



Australian Capital Territory

Justice and Community Safety Legislation Amendment Act 2009 (No 3)

A2009-44

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Australian Capital Territory

Justice and Community Safety Legislation Amendment Act 2009 (No 3)

A2009-44

An Act to amend legislation about justice and community safety

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

1 Name of Act

This Act is the *Justice and Community Safety Legislation Amendment Act 2009 (No 3)*.

2 Commencement

- (1) Schedule 1, part 1.6 (Crimes (Sentencing) Act 2005) commences 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)).

- (2) Schedule 1, part 1.10 (Firearms Act 1996) and part 1.11 (Firearms Regulation 2008) commence, or are taken to have commenced, on the earlier of—
- (a) the day after this Act's notification day; and
 - (b) 14 January 2010.
- (3) The remaining provisions commences on the 28th day after this Act's notification day:

3 Legislation amended—sch 1

This Act amends the legislation mentioned in schedule 1.

4 Fair Trading Regulation 2009—sch 2

- (1) The provisions set out in schedule 2 are taken, on the commencement of this section, to be a regulation made under the *Fair Trading Act 1992*, section 54 (Regulation-making power).
- (2) To remove any doubt and without limiting subsection (1), the provisions set out in schedule 2 may be amended or repealed as if they had been made as a regulation by the Executive under the *Fair Trading Act 1992*, section 54.

- (3) To remove any doubt, the regulation mentioned in subsection (1) is taken—
 - (a) to have been notified under the Legislation Act on the day this Act is notified; and
 - (b) to have commenced on the 28th day after this Act's notification day; and
 - (c) not to be required to be presented to the Legislative Assembly under the Legislation Act, section 64 (1).
- (4) Subsections (1), (2) and (3) are laws to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (5) This section expires on the day it commences.

5 Legislation repealed

The *Dangerous Substances (Explosives) Regulation 2004-Form-Consumer fireworks authorised receipt* (AF2009-129) is repealed.

Schedule 1 Legislation amended

(see s 3)

Part 1.1 ACT Civil and Administrative Tribunal Act 2008

[1.1] Section 10 (1) (b)

substitute

- (b) be in writing, whether with or without a registrar's help; and

Note A registrar may help a person put an application in writing (see s 13).

[1.2] Section 22L (4) (a)

substitute

- (a) if the reason stated is, or the reasons stated include, a prescribed reason—the Supreme Court, on a reference under section 84, decides that it would not be against the public interest to answer the question; or

[1.3] Section 29 (5)

substitute

- (5) The tribunal may, by written notice to the parties to an application, join a person as a new party to the application if—
- (a) the person has an interest in the application; or
 - (b) for an appeal—the person was a party to the original decision.

[1.4] Section 75 (2), except notes

substitute

- (2) A registrar must give the person written notice (a **warning notice**) that the person's licence or registration may be suspended or cancelled if the person does not pay the amount within 14 days after the day the registrar gives the person the notice.

[1.5] Section 81 (1) (b) (ii)

substitute

- (ii) decides not to deal with the appeal under section 85.

[1.6] Section 83 (1) and (2)

substitute

- (1) If the parties to an application or an appeal (a **matter**) jointly apply to have the matter removed to the Supreme Court, the tribunal must order that the matter be removed to the Supreme Court.
- (2) If a party to a matter applies to have the matter removed to the Supreme Court, the tribunal may, if it considers it appropriate, order that the matter be removed to the Supreme Court.

[1.7] Section 85

substitute

85 Tribunal may not deal with appeals more suited to Supreme Court

- (1) This section applies if—
 - (a) a party to an application appeals the decision on the application to the tribunal under section 79; and
 - (b) an application has not been made under section 83 (Removal of applications from tribunal to Supreme Court) in relation to the appeal.

- (2) The appeal president may decide not to deal with the appeal if the appeal president considers that—
 - (a) the appeal could be dealt with more conveniently or effectively by the Supreme Court; and
 - (b) it would be appropriate for the appeal to be dealt with by the Supreme Court.
- (3) If the appeal president decides not to deal with the appeal, the appeal president must give the applicant for the appeal written notice that—
 - (a) the appeal will not be dealt with by the tribunal; and
 - (b) the applicant may appeal to the Supreme Court under section 86 (1) (c).

[1.8] New section 86 (1) (c)

insert

- (c) if the appeal president decides not to deal with the appeal under section 85—the original decision of the tribunal.

[1.9] Section 87 (2), definition of *Supreme Court proceeding*, paragraph (c)

omit

[1.10] Section 110 (1)

substitute

- (1) The chief executive may appoint 1 or more public servants as a tribunal registrar.

