

2006

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Justice and Community Safety Legislation Amendment Bill 2006

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended—schs 1 and 2	2
Schedule 1	
General amendments	3
Part 1.1	
Civil Law (Wrongs) Act 2002	3
Part 1.2	
Classification (Publications, Films and Computer Games) (Enforcement) Act 1995	6
Part 1.3	
Consumer Credit Regulation 1996	6

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Contents

		Page
Part 1.4	Court Procedures Act 2004	10
Part 1.5	Domestic Violence and Protection Orders Act 2001	11
Part 1.6	Fair Trading (Consumer Affairs) Act 1973	12
Part 1.7	Human Rights Commission Act 2005	14
Part 1.8	Land Titles Act 1925	16
Part 1.9	Liquor Act 1975	16
Part 1.10	Magistrates Court (Security Industry Infringement Notices) Regulation 2003	20
Part 1.11	Mental Health (Treatment and Care) Act 1994	20
Part 1.12	Residential Tenancies Act 1997	20
Part 1.13	Sale of Motor Vehicles Act 1977	24
Part 1.14	Security Industry Act 2003	24
Part 1.15	Security Industry Regulation 2003	27
Schedule 2	Amendments arising out of harmonisation of court rules	28
Part 2.1	Administration and Probate Act 1929	28
Part 2.2	Administrative Appeals Tribunal Act 1989	39
Part 2.3	Administrative Decisions (Judicial Review) Act 1989	40
Part 2.4	Adoption Act 1993	40
Part 2.5	Animal Diseases Act 2005	43
Part 2.6	Bail Act 1992	44
Part 2.7	Children and Young People Act 1999	44
Part 2.8	Civil Law (Wrongs) Act 2002	44
Part 2.9	Commercial Arbitration Act 1986	46
Part 2.10	Consumer and Trader Tribunal Act 2003	49
Part 2.11	Consumer Credit (Administration) Act 1996	50

		Page
Part 2.12	Contractors Debts Act 1897	50
Part 2.13	Court Procedures Act 2004	51
Part 2.14	Discrimination Act 1991	61
Part 2.15	Electoral Act 1992	61
Part 2.16	Evidence (Miscellaneous Provisions) Act 1991	62
Part 2.17	Guardianship and Management of Property Act 1991	66
Part 2.18	Health Professionals Act 2004	67
Part 2.19	Judicial Commissions Act 1994	68
Part 2.20	Land Titles Act 1925	68
Part 2.21	Leases (Commercial and Retail) Act 2001	69
Part 2.22	Legal Profession Act 2006	70
Part 2.23	Magistrates Court Act 1930	72
Part 2.24	Mental Health (Treatment and Care) Act 1994	80
Part 2.25	Occupational Health and Safety Act 1989	81
Part 2.26	Partnership Act 1963	81
Part 2.27	Plant Diseases Act 2002	82
Part 2.28	Residential Tenancies Act 1997	82
Part 2.29	Royal Commissions Act 1991	82
Part 2.30	Supreme Court Act 1933	83
Part 2.31	Victims of Crime (Financial Assistance) Act 1983	91
Part 2.32	Wills Act 1968	91
Part 2.33	Workers Compensation Act 1951	92
Part 2.34	Workers Compensation Rules 2002	92

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FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Justice and Community Safety Legislation Amendment Bill 2006

A Bill for

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

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

J2005-876

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 **1 Name of Act**

2 This Act is the *Justice and Community Safety Legislation*
3 *Amendment Act 2006*.

4 **2 Commencement**

5 (1) The following provisions commence on the day after this Act's
6 notification day:

- 7 • section 3
- 8 • schedule 1, part 1.2 (Classification (Publications, Films and
9 Computer Games) (Enforcement) Act 1995)
- 10 • schedule 1, part 1.6 (Fair Trading (Consumer Affairs) Act 1973)
- 11 • schedule 1, part 1.9 (Liquor Act 1975)
- 12 • schedule 1, part 1.13 (Sale of Motor Vehicles Act 1977)
- 13 • schedule 2, other than part 2.23 (Magistrates Court Act 1930)
14 and part 2.33 (Workers Compensation Act 1951).

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

17 (2) Schedule 1, part 1.7 (Human Rights Commission Act 2005)
18 commences on the commencement of the *Human Rights*
19 *Commission Act 2005*, section 3.

20 (3) The remaining provisions of schedule 1 commence 21 days after
21 this Act's notification day.

22 (4) Schedule 2, part 2.23 and part 2.33 commence on 1 January 2007.

23 **3 Legislation amended—schs 1 and 2**

24 This Act amends the legislation mentioned in schedule 1 and
25 schedule 2.

1 **Schedule 1** **General amendments**

2 (see s 3)

3 **Part 1.1** **Civil Law (Wrongs) Act 2002**

4 **[1.1] Section 4, note 1, new dot point**

5 *after 2nd dot point, insert*

- 6 • s 203B (Further reports by insurers).

7 **[1.2] Section 116, definition of *Australian jurisdiction***

8 *substitute*

9 *Australian jurisdiction* means—

- 10 (a) a State; or
11 (b) a Territory; or
12 (c) the Commonwealth.

13 **[1.3] Section 123 (5), definition of *Australian jurisdictional area***

14 *substitute*

15 *Australian jurisdictional area* means—

- 16 (a) the geographical area of Australia that lies within the territorial
17 limits of a particular State (including its coastal waters), but
18 not including any territory, place or other area referred to in
19 paragraph (c); or

- 1 (b) the geographical area of Australia that lies within the territorial
2 limits of a particular Territory (including its coastal waters),
3 but not including any territory, place or other area referred to in
4 paragraph (c); or
- 5 (c) any territory, place or other geographical area of Australia over
6 which the Commonwealth has legislative competence but over
7 which no State or Territory has legislative competence.

8 **[1.4] Section 203 (3)**

9 *substitute*

- 10 (3) The report must—
- 11 (a) be given in the way required by regulation; and
- 12 (b) comply with any directions under section 203A.

13 **[1.5] New sections 203A and 203B**

14 *insert*

15 **203A Directions to insurers about reporting requirements**

- 16 (1) The Minister may give directions for insurers in relation to the
17 compiling of information to be included in a report under
18 section 203.
- 19 (2) A direction is a disallowable instrument.

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

- 1 **203B Further reports by insurers**
- 2 (1) The Minister may, by written notice given to an insurer, require the
- 3 insurer to give the Minister further stated information in relation to a
- 4 report provided by the insurer under this part.
- 5 (2) The notice must—
- 6 (a) allow the insurer a stated reasonable time to comply with the
- 7 notice; and
- 8 (b) require the insurer to give the information to the Minister in a
- 9 reasonable stated way.
- 10 (3) If an insurer is given a notice under subsection (1), the insurer must
- 11 comply with the notice.
- 12 Maximum penalty: 100 penalty units.
- 13 (4) An offence against this section is a strict liability offence.

1 **[1.8] New section 5 (4)**

2 *insert*

3 (4) In this section:

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

7 *Note* This section is made under the Act, s 8B. The effect of a contravention
8 of this section is set out in s 8B. The maximum interest rate is not part
9 of the uniform provisions of the code in Australia.

10 **[1.9] New section 6**

11 *insert*

12 **6 Working out maximum annual percentage rate**

13 (1) For the purposes of working out the maximum annual percentage
14 rate under a credit contract, the rate must be worked out as a
15 nominal rate per year, together with the compounding frequency, in
16 accordance with this section.

17 (2) The maximum annual percentage rate is worked out in accordance
18 with the following formula:

$$nr100\%$$

19
20 (3) In subsection (2):

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

23 (a) if repayments are to be made weekly or fortnightly—***n*** is to be
24 52.18 or 26.09, respectively; and

25 (b) if the contract does not provide for a constant interval between
26 repayments—***n*** is to be derived from the interval selected for
27 the purposes of the definition of ***j*** (see subsection (4)).

Amendment [1.9]

1 r is the solution of the following:

2
$$\sum_{j=0}^t \frac{A_j}{(1+r)^j} = \sum_{j=0}^t \frac{R_j + C_j}{(1+r)^j}$$

3 (4) In subsection (3):

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

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

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

18 R_j is the repayment to be made at time j .

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

24 (5) The maximum annual percentage rate must be correct to at least the
25 nearest 0.001% per year.

-
- 1 (6) In applying the formulas in this section, reasonable approximations
2 may be made if it would be impractical or unreasonably onerous to
3 make a precise calculation.
- 4 (7) The tolerances and assumptions under the code, sections 158 to 160
5 apply in working out the maximum annual percentage rate.
- 6 (8) If the credit contract is a continuing credit contract (within the
7 meaning of the code), the following assumptions also apply in
8 working out the maximum annual percentage rate:
- 9 (a) that the debtor has drawn down the maximum amount of credit
10 that the credit provider has agreed to provide under the
11 contract;
- 12 (b) that the debtor will pay the minimum repayments specified in
13 the contract;
- 14 (c) if credit is provided for payment by the credit provider to a
15 third person in relation to goods, services or cash supplied by
16 the third person to the debtor from time to time—that the
17 debtor will not be supplied with any more goods, services or
18 cash;
- 19 (d) if credit is provided for cash supplied by the credit provider to
20 the debtor—that the debtor will not be supplied with any more
21 cash.
- 22 (9) For the purposes of the maximum annual percentage rate—
- 23 (a) the amount of credit is the amount (or the maximum amount)
24 required by the debtor; and
- 25 (b) the term for which credit is provided is the term (or the
26 maximum term) required by the debtor.

1 **Part 1.4** **Court Procedures Act 2004**

2 **[1.10] New part 8**

3 *insert*

4 **Part 8** **Supreme Court—criminal**
5 **proceedings**

6 **Division 8.1** **Supreme Court criminal**
7 **proceedings—preliminary**

8 **75** **Application—pt 8**

9 This part applies to a criminal proceeding in the Supreme Court.

10 **Division 8.2** **Trial on indictment**

11 **76** **Trial proceedings after presentation of indictment and**
12 **before empanelment of jury**

13 (1) The Supreme Court has jurisdiction in relation to the conduct of a
14 proceeding on indictment as soon as the indictment is presented and
15 the accused person is arraigned.

16 (2) Any orders that may be made by the Supreme Court for the
17 purposes of the trial in the absence of the jury may be made
18 before—

19 (a) a jury is empanelled; or

20 (b) if the accused person elects to be tried by a judge alone—the
21 trial starts.

