

2009

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

---

(As presented)

(Attorney-General)

# Justice and Community Safety Legislation Amendment Bill 2009 (No 2)

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2009

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(As presented)

(Attorney-General)

## **Justice and Community Safety Legislation Amendment Bill 2009 (No 2)**

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### **A Bill for**

An Act to amend legislation about justice and community safety

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Justice and Community Safety Legislation*  
4 *Amendment Act 2009 (No 2)*.

5 **2 Commencement**

6 This Act commences on the 28th day after its notification day.

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



1 **Part 2** **Associations Incorporation Act**  
2 **1991**

3 **3 Legislation amended—pt 2**

4 This part amends the *Associations Incorporation Act 1991*.

5 **4 Cancellation of incorporation**  
6 **Section 93 (1) (d) and (e)**

7 *substitute*

8 (d) has not during the last 3 years convened an annual general  
9 meeting of the association in accordance with this Act; or

10 (e) has not lodged an annual return with the registrar-general in  
11 relation to each of the last 2 years; or

12 (ea) has lodged an annual return with the registrar-general in  
13 relation to each of the last 3 years and for each one of those  
14 returns an auditor, in the course of the auditor's duties to  
15 examine the association's accounting records and other  
16 records, has stated that he or she is unable to determine if the  
17 return complies with this Act;

- 1 **Part 3 Charitable Collections Act 2003**
- 2 **5 Legislation amended—pt 3**
- 3 This part amends the *Charitable Collections Act 2003*.
- 4 **6 What is a *collection***
- 5 **New section 7 (3) (fa)**
- 6 *insert*
- 7 (fa) receiving money or a benefit by an entity that—
- 8 (i) is not solicited by the entity; or
- 9 (ii) is not received by the entity because of a collection
- 10 conducted by the entity;

1 **Part 4** **Charitable Collections**  
2 **Regulation 2003**

3 **7** **Legislation amended—pt 4**

4 This part amends the *Charitable Collections Regulation 2003*.

5 **8** **What are not collections—Act, s 7 (3) (g)**  
6 **Section 6 (1) (d)**

7 *omit*

1 **Part 5** **Domestic Violence and**  
2 **Protection Orders Regulation**  
3 **2009**

4 **9** **Legislation amended—pt 5**

5 This part amends the *Domestic Violence and Protection Orders*  
6 *Regulation 2009*.

7 **10** **Section 58 heading**

8 *substitute*

9 **58** **Representation by Legal Aid ACT**

10 **11** **Section 58 (2)**

11 *omit*

12 Legal Aid Office (A.C.T.)

13 *substitute*

14 Legal Aid ACT

15 **12** **Section 58 (3)**

16 *substitute*

17 (3) For this section:

18 *Legal Aid ACT*—see the *Legal Aid Act 1977*, section 94  
19 (Commission to operate as Legal Aid ACT).

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## 1 Part 6 Door-to-Door Trading Act 1991

### 2 13 Legislation amended—pt 6

3 This part amends the *Door-to-Door Trading Act 1991*.

### 4 14 Contracts to which Act applies 5 Section 4 (4) (b)

6 *substitute*

7 (b) a contract, or part of a contract, exempted (with or without  
8 conditions) from the operation of this Act by regulation.

9 *Note 1* A reference to an Act includes a reference to a provision of an Act (see  
10 Legislation Act, s 7 (3)).

11 *Note 2* A reference to an Act includes a reference to the statutory instruments  
12 made or in force under the Act, including any regulation (see  
13 Legislation Act, s 104).

14 *Note 3* Power to make a statutory instrument includes power to make different  
15 provision for different categories (see Legislation Act, s 48).