[1.11] Further amendments, mentions of *the registrar*

omit

the registrar

substitute

a registrar

in

- section 13 (1)
- section 25
- section 37
- section 53
- section 74
- section 76
- section 110 (2)
- section 111
- section 112 (1), note (1st mention)
- sections 113 to 116

Part 1.2 ACT Civil and Administrative Tribunal (Transitional Provisions) Regulation 2009

[1.12] Section 67 (1), inserted section 301A

omit

Part 1.3 Agents Act 2003

[1.13] New section 105 (7)

insert

- (7) A licensed agent may, under section 105A, be exempted from the requirements under this section.

[1.14] New section 105A

insert

105A Opening trust accounts—exemptions

- (1) If a licensed agent does not receive or hold trust money, the commissioner for fair trading may, in writing, exempt the agent from the requirements under section 105 (Opening trust accounts).
- (2) The exemption ends if the licensed agent receives or holds trust money.
- (3) The exemption may be conditional.
- (4) A regulation may prescribe the matters to be considered by the commissioner for fair trading in deciding whether to exempt a licensed agent under subsection (1), or amend or revoke an exemption.

- (5) A condition under this section may be put or amended as if it were a condition on a licence.

Note The procedure for putting or amending licence conditions is dealt with in s 34 (2), (3) and (4).

[1.15] Schedule 1, new items 15A to 15C

insert

15A	105A (1)	refuse to exempt licensed agent from requirement to open trust account	licensed agent
15B	105A (3)	put condition on exemption from requirements of s 105	licensed agent exempted
15C	105A (3)	amend condition of exemption from requirements of s 105	licensed agent exempted

Part 1.4 Consumer Credit Act 1995

[1.16] Section 2, notes 1 and 2

substitute

Note 1 The dictionary at the end of this Act defines certain terms used in this Act.

Note 2 A definition in the dictionary 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)).

[1.17] Part 3A

omit

[1.18] Dictionary

omit the definitions of

annual percentage rate

code

contract document

credit

credit contract

credit fees and charges

Part 1.5 Consumer Credit Regulation 1996

[1.19] Sections 5 and 6

omit

Part 1.6 Crimes (Sentencing) Act 2005

[1.20] Section 48

substitute

48 Application—pt 4.3

This part applies in relation to an offence if the offence is—

- (a) an offence punishable by imprisonment for longer than 1 year;
or
- (b) another offence prescribed by regulation.

Part 1.7 Court Procedures Act 2004

[1.21] Section 45 (2)

substitute

- (2) A requirement made by a security officer under this section—
 - (a) may be made only if the officer believes on reasonable grounds that it is prudent for court security; and
 - (b) may be of general application; and
 - (c) must comply with any written policy of the Chief Justice or the Chief Magistrate in relation to searches under this section.

Part 1.8 Door-to-Door Trading Act 1991

[1.22] Section 7 (1) (d)

substitute

- (d) if the contract is negotiated in the presence of the consumer and the dealer—the consumer must be given a copy of the contract immediately after the making of the contract;

Part 1.9 Fair Trading Act 1992

[1.23] New part 4A

insert

Part 4A Maximum annual percentage rate and disclosure

51C Definitions—pt 4A

In this part:

annual percentage rate—see the code, section 25.

code means the Consumer Credit (Australian Capital Territory) Code.

contract document—see the code, schedule 1 (Principal definitions), clause 1 (1).

credit—see the code, section 4 (1).

credit contract—see the code, section 5.

credit fees and charges—see the code, schedule 1 (Principal definitions), clause 1 (1).

51D Maximum annual percentage rate

- (1) A regulation may prescribe a maximum annual percentage rate for a credit contract to which the code applies.
- (2) A regulation may require interest charges, and all credit fees and charges, under a credit contract to be included in working out the maximum annual percentage rate under the contract.

- (3) The code, part 2, division 2 applies in relation to a prescribed maximum annual percentage rate as if the rate had been prescribed by the code.

Note The effect of s (3) is that a contract is void to the extent that it imposes a monetary liability prohibited under s (1) and that any amount paid under the contract may be recovered. In addition, the credit provider commits an offence for entering into the contract.

- (4) This section does not affect the exercise of any powers under the code, part 4, division 3 in relation to a credit contract that is not void because of this section.

Note The code, pt 4, div 3 allows (among other things) the reopening of unjust transactions.

- (5) This section applies to a credit contract whether the credit contract was established before, or is established after, the commencement of this section.

