

**2003**

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT  
BILL 2003 (No. 2)**

**EXPLANATORY STATEMENT**

**Circulated by authority of the  
Attorney General  
Mr Jon Stanhope MLA**

## JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2003 (No 2)

### Overview of Bill

The Justice and Community Safety Legislation Amendment Bill 2003 (No 2) amends a number of laws administered by the ACT Department of Justice and Community Safety. The laws amended include:

- *Agents Act 2003*
- *Consumer Credit Act 1995*
- *Consumer Credit Regulations 1996*
- *Cooperatives Act 2002*
- *Cooperatives Regulations 2003*
- *Fair Trading Act 1992*
- *Magistrates Court (Civil Jurisdiction) Act 1982*
- *Protection Orders Act 2001*
- *Security Industry Act 2003*

### Strict liability offences

The amendment to the *Cooperatives Act 2002* inserts a strict liability offence. A strict liability offence under section 23 of the *Criminal Code 2002* means that there are no fault elements for any of the physical elements of the offence. Essentially, this means that conduct alone is sufficient to make the defendant culpable. However, under the *Criminal Code 2002*, all strict liability offences will have a specific defence of mistake of fact. Clause 23(3) of the *Criminal Code 2002* makes it clear that other defences may still be available for use in strict liability offences.

Strict liability offences do not have a mental element, or *mens rea*. However, the *actus reus*, the physical actions, do have a mental element of their own, for example, voluntariness. For this reason, the general common law defences of insanity and automatism still apply as they go towards whether a person has done something voluntarily, as well as whether they intended to do the act.

The proposed amendments are detailed below.

#### *Agents Act 2003*

The vast majority of offences in the *Agents Act 2003* are strict liability offences. Sections 86 and 87 of the Act are exceptions, as both sections expressly include a fault element. The addition of a subsection stating that the offences in these sections are strict liability offences was an oversight and is removed by this amendment.

The Bill amends section 202 of the *Agents Act 2003* to correct an inadvertent drafting error. References in this section to *Agents Act 1959*, should read *Agents Act 1968*.

The Bill also amends section 168 of the *Agents Act 2003* to remove an inconsistency with the *Consumer and Trader Tribunal Act 2003*.

### Consumer Credit Act 1995

This amendment removes section 10 of the *Consumer Credit Act 1995* and inserts a new Part 3A into the *Consumer Credit Act 1995* to amend the current wording of the regulation-making power under the Act, which is currently limited specifically to the setting of a percentage rate. The amendment is necessary to facilitate a future amendment to the *Consumer Credit Regulations 1996*. The amendment also provides for disclosure requirements in relation to short term credit contracts.

### Consumer Credit Regulations 1996

This is a consequential amendment required due to the changes to the *Consumer Credit Act 1995*.

### Cooperatives Act 2002

This amendment corrects a number of anomalies identified in the course of drafting the regulations for the *Cooperatives Act 2002*. The *Cooperatives Act 2002* provides that a Registrar of Cooperatives is to be appointed by the Chief Executive, but that Deputy Registrars are to be appointed by the Minister. This Bill amends the Act to allow the Chief Executive to also appoint Deputy Registrars. This amendment corrects the anomaly, provides for easier administration, and ensures consistency with provisions in other legislation, like the *Consumer and Trader Tribunal Act 2003*.

The Bill also adds an offence to the *Cooperatives Act 2002* where a body fails to lodge with the Registrar particulars of any alterations, in circumstances set out in section 375. A failure to lodge these particulars will be the commission of an offence punishable by a maximum of 10 penalty units. This offence was to form part of the regulations, but on the advice of Parliamentary Counsel's Office, it is necessary to add the offence to the Act itself. The *Cooperatives Act 2002* is uniform legislation using the Queensland *Cooperatives Act* as the national model. All amendments are consistent with the national model.