- 1 (3) If a proceeding is held for the purpose of making an order to which
2 subsection (2) applies after the indictment is presented and before a
3 jury is empanelled or a trial by judge alone starts—
4 (a) the proceeding is part of the trial of the accused person; and
5 (b) if the accused person is to be tried by a jury—the accused
6 person must be arraigned again on the indictment when the
7 jury is empanelled for the continuation of the trial.
- 8 (4) This section does not require a jury to be empanelled for the trial of
9 the accused person for an offence if the accused person pleads guilty
10 to the offence before the jury is empanelled.
- 11 (5) This section applies only in relation to an indictment presented after
12 the commencement of this section.
- 13 (6) Subsection (5) and this subsection are declared to be laws to which
14 the Legislation Act, section 88 (Repeal does not end effect of
15 transitional law etc) applies.
- 16 (7) Subsections (5) and (6) and this subsection expire 2 years after the
17 day this section commences.

18 **Part 1.5** **Domestic Violence and**
19 **Protection Orders Act 2001**

20 **[1.11] Section 9 (2), definition of *domestic violence offence*,**
21 **paragraph (c) (ii)**

22 *substitute*

- 23 (ii) section 316 (Going equipped with offensive weapon for
24 theft etc);
- 25 (iii) section 403, section 404, section 405, section 406,
26 section 407 or section 408 (which deal with property
27 offences); or

- 1 **[1.17] Section 7 (4)**
2 *omit*
- 3 **[1.18] Section 8**
4 *substitute*
- 5 **8 Delegation by commissioner**
- 6 (1) The commissioner may delegate the commissioner's functions under
7 the consumer and trader legislation or another territory law to a
8 public servant.
- 9 *Note* For the making of delegations and the exercise of delegated functions,
10 see the Legislation Act, pt 19.4.
- 11 (2) In this section:
- 12 ***consumer and trader legislation*** means the following:
- 13 (a) the consumer credit legislation;
- 14 (b) the fair trading legislation;
- 15 (c) the *Pawnbrokers Act 1902*;
- 16 (d) the *Second-hand Dealers Act 1906*;
- 17 (e) the trade measurement legislation.
- 18 ***consumer credit legislation***—see the *Consumer Credit*
19 *(Administration) Act 1996*, section 3.
- 20 ***trade measurement legislation***—see the *Trade Measurement*
21 *(Administration) Act 1991*, section 3.
- 22 **[1.19] Section 8A, definition of fair trading legislation**
23 *omit*

1 **Part 1.7** **Human Rights Commission Act**
2 **2005**

3 **[1.20] New section 19AA**

4 *in division 3.2, insert*

5 **19AA Delegation of president's functions**

6 The president may delegate the president's functions under this Act
7 or another territory law, except the function of conciliation, to a
8 member of the staff of the commission.

9 *Note 1* For the making of delegations and the exercise of delegated functions,
10 see the Legislation Act, pt 19.4.

11 *Note 2* Section 56 deals with delegation of the function of conciliation.

12 **[1.21] New section 19BA**

13 *insert*

14 **19BA Delegation of children and young people commissioner's**
15 **functions**

16 The children and young people commissioner may delegate the
17 commissioner's functions under this Act or another territory law to a
18 member of the staff of the commission.

19 *Note* For the making of delegations and the exercise of delegated functions,
20 see the Legislation Act, pt 19.4.

- 1 **[1.22] New section 21A**
- 2 *in division 3.4, insert*
- 3 **21A Delegation of disability and community services**
- 4 **commissioner's functions**
- 5 The disability and community services commissioner may delegate
- 6 the commissioner's functions under this Act or another territory law
- 7 to a member of the staff of the commission.
- 8 *Note* For the making of delegations and the exercise of delegated functions,
- 9 see the Legislation Act, pt 19.4.
- 10 **[1.23] New section 23A**
- 11 *in division 3.5, insert*
- 12 **23A Delegation of discrimination commissioner's functions**
- 13 The discrimination commissioner may delegate the commissioner's
- 14 functions under this Act or another territory law to a member of the
- 15 staff of the commission.
- 16 *Note* For the making of delegations and the exercise of delegated functions,
- 17 see the Legislation Act, pt 19.4.
- 18 **[1.24] New section 25A**
- 19 *in division 3.6, insert*
- 20 **25A Delegation of health services commissioner's functions**
- 21 The health services commissioner may delegate the commissioner's
- 22 functions under this Act or another territory law to a member of the
- 23 staff of the commission.
- 24 *Note* For the making of delegations and the exercise of delegated functions,
- 25 see the Legislation Act, pt 19.4.

1 **[1.25] New section 27A**

2 *in division 3.7, insert*

3 **27A Delegation of human rights commissioner's functions**

4 The human rights commissioner may delegate the commissioner's
5 functions under this Act or another territory law to a member of the
6 staff of the commission.

7 *Note* For the making of delegations and the exercise of delegated functions,
8 see the Legislation Act, pt 19.4.

9 **Part 1.8 Land Titles Act 1925**

10 **[1.26] New section 72A (3)**

11 *insert*

12 (3) The variation takes effect when the registrar-general endorses on the
13 folium of the register constituted by the relevant certificate of title
14 the memorial mentioned in subsection (2).

15 **Part 1.9 Liquor Act 1975**

16 **[1.27] Sections 21 to 23**

17 *substitute*

18 **21 Appointment of registrar and deputy registrar**

19 (1) The chief executive may appoint a public servant as the Registrar of
20 Liquor Licences.

- 1 (2) The chief executive may appoint a public servant as the Deputy
2 Registrar of Liquor Licences.
- 3 *Note 1* For the making of appointments (including acting appointments), see
4 the Legislation Act, pt 19.3.
- 5 *Note 2* In particular, an appointment may be made by naming a person or
6 nominating the occupant of a position (see s 207).
- 7 (3) The deputy registrar may exercise any of the registrar's functions
8 under this Act or another territory law, subject to any direction of
9 the registrar.
- 10 (4) If—
- 11 (a) immediately before the commencement of this section, the
12 duties of an office in the public service included exercising the
13 functions of the Registrar of Liquor Licences; and
- 14 (b) the chief executive has not made an appointment under
15 subsection (1); and
- 16 (c) the duties of the office have not ceased to include exercising
17 the functions of the Registrar of Liquor Licences;
- 18 the public servant for the time being occupying the office is the
19 Registrar of Liquor Licences.
- 20 *Note* **Occupy** a position is defined in the Legislation Act, dict, pt 1 (see also
21 def *office*).
- 22 (5) If—
- 23 (a) immediately before the commencement of this section, the
24 duties of an office in the public service included exercising the
25 functions of the Deputy Registrar of Liquor Licences; and
- 26 (b) the chief executive has not made an appointment under
27 subsection (2); and

- 1 (c) the duties of the office have not ceased to include exercising
2 the functions of the Deputy Registrar of Liquor Licences;
3 the public servant for the time being occupying the office is the
4 Deputy Registrar of Liquor Licences.
- 5 *Note* **Occupy** a position is defined in the Legislation Act, dict, pt 1 (see also
6 def *office*).
- 7 (6) Subsections (4) and (5) are laws to which the Legislation Act,
8 section 88 (Repeal does not end effect of transitional laws etc)
9 applies.
- 10 (7) Subsections (4) to (6) and this subsection expire 1 year after the day
11 this section commences.

12 **22 Delegation by registrar**

13 The registrar may delegate the registrar's functions under this Act or
14 another territory law to a public servant.

15 *Note* For the making of delegations and the exercise of delegated functions,
16 see the Legislation Act, pt 19.4.

17 **23 Inspectors of licensed premises**

- 18 (1) The chief executive may appoint a public servant as an inspector of
19 licensed premises.

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

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

- 24 (2) An inspector exercises the functions required by this Act, or as the
25 registrar directs for this Act.

- 1 (3) If—
- 2 (a) immediately before the commencement of this section, the
- 3 duties of an office in the public service included exercising the
- 4 functions of an inspector; and
- 5 (b) the chief executive has not made an appointment under
- 6 subsection (1); and
- 7 (c) the duties of the office have not ceased to include exercising
- 8 the functions of an inspector;
- 9 the public servant for the time being occupying the office is an
- 10 inspector.
- 11 *Note* **Occupy** a position is defined in the Legislation Act, dict, pt 1 (see also
- 12 def **office**).
- 13 (4) Subsection (3) is a law to which the Legislation Act, section 88
- 14 (Repeal does not end effect of transitional laws etc) applies.
- 15 (5) Subsections (3) and (4) and this subsection expire 1 year after the
- 16 day this section commences.

17 **[1.28] Section 108 (3)**

18 *omit*

19 Despite section 21 (3), the registrar

20 *substitute*

21 The registrar

22 **[1.29] Dictionary, definition of *deputy registrar***

23 *omit*

24 under section 22

Amendment [1.30]

1 **[1.30] Dictionary, definition of *registrar***

2 *omit*

3 under section 21

4 **Part 1.10 Magistrates Court (Security**
5 **Industry Infringement Notices)**
6 **Regulation 2003**

7 **[1.31] Schedule 1, new items 6A and 6B**

8 *insert*

6A	42 (2)	10	100
6B	42A (3)	10	100

9 **Part 1.11 Mental Health (Treatment and**
10 **Care) Act 1994**

11 **[1.32] New section 55N (3)**

12 *insert*

13 (3) To remove any doubt, section 94 (Notice of proceedings) does not
14 apply to the making of an emergency electroconvulsive therapy
15 order in relation to a person.

16 **Part 1.12 Residential Tenancies Act 1997**

17 **[1.33] Section 71C (1) (d) and (e)**

18 *substitute*

19 (d) the agreement is not a residential tenancy agreement.

1 **[1.34] Section 114 (4)**

2 *substitute*

- 3 (4) The registrar may delegate the registrar's functions under this Act to
4 a public servant.

5 *Note* For the making of delegations and the exercise of delegated functions,
6 see the Legislation Act, pt 19.4.

7 **[1.35] Section 115**

8 *substitute*

9 **115 Jurisdiction of tribunal generally**

- 10 (1) The tribunal has exclusive jurisdiction to hear and decide any matter
11 that may be the subject of an application to the tribunal under—

- 12 (a) this Act; or
13 (b) the standard residential tenancy terms; or
14 (c) the standard occupancy terms.

15 *Note* A reference to an Act includes a reference to the statutory instruments
16 made or in force under the Act, including any regulation (see
17 Legislation Act, s 104).

- 18 (2) However, the tribunal does not have jurisdiction to make an order
19 for—

- 20 (a) the payment of an amount greater than \$25 000; or
21 (b) work of a value greater than \$25 000.

