

2003

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT
BILL 2003

EXPLANATORY STATEMENT

Circulated by authority of the
Attorney General
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JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2003

Outline

The Justice and Community Safety Legislation Amendment Bill 2003 (the Bill) amends a number of laws administered by the ACT Department of Justice and Community Safety. The laws amended include:

- *Cooperatives Act 2002*;
- *Fair Trading Act 1992*
- *Fair Trading (Consumer Affairs) Act 1973*;
- *Leases (Commercial and Retail) Act 2001*
- *Legal Practitioners Act 1970*;
- *Second-hand Dealers Act 1906* and
- *Trade Measurement (Administration) Act 1991*.

The proposed amendments are detailed below.

Cooperatives Act 2002

On 19 November 2002, the ACT Legislative Assembly debated and passed the Bill for the *Cooperatives Act 2002*. During the debate, it was agreed that subclause 338(4) should be deleted. Inadvertently, all of clause 338, which provides for the grounds for winding-up, the transfer of engagements and the appointment of an administrator, was deleted. The amendment rectifies this error.

Fair Trading Act 1992

The amendments will remove any doubt that the Magistrates Court's power to grant relief, under the Act, also includes the power to enforce any orders for relief made, and also includes the power to make preliminary and procedural orders.

Fair Trading (Consumer Affairs) Act 1973

The amendments to the *Fair Trading (Consumer Affairs) Act 1973* will enable the adoption of consumer product safety standards, produced by standards' setting organisations. The new subsection will allow a regulation to apply, adopt or incorporate, wholly or in part, and with or without modification, any standard, rule, code or specification of Standards Australia, the British Standards Institute or any other association or body and may classify or describe anything by reference to a diagram, illustration or photograph.

In addition, the current wording of section 43 does not enable an offence to be created in the regulations, eg, an offence of failing to produce certificates for certain goods under the prescribed consumer product safety standards' regulations. The new regulation will create an offence punishable by a penalty not exceeding 20 penalty units.

The *Fair Trading (Consumer Affairs) Act 1973* is also amended to allow, where it is in the public interest to do so, for the Attorney General or the Commissioner for Fair Trading to issue public statements. These statements would identify, warn or inform the community about consumer protection matters, including any of the following:

- goods that are unsatisfactory or dangerous and the people who supply them;
- services that are supplied in an incompetent manner by traders who continually ignore court orders or the imposition of penalties; or
- unfair business practices and the people who engage in them.

For such public interest statements to be viable, the Bill provides the Attorney General or the Commissioner for Fair Trading immunity from liability for statements made in good faith and without negligence.

The Bill also clarifies that any publication of warning statements will attract the protection for actions against defamation provided by section 61 of the *Civil Law (Wrongs) Act 2002* and section 31 of the *Defamation (Criminal Proceedings) Act 2001*.

Leases (Commercial and Retail) Act 2001

The amendments will remove any doubt that the Magistrates Court's power to grant relief, under the Act, also includes the power to enforce any orders for relief made, and also includes the power to make preliminary and procedural orders.

Legal Practitioners Act 1970

Section 200 of the *Legal Practitioners Act 1970* requires unclaimed moneys to be paid to the ACT by payment to the Chief Executive. In December 2000, the Public Trustee assumed responsibility for the functions of what was the Registrar of Unclaimed Moneys. However, a strict reading of section 200 of the Act provides no basis for payments to be made to the Public Trustee. The amendments will require payments be made to the Public Trustee rather than to the Chief Executive.

Second-hand Dealers Act 1906

The amendments to this Act will also reduce the minimum lettering size to 5cm for the sign required by section 5 of the *Second-hand Dealers Act 1906*. This is consistent with the requirement in the *Pawnbrokers Act 1902*.

The amendments will also alter the meaning of suitable person for licensing requirements in section 11(3) to provide that a license cannot be granted where it would cause the breach of another law.

Amendments to section 4 of the *Second-hand Dealers Act 1906* allow the Commissioner for Fair Trading to exempt persons selling second hand goods from the requirement to be licensed. Exemptions will only be granted following consultation

with the Australian Federal Police. Exemptions will be for one-off events and fairs, where it is impractical to draft regulations exempting the people or event.

Trade Measurement (Administration) Act 1991

As of 2001, the provisions concerning infringement and penalty notices are found within Part 8 of the *Magistrates Court Act 1930*. Accordingly, the penalty notices' provision in section 13 of the *Trade Measurement (Administration) Act 1991* is now redundant and should be removed.

Clause Notes

Clause 1 – Name of Act – states the title of the Act, which is the *Justice and Community Safety Legislation Amendment Act 2003*.

Clause 2 – Commencement – states when the Act commences. All amendments are to commence on the day after notification.

Clause 3 – Act amended – pt 2 – provides that this part amends the *Cooperatives Act 2002*.