### 16 15 Requirements in relation to prescribed contracts 17 Section 7 (1) (c)

18 *substitute*

19 (c) the making of the contract must be completed—

20 (i) for a contract that is not made over the telephone—by the  
21 consumer signing the contract after it has been executed  
22 by or on behalf of the supplier; and

- 1 (ii) for a contract that is made over the telephone—by the  
2 recording of the consent of the consumer to be bound by  
3 the contract, by the supplier or a person acting on behalf  
4 of the supplier, either in writing or, with the consent of  
5 the consumer, using a recording device;

6 **16 Section 7 (1) (f) and (g)**

7 *substitute*

- 8 (f) for a contract that is not made over the telephone—the contract  
9 must contain the statement ‘THIS CONTRACT IS SUBJECT  
10 TO A COOLING-OFF PERIOD OF 10 DAYS’ printed in  
11 upper case in type not smaller than 18 point directly above the  
12 place provided for the signature of the consumer;
- 13 (fa) for a contract that is made over the telephone—the dealer must  
14 give the consumer the following as soon as practicable after the  
15 contract has been made:
- 16 (i) a copy of the contract;
- 17 (ii) a cooling-off statement which states that the consumer  
18 may rescind the contract before the end of the cooling-off  
19 period if the consumer gives the dealer notice of the  
20 rescission within the period;
- 21 (g) for a contract that is not made over the telephone—subject to  
22 subsection (2), the dealer must give the consumer the following  
23 immediately before the making of the contract:
- 24 (i) a notice explaining the right of the consumer to rescind  
25 the contract; and
- 26 (ii) a notice that may be used by the consumer to rescind the  
27 contract;

1 (ga) for a contract that is made over the telephone—subject to  
2 subsection (2A), the dealer must give the consumer the  
3 following as soon as practicable after the contract has been  
4 made:

5 (i) a notice explaining the right of the consumer to rescind  
6 the contract; and

7 (ii) a notice that may be used by the consumer to rescind the  
8 contract;

9 **17 Section 7 (2)**

10 *omit*

11 Before giving the notice

12 *substitute*

13 For a contract that is not made over the telephone—before giving  
14 the notice

15 **18 New section 7 (2A)**

16 *insert*

17 (2A) For a contract that is made over the telephone—before the consumer  
18 consents to be bound by the contract, the dealer must read the notice  
19 mentioned in subsection (1) (ga) (i) aloud to the consumer.

20 Maximum penalty: \$2 000.

21 **19 Cooling-off period—acceptance of consideration, supply  
22 of services  
23 Section 8 (2)**

24 *omit*

- 1 **20 Section 8 (3)**
- 2 *omit*
- 3 or (2)
- 4 **21 Duties of dealers**
- 5 **New section 10 (2A)**
- 6 *insert*
- 7 (2A) A dealer who telephones a person for the purpose of negotiating a
- 8 contract to which this Act applies or for an incidental or related
- 9 purpose must, as soon as practicable during the telephone call, tell
- 10 the person the following:
- 11 (a) the purpose of the telephone call;
- 12 (b) the dealer's full name and address;
- 13 (c) if the dealer is not the supplier—the supplier's full name and
- 14 address.
- 15 **22 Section 10 (3)**
- 16 *omit*
- 17 contravenes subsection (2)
- 18 *substitute*
- 19 contravenes subsection (2) or (2A)
- 20 **23 Restitution**
- 21 **Section 14 (1) (b) (ii)**
- 22 *omit*
- 23 in contravention of this Act



1 **Part 7** **Firearms Act 1996**

2 **24** **Legislation amended—pt 7**

3 This part amends the *Firearms Act 1996*.

4 **25** **Adult firearms licences—mandatory suspension**  
5 **Section 80 (1) (b)**

6 *substitute*

7 (b) an offence against a law of a State, another Territory or New  
8 Zealand corresponding to a domestic violence offence.

9 **26** **Minors firearms licences—mandatory suspension**  
10 **Section 97 (1) (b)**

11 *substitute*

12 (b) an offence against a law of a State, another Territory or New  
13 Zealand corresponding to a domestic violence offence.

14 **27** **Composite entity firearms licences—mandatory**  
15 **suspension**  
16 **Section 119 (1) (b)**

17 *substitute*

18 (b) an offence against a law of a State, another Territory or New  
19 Zealand corresponding to a domestic violence offence.