- 22 (3) This section is subject to—

- 23 (a) section 115B; and

1 (b) the Self-Government Act, section 48A (Jurisdiction and
2 powers of the Supreme Court).

3 *Note* The Self-Government Act, s 48A provides as follows:

- 4 (1) The Supreme Court is to have all original and appellate
5 jurisdiction that is necessary for the administration of justice in
6 the Territory.
7 (2) In addition, the Supreme Court may have such further jurisdiction
8 as is conferred on it by any Act, enactment or Ordinance, or any
9 law made under any Act, enactment or Ordinance.
10 (3) The Supreme Court is not bound to exercise any powers where it
11 has concurrent jurisdiction with another court or tribunal.

12 **115A Saving of court jurisdiction**

- 13 (1) A claim for payment of an amount, or for work of a value,
14 exceeding \$10 000 may be made in a court competent to hear and
15 decide claims based on contract for the amount claimed.
16 (2) If a claim mentioned in subsection (1) may be made—
17 (a) the claimant may also make any other claim related to the
18 relevant tenancy dispute or occupancy dispute; and
19 (b) the court in which the proceeding is brought may exercise the
20 powers of the tribunal under this Act.
21 (3) This section has effect despite section 115.

22 **115B Extended jurisdiction of tribunal with agreement of**
23 **parties**

- 24 (1) This section applies if—
25 (a) an application (the *original application*) is made to the tribunal
26 under—
27 (i) this Act; or
28 (ii) the standard residential tenancy terms; or

- 1 (iii) the standard occupancy terms; and
- 2 *Note* A reference to an Act includes a reference to the statutory
3 instruments made or in force under the Act, including any
4 regulation (see Legislation Act, s 104).
- 5 (b) the parties to the proceeding agree to the tribunal exercising
6 extended jurisdiction under this section.
- 7 (2) The tribunal has jurisdiction (*extended jurisdiction*) to hear and
8 decide any matter that—
- 9 (a) arises out of, or is ancillary to, the dispute that gave rise to the
10 original application; and
- 11 (b) the Magistrates Court has jurisdiction to hear and decide under
12 the *Magistrates Court Act 1930*, part 4.2 (Civil jurisdiction).
- 13 (3) If the tribunal is exercising extended jurisdiction, the tribunal may
14 exercise the jurisdiction and powers of the Magistrates Court under
15 the *Magistrates Court Act 1930*, part 4.2 (Civil jurisdiction).
- 16 *Note* The Magistrates Court has jurisdiction to hear and decide any personal
17 action at law if the amount claimed is not more than \$50 000 (see the
18 *Magistrates Court Act 1930*, s 257).

19 **[1.36] Section 115A**

20 *renumber as section 115C*

1 **Part 1.13 Sale of Motor Vehicles Act 1977**

2 **[1.37] New section 94**

3 *insert*

4 **94 Delegation by registrar**

5 The registrar may delegate the registrar's functions under this Act or
6 another territory law to a public servant.

7 *Note* For the making of delegations and the exercise of delegated functions,
8 see the Legislation Act, pt 19.4.

9 **[1.38] Section 94**

10 *renumber as section 95*

11 **Part 1.14 Security Industry Act 2003**

12 **[1.39] New section 36 (f) and (g)**

13 *insert*

14 (f) a decision under section 42A to refuse to exempt a licensee
15 from a provision of section 42;

16 (g) a decision under section 42A to exempt a licensee from a
17 provision of section 42 subject to conditions.

18 **[1.40] Section 37**

19 *after*

20 variation to a licence

21 *insert*

22 , or a licensee,

1 **[1.41] Section 42**

2 *substitute*

3 **42 Wearing of licences etc**

4 (1) A person commits an offence if the person—

5 (a) holds an employee licence; and

6 (b) carries out any of the following security activities:

7 (i) patrol, guard, watch or protect property (including cash in
8 transit);

9 (ii) act as a bodyguard;

10 (iii) act as a crowd controller; and

11 (c) does not wear the licence so the licence number is clearly
12 visible.

13 Maximum penalty: 10 penalty units.

14 (2) A person commits an offence if the person—

15 (a) holds an employee licence; and

16 (b) carries out any of the following security activities:

17 (i) act as a security consultant;

18 (ii) sell security equipment;

19 (iii) carry out surveys and inspections of security equipment;

20 (iv) give advice about security equipment;

21 (v) install, maintain, monitor, repair or service security
22 equipment; and

23 (c) either—

24 (i) does not carry the licence; or

- 1 (ii) fails to produce it for inspection on demand by a person
2 in relation to whom the person is carrying out the
3 activities.
- 4 Maximum penalty: 10 penalty units.
- 5 (3) An offence against this section is a strict liability offence.
- 6 (4) This section does not apply to—
- 7 (a) a person carrying on a security activity if—
- 8 (i) a regulation requires the person to wear another form of
9 identification while carrying on the security activity; and
- 10 (ii) the person wears the other form of identification while
11 carrying on the security activity; or
- 12 (b) a licensee if the commissioner for fair trading has exempted the
13 licensee under section 42A.
- 14 (5) In this section:
- 15 *security consultant*—see section 13 (2).
- 16 **42A Exemption for wearing of licences etc**
- 17 (1) On application by a licensee, the commissioner for fair trading may,
18 in writing, exempt a licensee from a provision of section 42 if
19 satisfied that it is appropriate to exempt the licensee because of the
20 special nature of the licensee's functions.
- 21 (2) An exemption under subsection (1) may be subject to conditions.
- 22 (3) A licensee commits an offence if the licensee contravenes a
23 condition of the exemption.
- 24 Maximum penalty: 10 penalty units.
- 25 (4) An offence against this section is a strict liability offence.

1 **Part 1.15** **Security Industry Regulation**
2 **2003**

3 **[1.42] Section 10, definition of *identification number***

4 *substitute*

5 *identification number*, for the crowd controller, means the number
6 allocated to the crowd controller under section 18.

7 **[1.43] Section 12**

8 *substitute*

9 **12 Identification number—Act, s 41 and s 42**

- 10 (1) The master licensee must ensure that the crowd controller wears the
11 crowd controller's identification number so that it is clearly visible
12 while the crowd controller is at the place.
- 13 (2) The crowd controller must wear the crowd controller's identification
14 number so that it is clearly visible while the crowd controller is at
15 the place.

16 **[1.44] New section 18**

17 *insert*

18 **18 Allocation of identification numbers to crowd controllers**

- 19 (1) This section applies if the commissioner for fair trading issues a
20 licence to a person that authorises the person to act as a crowd
21 controller.
- 22 (2) The commissioner for fair trading must allocate a unique number to
23 the person.

-
- 1 **[2.6] Section 9B (3)**
- 2 *omit everything before paragraph (a), substitute*
- 3 (3) If a caveat against the distribution of an estate has been filed in the
- 4 Supreme Court in accordance with a notice under subsection (1) (e)
- 5 and the caveat is in force under the rules—
- 6 **[2.7] Section 9B (3) (b)**
- 7 *omit*
- 8 lodged
- 9 *substitute*
- 10 filed
- 11 **[2.8] Section 9B (4)**
- 12 *substitute*
- 13 (4) Despite the filing of a caveat in the Supreme Court in accordance
- 14 with subsection (1) (e), the court may, on application under
- 15 subsection (3) (b), make an order authorising the executor or
- 16 administrator of an estate to distribute the estate among the people
- 17 entitled to it.
- 18 **[2.9] Sections 10 and 10A**
- 19 *omit*

Amendment [2.10]

1 **[2.10] Section 12 (3)**

2 *substitute*

3 (3) The Supreme Court must not grant administration of an intestate
4 estate to a person mentioned in subsection (1) (e) if there is anyone
5 else to whom administration may be granted under this section
6 who—

7 (a) in the court's opinion, can be trusted with administration of the
8 estate; and

9 (b) applies to be granted administration of the estate.

10 **[2.11] Sections 20 and 20A**

11 *substitute*

12 **20 Renunciation or non-appearance by executor**

13 (1) This section applies if—

14 (a) the person appointed executor by a will renounces probate of
15 the will; or

16 (b) the person appointed executor by a will survives the testator
17 but dies without having taken out probate of the will; or

18 (c) an application is made in the Supreme Court under section 25
19 (Failure of executor to prove will) in relation to the person
20 appointed executor by a will and the person does not file in the
21 court a notice of intention to respond or defence within the
22 time required by the rules.

23 (2) The person's rights as executor of the will cease, and the
24 representation of the testator and the administration of the testator's
25 estate are taken, without further renunciation, to devolve as if the
26 person had not been appointed executor.

- 1 **20A** **Renunciation etc by person appointed both executor and**
2 **trustee of will**
- 3 (1) If section 20 (1) (a) or (c) applies to a person who is appointed by a
4 will both executor and trustee, the person is taken to have
5 disclaimed the trust contained in the will.
- 6 (2) If—
- 7 (a) section 20 (1) (a), (b) or (c) applies to a person who is
8 appointed by a will both executor and trustee, and
9 administration with the will annexed is granted to a trustee
10 company; or
- 11 (b) a person appointed by a will both executor and trustee
12 authorises a trustee company to apply for administration with
13 the will annexed, and administration with the will annexed is
14 granted to the trustee company;
- 15 the trustee company is taken, because of the grant of administration
16 and without any further appointment, to be appointed trustee of the
17 will in the person's place.
- 18 (3) In this section:
- 19 *trustee company*—see the *Trustee Companies Act 1947*, dictionary.

20 **[2.12] Section 25**

21 *substitute*

22 **25** **Failure of executor to prove will**

- 23 (1) This section applies if the person named as executor in a will—
- 24 (a) fails to prove the will or renounce probate within 3 months
25 after the later of the following:
- 26 (i) the date of the testator's death;
- 27 (ii) the date the executor turns 18 years old; or

Amendment [2.13]

- 1 (b) is unknown or cannot be found.
- 2 (2) The Supreme Court may, on application under the rules, make an
- 3 order for administration of the estate, and any other orders, the court
- 4 considers appropriate.