51E Disclosure of cost of credit

- (1) For the code, section 15 (C) (Annual percentage rate or rates), the contract document must state an annual percentage rate worked out on the basis of charges under the credit contract that are interest charges (whether or not they are described in the credit contract as interest charges).
- (2) For the code, section 15 (E) (Total amount of interest charges payable), the total amount of interest charges payable under the contract includes an amount that is an interest charge (whether or not it is described in the contract as an interest charge).
- (3) For the code, section 14 (Precontractual disclosure), the precontractual statement must also set out the matters mentioned in subsections (1) and (2).
- (4) The requirements under this section are additional to any other requirements under the code, section 14 or section 15.

[1.24] Dictionary, note 2

insert

- Consumer Credit (Australian Capital Territory) Code

[1.25] Dictionary, new definitions

insert

annual percentage rate, for part 4A (Maximum annual percentage rate and disclosure)—see section 51C.

code, for part 4A (Maximum annual percentage rate and disclosure)—see section 51C.

contract document, for part 4A (Maximum annual percentage rate and disclosure)—see section 51C.

credit, for part 4A (Maximum annual percentage rate and disclosure)—see section 51C.

credit contract, for part 4A (Maximum annual percentage rate and disclosure)—see section 51C.

credit fees and charges, for part 4A (Maximum annual percentage rate and disclosure)—see section 51C.

Part 1.10 Firearms Act 1996

[1.26] New section 275

in part 17, insert

275 Authorised possession or use of prohibited firearms with pistol grips for sport or target shooting

- (1) The holder of a category B licence issued for the genuine reason of sport or target shooting is authorised to possess and use a registered prohibited firearm (other than a prohibited pistol fitted with a pistol grip) for the purposes of—
 - (a) taking part in any kind of approved shooting competition; and
 - (b) practising on an approved shooting range for the competition.
- (2) The holder of a category B licence issued for the genuine reason of sport or target shooting is authorised to possess and use a registered prohibited rifle fitted with a pistol grip for the purposes of—
 - (a) taking part in an approved specialised target shooting competition; and
 - (b) practising on an approved shooting range for the competition.
- (3) In this section:
approved, for a competition, means a competition that is—
 - (a) conducted or organised by an approved shooting club of which the licence holder is a member; and
 - (b) approved by the registrar.

Part 1.11 Firearms Regulation 2008

[1.27] Section 81

omit

Part 1.12 Guardianship and Management of Property Act 1991

[1.28] New section 72C

insert

72C Power to obtain information and documents

- (1) If the ACAT is satisfied that a person can give information or produce a document relevant to a hearing under this Act, the ACAT may, by written notice given to the person, require the person to—
- (a) give the information to the ACAT in writing signed by the person or, for a body corporate, by an officer of the body corporate; or
 - (b) produce the document to the ACAT; or
 - (c) attend before the ACAT to answer questions relevant to the hearing.

Note 1 The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

Note 2 Documents may be produced electronically in certain circumstances (see *Electronic Transactions Act 2001*).

- (2) The notice must state—
 - (a) for a notice to give written information or produce a document—
 - (i) the place where the information or document is to be given or produced; and
 - (ii) the time when, or the period within which, the information or document is to be given or produced; or
 - (b) for a notice to attend before the ACAT to answer questions—the time when, and the place where, the person is to attend.
- (3) This section does not limit any other power of the ACAT under a territory law to obtain information or a document.

Part 1.13 **Independent Competition and Regulatory Commission Act 1997**

[1.29] Section 6 (1)

substitute

- (1) The commission is constituted by—
 - (a) 1 or more standing commissioners; and
 - (b) any associated commissioners appointed for particular purposes.

[1.31] Dictionary, definition of *assistant commissioner*

omit

[1.32] Dictionary, definition of *senior commissioner*

substitute

senior commissioner means—

- (a) if the commission is constituted by only 1 standing commissioner—the commissioner; or
- (b) if the commission is constituted by more than 1 standing commissioner—the commissioner appointed or nominated as senior commissioner under schedule 2, section 2.1AA.

[1.33] Dictionary, definition of *standing commissioner*

substitute

standing commissioner means a commissioner appointed under schedule 2, section 2.1.

Part 1.14 Residential Tenancies Act 1997

[1.34] Section 48 (1) (b) (i)

substitute

- (i) has made an order under section 83 (b); and

Part 1.15 Supreme Court Act 1933

[1.35] Section 36

omit

[1.36] Dictionary, definition of *rules*

substitute

rules means rules under the *Court Procedures Act 2004* applying in relation to the court.