1 **28** **Temporary recognition of interstate licences for**  
2 **international visitors—shooting or paintball competitions**  
3 **Section 140 (5)**

4 *omit*  
5 is taken  
6 *substitute*  
7 is not taken

8 **29** **Schedule 2, part 2.2, new item 1A**

9 *insert*

1A	member of a police service or force of a foreign country	possessing or using firearm for taking part in a training activity— (a) conducted by the Australian Federal Police; and (b) carried out in the ACT
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1 **Part 8** **Firearms Regulation 2008**

2 **30** **Legislation amended—pt 8**

3 This part amends the *Firearms Regulation 2008*.

4 **31** **People exempt from Act—Act, s 272 (2) (r)**  
5 **Section 73A**

6 *omit*

7 **32** **Dictionary, note 2, 2nd dot point**

8 *omit*

1 **Part 9 Legal Aid Act 1977**

2 **33 Legislation amended—pt 9**

3 This part amends the *Legal Aid Act 1977*.

4 **34 Constitution of commission**  
5 **Section 7**

6 *omit*

7 **35 Powers of commission**  
8 **Section 9 (2)**

9 *omit*

10 section 32 (5), (6) and (7)

11 *substitute*

12 section 31C (1) and (2)

13 **36 New part 3**

14 *insert*

15 **Part 3 Board of commission**

16 **14 Establishment of board of commission**

17 A board of the commission is established.

1   **15        Functions of board**

2        The functions of the board are—

- 3            (a) to determine the broad policies, priorities and strategies of the  
4            commission for the provision of legal assistance under this  
5            Act; and
- 6            (b) to ensure that the commission's affairs are managed in  
7            accordance with this Act.

8   **16        Constitution of board**

9            (1) The board consists of the following members (each of whom is a  
10            *commissioner*):

- 11            (a) the president of the commission;
- 12            (b) the chief executive officer;
- 13            (c) 5 other members of whom—
- 14                    (i) 1 member represents the Minister; and
- 15                    (ii) 1 member is chosen from a panel of not less than  
16                    3 people nominated by the council of the bar association;  
17                    and
- 18                    (iii) 1 member is chosen from a panel of not less than  
19                    3 people nominated by the council of the law society; and
- 20                    (iv) 1 member is chosen from a panel of not less than  
21                    3 people nominated by the executive committee of the  
22                    Council of Social Service of the Australian Capital  
23                    Territory; and
- 24                    (v) 1 member has expertise in financial management;
- 25            (d) 1 member who has qualifications, training or experience that  
26            will enable the member to give other specialist assistance to the  
27            commission in the exercise of its functions.

- 1 (2) The Minister must appoint the members of the board other than the  
2 chief executive officer.
- 3 (3) However, the Minister must only appoint a member mentioned in  
4 subsection (1) (d) if, in the opinion of the Minister, the commission  
5 requires specialist assistance in the exercise of its functions.
- 6 *Note 1* For the making of appointments (including acting appointments), see  
7 the Legislation Act, pt 19.3.
- 8 *Note 2* In particular, an appointment may be made by naming a person or  
9 nominating the occupant of a position (see Legislation Act, s 207).
- 10 *Note 3* Certain Ministerial appointments require consultation with a Legislative  
11 Assembly committee and are disallowable (see Legislation Act,  
12 div 19.3.3).
- 13 (4) A person appointed as a member by the Minister is appointed on a  
14 part-time basis.

15 **37 Section 32**

16 *substitute*

17 **31B Arranging for services of private legal practitioners**

- 18 (1) If the commission provides legal assistance to a person by arranging  
19 for the services of a private legal practitioner, the commission may  
20 only select a practitioner who is included in a panel established  
21 under section 31E (1) (a *listed practitioner*) to provide that  
22 assistance.
- 23 (2) In selecting a listed practitioner to act for a legally assisted person,  
24 the principal considerations that the commission must take into  
25 account are the interests of the person and the person's preference  
26 (if any) for a particular listed practitioner.

- 1           (3) The commission must, after taking into account the considerations  
2           mentioned in subsection (2), ensure that selection of a listed  
3           practitioner to provide legal assistance is made as equitably as  
4           possible having regard to—
- 5           (a) the nature of the listed practitioner’s legal practice; and  
6           (b) the practitioner’s experience.

