *Consumer Credit (Administration) Act 1996*; and
- (b) the *Consumer Credit (Administration) Regulation 1996*; and
- (c) the *Consumer Credit Act 1995*; and
- (d) the *Consumer Credit Regulation 1996*.

3.6 Transitional—pre-credit code contracts

- (1) The repealed credit legislation continues to apply to pre-credit code contracts as if the repealed credit legislation had not been repealed.
- (2) In this section:

pre-credit code contract means a contract to which the repealed pre-credit code legislation applied immediately before the repeal of that legislation.

repealed pre-credit code legislation means—

- (a) the *Credit Act 1985*; and
- (b) the *Credit Regulation 1985*.

3.7 Transitional—finance broking commissions

- (1) The repealed finance broking provisions continue to apply as if the repealed credit legislation had not been repealed.
- (2) This section expires on the Chapter 3 start day.

- (3) In this section:

Chapter 3 start day has the same meaning as in the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* (Cwlth), section 4.

repealed finance broking provisions means—

- (a) the *Consumer Credit (Administration) Act 1996*, section 35;
and
- (b) the *Consumer Credit (Administration) Regulation 1996*,
section 4.

3.8 Transitional—regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the repeal of the repealed credit legislation.
- (2) A regulation may modify this schedule (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this schedule.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act.

3.9 Expiry—sch 3

- (1) This schedule expires on 1 July 2013.
- (2) This schedule is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

[1.19] Dictionary, note 2

insert

- territory law

Part 1.6 Fair Trading (Consumer Product Standards) Regulation 2009

[1.20] Section 8 (a)

omit

Consumer Credit (Australian Capital Territory) Code

substitute

National Credit Code

[1.21] Dictionary, note 2

omit

- Consumer Credit (Australian Capital Territory) Code

[1.22] Dictionary, note 2

insert

- National Credit Code

Part 1.7 Firearms Act 1996

[1.23] Section 13 (2), definition of *credit contract*

substitute

credit—see the National Credit Code, section 204 (1).

credit contract means a contract under which credit is or may be provided.

[1.24] Dictionary, note 2

insert

- National Credit Code

Part 1.8 Legislation Act 2001

[1.25] Dictionary, part 1

omit the definitions of

Consumer Credit (Australian Capital Territory) Code

Consumer Credit (Australian Capital Territory) Regulations

[1.26] Dictionary, part 1, new definition of *National Credit Code*

insert

National Credit Code—see the *National Consumer Credit Protection Act 2009* (Cwlth), section 5.

Part 1.9 Payroll Tax Act 1987

[1.27] Section 4 (8), definition of *credit contract*

substitute

credit contract—see the National Credit Code, section 204 (1).

[1.28] Section 4 (8), definition of *regulated contract*

omit

[1.29] Section 4 (8), definition of *supply*

omit

or regulated contract

[1.30] Dictionary, note 2

omit

- Consumer Credit (Australian Capital Territory) Code

[1.31] Dictionary, note 2

insert

- National Credit Code

Part 1.10 Sale of Motor Vehicles Act 1977

[1.32] Section 25B (6)

substitute

- (6) The National Credit Code, section 135 does not apply to the termination of agreements under this section.

[1.33] Dictionary, note 2

insert

- National Credit Code

**Part 1.11 Second-hand Dealers
Regulation 2002**

**[1.34] Dictionary, definition of *financial institution*,
paragraph (b)**

substitute

- (b) a credit provider, registered or licensed under the *National Consumer Credit Protection Act 2009* (Cwlth) or a corresponding law of an external Territory or New Zealand, that carries on the business of providing home loans.

Schedule 2 Amendments relating to Evidence (Miscellaneous Provisions) Act 1991

(see s 3)

Part 2.1 Children and Young People Act 2008

[2.1] Section 335 (1) (a) and (b)

substitute

- (a) section 20 (1) (Territory courts may take evidence and submissions from participating States);
- (b) section 32 (1) (Territory courts may take evidence and submissions from place other than participating State).