5 **[2.13] Section 26**

- 6 *omit*
- 7 rescission
- 8 *substitute*
- 9 revocation

10 **[2.14] Section 28, heading**

- 11 *omit*
- 12 **rescinded**
- 13 *substitute*
- 14 **revoked**

15 **[2.15] Section 28**

- 16 *omit*
- 17 rescind
- 18 *substitute*
- 19 revoke

1	[2.16] Section 29
2	<i>omit</i>
3	rescission
4	<i>substitute</i>
5	revocation
6	[2.17] Section 30
7	<i>omit</i>
8	rescission
9	<i>substitute</i>
10	revocation
11	[2.18] Section 30
12	<i>omit</i>
13	unrescinded
14	<i>substitute</i>
15	unrevoked
16	[2.19] Section 31
17	<i>omit</i>
18	or rescinded
19	[2.20] Division 3.2
20	<i>omit</i>
21	[2.21] Section 56 (1)
22	<i>omit</i>
23	, in the prescribed form,

Amendment [2.22]

- 1 **[2.22] Sections 58 to 60**
- 2 *substitute*
- 3 **58 Examination and passing of accounts etc**
- 4 (1) The rules may require—
- 5 (a) the executor or administrator of the estate of a deceased person
- 6 to file an inventory of the estate; and
- 7 (b) accounts of the executor or administrator of the estate of a
- 8 deceased person to be examined and passed.
- 9 (2) The Supreme Court may, by order, require—
- 10 (a) the executor or administrator of the estate of a deceased person
- 11 to file an inventory of the estate; and
- 12 (b) accounts of the executor or administrator of the estate of a
- 13 deceased person to be examined and passed.
- 14 (3) An order of the Supreme Court passing an account of the executor
- 15 or administrator of the estate of a deceased person—
- 16 (a) is evidence of its correctness; and
- 17 (b) operates, after the end of 3 years after the date of the order, to
- 18 release the executor or administrator.
- 19 (4) However, subsection (3) (b) does not apply to an account as far as
- 20 someone interested in the estate shows that an error or omission or
- 21 fraudulent entry has been made in the account.
- 22 **[2.23] Section 62**
- 23 *omit*
- 24 or rescinded

1 **[2.24] Section 69 (2) and (3)**

2 *omit*

3 **[2.25] Section 70**

4 *substitute*

5 **70 Executors etc may be allowed commission**

6 The Supreme Court may allow out of the assets of a deceased
7 person to the person's executor, administrator or trustee the
8 commission or percentage for his or her services that is just.

9 **[2.26] Section 71 (4) and (5)**

10 *substitute*

11 (4) If the net value of the estate is more than \$4 000, a solicitor may
12 give a bill of costs for the solicitor's work to the executor or
13 administrator and have it assessed under the rules.

14 (5) If the net value of the estate is not more than \$4 000, the Supreme
15 Court may, if a solicitor's work has been of exceptional length or
16 difficulty, give leave for the solicitor to have a bill of costs for the
17 work assessed under the rules.

18 **[2.27] Section 71 (7)**

19 *substitute*

20 (7) If subsection (4) or (5) applies, the costs as assessed under the rules,
21 and no more, are payable out of the estate.

22 (8) If a bill of costs is assessed under subsection (4) or (5) and the
23 amount of the bill (excluding the costs of having it assessed and the
24 amounts mentioned in subsection (3)) does not, after assessment,
25 exceed the amount that would otherwise have been payable under
26 subsection (1), the costs of having the bill assessed are payable by
27 the solicitor.

Amendment [2.28]

1 **[2.28] Sections 73 and 74**

2 *omit*

3 **[2.29] Section 77 (1) (c)**

4 *substitute*

5 (c) a caveat is not in force under the rules in relation to the estate;
6 and

7 **[2.30] Section 80 heading, note**

8 *omit*

9 **[2.31] Section 80 (2) and (3)**

10 *substitute*

11 (2) On application by a relevant person, the Supreme Court may order
12 that the probate, administration or order be sealed with the seal of
13 the court.

14 **[2.32] Sections 80A, 81 and 82**

15 *omit*

16 **[2.33] Section 87B (4)**

17 *omit*

18 shall deposit the will with the registrar

19 *substitute*

20 must file the will in the Supreme Court

21 **[2.34] Section 87C (1)**

22 *omit*

23 in the office of the registrar

1 *substitute*
2 in the Supreme Court

3 **[2.35] Section 87C (6) and (8)**

4 *omit*
5 shall, forthwith, file in the office of the registrar
6 *substitute*
7 must file in the Supreme Court

8 **[2.36] Section 88 (2) to (6)**

9 *substitute*
10 (2) The Supreme Court may, in any case—
11 (a) require the public trustee to give the notices, produce the
12 evidence, or do anything else, the court considers appropriate
13 before granting the order applied for; or
14 (b) make a temporary order for collection or protection only or a
15 temporary order limited to a part of the estate or otherwise.
16 (3) In this section:
17 *partner*, in relation to a deceased person, has the same meaning as it
18 has in part 3A (Intestacy) in relation to an intestate.

19 **[2.37] Section 90 (2)**

20 *substitute*
21 (2) An application for a grant under subsection (1) must be served on
22 the public trustee in accordance with the rules.

23 **[2.38] Section 95 (2)**

24 *omit*
25 on affidavit

Amendment [2.39]

- 1 **[2.39] Section 95 (2) (a)**
- 2 *omit*
- 3 , within 2 days after the date of service of the order,
- 4 **[2.40] Section 96**
- 5 *substitute*
- 6 **96 Orders on complaints under s 95**
- 7 (1) On the hearing of a complaint under section 95, the Supreme Court
- 8 may make any order that it considers just.
- 9 (2) To remove any doubt, an order under subsection (1) has effect, and
- 10 may be enforced, as if it had been made by the Supreme Court in a
- 11 proceeding between the parties to the complaint.
- 12 **[2.41] Section 97A (2) and (3)**
- 13 *omit*
- 14 **[2.42] Part 8**
- 15 *omit*
- 16 **[2.43] Sections 125 to 126**
- 17 *omit*

1 **[2.44] New part 10**

2 *insert*

3 **Part 10 Transitional**

4 **150 Things done by registrar of probates etc**

- 5 (1) Anything done before the commencement of this section under this
6 Act or another territory law by or in relation to the Registrar of
7 Probates or a Deputy Registrar of Probates is taken, after the
8 commencement of this section, also to have been done by the
9 registrar of the Supreme Court.
- 10 (2) Anything done before the commencement of this section under this
11 Act or the *Wills Act 1968* by or in relation to the registrar or deputy
12 registrar of the Supreme Court is taken also to have been done by
13 the Registrar of Probates.
- 14 (3) This section is a law to which the Legislation Act, section 88
15 (Repeal does not end effect of transitional laws etc) applies.
- 16 (4) This section expires 6 months after the day it commences.

17 **Part 2.2 Administrative Appeals Tribunal**
18 **Act 1989**

19 **[2.45] Section 46**

20 *substitute*

21 **46 Appeals from tribunal to Supreme Court**

- 22 (1) A party to a proceeding before the tribunal may appeal to the
23 Supreme Court on a question of law from a decision of the tribunal
24 in the proceeding.

Amendment [2.46]

1 (2) The appeal may be brought only with the Supreme Court's leave.

2 *Note* See the *Court Procedures Rules 2006*, r 5052 (Appeals to Supreme
3 Court—general powers), r 5072 (Appeals to Supreme Court—time for
4 filing application for leave to appeal) and r 5103 (Appeals to Supreme
5 Court—time for filing notice of appeal).

6 **[2.46] Section 47**

7 *omit*

8 **Part 2.3 Administrative Decisions**
9 **(Judicial Review) Act 1989**

10 **[2.47] Section 8 (3)**

11 *substitute*

12 (3) In this section:

13 *review* includes—

14 (a) a review by way of reconsideration, rehearing or appeal; and

15 (b) the grant of an injunction; and

16 (c) the making of a prerogative order, declaration or other order.

17 **Part 2.4 Adoption Act 1993**

18 **[2.48] Section 4 (1), definition of *file***

19 *omit*

20 **[2.49] Section 9 (a)**

21 *substitute*

22 (a) was under 18 years old on the day the application was filed in
23 the court; or

- 1 **[2.50] Section 22**
- 2 *substitute*
- 3 **22 Notice of application for adoption order**
- 4 (1) An adoption order must not be made unless the applicants have, not
- 5 later than 28 days before the return date for the application, served
- 6 written notice of the application and its return date on—
- 7 (a) anyone whose consent to the adoption is required but whose
- 8 consent has not been given; and
- 9 (b) anyone whose consent is not required but with whom the child
- 10 lives or who has guardianship or custody of the child.
- 11 (2) On application, the Supreme Court may dispense with the
- 12 requirement to serve notice under subsection (1).
- 13 (3) If it appears to the Supreme Court to be necessary in the interests of
- 14 justice, the court may, on application or its own initiative, direct that
- 15 notice of an application for an adoption order and its return date be
- 16 served on anyone.
- 17 **[2.51] Section 26 (5) and (6)**
- 18 *substitute*
- 19 (5) A discharging order must not be made unless the applicant has, not
- 20 later than 28 days before the return date for the application, served
- 21 written notice of the application and its return date on each person
- 22 whose consent to the adoption was required.
- 23 (6) On application, the Supreme Court may dispense with the
- 24 requirement to serve notice under subsection (5).

Amendment [2.52]

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[2.52] Section 31

substitute

31 Revocation of consent

- (1) A person who consents to the adoption of a child may revoke the consent only by filing a notice of revocation in the Supreme Court before the end of—
 - (a) 30 days after the day the instrument of consent is signed; or
 - (b) if before the end of the 30-day period the person files in the Supreme Court a notice stating the person needs further time—
14 days after the end of the 30-day period.
- (2) A period applying under subsection (1) may not be extended.
- (3) Subsection (2) has effect despite the Legislation Act, section 151C (Power to extend time).
- (4) The registrar of the Supreme Court must tell the chief executive in writing about a notice filed under subsection (1).
- (5) When the period within which a person’s consent to the adoption of a child may be revoked ends, the chief executive must tell the person in writing.

[2.53] Section 41 heading

substitute

41 Amendment of adoption condition

1 **[2.54] Section 41 (1)**

2 *omit*

3 varied or revoked

4 *substitute*

5 amended

6 **[2.55] Section 41 (1)**

7 *omit*

8 vary or revoke

9 *substitute*

10 amend

11 **[2.56] Section 41 (3)**

12 *omit*

13 A variation

14 *substitute*

15 An amendment

16 **[2.57] Section 42 (a)**

17 *substitute*

18 (a) if the condition is omitted; or

19 **Part 2.5 Animal Diseases Act 2005**

20 **[2.58] Section 26 (b)**

21 *substitute*

22 (b) is not subject to a prerogative order or injunction in any court.