7           **31C       Fees for services of private legal practitioners**

- 8           (1) The fees the commission pays for services provided by private legal  
9           practitioners to legally assisted people must as far as practicable—
- 10           (a) consist of fixed amounts for the performance of particular  
11           services; and
- 12           (b) be less than the ordinary professional cost of those services.
- 13           (2) However, the commission must consult, and take into account the  
14           views of, the following bodies when determining the fees it will pay  
15           for services provided by private legal practitioners to legally assisted  
16           people:
- 17           (a) the council of the law society;  
18           (b) the council of the bar association.

19           **31D       Record of services provided by private legal practitioners**

- 20           The commission must—
- 21           (a) keep a record of the number and type of matters in which  
22           private legal practitioners provide services to legally assisted  
23           people under this Act; and
- 24           (b) make the record available for inspection on request by the law  
25           society or bar association.

- 1     **31E     Panels of private legal practitioners**
- 2           (1) The commission may establish panels of private legal practitioners  
3           to provide legal assistance in accordance with the commission's  
4           function under section 8 (2).
- 5           (2) A panel may be established for matters generally, or particular kinds  
6           of matter, or matters before particular courts or tribunals, for which  
7           legal assistance may be granted under this Act.
- 8           (3) A practitioner who wishes to be included in a panel established  
9           under this section must apply to the commission in a way approved  
10          by the commission.
- 11          (4) The commission may—
- 12           (a) appoint practitioners to a panel in accordance with the criteria  
13           determined under subsection (5); and
- 14           (b) suspend, remove or exclude practitioners from a panel on the  
15           grounds determined under subsection (7) (b); and
- 16           (c) impose conditions on the reappointment of a practitioner who  
17           has been suspended, removed or excluded, which in the  
18           opinion of the commission are:
- 19                 (i) appropriate under the circumstances; and
- 20                 (ii) in keeping with the requirements determined under  
21                 subsection (7) (c).
- 22          (5) The commission may determine criteria for the appointment of  
23          practitioners to a panel.
- 24          (6) Without limiting subsection (5), the criteria may include criteria  
25          about any of the following matters:
- 26           (a) a practitioner's skills, qualifications and experience;



- 1 (b) a practitioner's agreement to comply with the requirements  
2 stated by the commission in relation to any of the following:
- 3 (i) practice standards;
- 4 (ii) reporting and accountability;
- 5 (iii) compliance audits.
- 6 (7) The commission may determine the following:
- 7 (a) the period for which practitioners are appointed to a panel;
- 8 (b) the grounds on which a practitioner may be suspended,  
9 removed or excluded from a panel;
- 10 (c) the requirements, if any, for reappointment of a practitioner to  
11 a panel.
- 12 (8) A determination by the commission under this section is a notifiable  
13 instrument.

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

15 **31F Compliance audits**

- 16 (1) The commission may, at any time, perform an audit (a *compliance*  
17 *audit*) of legal assistance provided by a private legal practitioner.
- 18 (2) A compliance audit must not be performed unless the commission  
19 has given the practitioner written notice of—
- 20 (a) the commission's intention to carry out the audit; and
- 21 (b) the scope of the audit.

- 1   **32**       **Notice to practitioner about proposed decision**
- 2               Before making a decision about a private legal practitioner under
- 3               section 31E (4) (b) or (c), the commission must—
- 4               (a) give written notice to the practitioner setting out the reasons for
- 5               the proposed decision; and
- 6               (b) allow the practitioner a reasonable opportunity to be heard on
- 7               the proposed decision.

8   **38**       **Payments to private legal practitioners**

9               **Section 32AA (2)**

- 10              *substitute*
- 11              (2) The private legal practitioner must give the commission an invoice
- 12              for the legal services provided in the matter.
- 13              (2A) The commission may issue directions about the giving of invoices.

14   **39**       **Section 32AA (4)**

- 15              *omit*
- 16              in accordance with subsection (2)
- 17              *substitute*
- 18              in accordance with any directions issued under subsection (2A)

**40 New part 5A***insert***Part 5A Dispute resolution****35A Definitions—pt 5A**

In this part:

*approved negotiation* means a program for dispute resolution that—

- (a) is approved by the commission; and
- (b) consists of a structured negotiation process; and
- (c) uses a convenor to assist parties to a dispute to settle the dispute.

