



Australian Capital Territory

# Justice and Community Safety Legislation Amendment Act 2005 (No 2)

A2005-11

## Contents

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	Page
<b>Part 1</b>	
<b>Preliminary</b>	
1 Name of Act	2
2 Commencement	2
<b>Part 2</b>	
<b>Agents Act 2003</b>	
3 Legislation amended—pt 2	3
4 Eligibility for licences Section 24 (4) (c)	3
5 Additional eligibility grounds for travel agents Section 26	3
6 New section 26 (2)	3
7 Grounds for disciplinary action—agents Section 41 (1) (e)	4
8 Meaning of compensation scheme for div 5.7 Section 90, note	4

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## Contents

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	Page	
9	Participation in compensation scheme New section 91 (4)	4
10	Dictionary, new definition of <i>employee condition</i>	4
<b>Part 3</b>	<b>Evidence Act 1971</b>	
11	Legislation amended—pt 3	5
12	Definitions for Act Section 6, definition of diplomatic or consular representative	5
13	Documents attested outside ACT Section 17	5
<b>Part 4</b>	<b>Justices of the Peace Act 1989</b>	
14	Legislation amended—pt 4	6
15	New section 2	6
16	Appointments Section 3 (1)	6
17	New sections 3A and 3B	7
<b>Part 5</b>	<b>Liquor Act 1975</b>	
18	Legislation amended—pt 5	9
19	Division 9.1 heading	9
20	Section 106	9
21	Application for permit Section 107, note	10
22	Section 110	11
23	Section 112	14
24	Part 9	15
25	Consumption of liquor in certain public places Section 139 (4) (c)	15
26	Commissioner to be notified Section 176	15
27	Dictionary, new definitions	16
28	Dictionary, definition of <i>permit</i>	16
29	Dictionary, new definition of <i>tourism wine permit</i>	16







Australian Capital Territory

# **Justice and Community Safety Legislation Amendment Act 2005 (No 2)**

**A2005-11**

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An Act to amend the law relating to justice and community safety

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

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Justice and Community Safety Legislation Amendment Act 2005 (No 2)*.

### 2 Commencement

This Act commences on the day after its notification day.

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

## Part 2                      Agents Act 2003

### 3                      Legislation amended—pt 2

This part amends the *Agents Act 2003*.

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

*substitute*

- (c) the corporation satisfies the additional eligibility requirements in section 26 (1) (Additional eligibility grounds for travel agents).

### 5                      Additional eligibility grounds for travel agents Section 26

*omit*

A person

*substitute*

- (1) A person

### 6                      New section 26 (2)

*insert*

- (2) This section does not apply to an individual applicant for a travel agents licence if the licence applied for is to be subject to a condition (an ***employee condition***) that the person carry on business as a travel agent only as an employee of a licensed travel agent who holds a travel agents licence that is not subject to an employee condition.

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

*substitute*

- (e) if the agent is a licensed travel agent whose licence is not subject to an employee condition—the agent is not a compensation scheme participant;

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

*substitute*

*Note* The following terms are defined in the dictionary:

- *compensation scheme participant*
- *employee condition* (see s 26 (2))
- *travel agents board of trustees*
- *travel agents trust deed*.

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

*insert*

- (4) This section does not apply to a licensed travel agent if the licence is subject to an employee condition.

**10 Dictionary, new definition of *employee condition***

*insert*

*employee condition*—see section 26 (2) (Additional eligibility grounds for travel agents).



## Part 3 Evidence Act 1971

### 11 Legislation amended—pt 3

This part amends the *Evidence Act 1971*.

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

*omit*

### 13 Documents attested outside ACT Section 17

*omit*

## Part 4 Justices of the Peace Act 1989

### 14 Legislation amended—pt 4

This part amends the *Justices of the Peace Act 1989*.

### 15 New section 2

*insert*

#### 2 Who may be appointed justice of the peace?

- (1) A person is eligible to be appointed as a justice of the peace (an *eligible person*) if the person—
  - (a) is at least 18 years old; and
  - (b) satisfies the criteria (if any) in the guidelines made by the Minister for this section.
- (2) The Minister may make guidelines about eligibility for appointment as a justice of the peace.
- (3) A guideline is a disallowable instrument.

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

### 16 Appointments Section 3 (1)

*substitute*

- (1) The Minister may appoint an eligible person as a justice of the peace.

*Note 1* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

*Note 2* In particular, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

*Note 3* A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

## **17 New sections 3A and 3B**

*insert*

### **3A Guidelines about the role of justice of the peace**

- (1) The Minister may make guidelines about the role of a justice of the peace.
- (2) A guideline is a disallowable instrument.