Part 2.2 Commercial Arbitration Act 1986

[2.2] Section 20A (1)

omit

section 20 (1) (Territory courts may take evidence and submissions from outside ACT) or section 32 (1) (Use of link in proceedings)

substitute

section 20 (1) (Territory courts may take evidence and submissions from participating States) or section 32 (1) (Territory courts may take evidence and submissions from place other than participating State)

Part 2.3 Coroners Act 1997

[2.3] Section 42A (1)

omit

section 20 (1) (Territory courts may take evidence and submissions from outside ACT) or section 32 (1) (Use of link in proceedings)

substitute

section 20 (1) (Territory courts may take evidence and submissions from participating States) or section 32 (1) (Territory courts may take evidence and submissions from place other than participating State)

Part 2.4 Corrections Management Act 2007

[2.4] Section 203 (1) (a) and (b)

substitute

- (a) section 20 (1) (Territory courts may take evidence and submissions from participating States);
- (b) section 32 (1) (Territory courts may take evidence and submissions from place other than participating State).

Part 2.5 **Crimes (Forensic Procedures) Act 2000**

[2.5] Section 38 (2) (a), note 2

substitute

Note 2 The *Evidence (Miscellaneous Provisions) Act 1991*, pt 3 applies in relation to the taking of evidence and making of submissions by audiovisual link or audio link from a State. See also the *Magistrates Court Act 1930*, s 311 (Appearance by audiovisual or audio links etc).

Part 2.6 **Crimes (Sentence Administration) Act 2005**

[2.6] Section 207 (1)

omit

section 20 (Territory courts may take evidence and submissions from outside ACT) or section 32 (Use of link in proceedings)

substitute

section 20 (1) (Territory courts may take evidence and submissions from participating States) or section 32 (1) (Territory courts may take evidence and submissions from place other than participating State)

Part 2.7 Domestic Violence and Protection Orders Regulation 2009

[2.7] Section 36

substitute

36 Evidence from place outside court

If the Magistrates Court has given a direction under the *Evidence (Miscellaneous Provisions) Act 1991*, section 20 (1) (Territory courts may take evidence and submissions from participating States) or section 32 (1) (Territory courts may take evidence and submissions from place other than participating State), in relation to a person who is required to give evidence under a subpoena, the person satisfies the requirement by appearing and giving evidence in accordance with the direction.

[2.8] Section 56 (3)

omit

section 20 (1) (Territory courts may take evidence and submissions from outside ACT) or section 32 (1) (Use of link in proceedings)

substitute

section 20 (1) (Territory courts may take evidence and submissions from participating States) or section 32 (1) (Territory courts may take evidence and submissions from place other than participating State)

Part 2.8 **Evidence (Miscellaneous Provisions) Act 1991**

[2.9] Section 18

substitute

18 Operation of other Acts

- (1) This part is not intended to exclude or limit the operation of any territory law that makes provision for the taking of evidence or making of a submission in an external place for a proceeding in the ACT.

- (2) In this section:

external place means a place within or outside the ACT but within Australia that is outside the courtroom or other place where the court is sitting.

[2.10] Division 3.2 heading

substitute

Division 3.2 Use of audiovisual links or audio links with participating States in ACT proceedings

[2.11] Section 20 heading

substitute

20 Territory courts may take evidence and submissions from participating States

[2.12] Division 3.4

substitute

**Division 3.4 Use of audiovisual links or audio links
with places other than participating
States in ACT proceedings**

31 Application—div 3.4

This division applies to any proceeding before a territory court.

**32 Territory courts may take evidence and submissions from
place other than participating State**

- (1) Subject to any Act or rules of court, a territory court may, on the application of a party to a proceeding before it or on its own initiative, direct that a person, whether or not a party to the proceeding, appear before, or give evidence or make a submission to, the court by audiovisual link or audio link from—

- (a) a place in the ACT that is outside the courtroom or other place where the court is sitting; or
- (b) a place outside the ACT but within Australia (other than a participating State).