*convenor* means a person to whom a dispute has been referred for approved negotiation.*negotiation session* means a meeting that forms part of approved negotiation and includes steps to arrange or follow-up the meeting.**35B Power of commission to arrange approved negotiation**

The commission may provide approved negotiation to all parties in a matter or proceeding if at least 1 party is receiving legal assistance from the commission for the matter or proceeding.

**35C Expenses of dispute resolution**

- (1) The commission may, to partly or fully meet the costs associated with approved negotiation in a matter or proceeding—
  - (a) use money available to the commission; or
  - (b) require a legally assisted person, or another party, in the matter or proceeding to partly or fully meet the costs.

- 1           (2) An amount required to be paid under subsection (1) (b)—
- 2               (a) is a debt owing to the commission; and
- 3               (b) must be paid in the time and way stated by the commission.
- 4           *Note*     If an amount is owing under a law to a person by another person, the
- 5                     person may recover the amount as a debt owing to the person in a court
- 6                     of competent jurisdiction (see Legislation Act, s 177). The commission
- 7                     is a person (see Legislation Act, s 160).

8           **35D           Confidentiality of negotiation**

9           A convenor must not disclose information obtained in a negotiation

10           session to a person who is not a party to the session

11           (a *nonparticipant*) unless—

- 12               (a) the person who provided the information to the convenor
- 13                     consents to the information being disclosed to the
- 14                     nonparticipant; or
- 15               (b) the information is necessary for the provision or administration
- 16                     of legal assistance and is being disclosed to any of the
- 17                     following:
- 18                       (i) the board;
- 19                       (ii) the chief executive officer;
- 20                       (iii) a committee established under this Act;
- 21                       (iv) a member of the staff of the commission; or
- 22               (c) the following apply:
- 23                       (i) the information is necessary so that any party or parties to
- 24                             the session can be referred to another dispute resolution
- 25                             service (a *related service*) that may be able to assist in the
- 26                             resolution of the dispute between the parties, or in some
- 27                             other way;

- 1 (ii) all parties to the session consent to the information being  
2 disclosed to the related service; or
- 3 (d) the disclosure of the information is reasonably necessary to  
4 prevent or minimise injury to a person or damage to property;  
5 or
- 6 (e) the convenor is required to disclose the information under a  
7 law of the Territory or Commonwealth.

8 **35E Admissibility of evidence**

- 9 (1) Evidence of anything said or done at a negotiation session, including  
10 a document prepared at or for the session, is not admissible in  
11 evidence in any proceeding in a court or tribunal unless the parties  
12 in attendance at the session consent to the admission of the  
13 evidence.
- 14 (2) In this section:  
15 *document* includes a copy of, or an extract from, a document.

16 **35F Protection of convenor from liability**

- 17 A convenor is not liable in a civil proceeding for anything done, or  
18 omitted to be done, honestly by the convenor—
- 19 (a) in the exercise of a function under this part; or  
20 (b) in the reasonable belief that the act or omission was in the  
21 exercise of a function under this part.

1 **41** **Qualifications for appointment**  
2 **Section 50 (2)**

3 *omit*

4 section 7 (1) (e)

5 *substitute*

6 section 16 (1) (c) (iv)

7 **42** **Section 50 (3)**

8 *omit*

9 **43** **Section 58**

10 *substitute*

11 **58** **Leave of absence**

12 The commission may grant leave of absence to a statutory officer of  
13 the commission on the terms decided by the commission.

