



Australian Capital Territory

# Justice and Community Safety Legislation Amendment Act 2005

A2005-5

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2004 068B

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Australian Capital Territory

# Justice and Community Safety Legislation Amendment Act 2005

**A2005-5**

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An Act to amend the law relating to justice and community safety, and for other purposes

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

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2004 068B

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Justice and Community Safety Legislation Amendment Act 2005*.

### 2 Commencement

- (1) The following provisions commence on the commencement of the *Criminal Code (Serious Drug Offences) Amendment Act 2004*:
  - part 6 (Drugs of Dependence Act 1989)
  - part 9 (Periodic Detention Act 1995)
  - part 10 (Road Transport (Alcohol and Drugs) Act 1977)
  - part 13 (Smoke-free Areas (Enclosed Public Places) Act 1994)
  - part 15 (Tobacco Act 1927).
- (2) The remaining provisions commence on the day after this Act's notification day.

*Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).
- (3) To remove any doubt, the Legislation Act, section 79A (Commencement of amendment of uncommenced law) does not apply to the amendment made by part 14.

## Part 2                      Agents Act 2003

### **3                      Legislation amended—pt 2**

This part amends the *Agents Act 2003*.

### **4                      Interest on trust accounts Section 109 (1)**

omit

1st

*substitute*

10th

## Part 3 Bail Act 1992

### 5 Legislation amended—pt 3

This part amends the *Bail Act 1992*.

### 6 Section 42

*substitute*

#### 42 Power of Magistrates Court to review

- (1) The Magistrates Court may, on application under this division, review any decision of an authorised officer or the Magistrates Court (however constituted) in relation to bail.
- (2) However, the Magistrates Court may review the decision only if the application for review is based on—
  - (a) a significant change in circumstances relevant to the granting of bail; or
  - (b) the availability of fresh evidence or information of material significance to the granting of bail to the person that was unavailable on the most recent application in relation to bail.
- (3) The power of the Magistrates Court to review a decision under this section may be exercised whether or not any power to review the decision under section 38 has been exercised or been sought to be exercised.



**7 Power of Supreme Court to review  
Section 43 (2)**

*omit*

court

*substitute*

Supreme Court

**8 Section 43 (2) (b)**

*omit*

application to the judge

*substitute*

application in relation to bail

## Part 4 Civil Law (Wrongs) Act 2002

### 9 Legislation amended—pt 4

This part amends the *Civil Law (Wrongs) Act 2002*.

### 10 Notice of claim Section 51 (3) (b)

*substitute*

- (b) the day that is 1 month after the later of the following days:
- (i) the day the claimant first instructs a lawyer to provide advice about seeking damages for the personal injury;
  - (ii) the day the respondent is identified.

### 11 Certificate that claim or defence has reasonable prospects of success Section 188 (2)

*substitute*

- (2) The lawyer must not lodge a pleading in a court for filing, or file a pleading in a court, in relation to the claim unless the lawyer has lodged for filing or filed in the court, or the pleading is accompanied by, a certificate stating that the lawyer believes, on the basis of provable facts and a reasonably arguable view of the law, that the claim or defence has reasonable prospects of success.

## Part 5 Confiscation of Criminal Assets Act 2003

### 12 Legislation amended—pt 5

This part amends the *Confiscation of Criminal Assets Act 2003*.

### 13 Key concepts Part 3 heading, new note 3

*insert*

*Note 3* Other important concepts are defined in the Legislation Act, dict, pt 1, including the following:

- indictment
- present.

### 14 Meaning of *convicted* and *quashed* Section 15 (1), notes 1 and 2

*substitute*

*Note 1* **Indictment** is defined in the Legislation Act, dict, pt 1 as including an information. (See also that Act, dict, pt 1, def **present**.)

*Note 2* **Found guilty**, of an offence, is defined in the Legislation Act, dict, pt 1 as including—

- having the offence taken into account under the *Crimes Act 1900*, s 357 (which is about taking outstanding charges into account when passing sentence); and
- having an order made in relation to the offence under the *Crimes Act 1900*, s 402 (Conditional release of offenders without proceeding to conviction) or the *Children and Young People Act 1999*, s 96 (Disposition of young offenders).

*Note 3* For the meaning of **abscond**, see s 16.

**15 Restraining orders—time for making certain applications  
Section 27 (2), notes 1 and 2**

*substitute*

*Note 1* For the meaning of *in relation to*, see dict.

*Note 2* **Indictment** is defined in the Legislation Act, dict, pt 1 as including an information. (See also that Act, dict, pt 1, def **present**.)

*Note 3* The court may allow leave for an application to be made after a time fixed by this section in certain circumstances (see s 49 and s 246).

**16 Restraining orders over other property—affidavit  
supporting application  
Section 29 (5) (b) (i) and (ii)**

*substitute*

- (i) that the officer suspects that the property is tainted property; or
- (ii) that the officer suspects that the property is subject to the offender's effective control.