Clause 4 – Transfer of engagements by direction registrar Section 305 (2) – provides that the reference to section 338 of the *Cooperatives Act 2002* in section 305 (2) of that Act is to be replaced by a reference to section 338A. The current reference is incorrect as section 338 was inadvertently omitted.

Clause 5 – Winding-up on registrar’s certificate Section 315 (1) – provides that the reference to section 338 of the *Cooperatives Act 2002* in section 315 (1) of that Act is to be replaced by a reference to section 338A. The current reference is incorrect as section 338 was inadvertently omitted.

Clause 6 – Appointment of administrator Section 325 (4) – provides that the reference to section 338 of the *Cooperatives Act 2002* in section 325 (4) of that Act is to be replaced by a reference to section 338A. The current reference is incorrect as section 338 was inadvertently omitted.

Clause 7 – New Section 338A – inserts section 338A into the *Cooperatives Act 2002*. This section was inadvertently omitted from the Act. This section provides the grounds for winding up, transfer of engagements and appointment of administrators.

Clause 8 – Act amended – pt 3 – provides that this part amends the *Fair Trading Act 1992*.

Clause 9 – New section 51AA – inserts section 51AA into the *Fair Trading Act 1992*. This section removes any doubt that the Magistrates Court’s power to grant relief, under the Act, also includes the power to enforce any orders for relief made, and also includes the power to make preliminary and procedural orders.

Clause 10 – Act amended – pt 4 – provides that this part amends the *Fair Trading (Consumer Affairs) Act 1973*.

Clause 11 – Consumer product safety standards Section 25 – inserts section (3) and (4) to provide that consumer product safety standards may use a law of another jurisdiction.

Clause 12 – New Section 41A – inserts section 41A to provide that the Minister or the Commissioner may make public statement about goods (or the people who supply them) that are dangerous or supplied in an unsatisfactory way. The statement must be

made in the public interest. This clause also inserts section 42, which provides that civil liability does not lie against the Territory, Minister or the commissioner in respect of the statements issued under section 41A and clarifies that publication of warning statements will attract the protection for actions against defamation provided by section 61 of the *Civil Law (Wrongs) Act 2002* and section 31 of the *Defamation (Criminal Proceedings) Act 2001*.

Clause 13 – Regulation-making power Section 43 – this amendment makes the present section a sub-section so as to allow for new sub-section 43(2) of the *Fair Trading (Consumer Affairs) Act 1973*.

Clause 14 – New Section 43 (2) – inserts section 43 (2) to provide that regulations may prescribe offences with a maximum penalty of not more than 20 penalty units.

Clause 15 – Act amended – pt 5 – provides that the Act amended is the *Leases (Commercial and Retail Act 2001)*.

Clause 16 – Jurisdiction Section 144 (3) – provides that Magistrates Court’s power to grant relief, under the Act, also includes the power to enforce any orders for relief made, and also includes the power to make preliminary and procedural orders.

Clause 17 – Act amended – pt 6 – provides that the Act amended is the *Legal Practitioners Act 1970*.

Clause 18 – Unclaimed moneys Section 200 (1) – allows for unclaimed monies to be paid directly to the Public Trustee rather than the Chief Executive.

Clause 19 – Act amended – pt 7 – provides that the Act amended is the *Second-hand Dealers Act 1906*.

Clause 20– Issue of licenses New Section 3 (1) (ba) – provides that a licence cannot be issued where the applicant would contravene a law of the Territory or a Commonwealth law in the course of carrying on business under the licence.

Clause 21– Section 3 (1) – provides that the paragraphs in this Act are to be renumbered in the next publication.

Clause 22 – Dealer must be licensed New Section 4 (3) – (6) – inserts section 4 (3) – (6) to provide that the commissioner (in consultation with the chief police officer) may exempt an entity from the requirement to be licensed when the business being carried on is infrequent or irregular or when the exemption would not undermine the purpose of the Act.

Clause 23 - Name of dealer etc to be displayed on premises Section 5 – pt 6 – allows for the height of the sign stating the name of the dealer to be prescribed in the regulations rather than the primary legislation.

Clause 24 – Regulation amended – pt 8 – provides that the Regulations amended

are the *Second Hand Dealers Regulations 2002*.

Clause 25 – Exempt entities – Act, s 4 (2) Regulation 5B – provides that the required height for displayed lettering is 5 cm.

Clause 26 – Dictionary, definition of exempt entity – provides that ‘exempt entity’ means an entity exempted under section 4 of the Act.

Clause 27 – New Regulation 5B – inserts a new regulation to provide that the required height for displayed lettering is 5 cm.

Clause 28 – Act amended – pt 9 – provides that the Act amended is the *Trade Measurement (Administration) Act 1991*.

Clause 29 – Penalty notices Section 13 – removes the provision regarding penalty notices, which is now contained within Part 8 of the *Magistrates Court Act 1930*.