Schedule 2 **New Fair Trading Regulation 2009**

(see s 4)



Australian Capital Territory

Fair Trading Regulation 2009

Subordinate Law SL2009-

made under the

Fair Trading Act 1992

1 Name of regulation

This regulation is the *Fair Trading Regulation 2009*.

2 Notes

A note included in these regulations is explanatory and is not part of these regulations.

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

3 Maximum annual percentage rate—Act, s 51D

- (1) The prescribed maximum annual percentage rate is 48% per annum for all credit contracts to which the code applies.
- (2) Interest charges, and all credit fees and charges, under a credit contract must be included in working out the maximum annual percentage rate under all credit contracts to which the code applies.
- (3) The maximum annual percentage rate must be worked out in accordance with section 4.
- (4) Despite subsection (2), any credit fees or charges arising from the establishment or maintenance of a temporary credit facility are not required to be included for working out the maximum annual percentage rate if—
 - (a) the credit provider is an authorised deposit-taking institution; and
 - (b) the debtor has or had an existing credit contract or debit account with the authorised deposit-taking institution when the temporary credit facility is or was established; and
 - (c) the temporary credit facility is related to the existing credit contract or debit account.

- (5) In this section:

temporary credit facility includes an overdraft facility and a short-term extension of the total amount of credit available under an existing credit contract.

Note This section is made under the Act, s 51D. The effect of a contravention of this section is set out in s 51D. The maximum interest rate is not part of the uniform provisions of the code in Australia.

4 Working out maximum annual percentage rate

- (1) For working out the maximum annual percentage rate under a credit contract, the rate must be worked out as a nominal rate for each year, together with the compounding frequency, in accordance with this section.
- (2) The maximum annual percentage rate is worked out as follows:

$$nr100\%$$

- (3) In subsection (2):

n is the number of repayments per year to be made under the credit contract annualised, except that—

- (a) if repayments are to be made weekly or fortnightly—***n*** is to be 52.18 or 26.09, respectively; and
- (b) if the contract does not provide for a constant interval between repayments—***n*** is to be derived from the interval selected for the purposes of the definition of ***j*** (see subsection (4)).

r is the solution of the following:

$$\sum_{j=0}^t \frac{A_j}{(1+r)^j} = \sum_{j=0}^t \frac{R_j + C_j}{(1+r)^j}$$

- (4) In subsection (3):

j is the time, measured as a multiple (not necessarily integral) of the interval between contractual repayments that will have elapsed since the first amount of credit is provided under the credit contract, except that if the contract does not provide for a constant interval between repayments an interval of any kind is to be selected by the credit provider as the unit of time.

t is the time, measured as a multiple of the interval between contractual repayments (or other interval so selected), that will elapse between the time when the first amount of credit is provided and the time when the last repayment is to be made under the contract.

A_j is the amount of credit to be provided under the contract at time j (the value of j for the provision of the first amount of credit is taken to be zero).

R_j is the repayment to be made at time j .

C_j is the fee or charge (if any) payable by the debtor at time j (j is taken to be zero for any such fee or charge payable before the time of the first amount of credit provided) in addition to the repayments R_j , being a credit fee or charge that is ascertainable when the annual percentage rate is worked out.

- (5) The maximum annual percentage rate must be correct to at least the nearest 0.001% for each year.
- (6) In applying the formulas in this section, reasonable approximations may be made if it would be impractical or unreasonably onerous to make a precise calculation.
- (7) The tolerances and assumptions under the code, section 158 to section 160 apply in working out the maximum annual percentage rate.

-
- (8) If the credit contract is a continuing credit contract (within the meaning of the code), the following assumptions also apply in working out the maximum annual percentage rate:
- (a) that the debtor has drawn down the maximum amount of credit that the credit provider has agreed to provide under the contract;
 - (b) that the debtor will pay the minimum repayments stated in the contract;
 - (c) if credit is provided for payment by the credit provider to a third person in relation to goods, services or cash supplied by the third person to the debtor from time to time—that the debtor will not be supplied with any more goods, services or cash;
 - (d) if credit is provided for cash supplied by the credit provider to the debtor—that the debtor will not be supplied with any more cash.
- (9) For the maximum annual percentage rate—
- (a) the amount of credit is the amount (or the maximum amount) required by the debtor; and
 - (b) the term for which credit is provided is the term (or the maximum term) required by the debtor.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 15 October 2009.

2 Notification

Notified under the Legislation Act on 24 November 2009.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Justice and Community Safety Legislation Amendment Bill 2009 (No 3), which was passed by the Legislative Assembly on 12 November 2009.

Clerk of the Legislative Assembly

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