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

### **3B When does a person stop being a justice of the peace?**

- (1) The Minister may end a person's appointment as a justice of the peace if—
  - (a) the person becomes bankrupt, or executes a personal insolvency agreement; or
  - (b) the person is convicted, in the ACT, of an offence punishable by imprisonment for at least 1 year; or
  - (c) the person is convicted outside the ACT, in Australia or elsewhere, of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year; or
  - (d) the Minister is satisfied that the person has not complied with the guidelines (if any) made under section 3A; or
  - (e) the Minister is satisfied that the person is no longer an eligible person; or

- (f) the criteria (if any) prescribed by regulation for this section apply to the person.
- (2) The Minister must end a person's appointment as a justice of the peace for physical or mental incapacity, if the incapacity substantially affects the exercise of the member's functions.

*Note 1* The appointer's power to make the appointment includes the power to suspend the appointee. The power to suspend is exercisable in the same way, and subject to the same conditions, as the power to make the appointment (see Legislation Act, s 208).

*Note 2* A person's appointment also ends if the person resigns (see Legislation Act, s 210).

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## Part 5                      Liquor Act 1975

### 18            Legislation amended—pt 5

This part amends the *Liquor Act 1975*.

### 19            Division 9.1 heading

*substitute*

## Division 9.1              Kinds of permits

### 20            Section 106

*substitute*

### 106          What is a *permit*?

In this Act:

*permit* means—

- (a) a liquor permit; or
- (b) a non-profit organisation wine permit; or
- (c) a tourism wine permit.

### 106A        What is a *liquor permit*?

- (1) A *liquor permit* authorises the permit-holder to sell the amount of liquor stated in the permit, at the event stated in the permit, at the times and places stated in the permit.
- (2) A liquor permit does not authorise the permit-holder to sell liquor—
  - (a) in a closed container; or
  - (b) in a container together with the means of closing the container.

**106B What is a *non-profit organisation wine permit*?**

A *non-profit organisation wine permit* authorises the permit-holder to sell, in closed containers, the amount of wine stated in the permit, at the event stated in the permit, at the times and places stated in the permit.

**106C What is a *tourism wine permit*?**

A *tourism wine permit* authorises the permit-holder to sell, in closed containers, the amount of wine stated in the permit, at the event stated in the permit, at the times and places stated in the permit.

**106D Meaning of *amount* in a permit**

The *amount* of liquor stated in the permit must be stated by reference to a stated dollar figure.

**Examples of stated amount**

- 1 a dollar figure for the wine acquired for sale under the permit
- 2 a dollar figure for the total sales of wine under the permit

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## **Division 9.1A Issue of permits**

### **21 Application for permit Section 107, note**

*substitute*

*Note 1* A fee may be determined under s 179 for this provision.

*Note 2* If a form is approved under s 180 for this provision, the form must be used.

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**22 Section 110**

*substitute*

**109A Criteria for liquor permit**

- (1) A liquor permit may be issued to an applicant only if the relevant decision-maker is satisfied on reasonable grounds that—
- (a) there will be adequate toilet facilities for the people attending the event to which the permit would apply; and
  - (b) the event is not likely to result in disturbance or inconvenience to people occupying premises in the neighbourhood of the event; and
  - (c) the amount of liquor for which the permit is sought is not more than the amount reasonably needed for the event; and
  - (d) it is in the public interest to issue the permit.

**Examples of when it may not be in public interest to issue permit**

- 1 if the applicant has been convicted of a defined offence
- 2 if the applicant is a corporation and a defined influential person in relation to the corporation has been convicted of a defined offence
- 3 if the applicant is a partner in a partnership and intends to hold the permit for the partnership and another partner has been convicted of a defined offence

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) If the decision-maker for the application is satisfied that the amount of liquor for which the permit is sought is more than the amount reasonably needed for the event to which the permit would apply, a permit may be issued to the applicant authorising the sale of the amount of liquor the decision-maker considers appropriate for the event.

**109B Criteria for non-profit organisation wine permit**

- (1) A non-profit organisation wine permit may be issued to an applicant only if the decision-maker is satisfied on reasonable grounds that—
  - (a) the applicant is, or represents, a non-profit organisation; and
  - (b) all profits from the sale of the wine will directly benefit a non-profit organisation; and
  - (c) the applicant is not the holder of a club licence under section 48; and
  - (d) it is in the public interest to issue the permit.
- (2) The stated amount of wine that may be sold under the permit must not exceed the applicant's annual quota.
- (3) In this section:

*annual quota*, for an applicant, means the amount of wine that—

- (a) is bought by the applicant in the financial year in which the event to which the permit would apply happens; and
- (b) is authorised for sale by the applicant under the permit, or any other non-profit organisation wine permit, in the same financial year; and
- (c) does not exceed the price cap.

*non-profit organisation* means an organisation that is not carried on for profit or gain to its individual members and does not make any distribution, whether in money, property or otherwise, to its members.

*price cap* means—

- (a) \$10 000; or
- (b) if another amount is prescribed by regulation—that amount.