14 **44** **Delegation of commission's power to appoint**  
15 **Section 62**

16 *omit*

17 **45** **Personnel management**  
18 **Section 68A (2) (a)**

19 *omit*

20 all people

21 *substitute*

22 all employees

- 1 **46** **New section 90**
- 2 *in part 13, insert*
- 3 **90** **Delegation by commission**
- 4 The commission may delegate any of its functions under this Act to
- 5 any of the following:
- 6 (a) a committee of commissioners or committee of officers of the
- 7 commission or both;
- 8 (b) an officer of the commission;
- 9 (c) any person providing services on behalf of the commission
- 10 under this Act.
- 11 *Note* For the making of delegations and the exercise of delegated functions,
- 12 see the Legislation Act, pt 19.4.
- 13 **47** **Section 94 heading**
- 14 *substitute*
- 15 **94** **Commission to operate as Legal Aid ACT**
- 16 **48** **Section 94 (1)**
- 17 *omit*
- 18 Legal Aid Office (A.C.T.)
- 19 *insert*
- 20 Legal Aid ACT

1 **49 Section 98**

2 *substitute*

3 **98 Superannuation**

4 (1) Nothing in this Act authorises the provision of superannuation  
5 benefits to an officer of the commission otherwise than under—

6 (a) the *Superannuation Act 1976* (Cwlth); or

7 (b) the *Superannuation Act 1990* (Cwlth); or

8 (c) the *Superannuation Act 2005* (Cwlth); or

9 (d) a superannuation scheme determined by the Minister.

10 (2) A determination is a notifiable instrument.

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

12 **50 New part 14**

13 *insert*

14 **Part 14 Transitional—Justice and**  
15 **Community Safety Legislation**  
16 **Amendment Act 2009 (No 2)**

17 **101 Continuation of appointments**

18 (1) This section applies to a person appointed as a commissioner under  
19 section 7 (3) before the commencement day (a *former appointee*).

20 (2) A former appointee whose period of office as a commissioner has  
21 not ended on the commencement day continues to hold office until  
22 the end of the period of office as if the former appointee were  
23 appointed under the corresponding provision of section 16 as in  
24 force on the commencement day.



1 (3) In this section:

2 *commencement day* means the day this section commences.

3 **51 Dictionary, note 2**

4 *insert*

- 5 • document

6 **52 Dictionary, new definition of *board***

7 *insert*

8 *board* means the board of the commission established under  
9 section 14.

10 **53 Dictionary, definition of *commissioner***

11 *substitute*

12 *commissioner* means a member of the board appointed under  
13 section 16.

1 **Part 10 Machinery Act 1949**

2 **54 Legislation amended—pt 10**

3 This part amends the *Machinery Act 1949*.

4 **55 Inspectors of machinery**  
5 **Section 4 (1), except notes**

6 *substitute*

7 (1) The chief executive may appoint a person to be an inspector for this  
8 Act.

1 **Part 11** **Magistrates Court Act 1930**

2 **56** **Legislation amended—pt 11**

3 This part amends the *Magistrates Court Act 1930*.

4 **57** **Section 7F**

5 *substitute*

6 **7F** **Retirement**

- 7 (1) This section applies if a magistrate is—
- 8 (a) an eligible employee for the *Superannuation Act 1976* (Cwlth);
- 9 or
- 10 (b) a member of the superannuation scheme for the
- 11 *Superannuation Act 1990* (Cwlth); or
- 12 (c) a member of any other superannuation scheme determined by
- 13 the Attorney-General.
- 14 (2) The Executive may retire the magistrate on the ground of invalidity
- 15 with the magistrate's consent.
- 16 (3) A determination under subsection (1) (c) is a notifiable instrument.

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

**58** **Division 3.4.2**

*substitute*

**Division 3.4.2** **Warrants for witnesses****62** **Definitions—div 3.4.2**

In this division:

*prescribed period* means 18 hours from the time a person is arrested under a warrant.

*reporting officer* means the police officer mentioned in section 67 (2) (b).

*warrant* means a warrant under this division.

**63** **Warrant to bring witness to court**

(1) The court may issue a warrant for the arrest of a person who is a witness in a hearing if the person—

(a) was informed of the time and place of the hearing; and

(b) was required to attend to give evidence at the hearing in accordance with—

(i) a subpoena served on the person; or

(ii) an order of the court; or

(iii) an undertaking given to the court by the person; and

(c) failed to attend the hearing as required; and

(d) did not provide the court with a reasonable explanation for not attending.