Amendment [2.59]

1 **Part 2.6** **Bail Act 1992**

2 **[2.59] Section 8 (1) (e)**

3 *omit*

4 writ of habeas corpus

5 *substitute*

6 habeas corpus order

7 **Part 2.7** **Children and Young People Act**
8 **1999**

9 **[2.60] Section 53A (6) (b)**

10 *substitute*

11 (b) is not subject to a prerogative order or injunction in any court.

12 **Part 2.8** **Civil Law (Wrongs) Act 2002**

13 **[2.61] Division 3.1.3**

14 *omit*

15 **[2.62] Part 7.4**

16 *omit*

17 **[2.63] Section 107J**

18 *substitute*

19 **107J Including non-party concurrent wrongdoer**

20 (1) In a proceeding in a court involving an apportionable claim, any
21 number of people may be included as defendants.

1 (2) However, a person may be included as a defendant only with the
2 court's leave.

3 (3) The court must not give leave for a person to be included as a
4 defendant if the person was a party to a previously concluded
5 proceeding in relation to the claim.

6 **[2.64] Section 191 (1)**

7 *omit*

8 court or tribunal

9 *substitute*

10 tribunal

11 **[2.65] Section 191 (3)**

12 *omit*

13 **[2.66] Sections 193 and 194**

14 *omit*

15 court or tribunal

16 *substitute*

17 tribunal

18 **[2.67] Section 195 heading**

19 *substitute*

20 **195 Referral by tribunal for mediation or neutral evaluation**

Amendment [2.68]

1 **[2.68] Section 195 (1) and (2)**

2 *omit*

3 court or tribunal

4 *substitute*

5 tribunal

6 **[2.69] Section 195 (3)**

7 *omit*

8 **[2.70] Sections 197, 198 (1) and 199 (1)**

9 *omit*

10 court or tribunal

11 *substitute*

12 tribunal

13 **Part 2.9 Commercial Arbitration Act 1986**

14 **[2.71] Section 17 (2)**

15 *omit*

16 an action

17 *substitute*

18 a proceeding in the court

1	[2.72]	Section 34 (1) (b)
2		<i>omit</i>
3		tax
4		<i>substitute</i>
5		assess
6	[2.73]	Section 34 (1) (c) and (2)
7		<i>omit</i>
8		taxed
9		<i>substitute</i>
10		assessed
11	[2.74]	Section 34 (2)
12		<i>omit</i>
13		taxable in
14		<i>substitute</i>
15		assessed by
16	[2.75]	Section 35 heading
17		<i>substitute</i>
18	35	Assessment of arbitrator's or umpire's fees or expenses
19	[2.76]	Section 35 (1) (b) and (2)
20		<i>omit</i>
21		taxed in
22		<i>substitute</i>
23		assessed by

Amendment [2.77]

1 **[2.77] Section 35 (3)**

2 *omit*

3 taxation

4 *substitute*

5 assessment

6 **[2.78] Section 35 (4)**

7 *omit*

8 taxed

9 *substitute*

10 assessed

11 **[2.79] Section 35 (4)**

12 *omit*

13 on taxation

14 *substitute*

15 by the assessment

16 **[2.80] Section 38 (3) (a)**

17 *omit*

18 vary

19 *substitute*

20 amend

1 **[2.81] Section 38 (7)**

2 *omit*

3 varied

4 *substitute*

5 amended

6 **[2.82] Section 53 (2)**

7 *substitute*

8 (2) An application under subsection (1) must not, except with the leave
9 of the court in which the proceeding is started, be made after the
10 applicant has filed pleadings or taken any other step in the
11 proceeding other than the filing of a notice of intention to respond or
12 defence.

13 **[2.83] Section 56**

14 *omit*

15 **Part 2.10 Consumer and Trader Tribunal**
16 **Act 2003**

17 **[2.84] Section 51**

18 *substitute*

19 **51 Appeals from tribunal to Supreme Court**

20 (1) A party to a proceeding before the tribunal may appeal to the
21 Supreme Court on a question of law from a decision of the tribunal
22 in the proceeding.

Amendment [2.85]

1 (2) The appeal may be brought only with the Supreme Court's leave.

2 *Note* See the *Court Procedures Rules 2006*, r 5052 (Appeals to Supreme
3 Court—general powers), r 5072 (Appeals to Supreme Court—time for
4 filing application for leave to appeal) and r 5103 (Appeals to Supreme
5 Court—time for filing notice of appeal).

6 **Part 2.11 Consumer Credit**
7 **(Administration) Act 1996**

8 **[2.85] Section 94**

9 *substitute*

10 **94 Appeals from tribunal to Supreme Court**

11 (1) A party to a proceeding before the tribunal may appeal to the
12 Supreme Court on a question of law from a decision of the tribunal
13 in the proceeding.

14 (2) The appeal may be brought only with the Supreme Court's leave.

15 *Note* See the *Court Procedures Rules 2006*, r 5052 (Appeals to Supreme
16 Court—general powers), r 5072 (Appeals to Supreme Court—time for
17 filing application for leave to appeal) and r 5103 (Appeals to Supreme
18 Court—time for filing notice of appeal).

19 **Part 2.12 Contractors Debts Act 1897**

20 **[2.86] Section 9 (1)**

21 *omit*

22 or originating summons

- 1 **[2.87] Section 10 (2)**
2 *omit*
3 , in the application, prove on oath or affidavit
4 *substitute*
5 prove

6 **Part 2.13 Court Procedures Act 2004**

- 7 **[2.88] Section 13 (1) (a) (i)**
8 *omit*
9 and enrolment

- 10 **[2.89] Section 13 (1) (a) (iii)**
11 *substitute*
12 (iii) the assessment of costs;

- 13 **[2.90] Part 6**
14 *relocate to Evidence (Miscellaneous Provisions) Act 1991 as part 6*
15 *and renumber sections 53, 54 and 55 as sections 90, 91 and 92*

- 16 **[2.91] Parts 7 and 8**
17 *substitute*

18 **Part 6 Procedural provisions—all**
19 **proceedings**

20 **53 Application—pt 6**

- 21 This part applies to all proceedings in the Supreme Court or
22 Magistrates Court.

1 **54 No distinction between court and chambers**

2 The business of a court, wherever it is conducted, is taken to be
3 conducted in court.

4 **Part 7 Procedural provisions—civil**
5 **proceedings**

6 **60 Application—pt 7**

7 This part (other than section 63) applies to a civil proceeding in the
8 Supreme Court or Magistrates Court.

9 *Note* Section 63 (Receivers) applies only to a civil proceeding in the Supreme
10 Court.

11 **61 Counterclaims and third parties**

12 (1) In a proceeding in the court, the defendant is entitled to relief
13 (whether at law or in equity)—

14 (a) against the plaintiff, if the relief claimed would have been
15 granted to the defendant if the defendant had started a separate
16 proceeding against the plaintiff; or

17 (b) against someone other than the plaintiff, if—

18 (i) the relief claimed relates to the subject matter of the
19 proceeding; and

20 (ii) the person is served with written notice of the claim; and

21 (iii) the claim would have been granted to the defendant if the
22 defendant had started a separate proceeding against the
23 person.

- 1 (2) If a person is served with a notice mentioned in subsection (1) (b)
2 (ii), the person is taken to be a party to the relevant proceeding with
3 the same rights as if the defendant had started a separate proceeding
4 against the person.

5 **62 Injunctions**

- 6 (1) At any stage of a proceeding, the court may grant an injunction
7 (interlocutory or otherwise) on the conditions the court considers
8 appropriate if the court considers it appropriate to do so.
- 9 (2) Without limiting subsection (1), the court may grant an injunction to
10 restrain any threatened or apprehended waste, trespass, breach of
11 contract or other injury.
- 12 (3) Subsection (2) applies in relation to a threatened waste or trespass to
13 land whether or not—
- 14 (a) the person against whom the injunction is sought claims any
15 title to the land; or
- 16 (b) that person is in possession of the land; or
- 17 (c) the estates claimed by both or either of the parties are legal or
18 equitable.

19 **63 Receivers**

- 20 (1) This section applies only to a civil proceeding in the Supreme Court.
- 21 (2) At any stage of the proceeding, the court may appoint a receiver if
22 the court considers it appropriate to do so.
- 23 (3) The appointment may be made on the conditions the court considers
24 appropriate.

Amendment [2.92]

1 **64 Rules of practice and procedure—judicial discretion**

2 In a proceeding, if no provision about a matter of practice or
3 procedure of a court is made under this Act or another territory law,
4 the court may give the directions about practice and procedure that it
5 considers appropriate.

6 **65 Appearance by lawyer**

7 A party to a proceeding in a court may appear before the court either
8 personally or by a lawyer.

9 **[2.92] New part 12**

10 *insert*

11 **Part 12 Transitional—rules of court**

12 **500 Transitional regulations**

13 (1) A regulation may prescribe transitional matters necessary or
14 convenient to be prescribed because of the making of rules under
15 this Act or the amendments made by the *Justice and Community*
16 *Safety Legislation Amendment Act 2006*, schedule 2.

17 (2) A regulation may modify this part (including its operation in
18 relation to another territory law) to make provision in relation to
19 anything that, in the Executive's opinion, is not, or is not adequately
20 or appropriately, dealt with in this part.

21 (3) A regulation under subsection (2) has effect despite anything
22 elsewhere in this Act or another territory law.

1 **501 Construction of outdated references**

2 (1) In an Act, statutory instrument or document, a reference to the
3 *Supreme Court Rules 1937*, the *Supreme Court (Admission of Legal*
4 *Practitioners) Rules 1998*, the *Supreme Court (Corporations) Rules*
5 *2003*, the *Magistrates Court Rules 1932* or the *Magistrates Court*
6 *(Civil Jurisdiction) Rules 2004* is, in relation to anything to which
7 the *Court Procedures Rules 2006* apply, a reference to those rules.

8 (2) In an Act, statutory instrument or document, a reference to a
9 provision of the *Supreme Court Rules 1937*, the *Supreme Court*
10 *(Admission of Legal Practitioners) Rules 1998*, the *Supreme Court*
11 *(Corporations) Rules 2003*, the *Magistrates Court Rules 1932* or the
12 *Magistrates Court (Civil Jurisdiction) Rules 2004* is, in relation to
13 anything to which the *Court Procedures Rules 2006* apply, a
14 reference to the corresponding provision of those rules.

15 (3) In an Act, statutory instrument or document, a reference to anything
16 that is no longer applicable because of the making of rules under
17 this Act or the amendments made by the *Justice and Community*
18 *Safety Legislation Amendment Act 2006*, schedule 2, and for which
19 there is a corresponding thing under the rules or in legislation
20 amended by that schedule, is taken to be a reference to the thing
21 under the rules or in the legislation, if the context allows and if
22 otherwise appropriate.