### Cooperatives Regulations 2003

The Bill amends the *Cooperatives Regulations 2003* to specify the *Commonwealth Aboriginal Councils and Associations Act 1976* as a law under which a cooperative may, if approved, become registered or incorporated under section 307(1)(e) of the *Cooperatives Act 2002*.

### Fair Trading Act 1992

Currently, subsection 41(5) of the *Fair Trading Act 1992* refers to sections 180, 182 and 183 of the *Crimes Act 1900* which, following the introduction of the *Criminal Code 2002*, have been relocated into the Code. The effect of the *Criminal Code 2002* is such that subsection 41(5) in the *Fair Trading Act 1992* is otiose. Accordingly, paragraphs 41(1)(b) - (e) and subsection 41(5) of the *Fair Trading Act 1992* are removed.

*Magistrates Court (Civil Jurisdiction) Act 1982*

This amendment corrects a technical error in section 461 of the *Magistrates Court (Civil Jurisdiction) Act 1982*. The current section refers to an order declaring that a specified amount of money is or is not due or owing to the applicant which should read by the applicant, because the applicant is always the debtor, not the creditor. The amendment will correct this error. As a consequence of this amendment, the Bill also alters the definition of a debt declaration under section 394 of the Act.

*Protection Orders Act 2001*

Section 33 of the *Protection Orders Act 2001* requires the respondent to be personally served with a copy of a protection order made by the Magistrates Court. The purpose of personal service is to ensure that the person upon whom the order is served is aware of both the existence of the order, and the consequences of a failure to comply with the order. Personal service should not be necessary if the respondent was before the court when the order was made, as the Magistrate has explained the order to the parties. The Bill amends the requirement for personal service on the respondent to provide that personal service may be dispensed with where the respondent is before the court when the order is made, varied or revoked. Personal service will only be retained where the order is made ex-parte.

*Security Industry Act 2003*

The Bill also amends section 37 of the *Security Industry Act 2003* to remove an inconsistency with the *Consumer and Trader Tribunal Act 2003*.

**Outline of Provisions**

**PART 1      Preliminary**

**Clause 1      Name of Act**

This clause names the Act as the *Justice and Community Safety Legislation Amendment Act 2003 (No 2)*.

**Clause 2      Commencement**

This clause provides that the Act commences 14 days after its notification day.

**PART 2      Agents Act 2003**

**Clause 3      Legislation amended – pt 2**

This clause explains that Part 2 amends the *Agents Act 2003*.

**Clause 4      Agents must not obtain beneficial interest in land - section 86(3)**

This clause omits subsection 86(3) of the *Agents Act 2003*, which declares that an offence under section 86 is a strict liability offence.

**Clause 5 Salespeople must not obtain beneficial interest in land - section 87(3)**

This clause omits subsection 87(3) of the *Agents Act 2003*, which declares that an offence under section 87 is a strict liability offence.

**Clause 6 Section 168**

This clause amends section 168 by adding the words “of a relevant person” to subsection 168(1). The clause also removes the current subsection 168(2) and inserts a new subsection defining who is a relevant person for the purposes of the section.

**Clause 7 Keeping of agents’ records – section 202**

This clause amends section 202 by replacing the words “*Agents Act 1959*” with the words “*Agents Act 1968*”.

**PART 3 Consumer Credit Act 1995**

**Clause 8 Legislation amended – pt 3**

This clause explains that Part 3 amends the *Consumer Credit Act 1995*.

**Clause 9 Definitions for Act – section 3**

This clause inserts a number of definitions used in new Part 3A into section 3 of the *Consumer Credit Act 1995*.

**Clause 10 New Part 3A**

This clause inserts a new Part 3A - Maximum annual percentage rate and disclosure into the *Consumer Credit Act 1995* to enable future amendments to the *Consumer Credit Regulations 1996*. The amendment also requires credit providers to make certain disclosures required under the *Consumer Credit (Australian Capital Territory) Code*, in relation to short-term credit contracts.

**Clause 11 Section 10**

This clause omits section 10 of the *Consumer Credit Act 1995*.