- 1 (2) A warrant must not be issued under subsection (1) unless—
- 2 (a) the court is satisfied that the party calling the person as a
- 3 witness in the proceeding has taken reasonably practicable
- 4 steps to contact the person; and
- 5 (b) it is in the interests of justice to issue the warrant.
- 6 (3) In deciding whether it is in the interests of justice to issue a warrant,
- 7 the court must consider the following:
- 8 (a) the importance of the evidence the person is expected to give;
- 9 (b) whether the evidence could be obtained by other means;
- 10 (c) the nature of the matter being heard;
- 11 (d) the degree of urgency to resolve the matter;
- 12 (e) the likelihood that the issue of a warrant would secure the
- 13 person's attendance at the hearing;
- 14 (f) if the court has been contacted by the person, or the party
- 15 calling the person as a witness in the proceeding has contacted
- 16 the person—
- 17 (i) the reason (if any) given by the person for not attending
- 18 as required; and
- 19 (ii) the impact of using a warrant for the arrest of the person.

20 **64 First instance warrant**

- 21 (1) The court may, instead of issuing a subpoena for the attendance of a
- 22 witness in a hearing, issue a warrant in the first instance for the
- 23 arrest of the person if it is—
- 24 (a) unlikely that the person will attend the hearing to give evidence
- 25 unless the person is compelled to do so; and
- 26 (b) in the interests of justice to do so.

- 1           (2) In deciding whether it is in the interests of justice to issue a warrant,  
2           the court must consider the following:
- 3           (a) the importance of the evidence the person is expected to give;  
4           (b) whether the evidence could be obtained by other means;  
5           (c) the nature of the matter being heard;  
6           (d) the degree of urgency to resolve the matter;  
7           (e) the likelihood that the issue of a warrant would secure the  
8           person's attendance at the hearing;  
9           (f) the impact of using a warrant for the arrest of the person.

10       **65           Warrant remains in force until executed**

- 11           A warrant remains in force until whichever of the following happens  
12           first:
- 13           (a) the warrant is executed;  
14           (b) the court revokes the warrant.

15       **66           Executing a warrant**

- 16           (1) A warrant authorises a police officer (an *executing officer*) to—  
17           (a) arrest the person named in the warrant; and  
18           (b) bring the person before the court.
- 19           (2) If an executing officer believes on reasonable grounds that the  
20           person named in the warrant is on any premises, the officer is  
21           authorised to enter the premises, using not more than necessary and  
22           reasonable force in the circumstances, to execute the warrant.

- 1 (3) However, an executing officer is not authorised to enter a dwelling  
2 house to execute the warrant before 6 am or after 9 pm on any day,  
3 unless the officer believes on reasonable grounds that it would not  
4 be practicable to arrest the person at the dwelling house, or another  
5 location, at any other time.
- 6 (4) An executing officer—
- 7 (a) must use not more force than is necessary to arrest the person  
8 and remove the person to the place stated in the warrant; and
- 9 (b) must, before removing the person, explain to the person the  
10 purpose of the warrant; and
- 11 (c) must tell the person of his or her right to contact a lawyer, and  
12 allow the person to contact a lawyer if the person wishes to do  
13 so; and
- 14 (d) if a person is under a legal disability—must inform a parent or  
15 guardian of the person of the arrest.
- 16 (5) In this section:
- 17 *dwelling house* includes a conveyance, and a room in a hotel, motel,  
18 boarding house or club, where people ordinarily sleep at night.

19 **67 Procedure after arrest**

- 20 (1) A person who is arrested under a warrant must be brought before the  
21 court—
- 22 (a) as soon as practicable after the person is arrested; and
- 23 (b) within the prescribed period; and
- 24 (c) in accordance with this section.
- 25 (2) A person must be brought before the court by a police officer—
- 26 (a) if the court is sitting at the time the officer is able to bring the  
27 person before the court—in person; or

- 1 (b) if the court is not sitting at the time the officer is able to bring  
2 the person before the court—by telephone call made by the  
3 officer to a magistrate to report the execution of the warrant to  
4 the court.
- 5 (3) A person brought before the court must be dealt with in accordance  
6 with section 68.
- 7 (4) A person arrested under a warrant—
- 8 (a) may be detained by a police officer for not longer than the  
9 prescribed period for the officer to comply with subsection (2);  
10 and
- 11 (b) must be released if the officer cannot comply with that  
12 subsection within the prescribed period.