23 **Examples**

- 24 1 A 'notice of motion' is taken to be an 'application'.
25 2 A reference to entering an appearance in relation to an originating process in
26 a civil proceeding is taken to be a reference to filing a notice of intention to
27 respond in the court or filing a defence (if the defendant chooses not to file a
28 notice of intention to respond but files a defence).
29 3 A reference to taxation of costs is taken to be a reference to assessment of
30 costs.

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

- 1 (4) This section is a law to which the Legislation Act, section 88
2 (Repeal does not end effect of transitional laws etc) applies.

3 **502 Abolition of old enforcement processes**

- 4 (1) All writs in aid of enforcement are abolished.
- 5 (2) For a law in force immediately before the commencement of this
6 section that expressly or impliedly refers to a writ in aid of
7 enforcement, the reference is taken to be a reference to the
8 equivalent enforcement order under rules made under this Act, if the
9 context allows.
- 10 (3) This section does not affect the validity of a writ in aid of
11 enforcement issued before the commencement of this section.
- 12 (4) In this section:
- 13 *writ in aid of enforcement* includes a writ of *capias ad*
14 *respondendum*, writ of *capias ad satisfaciendum*, writ of *elegit*, writ
15 or warrant of execution, writ of *fieri-facias*, writ of *ne exeat colonia*
16 or a writ subsequent to those writs as a procedure of enforcement.
- 17 (5) This section is a law to which the Legislation Act, section 88
18 (Repeal does not end effect of transitional laws etc) applies.

19 **503 Right to claim set-off**

- 20 (1) The provisions of the *Court Procedures Rules 2006* about a
21 defendant being able to rely on set-off as a defence to all or part of a
22 claim made by the plaintiff extend to—
- 23 (a) any debt arising under an agreement entered into before the
24 commencement of those rules; and
- 25 (b) any other debt arising before the commencement of those rules.

1 (2) However, the court may order that the provisions mentioned in
2 subsection (1) do not apply to a debt mentioned in subsection (1) (a)
3 if it is satisfied that it would be in the interests of justice to make the
4 order.

5 (3) This section is a law to which the Legislation Act, section 88
6 (Repeal does not end effect of transitional laws etc) applies.

7 **504 Abolition of distinction between court and chambers**

8 (1) This section applies to the Supreme Court and the Magistrates
9 Court.

10 (2) The distinction between court and chambers is abolished.

11 (3) This section is a law to which the Legislation Act, section 88
12 (Repeal does not end effect of transitional laws etc) applies.

13 **505 Application of sch 1 amendments**

14 (1) The amendments of schedule 1 made by the *Justice and Community*
15 *Safety Legislation Amendment Act 2006* have effect in relation to the
16 *Court Procedures Rules 2006* SL2006-29 as if those amendments
17 had been made, and were in force, immediately before those rules
18 were made.

19 (2) This section is a law to which the Legislation Act, section 88
20 (Repeal does not end effect of transitional laws etc) applies.

21 (3) This section expires 2 months after the day it commences.

22 **506 Expiry—pt 12**

23 This part expires on 1 July 2008.

Amendment [2.93]

- 1 **[2.93] Schedule 1, item 6 (h) and (i)**
- 2 *substitute*
- 3 (h) confidentiality for mediators, neutral evaluators and expert
- 4 witnesses;
- 5 (i) protection from liability for mediators, neutral evaluators and
- 6 expert witnesses;
- 7 (j) transitional arrangements
- 8 **[2.94] Schedule 1, item 9 (e)**
- 9 *substitute*
- 10 (e) set-off and contribution, including, for example, rights to
- 11 set-off and contribution;
- 12 (f) third-party procedure
- 13 **[2.95] Schedule 1, item 10**
- 14 *substitute*
- 15 **10 Steps in proceedings**
- 16 steps in proceedings, including, for example, the first step for a
- 17 defendant in a proceeding
- 18 **[2.96] Schedule 1, item 12 (d)**
- 19 *substitute*
- 20 (d) disclosure of experts reports;

1 **[2.97] Schedule 1, item 13**

2 *substitute*

3 **13 Preservation of rights and property**

4 preservation of rights and property, including, for example, the
5 following:

- 6 (a) inspection, detention and preservation of property;
- 7 (b) injunctions;
- 8 (c) for the Supreme Court—receivers and sales of land by court
9 order

10 **[2.98] Schedule 1, item 17 (g) and (h)**

11 *substitute*

12 (g) making findings of liability independently of awarding
13 damages;

14 (h) assessment and awarding of damages, including, for
15 example—

16 (i) structured settlements, that is, payment of awards of
17 damages otherwise than in lump sum form; and

18 (ii) awarding damages independently of making findings of
19 liability;

20 (i) simplifies procedures for certain claims

21 **[2.99] Schedule 1, item 19 (e)**

22 *substitute*

23 (e) for the Supreme Court—prerogative orders, including
24 prerogative injunctions and declarations, and the form in which
25 prerogative relief or remedy may be granted;

Schedule 2
Part 2.13

Amendments arising out of harmonisation of court rules
Court Procedures Act 2004

Amendment [2.100]

1 (f) for the Supreme Court—habeas corpus orders, including the
2 form in which relief by way of habeas corpus may be granted

3 **[2.100] Schedule 1, item 24**

4 *omit*

5 for the Supreme

6 *substitute*

7 (1) for the Supreme

8 **[2.101] Schedule 1, item 24 (b)**

9 *substitute*

10 (b) proceedings for failure to comply with orders, other than orders
11 to pay an amount;

12 (c) contempt of the Magistrates Court

13 **[2.102] Schedule 1, new item 24 (2)**

14 *insert*

15 (2) for the Magistrates Court, the power to refer contempt of court to
16 the Supreme Court

17 **[2.103] Schedule 1, item 26 (e)**

18 *omit*

1 Part 2.14 Discrimination Act 1991

2 [2.104] Section 108DB

3 *substitute*

4 108DB Appeals from tribunal to Supreme Court

5 (1) A party to a proceeding before the tribunal may appeal to the
6 Supreme Court on a question of law from a decision of the tribunal
7 in the proceeding.

8 (2) The appeal may be brought only with the Supreme Court's leave.

9 *Note* See the *Court Procedures Rules 2006*, r 5052 (Appeals to Supreme
10 Court—general powers), r 5072 (Appeals to Supreme Court—time for
11 filing application for leave to appeal) and r 5103 (Appeals to Supreme
12 Court—time for filing notice of appeal).

13 Part 2.15 Electoral Act 1992

14 [2.105] Section 55

15 *omit everything after subsection (1) (b), substitute*

16 (c) is not subject to any proceeding for a prerogative order,
17 injunction, declaration or other order in any court on any
18 ground.

19 (2) In this section:

20 *decision* includes a failure to make a decision.

Amendment [2.106]

1 **Part 2.16** **Evidence (Miscellaneous**
2 **Provisions) Act 1991**

3 **[2.106] Section 31**

4 *substitute*

5 **31 Application—div 3.4**

6 This division applies to any proceeding before a territory court other
7 than the Supreme Court or Magistrates Court.

8 **[2.107] Section 38 (2) (d)**

9 *omit*

10 writ

11 *substitute*

12 order

13 **[2.108] Section 54, definition of *criminal proceeding*, paragraph**
14 **(c) and definition of *preliminary criminal proceeding*,**
15 **paragraph (c)**

16 *omit*

17 writ

18 *substitute*

19 order

1 **[2.109] New part 5**

2 *insert*

3 **Part 5** **Certain evidence under court**
4 **rules not admissible**

5 **82 Evidence not admissible in court—neutral evaluation**

- 6 (1) This section applies if, under rules under the *Court Procedures*
7 *Act 2004* (the *rules*), the Supreme Court or Magistrates Court has
8 referred a civil proceeding, or part of a civil proceeding, for neutral
9 evaluation.
- 10 (2) Evidence of anything said, or of any admission made, in a neutral
11 evaluation session under the rules is not admissible in any
12 proceeding before a court or tribunal.
- 13 (3) A document prepared for, in the course of, or because of, a neutral
14 evaluation session under the rules is not admissible in any
15 proceeding before a court or tribunal.
- 16 (4) Subsections (1) and (2) do not apply to any evidence or document—
- 17 (a) for evidence—if the people attending, or identified during, the
18 neutral evaluation session consent to the admission of the
19 evidence; or
- 20 (b) for a document—if the people attending, or identified during,
21 the neutral evaluation session and all the people identified in
22 the document, consent to the admission of the document; or
- 23 (c) in a proceeding (including a criminal proceeding) brought in
24 relation to an act or omission in relation to which a disclosure
25 has been made under the rules because an evaluator has
26 reasonable grounds to believe the disclosure is necessary or
27 desirable to prevent or reduce the danger of death or injury to
28 anyone or damage to any property.

- 1 (5) In this section:
2 *neutral evaluation session* includes any steps taken in the course of
3 making arrangements for the session or in the course of the
4 follow-up of the session.

5 **83 Evidence not admissible in court—expert report**

- 6 (1) This section applies if—
7 (a) a party to a civil proceeding in the Supreme Court or
8 Magistrates Court (the *court*) engages an expert witness; and
9 (b) the expert witness prepares a report (an *expert report*); and
10 (c) the expert report does not contain an acknowledgment by the
11 expert witness who prepared the report that the expert witness
12 has read the code of conduct for expert witnesses prescribed by
13 the rules under the *Court Procedures Act 2004* applying to the
14 expert witness and agrees to be bound by it.
15 (2) The expert report is not admissible in evidence in the proceeding,
16 unless the court otherwise orders.

17 **84 Evidence not admissible in court—meeting of experts**

- 18 (1) This section applies if, in a civil proceeding in the Supreme Court or
19 Magistrates Court (the *court*), the court directs the expert witnesses
20 in the proceeding to meet—
21 (a) to identify the matters on which they agree; and
22 (b) to identify the matters on which they disagree and the reasons
23 why; and
24 (c) to try to resolve any disagreement.

- 1 (2) Unless the court otherwise orders, evidence of anything done or
2 said, or an admission made, at the meeting is admissible at a trial of
3 the proceeding only if all the parties to the proceeding that are active
4 parties under the rules under the *Court Procedures Act 2004*
5 applying to the proceeding (the *rules*) agree.
- 6 (3) However, subsection (2) does not apply to a document produced in
7 accordance with a direction made by the court under the rules that
8 the expert witnesses produce a document for the court's use,
9 identifying—
- 10 (a) the matters on which they agree; and
11 (b) the matters on which they disagree; and
12 (c) the reasons for any failure to reach agreement on any matter.

