

2005

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

**JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT
BILL 2005**

EXPLANATORY STATEMENT

Circulated by authority of the
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Overview of Bill

The Justice and Community Safety Legislation Amendment Bill (the Bill) amends a number of laws administered by the ACT Department of Justice and Community Safety. The laws amended include the:

- *Agents Act 2003*;
- *Evidence Act 1971*;
- *Justices of the Peace Act 1989*;
- *Liquor Act 1975*; and the
- *Oaths and Affirmations Act 1984*.

The proposed amendments are detailed below.

Agents Act 2003

The Bill amends the Agents Act to remove the requirement for a person applying for a travel agent's licence as an employee to manage the day-to-day branch office business of another licensed agent from having to meet the additional eligibility grounds for licensing under section 26 of the *Agents Act 2003*.

Under the new Agents Act, travel agents responsible for the day-to-day business of a branch office are required to be licensed (refer section 69 of the Act). However, before a person can be licensed, they must be eligible under the travel agents Trust Deed to be a participant in the Travel Compensation Fund (TCF) (refer section 26 of the Act). It was never intended that branch office managers should contribute to the TCF in addition to the contribution made by the head office licensee who would have already contributed to the TCF for the total operation of the business, including the branch offices. This Bill amends the Agents Act to remove the requirement for an applicant for a travel agent's licence to manage a travel agency branch office to contribute to the TCF.

Evidence Act 1971

The Bill amends the Evidence Act to omit the definition of *diplomatic or consular representative* and section 17 of the Act which deals with the attestation of documents outside the ACT. The definition and section 17 are now redundant given the application of section 149 of the *Evidence Act 1995 (Cwlth)* which removed the obligation to adduce evidence to prove that a document was signed or attested, as it purports to have been signed or attested.

Justices of the Peace Act 1989

The Bill amends the Justices of the Peace Act to include eligibility grounds for appointment of Justices of the Peace, as well as listing various circumstances in which the appointment of a Justice of the Peace may be ended, such as when a Justice of the Peace has been convicted of a serious criminal offence, or when the person is

suffering from a physical or mental incapacity which substantially affects the exercise of the Justice of the Peace's functions. The appointment of a Justice of the Peace is discretionary and not a right and is therefore not subject to appeal. The Bill also amends the Act to allow for the creation of further guidelines for appointments and termination of appointments in the future.

Liquor Act 1975

The Bill amends the Liquor Act to extend the permit system under the legislation to allow winegrowers from any Australian jurisdiction who do not hold an ACT off-licence to apply for a permit to sell their own unopened bottles of wine at ACT tourism events for consumption away from the place or event listed in the permit. The extension will also apply to allow sales of wine by non-profit organisations as a fund raising activity. The extension of the permit system was a recommendation that came out of the ACT Business Regulation Review. The extension of the permit system to non-profit organisations to sell wine for fundraising activities mirrors the permit systems operating in other jurisdictions.

Oaths and Affirmations Act 1984

The Bill inserts a new definition of *Australian diplomatic or consular representative* in section 11 of the Act which deals with the authority to administer an oath. The new definition broadens the class of people outside the ACT who are authorised to administer an oath or affirmation to include Commonwealth employees and employees of the Australian Trade Commission authorised in writing by the secretary to the Commonwealth department, consistent with the *Consular Fees Act 1955* (Cwlth), subsections 3(c) and (d).

Outline of Provisions

Part 1 Preliminary

Clause 1 Name of Act

Clause 1 notes that the name of the Act is the *Justice and Community Safety Legislation Amendment Act 2005*.

Clause 2 Commencement

Clause 2 provides that the Act commences on the day after it is notified.

Part 2 Agents Act 2003

Clause 3 Legislation amended – pt 2

Clause 3 notes that Part 2 of the Bill amends the *Agents Act 2003*.

Clause 4 Eligibility for licences Section 24(4)(c)

Clause 4 substitutes a new paragraph (c) to include a reference to new subsection 26(1).