Note The *Evidence and Procedure (New Zealand) Act 1994* (Cwlth), pt 4 (Use of video links or telephones in Australian proceedings) and the *Court Procedures Rules 2006*, div 6.10.7 (Taking evidence from New Zealand by video link or telephone) apply to the taking of evidence and submissions by audiovisual links or audio links from New Zealand.

- (2) The court may make the direction only if satisfied that—
- (a) the necessary facilities are available or can reasonably be made available; and
 - (b) the evidence or submission can more conveniently be given or made from the place; and

- (c) the making of the direction is not unfair to any party opposing the making of the direction.
- (3) The court may at any time amend or revoke a direction made under this division, either on the application of a party to the proceeding or its own initiative.
- (4) While a person is at a place giving evidence or making a submission, the place is taken for all purposes to be part of the court.

[2.13] Section 36

omit

section 20 (Territory courts may take evidence and submissions from outside ACT) or section 32 (Use of link in proceedings)

substitute

section 20 (1) (Territory courts may take evidence and submissions from participating States) or section 32 (1) (Territory courts may take evidence and submissions from place other than participating State)

[2.14] Section 82 (4)

omit

Subsections (1) and (2)

substitute

Subsections (2) and (3)

Part 2.9 Judicial Commissions Act 1994

[2.15] Section 43A (1)

omit

section 18 (1) or section 30 (1)

substitute

section 20 (1) (Territory courts may take evidence and submissions from participating States) or section 32 (1) (Territory courts may take evidence and submissions from place other than participating State)

Part 2.10 Magistrates Court Act 1930

[2.16] Section 72B (1)

omit

section 20 (Territory courts may take evidence and submissions from outside ACT) or section 32 (1) (Use of link in proceedings)

substitute

section 20 (1) (Territory courts may take evidence and submissions from participating States) or section 32 (1) (Territory courts may take evidence and submissions from place other than participating State)

[2.17] Section 311 (1) (a)

omit

section 20 (1) (Territory courts may take evidence and submissions from outside ACT)

substitute

section 20 (1) (Territory courts may take evidence and submissions from participating States) or section 32 (1) (Territory courts may take evidence and submissions from place other than participating State)

[2.18] Section 316 (2) (a)

omit

section 20 (1) (Territory courts may take evidence and submissions from outside ACT) or section 32 (1) (Use of link in proceedings)

substitute

section 20 (1) (Territory courts may take evidence and submissions from participating States) or section 32 (1) (Territory courts may take evidence and submissions from place other than participating State)

Part 2.11 **Royal Commissions Act 1991**

[2.19] Section 34A (1)

omit

section 20 (1) (Territory courts may take evidence and submissions from outside ACT) or section 32 (1) (Use of link in proceedings)

substitute

section 20 (1) (Territory courts may take evidence and submissions from participating States) or section 32 (1) (Territory courts may take evidence and submissions from place other than participating State)

Schedule 3 Other amendments

(see s 3)

Part 3.1 Juries Act 1967

[3.1] Section 51

substitute

51 Payment of jurors

- (1) A person summoned or appointed to attend the Supreme Court to serve as a juror is entitled to be paid the amount determined by the Minister for the person's attendance at the court in accordance with the summons or appointment, whether or not the person serves as a juror.
- (2) A determination is a disallowable instrument.

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

Part 3.2 Supreme Court Act 1933

[3.2] Section 68C (2) and (3)

substitute

- (2) The judgment in criminal proceedings tried by a judge alone must include the principles of law applied by the judge and the findings of fact on which the judge relied.
- (3) In criminal proceedings tried by a judge alone, if a territory law requires a warning or direction to be given, or a comment to be made, to a jury in the proceedings, the judge must take the warning, direction or comment into account in considering his or her verdict.

(4) In this section:

territory law includes the *Evidence Act 1995 (Cwlth)*.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 26 August 2010.

2 Notification

Notified under the Legislation Act on 5 October 2010.

3 Republications of amended laws

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

I certify that the above is a true copy of the Justice and Community Safety Legislation Amendment Bill 2010 (No 3) , which was passed by the Legislative Assembly on 23 September 2010.

Acting Clerk of the Legislative Assembly