**17 Dictionary, note 2**

*insert*

- present

**18 Dictionary, definition of *present***

*omit*

**19 Further amendments, new note**

*insert*

*Note* **Indictment** is defined in the Legislation Act, dict, pt 1 as including an information. (See also that Act, dict, pt 1, def *present*.)

*in*

- section 16 (1)
- section 17
- section 29 (1)
- section 31 (2)
- section 47 (6)
- section 48 (5)
- section 67 (5)
- section 85 (3)

## Part 6 Drugs of Dependence Act 1989

### 20 Legislation amended—pt 6

This part amends the *Drugs of Dependence Act 1989*.

### 21 Interpretation for Act Section 3 (1), definition of *drug of dependence*

*substitute*

*drug of dependence* means a substance prescribed by regulation as a drug of dependence for this definition.

### 22 Section 3 (1), definition of *prohibited substance*

*substitute*

*prohibited substance* means a substance prescribed by regulation as a prohibited substance for this definition.

### 23 Definitions for pt 2 Section 4, definition of *drug of dependence*

*substitute*

*drug of dependence* means a substance prescribed by regulation as a drug of dependence for this definition.

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## Part 7                      Legislation Act 2001

### 24            Legislation amended—pt 7

This part amends the *Legislation Act 2001*.

### 25            Exercise of powers between notification and commencement Section 81 (2)

*substitute*

- (2) To remove any doubt and without limiting subsection (1), this section applies to any of the following powers if the power is to be exercised in relation to an entity to be established by the authorising law or the authorising law as amended by the amending law:
- (a) a power to make an appointment to the entity;
  - (b) a power to make a statutory instrument for the purposes of the entity;
  - (c) a power to do anything else in relation to the entity.

#### **Example**

This section applies to powers under an authorising law to be exercised in relation to the conduct of an election for members of a board to be established as a corporation by the authorising law.

*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).

- (2A) The power may be exercised at any time even though the authorising law, or the authorising law and amending law (or either of them), is not in force at the time.

- (2B) For the exercise of the power, the authorising law, or the authorising law and amending law, are taken to be in force at the time of the exercise of the power.

**26                      Section 81**

*renumber subsections when Act next republished under Legislation Act*

**27                      When must prosecutions begin?  
Section 192 (1) (b), (c) and (d)**

*substitute*

- (b) an offence by a corporation punishable by a fine of 100 penalty units or more;

*Note*        See s 161 for the fines that may be imposed on a corporation for offences punishable only by imprisonment.

- (c) an aiding and abetting offence by an individual in relation to an offence by a corporation punishable by a fine of 100 penalty units or more.

**28                      Dictionary, part 1, new definition of *present***

*insert*

*present* an indictment includes lay an information.



## Part 8 Magistrates Court Act 1930

### Explanatory note

The amendments in this part take account of amendments of the *Magistrates Court Act 1930* to be made by the *Court Procedures (Consequential Amendments) Act 2004*.

### 29 Legislation amended—pt 8

This part amends the *Magistrates Court Act 1930*.

### 30 Jurisdiction of Supreme Court Section 207 (1) (a) and (b)

*substitute*

- (a) appeals to which division 3.10.2 (Appeals in criminal matters) applies;
- (b) reference appeals under division 3.10.2A (Reference appeals in criminal matters);
- (c) appeals from decisions of the Magistrates Court by way of orders to review under division 3.10.3 (Orders to review in criminal matters).

### 31 Institution of appeal Section 209 (1)

*omit*

21 days

*substitute*

28 days

**32 New division 3.10.2A**

*insert*

**Division 3.10.2A Reference appeals in criminal matters****219A What is a reference appeal?**

In this division:

*reference appeal*—see section 219AB (2).

**219AB Reference appeal following acquittal on indictment**

- (1) This section applies if a person has been tried on indictment in the Magistrates Court and acquitted in relation to all or part of the indictment.
- (2) The Supreme Court may, on application by the Attorney-General or director of public prosecutions (the *applicant*), hear and decide (by a *reference appeal*) any question of law arising at or in relation to the trial.
- (3) An application must be made within 6 weeks after the end of the trial, or within any longer period allowed by the Supreme Court.

**219AC Who may be heard at reference appeal**

- (1) Each of the following people (each *interested party*) may be heard in a reference appeal:
  - (a) a person charged at the trial;
  - (b) a person who seeks to be heard, if the court is satisfied that the person has a sufficient interest in the appeal to be heard.
- (2) If an interested party is not represented in the appeal, the applicant must instruct counsel to argue the reference appeal on the party's behalf.

- (3) The reasonable costs of legal representation of an interested party are payable by the Territory.

**219AD Reference appeal decision does not affect trial verdict**

The decision on a reference appeal does not invalidate or affect any verdict or decision given at the trial.