13 **85 Evidence not admissible in court—evidence taken in**
14 **examination**

- 15 (1) This section applies if—
- 16 (a) in a civil or criminal proceeding, the Supreme Court or the
17 Magistrates Court (the *court*) makes an order under the rules
18 under the *Court Procedures Act 2004*—
- 19 (i) for the examination of a person on oath at a place in or
20 outside the ACT (including outside Australia) before a
21 person appointed by the court; or
- 22 (ii) for the issue of a commission for the examination of a
23 person on oath at a place in or outside the ACT
24 (including outside Australia); or
- 25 (iii) for the issue of a letter of request to a judicial authority of
26 a place outside the ACT (including outside Australia) to
27 take the evidence of a person (or cause it to be taken);
28 and

Amendment [2.110]

- 1 (b) the person's evidence is taken in an examination held in
2 accordance with the order; and
- 3 (c) a party to the proceeding tenders the person's evidence as
4 evidence in the proceeding.
- 5 (2) Unless the court otherwise orders, the person's evidence is not
6 admissible if, at the hearing of the proceeding, the court is satisfied
7 that the person is in the ACT and is able to attend the hearing.

8 **[2.110] Part 5**

9 *renumber as part 7*

10 **[2.111] Sections 82 and 83**

11 *renumber as sections 100 and 101*

12 **Part 2.17 Guardianship and Management**
13 **of Property Act 1991**

14 **[2.112] Section 56**

15 *substitute*

16 **56 Appeals from tribunal to Supreme Court**

- 17 (1) An appeal to the Supreme Court from an order, direction or decision
18 of the tribunal in an inquiry may be brought by someone—
- 19 (a) who appeared, or was entitled to appear under section 36 (1)
20 (Appearance and representation), before the tribunal in the
21 inquiry; or
- 22 (b) who, with the tribunal's leave, would have been entitled to
23 appear before the tribunal in the inquiry; or
- 24 (c) in relation to whom the order, direction or decision was made.

- 1 (2) The appeal may be brought—
2 (a) on a question of law—as of right; or
3 (b) on any other question—only with the Supreme Court’s leave.
4 *Note* See the *Court Procedures Rules 2006*, r 5052 (Appeals to Supreme
5 Court—general powers), r 5072 (Appeals to Supreme Court—time for
6 filing application for leave to appeal) and r 5103 (Appeals to Supreme
7 Court—time for filing notice of appeal).

8 **Part 2.18 Health Professionals Act 2004**

9 **[2.113] Section 67**

10 *substitute*

11 **67 Appeals from health professions tribunal to Supreme** 12 **Court**

13 A party to a proceeding before the health professions tribunal may
14 appeal to the Supreme Court from a decision of the tribunal in the
15 proceeding.

16 *Note* See the *Court Procedures Rules 2006*, r 5052 (Appeals to Supreme
17 Court—general powers) and r 5103 (Appeals to Supreme Court—time
18 for filing notice of appeal).

Amendment [2.114]

1 **Part 2.19** **Judicial Commissions Act 1994**

2 **[2.114] Section 60**

3 *omit everything before paragraph (a), substitute*

4 **60** **No proceeding to be brought**

5 A proceeding for an injunction, declaration or prerogative order
6 must not be brought in relation to—

7 **Part 2.20** **Land Titles Act 1925**

8 **[2.115] Section 156**

9 *substitute*

10 **156** **Notice of action**

11 (1) This section applies if—

12 (a) there is a proceeding against the Territory to recover damages
13 under section 143 (Damages in certain cases) or section 155
14 (When actions may lie against registrar-general as nominal
15 defendant); and

16 (b) either—

17 (i) judgment is given for the defendant; or

18 (ii) the plaintiff ends the proceeding.

19 (2) The plaintiff is liable to pay the defendant's full costs of defending
20 the proceeding.

1 **[2.116] New section 170 (8)**

2 *insert*

3 (8) In this section:

4 *writ of execution* means a writ or warrant of execution after
5 judgment in any court, and includes an enforcement order under the
6 rules under the *Court Procedures Act 2004*.

7 **[2.117] New section 170A (4)**

8 *insert*

9 (4) In this section:

10 *writ of execution* means a writ or warrant of execution after
11 judgment in any court, and includes an enforcement order under the
12 rules under the *Court Procedures Act 2004*.

13 **Part 2.21 Leases (Commercial and Retail)**
14 **Act 2001**

15 **[2.118] Sections 155 and 156**

16 *substitute*

17 **155 Appeals to Supreme Court**

18 A party to a proceeding under this Act may appeal to the Supreme
19 Court on a question of law or fact from a decision of the Magistrates
20 Court in the proceeding.

21 *Note* See the *Court Procedures Rules 2006*, r 5052 (Appeals to Supreme
22 Court—general powers) and r 5103 (Appeals to Supreme Court—time
23 for filing notice of appeal).

1 **Part 2.22** **Legal Profession Act 2006**

2 **[2.119] Sections 25 and 81 (2), new note**

3 *insert*

4 *Note* See the *Court Procedures Rules 2006*, r 5052 (Appeals to Supreme
5 Court—general powers) and r 5103 (Appeals to Supreme Court—time
6 for filing notice of appeal).

7 **[2.120] Section 81 (3)**

8 *omit*

9 **[2.121] Section 207 (3) and (4)**

10 *substitute*

11 (3) In an appeal under this section, the parties to the appeal bear their
12 own costs unless the Supreme Court otherwise orders.

13 *Note* See the *Court Procedures Rules 2006*, r 5052 (Appeals to Supreme
14 Court—general powers) and r 5103 (Appeals to Supreme Court—time
15 for filing notice of appeal).

16 **[2.122] Section 239 (5)**

17 *insert*

18 *Note* See the *Court Procedures Rules 2006*, r 5052 (Appeals to Supreme
19 Court—general powers) and r 5103 (Appeals to Supreme Court—time
20 for filing notice of appeal).

21 **[2.123] Section 239 (6)**

22 *omit*

- 1 **[2.124] Section 249 (5), new note**
- 2 *insert*
- 3 *Note* See the *Court Procedures Rules 2006*, r 5052 (Appeals to Supreme
4 Court—general powers) and r 5103 (Appeals to Supreme Court—time
5 for filing notice of appeal).
- 6 **[2.125] Section 249 (6)**
- 7 *omit*
- 8 **[2.126] Section 437, new note**
- 9 *insert*
- 10 *Note* See the *Court Procedures Rules 2006*, r 5052 (Appeals to Supreme
11 Court—general powers) and r 5103 (Appeals to Supreme Court—time
12 for filing notice of appeal).
- 13 **[2.127] Section 514 (3) and (4)**
- 14 *substitute*
- 15 (3) The appointment of a supervisor or manager for a law practice is not
16 stayed by the filing of an appeal, and the supervisor or manager may
17 continue to exercise his or her functions as a supervisor or manager
18 during the appeal proceeding except to the extent that the Supreme
19 Court otherwise directs.
- 20 *Note* See the *Court Procedures Rules 2006*, r 5052 (Appeals to Supreme
21 Court—general powers).
- 22 **[2.128] Section 589 (4), new note**
- 23 *insert*
- 24 *Note* See the *Court Procedures Rules 2006*, r 5052 (Appeals to Supreme
25 Court—general powers) and r 5103 (Appeals to Supreme Court—time
26 for filing notice of appeal).

1 **Part 2.23** **Magistrates Court Act 1930**

2 **[2.129] Section 9B**

3 *substitute*

4 **9B Functions of registrar and deputy registrars**

5 (1) The registrar has power to administer oaths and may exercise the
6 other functions given to the registrar under this Act, another territory
7 law or an order of the court.

8 (2) Subject to this Act and to any directions of the registrar, a deputy
9 registrar may exercise the functions of the registrar under this Act or
10 another territory law.

11 *Note* A reference to an Act includes a reference to the statutory instruments
12 made or in force under the Act, including regulations and rules (see
13 Legislation Act, s 104).

14 (3) The exercise of a function by a deputy registrar does not affect the
15 power of the registrar to exercise the function.

16 (4) In this section:

17 *territory law* does not include rules under the *Court Procedures*
18 *Act 2004*.

19 **[2.130] Section 13 heading**

20 *substitute*

21 **13 Making of enforcement order after case decided**

- 1 **[2.131] Section 13**
- 2 *omit*
- 3 issue a writ of execution
- 4 *substitute*
- 5 make an enforcement order
- 6 **[2.132] Section 15**
- 7 *omit*
- 8 summons, warrant or writ issued
- 9 *substitute*
- 10 summons or warrant issued, or order made,
- 11 **[2.133] Section 16 heading**
- 12 *substitute*
- 13 **16 Order instead of mandamus order**
- 14 **[2.134] Section 16 (1)**
- 15 *omit*
- 16 , on affidavit of the facts,
- 17 **[2.135] Section 16 (1)**
- 18 *omit*
- 19 , after due service of the order,

Amendment [2.136]

- 1 **[2.136] Section 17C heading**
- 2 *substitute*
- 3 **17C Committal or enforcement order by magistrate on order**
- 4 **of court**
- 5 **[2.137] Sections 17C and 17E**
- 6 *omit*
- 7 writ of execution is issued
- 8 *substitute*
- 9 enforcement order is made
- 10 **[2.138] Section 17E**
- 11 *omit*
- 12 granting of the committal order or writ,
- 13 *substitute*
- 14 making of the committal order or enforcement order,
- 15 **[2.139] Section 17E**
- 16 *omit*
- 17 granted the committal order or writ
- 18 *substitute*
- 19 made the committal order or enforcement order

1	[2.140] Section 43 (2) (a)
2	<i>omit</i>
3	writ of habeas corpus
4	<i>substitute</i>
5	habeas corpus order or another order
6	[2.141] Section 107 (1)
7	<i>omit</i>
8	certiorari
9	<i>substitute</i>
10	certiorari order
11	[2.142] Section 107 (1)
12	<i>omit</i>
13	, or on a rule or order directed to him or her instead of that writ,
14	[2.143] Section 141 (4) (b)
15	<i>substitute</i>
16	(b) an enforcement order.
17	[2.144] Section 142 (2)
18	<i>omit</i>
19	return to a writ of habeas corpus or other writ
20	<i>substitute</i>
21	habeas corpus order or another order

Amendment [2.145]

1 **[2.145] Section 166C (2) (b)**

2 *omit*

3 issue a writ of execution

4 *substitute*

5 make an enforcement order

6 **[2.146] Section 166C (2) (c)**

7 *substitute*

8 (c) subject to this section, this Act and the rules applying to civil
9 proceedings in the Magistrates Court apply in relation to an
10 enforcement order made under paragraph (b) as if the order had
11 been made in a civil proceeding in the court.