**PART 4 Consumer Credit Regulations 1996**

**Clause 12 Legislation amended – pt 4**

This clause provides that Part 5 amends the *Consumer Credit Regulations 1996*.

**Clause 13 Maximum annual percentage rate – Regulation 5**

This clause amends Regulation 5 of the *Consumer Credit Regulations 1996* by replacing the words “section 10(1)” with the words “section 8B(1)”.

**PART 5 Cooperatives Act 2002**

**Clause 14 Legislation amended – part 5**

This clause provides that Part 5 amends the *Cooperatives Act 2002*.

**Clause 15 Application for transfer of registration etc – section 307(1)(e)**

This clause substitutes a redrafted paragraph 307(1)(e), which replaces the phrase “outside the ACT” with the words “under a law of the Commonwealth, or a State or Territory or foreign country”.

**Clause 16 Section 375**

This clause substitutes a redrafted section 375, which meets the requirements of the *Criminal Code 2002*. The redrafted section 375 makes it a strict liability offence for a foreign cooperative to fail to file certain particulars with the registrar within 28 days after a notifiable change occurs. An offence against this provision carries a maximum penalty of 10 penalty units.

**Clause 17 Deputy registrar and other staff – section 430(1)**

This clause provides that the chief executive may appoint a deputy registrar and assistant registrars.

**PART 6 Cooperatives Regulations 2003****Clause 18 Legislation amended – pt 6**

This clause explains that Part 6 amends the *Cooperatives Regulations 2003*.

**Clause 19 New part 8A**

This clause inserts a new Part 8A into the *Cooperatives Regulations 2003* and provides at Regulation 26A that the *Aboriginal Councils and Associations Act 1976 (Cwlth)* is a prescribed law under which a cooperative may, if approved, become registered or incorporated under section 307(1)(e) of the *Cooperatives Act 2002*.

**PART 7 Fair Trading Act 1992****Clause 20 Legislation amended – pt 7**

This clause explains that Part 7 amends the *Fair Trading Act 1992*.

**Clause 21 Offences against pt 2 – section 41(1)**

This clause removes paragraphs 41(1)(b) – (e) of the *Fair Trading Act 1992* to accord with the removal of subsection 41(5) of the *Fair Trading Act 1992*.

**Clause 22 Section 41(5)**

This clause omits section 41(5) of the *Fair Trading Act 1992* to remove a reference to sections 180, 182 and 183 of the *Crimes Act 1900* which, following the introduction of the *Criminal Code 2002*, no longer exist.

**Clause 23 Section 41**

This clause provides that renumbering of subsections will occur when the *Fair Trading Act 1992* is next republished under the *Legislation Act 2001*.

**PART 8 Magistrates Court (Civil Jurisdiction) Act 1982****Clause 24 Legislation amended pt 8**

This clause explains that Part 8 amends the *Magistrates Court (Civil Jurisdiction) Act 1982*.

**Clause 25 Definitions for pt 22 – section 394, definition of *debt declaration***

This clause amends the definition of a debt declaration to provide that the Small Claims Court may declare that the applicant does or does not owe a debt to the respondent.

**Clause 26 Section 461**

This clause permits the Small Claims Court to make a debt declaration in a proceeding on an application for a debt declaration.

**PART 9 Protection Orders Act 2001****Clause 27 Legislation amended – pt 9**

This clause explains that Part 9 amends the *Protection Orders Act 2001*.

**Clause 28 Service of non-emergency orders – section 33(2) and note**

This clause amends section 33 to dispense with the requirements for personal service on the respondent in the circumstances where the respondent is before the court at the time the protection order is made.

**PART 10 Security Industry Act 2003****Clause 29 Legislation amended – pt 10**

This clause explains that Part 10 amends the *Security Industry Act 2003*.

**Clause 30 Section 37**

This clause amends section 37 to remove an inconsistency between the *Security Industry Act 2003* and the *Consumer and Trader Tribunal Act 2003* in relation to an application for a review of a decision of the commissioner for fair trading in relation to a licence.