13 **68 Orders following executed warrant**

- 14 (1) The court may order that the person—
- 15 (a) be remanded in custody until the date, time and place specified  
16 in the order; or
- 17 (b) be released on a recognisance, signed by the person, in which  
18 the person agrees to appear before the court on a day and at a  
19 time and place specified by the court—
- 20 (i) in the recognisance; and
- 21 (ii) in any subsequent notice given or sent to the person by  
22 the court; or
- 23 (c) be released unconditionally.
- 24 (2) If the court makes any orders in relation to a person under this  
25 section, the person must be given written notice of the orders by—
- 26 (a) if the court is sitting when the order is made—the court; or



- 1           (b) if the court is not sitting when the order is made—the reporting  
2           officer.
- 3           (3) Any single period of remand ordered under this section must not be  
4           longer than—
- 5           (a) 28 days; or
- 6           (b) if the person chooses to be remanded for a longer period  
7           without review—a longer period that the court considers  
8           reasonable.
- 9           (4) Division 3.4.4 applies to a recognisance under this section.

1 **Part 12 Prohibited Weapons Act 1997**

2 **59 Legislation amended—pt 12**

3 This part amends the *Prohibited Weapons Act 1997*.

4 **60 Application of Act**  
5 **New section 4 (1) (aa)**

6 *insert*

7 (aa) a police service or force of a foreign country required to  
8 possess or use a prohibited weapon for taking part in a training  
9 activity—

10 (i) conducted by the Australian Federal Police; and

11 (ii) carried out in the ACT; or

1 **Part 13** **Regulatory Services Legislation**  
2 **Amendment Act 2008**

3 **61** **Legislation amended—pt 13**

4 This part amends the *Regulatory Services Legislation Amendment*  
5 *Act 2008*.

6 **62** **Section 26**

7 *substitute*

8 **26** **Contracts to which Act applies**  
9 **Section 4 (1) (a)**

10 *substitute*

- 11 (a) negotiations leading to the making of the contract (whether or  
12 not they are the only negotiations that precede the making of  
13 the contract) take place between the consumer and a dealer—
- 14 (i) in each other's presence in the ACT at a place other than  
15 trade premises of the supplier; or
  - 16 (ii) in a telephone call made, or received, by the consumer in  
17 the ACT; and

1 **Part 14 Remuneration Tribunal Act 1995**

2 **63 Legislation amended—pt 14**

3 This part amends the *Remuneration Tribunal Act 1995*.

4 **64 Schedule 1, part 1.2**

5 *omit*

- 6
- president of the human rights commission

1 **Part 15** **Residential Tenancies Act 1997**

2 **65** **Legislation amended—pt 15**

3 This part amends the *Residential Tenancies Act 1997*.

4 **66** **New section 64A**

5 *in part 5, insert*

6 **64A** **Standard residential tenancy term—increase in rent**

7 Under a fixed term agreement rent may not be increased during the  
8 currency of the fixed term unless the amount of the increase, or a  
9 method for working it out, is set out in the agreement.

1 **Part 16 Supreme Court Act 1933**

2 **67 Legislation amended—pt 16**

3 This part amends the *Supreme Court Act 1933*.

4 **68 Section 44**

5 *substitute*

6 **44 Retirement**

- 7 (1) This section applies if the master is—
- 8 (a) an eligible employee for the *Superannuation Act 1976* (Cwlth);
- 9 or
- 10 (b) a member of the Superannuation Scheme for the
- 11 *Superannuation Act 1990* (Cwlth); or
- 12 (c) a member of any other superannuation scheme determined by
- 13 the Attorney-General.
- 14 (2) The Executive may retire the master on the ground of invalidity with
- 15 the master's consent.
- 16 (3) A determination under subsection (1) (c) is a notifiable instrument.

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

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2009.

**2 Notification**

Notified under the Legislation Act on 2009.

**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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