**Clause 5 Additional eligibility grounds for travel agents
Section 26**

Clause 5 inserts subsection 26(1).

Clause 6 New section 26(2)

Clause 6 inserts a new subsection (2) to exempt an application by an individual for a travel agent's licence to work for another licensed travel agent managing the day-to-day business of a branch office (refer section 69 of the Agents Act). It was never intended that an employee licensed agent working for another licensed travel agent would need to meet the additional eligibility grounds for licensing as a travel agent and contribute to the travel compensation fund. The principal of the business would have already contributed to the compensation fund for the head office and any branches.

**Clause 7 Grounds for disciplinary action – agents
Section 41(1)(e)**

Clause 7 substitutes a new paragraph (e) to ensure that only a licensed owner of a travel agency (not an employee licensed agent) who has not contributed to the consumer compensation fund is subject to disciplinary action by the Consumer and Trader Tribunal.

**Clause 8 Meaning of *compensation scheme* for div 5.7
Section 90, note**

Clause 8 substitutes a new section 90 note, which includes a new definition of 'employee condition' in the dictionary at the end of the Act.

**Clause 9 Participation in compensation scheme
New section 91(4)**

Clause 9 inserts a new subsection (4), which exempts a licensed travel agent who is employed by another licensed travel agent from having to participate in the travel compensation fund scheme.

Clause 10 Dictionary, new definition of *employee condition*

Clause 10 inserts a definition of *employee condition* in the dictionary.

Part 3 Evidence Act 1971

Clause 11 Legislation amended – pt 3

Clause 11 notes that Part 3 amends the *Evidence Act 1971*.

**Clause 12 Definitions for Act
Section 6, definition of *diplomatic or consular representative***

Clause 12 omits the definition of *diplomatic or consular representative* for the purposes of section 17 of the Act.

**Clause 13 Documents attested outside ACT
Section 17**

Clause 13 omits section 17 of the Act as it is now redundant given the application of section 149 of the *Evidence Act 1995 (Cwlth)* which removed the obligation to adduce evidence to prove that any document was signed or attested, as it purports to have been signed or attested.

Part 4 Justices of the Peace Act 1989

Clause 14 Legislation amended – pt 4

Clause 14 notes that Part 4 amends the *Justices of the Peace Act 1989*.

Clause 15 New section 2

Clause 15 inserts a new section that prescribes eligibility criteria for appointment as a Justice of the Peace. A person wishing to be appointed as a Justice of the Peace must be at least 18 years of age and satisfy any criteria prescribed in any guidelines made by the Minister. The appointment of a Justice of the Peace is discretionary and not a right and is not therefore subject to appeal.

**Clause 16 Appointments
Section 3(1)**

Clause 16 substitutes a new subsection (1) that gives the Minister the power to appoint an eligible person as a Justice of the Peace.

Clause 17 New sections 3A and 3B

Clause 17 inserts a new section 3A, which gives the Minister the power to make guidelines about the role of a Justice of the Peace. Clause 17 also inserts a new section 3B which sets out various grounds upon which a person's appointment as a Justice of the Peace may be terminated by the Minister. Subsection (2) requires the Minister to end a person's appointment for physical or mental incapacity where the incapacity substantially affects their ability to exercise their functions.

Part 5 Liquor Act 1975

Clause 18 Legislation amended – pt 5

Clause 18 notes that Part 5 of the Bill amends the *Liquor Act 1975*.

Clause 19 Division 9.1 heading

Clause 19 substitutes a new heading for Division 9.1, Kinds of permits.

Clause 20 Section 106

Clause 20 substitutes a new section 106 and inserts new sections 106A, 106B, 106C and 106D. New section 106 extends the liquor permit system to allow winegrowers who do not hold an ACT off-licence to apply for a permit to sell unopened bottles of wine at tourism events for consumption away from the place or event listed in the permit. The extension also applies to allow sales of wine by non-profit organisations as a fund raising activity.