**33 Grant of order nisi to review  
Section 219C (1)**

*omit*

21 days

*substitute*

28 days

**34 Dictionary, new definition of *reference appeal***

*insert*

*reference appeal*, for division 3.10.2A (Reference appeals in criminal matters)—see section 219AB (2).

## Part 9 Periodic Detention Act 1995

### 35 Legislation amended—pt 9

This part amends the *Periodic Detention Act 1995*.

### 36 Meaning of *drug* Section 12, definition of *drug*, paragraph (b)

*substitute*

- (b) a controlled drug within the meaning of the Criminal Code, chapter 6 (Serious drug offences).

## Part 10 Road Transport (Alcohol and Drugs) Act 1977

### 37 Legislation amended—pt 10

This part amends the *Road Transport (Alcohol and Drugs) Act 1977*.

### 38 Dictionary, definition of *drug*, paragraph (b)

*substitute*

- (b) a controlled drug within the meaning of the Criminal Code, chapter 6 (Serious drug offences); or

## Part 11 Security Industry Act 2003

### 39 Legislation amended—pt 11

This part amends the *Security Industry Act 2003*.

### 40 Sections 41 and 42

*Substitute*

### 41 Licence to be produced on request

- (1) A licensee commits an offence if—
  - (a) the licensee is asked to produce the licensee's licence for inspection by—
    - (i) a police officer; or
    - (ii) an investigator; or
    - (iii) anyone with whom the licensee has dealings when carrying on a security activity; and
  - (b) the licensee does not produce the licence for inspection.Maximum penalty: 10 penalty units.
- (2) An offence against this section is a strict liability offence.
- (3) Subsection (1) (a) (iii) does not apply to a licensee if—
  - (a) a regulation requires the licensee to wear another form of identification while carrying on the security activity; and
  - (b) the licensee wears the other form of identification while carrying on the security activity.

- (4) In this section:

*investigator*—see the *Fair Trading (Consumer Affairs) Act 1973*, section 2.

## **42 Licence to be worn by licensee**

- (1) A person who holds an employee licence commits an offence if the person—
- (a) carries on a security activity; and
  - (b) does not wear the licence so the licence number is clearly visible.

Maximum penalty: 10 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) Subsection (1) does not apply to—
- (a) a person if—
    - (i) a regulation requires the person to wear another form of identification while carrying on the security activity; and
    - (ii) the person wears the other form of identification while carrying on the security activity; or
  - (b) a licensee if the commissioner for fair trading has exempted the licensee under subsection (4).
- (4) On application, the commissioner for fair trading may, in writing, exempt a licensee from subsection (1) if satisfied that it is appropriate to exempt the licensee because of the special nature of the licensee's functions.

## Part 12 Security Industry Regulation 2003

### 41 Legislation amended—pt 12

This part amends the *Security Industry Regulation 2003*.

### 42 Definitions for pt 4 Section 10, definition of *identification number*

*substitute*

*identification number*—see section 12 (1).

### 43 Section 12

*substitute*

### 12 Identification numbers—Act, s 41 and s 42

- (1) The commissioner for fair trading must allocate a unique number (the *identification number*) to the crowd controller.
- (2) The master licensee must ensure that the crowd controller wears the identification number so that it is clearly visible while the controller is at the place.
- (3) The crowd controller must wear the identification number so that it is clearly visible while the controller is at the place.



## Part 13                      Smoke-free Areas (Enclosed Public Places) Act 1994

### 44                      Legislation amended—pt 13

This part amends the *Smoke-free Areas (Enclosed Public Places) Act 1994*.

### 45                      Definitions for Act Section 2, definition of *drug*

*substitute*

*drug* means a controlled drug within the meaning of the Criminal Code, chapter 6 (Serious drug offences).

## Part 14 Smoking (Prohibition in Enclosed Public Places) Act 2003

### Explanatory note

The *Smoking (Prohibition in Enclosed Public Places) Act 2003*, s 31 and s 35 amend the *Liquor Act 1975*.

### 46 Legislation amended—pt 14

This part amends the *Smoking (Prohibition in Enclosed Public Places) Act 2003*.

### 47 Sections 31 and 35

*omit*

## Part 15 Tobacco Act 1927

### 48 Legislation amended—pt 15

This part amends the *Tobacco Act 1927*.

### 49 Dictionary, definition of *drug*

*substitute*

*drug* means a controlled drug within the meaning of the Criminal Code, chapter 6 (Serious drug offences).

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### Endnotes

#### 1 Presentation speech

Presentation speech made in the Legislative Assembly on 9 December 2004.

#### 2 Notification

Notified under the Legislation Act on 23 February 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, which originated in the Legislative Assembly as the Justice and Community Safety Legislation Amendment Bill 2004 (No 2) and was passed by the Assembly on 17 February 2005.

Clerk of the Legislative Assembly

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