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**109C Criteria for tourism wine permit**

- (1) A tourism wine permit may be issued to an applicant only if the decision-maker is satisfied on reasonable grounds that—
  - (a) the applicant holds—
    - (i) a licence or permit under this Act to sell wine; or
    - (ii) a licence, permit or other authority (however described) under the law of another State or Territory to sell wine; and
  - (b) the applicant was involved in the production or processing of the wine; and
  - (c) the wine to be sold under the permit is to be sold at a tourism or promotional event; and
  - (d) it is in the public interest to issue the permit.
- (2) The stated amount of wine that may be sold under the permit must not exceed the applicant's annual quota.
- (3) In this section:
  - (a) is authorised for sale by the applicant—
    - (i) in the financial year in which the event to which the permit would apply happens; and
    - (ii) under the permit or any other tourism wine permit; and
  - (b) does not exceed the price cap.

***tourism or promotional event*** includes an exhibition, festival, trade fair and show.

*price cap* means—

- (a) \$15 000; or
- (b) if another amount is prescribed by regulation—that amount.

### **110 Permit conditions may differ from application**

- (1) If the decision-maker for an application is satisfied that the times for which the permit is sought are not appropriate, the decision-maker may issue a permit to the applicant for the times the decision-maker considers appropriate.
- (2) If the decision-maker for an application is satisfied that aspects of the sale of liquor for which the permit is sought would not be in the public interest, the decision-maker may issue a permit to the applicant subject to the conditions the decision-maker considers necessary to protect the public interest.

## **23 Section 112**

*substitute*

### **112 Source of liquor to be endorsed on permit**

- (1) If a permit-holder buys liquor from someone else (the *seller*), the permit-holder must give the permit to the seller for endorsement.
- (2) The seller must, on receiving the permit—
  - (a) endorse on the permit—
    - (i) the name of the seller; and
    - (ii) the kind and amount of liquor bought; and
    - (iii) the price paid for the liquor; and
  - (b) sign the endorsement.

- (3) If a permit-holder acquires liquor to be sold under the permit without buying it, the permit-holder must—
- (a) endorse on the permit—
    - (i) how the liquor was acquired; and
    - (ii) the kind and amount of liquor acquired; and
    - (iii) the total amount received from the sale of liquor under the permit at the event; and
  - (b) sign the endorsement.

**Examples of how permit-holder may acquire liquor otherwise than by buying it**

- 1 the permit-holder may produce the liquor
- 2 the liquor may be donated to the permit-holder

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**24 Part 9**

*renumber divisions when Act next republished under the Legislation Act*

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

*substitute*

- (c) at a time and place stated in a liquor permit.

**26 Commissioner to be notified  
Section 176**

*omit*

**27 Dictionary, new definitions**

*insert*

*amount*, for part 9 (Permits)—see section 106D.

*liquor permit*, for part 9 (Permits)—see section 106A.

*non-profit organisation wine permit*, for part 9 (Permits)—see section 106B.

**28 Dictionary, definition of *permit***

*substitute*

*permit*—see section 106.

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

*insert*

*tourism wine permit*, for part 9 (Permits)—see section 106C.

## Part 6 Oaths and Affirmations Act 1984

### 30 Legislation amended—pt 6

This part amends the *Oaths and Affirmations Act 1984*.

### 31 Section 4

*substitute*

## 2 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*court*—see the *Evidence Act 1971*, dictionary.’ means that the term ‘court’ is defined in that dictionary and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

## 3 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

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

*insert*

(3) In this section:

*Australian diplomatic or consular representative* means—

- (a) an Australian consular officer under the *Consular Fees Act 1955* (Cwlth), section 2 (Interpretation); or
- (b) an Australian diplomatic officer under the *Consular Fees Act 1955* (Cwlth), section 2; or
- (c) an employee mentioned in the *Consular Fees Act 1955* (Cwlth), section 3 (c) or (d) (Fees may be prescribed for consular Acts); or

*Note* The *Consular Fees Act 1955* (Cwlth), s 3 (c) and (d) mentions employees of the Commonwealth and employees of the Australian Trade Commission authorised, in writing, by the secretary to the Cwlth department.

**33 New dictionary**

*insert*

## Dictionary

(see s 2)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1 defines the following terms:

- affidavit
- instrument (see s 14)
- oath.

*court*—see the *Evidence Act 1971*, section 6.

*proceeding*—see the *Evidence Act 1971*, section 6.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 17 February 2005.

**2 Notification**

Notified under the Legislation Act on 11 March 2005.

**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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I certify that the above is a true copy of the Justice and Community Safety Legislation Amendment Bill 2005 (No 2), which originated in the Legislative Assembly as the Justice and Community Safety Legislation Amendment Bill 2005 and was passed by the Assembly on 10 March 2005.

Acting Clerk of the Legislative Assembly

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