The new sections prescribe what each permit holder is authorised to do under each permit. Section 106D requires the amount of liquor stated in the permit to be stated by reference to a stated dollar figure. For example, a liquor permit holder and a non-profit organisation permit holder would be limited to the dollar amount of wine stated on the permit acquired for sale at the fund raising event, and a tourism wine permit holder would be limited to the dollar amount of wine stated on the permit for sale at an event. Clause 20 also inserts a new Division 9.1A dealing with the issue of permits.

The extension of the liquor permit system to allow local winegrowers to sell unopened bottles of wine at tourism events came out of the ACT Business Regulation Review. The extension of the liquor permit system to non-profit organisations to purchase and sell wine as a fund raising activity, mirrors the liquor permit systems in other jurisdictions.

Clause 21 Application for permit
Section 107, note

Clause 21 substitutes a new section 107 by inserting a new Note 2.

Clause 22 Section 110

Clause 22 substitutes section 110 and inserts new sections 109A, 109B and 109C, which prescribe specific criteria that an applicant must satisfy before the decision-maker may issue a permit. Section 109B sets an annual quota for an applicant for a non-profit organisation wine permit which must not exceed \$10,000 of wine purchased for sale at fund raising events throughout each financial year. New section 109C authorises only licensed winegrowers to sell their own wine at tourism events and not wine produced by other winegrowers. New section 109C also sets an annual quota for an applicant for a tourism wine permit which must not exceed \$15,000 of wine sold at tourism events for each financial year. Price caps for both permits may be changed by regulation. New section 110 gives the decision-maker flexibility to substitute more appropriate times on a permit application and place conditions on a permit, where appropriate, to protect the public interest.

Clause 23 Section 112

Clause 23 substitutes a new section 112 which better guarantees the integrity of the liquor permit system by making it mandatory for the permit holder to obtain a signed endorsement from the seller. The seller is now required to endorse all permits, not just those given to him or her by the permit holder. Similarly, where a permit holder acquires liquor to be sold, other than by buying it from a seller, the permit holder must sign and endorse the permit by including specific information on the permit.

Clause 24 Part 9

Clause 24 notes that Part 9 divisions will be renumbered when the Act is next republished under the *Legislation Act 2001*.

Clause 25 Consumption of liquor in certain public places
Section 139(4)(c)

Clause 25 substitutes a new paragraph (c) to make provision for a time and place stated in a liquor permit.

Clause 26 Commissioner to be notified
Section 176

Clause 26 omits section 176, as this provision is now redundant. The Commissioner for Revenue no longer collects revenue from licensees and thus does not require this information.

Clause 27 Dictionary, new definitions

Clause 27 inserts new definitions for *amount* for part 9 (Permits) – refer section 106D; *liquor permit* for part 9(Permits) – refer section 106A; and *non-profit organisation wine permit* for the purposes of part 9 (Permits) - refer section 106B.

Clause 28 Dictionary, definition of *permit*

Clause 28 substitutes a new definition of *permit*, refer section 106.

Clause 29 Dictionary, new definition of *tourism wine permit*

Clause 29 inserts a definition of *tourism wine permit*, for part 9 (Permits) – refer section 106C.

Part 6 Oaths and Affirmations Act 1984

Clause 30 Legislation amended – pt 6

Clause 30 notes that the Bill amends the *Oaths and Affirmations Act 1984*.

Clause 31 Section 4

Clause 31 substitutes the dictionary at section 2 and new notes at section 3 at the end of the Bill which form part of the Act.

Clause 32 Authority to administer oath etc
New section 11(3)

Clause 32 inserts a new definition of *Australian diplomatic or consular representative* for the purposes of paragraph 11(1)(c) to include an employee of the Commonwealth and an employee of the Australian Trade Commission authorised, in writing, by the Secretary to the Commonwealth department which is consistent with the *Consular Fees Act 1955* (Cwlth), subsections 3(c) and (d).

Clause 33 New dictionary

Clause 33 inserts a new dictionary at section 2.