12 **[2.147] Section 166C (4) to (6)**

13 *substitute*

14 (4) If—

15 (a) an enforcement order is made under subsection (2) in relation
16 to a fine; and

17 (b) before enforcement, the registrar receives a notification
18 mentioned in subsection (3) in relation to the fine;

19 the registrar must stay the order.

20 (5) On the stay of the order, the registrar must—

21 (a) if the amount of the fine has been paid in full—set aside the
22 order; or

23 (b) if part of the amount of the fine remains unpaid—amend the
24 order to show the amount still unpaid.

1 (6) If an enforcement order is amended under subsection (5) (b), the
2 order must be enforced in relation to the amount of the fine shown
3 in the order as unpaid.

4 **[2.148] Section 194 heading**

5 *substitute*

6 **194 Enforcement order not void for form only**

7 **[2.149] Section 194**

8 *omit*

9 A writ of execution

10 *substitute*

11 An enforcement order

12 **[2.150] Section 209 (2) (b) (ii)**

13 *omit*

14 informant

15 *substitute*

16 director of public prosecutions

17 **[2.151] Section 219AB (3)**

18 *omit*

19 **[2.152] Sections 219D and 219E**

20 *omit*

Amendment [2.153]

- 1 **[2.153] Section 219F (2) (d) (ii)**
2 *substitute*
3 (ii) make any other order the Supreme Court considers
4 necessary to decide the matter finally, including a
5 prohibition order or habeas corpus order.
- 6 **[2.154] Section 222**
7 *omit*
8 on habeas corpus
9 *substitute*
10 under a habeas corpus order or another order
- 11 **[2.155] Section 224 heading**
12 *substitute*
13 **224 In cases of certiorari order**
- 14 **[2.156] Section 224**
15 *omit*
16 writ of certiorari
17 *substitute*
18 certiorari order
- 19 **[2.157] Section 225 (1)**
20 *substitute*
21 (1) The notice required by section 222 may be given either before or
22 after the habeas corpus order, certiorari order or other order is made.

1 **[2.158] Section 225 (2)**

2 *omit*

3 writ

4 *substitute*

5 order

6 **[2.159] Section 226 (1)**

7 *omit*

8 writ of habeas corpus

9 *substitute*

10 a habeas corpus order

11 **[2.160] Section 230**

12 *omit*

13 **[2.161] Section 254 (5) (b)**

14 *substitute*

15 (b) an enforcement order has been made; and

16 **[2.162] Section 254 (5) (c)**

17 *omit*

18 writ

19 *substitute*

20 enforcement order

Amendment [2.163]

1 **[2.163] Section 269 (6)**

2 *omit*

3 taxed

4 *substitute*

5 assessed

6 **[2.164] Sections 277, 294 to 297 and 299**

7 *omit*

8 **Part 2.24 Mental Health (Treatment and**
9 **Care) Act 1994**

10 **[2.165] Section 141**

11 *substitute*

12 **141 Appeals from tribunal to Supreme Court**

13 (1) An appeal to the Supreme Court from a decision of the tribunal in a
14 proceeding may be brought by—

15 (a) someone in relation to whom the decision was made; or

16 (b) someone who appeared, or was entitled to appear under
17 section 89 (1) (Appearance, representation and use of
18 interpreters), before the tribunal in the proceeding; or

19 (c) the discrimination commissioner; or

20 (d) anyone else, only with the court's leave.

21 *Note* See the *Court Procedures Rules 2006*, r 5052 (Appeals to Supreme
22 Court—general powers), r 5054 (Appeals to Supreme Court—stay and
23 reinstatement), r 5072 (Appeals to Supreme Court—time for filing
24 application for leave to appeal) and r 5103 (Appeals to Supreme
25 Court—time for filing notice of appeal).

- 1 (2) The *Magistrates Court Act 1930*, section 214 (3) and (4) (Appeals in
2 cases other than civil cases) applies in relation to an appeal under
3 this section as if it were an appeal mentioned in that Act,
4 section 214 (1).

5 **Part 2.25 Occupational Health and Safety**
6 **Act 1989**

7 **[2.166] Section 194**

8 *substitute*

9 **194 Appeals from review authority to Supreme Court**

10 A party to a proceeding before the review authority may appeal to
11 the Supreme Court on a question of law from a decision of the
12 review authority in the proceeding.

13 *Note* See the *Court Procedures Rules 2006*, r 5052 (Appeals to Supreme
14 Court—general powers) and r 5103 (Appeals to Supreme Court—time
15 for filing notice of appeal).

16 **[2.167] Section 199**

17 *omit*

18 **Part 2.26 Partnership Act 1963**

19 **[2.168] Section 28**

20 *omit*

Amendment [2.169]

1 **Part 2.27 Plant Diseases Act 2002**

2 **[2.169] Section 17 (3) (b)**

3 *substitute*

4 (b) is not subject to a prerogative order or injunction in any court.

5 **Part 2.28 Residential Tenancies Act 1997**

6 **[2.170] Section 125**

7 *substitute*

8 **125 Appeals from tribunal to Supreme Court**

9 (1) A party to a proceeding before the tribunal may appeal to the
10 Supreme Court on a question of law from a decision of the tribunal
11 in the proceeding.

12 (2) The appeal may be brought only with the Supreme Court's leave.

13 *Note* See the *Court Procedures Rules 2006*, r 5052 (Appeals to Supreme
14 Court—general powers), r 5072 (Appeals to Supreme Court—time for
15 filing application for leave to appeal) and r 5103 (Appeals to Supreme
16 Court—time for filing notice of appeal).

17 **Part 2.29 Royal Commissions Act 1991**

18 **[2.171] Section 48**

19 *substitute*

20 **48 No proceeding against commission**

21 A proceeding for an injunction, declaration or prerogative order
22 must not be brought against a commission.

1 **Part 2.30** **Supreme Court Act 1933**

2 **[2.172] Section 8 (3)**

3 *substitute*

4 (3) In this section:

5 *registrar* includes a deputy registrar.

6 **[2.173] Section 9 (2)**

7 *omit*

8 a judgment

9 *substitute*

10 an order

11 **[2.174] Section 9 (2) (a) and (b)**

12 *omit*

13 judgment

14 *substitute*

15 order

16 **[2.175] Section 9 (3) and (4)**

17 *substitute*

18 (3) On an appeal under subsection (2) (a), the court—

19 (a) must have regard to the evidence given in the proceeding out
20 of which the appeal arose; and

21 (b) may draw inferences of fact from the evidence; and

22 (c) may receive further evidence in any of the following ways:

23 (i) by oral examination before the court or a judge;

Amendment [2.176]

- 1 (ii) on affidavit;
- 2 (iii) by audiovisual link or audio link;
- 3 (iv) any other way the court may receive evidence.
- 4 (4) On an appeal under subsection (2) (a), the court may confirm,
5 amend or set aside the order of the master and may make any order
6 that in all the circumstances it considers just.
- 7 (5) In this section:
- 8 *audio link*—see the *Evidence (Miscellaneous Provisions) Act 1991*,
9 section 16 (Definitions—pt 3).
- 10 *audiovisual link*—see the *Evidence (Miscellaneous Provisions)*
11 *Act 1991*, dictionary.

12 **[2.176] Section 10**

13 *omit*

14 , subject to this section,

15 **[2.177] New section 10 (2)**

16 *insert*

- 17 (2) In this section:
- 18 *registrar* includes a deputy registrar.

19 **[2.178] Section 14 (a)**

20 *omit*

21 a judgment

22 *substitute*

23 an order

-
- 1 **[2.179] Section 14 (a)**
- 2 *omit*
- 3 the judgment
- 4 *substitute*
- 5 the order
- 6 **[2.180] Sections 15, 21 and 28**
- 7 *omit*
- 8 **[2.181] Section 30**
- 9 *substitute*
- 10 **30 Defence or stay of proceeding instead of prohibition**
- 11 **order or injunction**
- 12 (1) A proceeding in the court must not be restrained by a prohibition
- 13 order or injunction.
- 14 (2) A defence is available in a proceeding in the court if an injunction
- 15 would previously have been available in a pre-Judicature Act
- 16 proceeding of the same kind.
- 17 (3) However, this section does not prevent the court from ordering a
- 18 stay in a proceeding in the court.
- 19 (4) The court may grant a stay in a proceeding in the court on
- 20 application by an entitled person.

Amendment [2.182]

- 1 (5) In this section:
2 *entitled person*, in relation to a proceeding in the court, means a
3 person (whether or not the person is a party to the proceeding) who
4 would have been entitled, in relation to a pre-Judicature Act
5 proceeding of the same kind—
6 (a) to apply to a court to restrain the prosecution of the
7 proceeding; or
8 (b) to enforce any order or rule in contravention of which all or
9 part of the proceeding had been taken.

10 **[2.182] Sections 34 and 34A**

11 *omit*

12 **[2.183] Section 34B**

13 *substitute*

14 **34B Habeas corpus and prerogative orders**

15 (1) The Supreme Court has power to grant any relief by way of a habeas
16 corpus order or prerogative order.

17 (2) In this section:

18 *habeas corpus order* means an order the relief under which is in the
19 nature of, and to the same effect as, relief by way of a writ of habeas
20 corpus.

21 *prerogative order* means an order the relief under which is in the
22 nature of, and to the same effect as, relief by way of—

23 (a) a writ of mandamus, prohibition or certiorari; or

24 (b) an information in the nature of *quo warranto*.

25 *relief* includes remedy.

- 1 **[2.184] Section 35**
- 2 *omit*
- 3 **[2.185] Section 37E (2) (a)**
- 4 *substitute*
- 5 (a) appeals in relation to the following orders:
- 6 (i) orders of the master, except interlocutory orders (see
- 7 section 9 (Exercise of jurisdiction by master));
- 8 (ii) other orders of the court (except orders of the registrar,
- 9 the Full Court exercising appellate jurisdiction or the
- 10 Court of Appeal itself);
- 11 **[2.186] Section 37E (3)**
- 12 *omit*
- 13 a judgment
- 14 *substitute*
- 15 an order
- 16 **[2.187] Section 37E (4)**
- 17 *omit*
- 18 judgment
- 19 *substitute*
- 20 order
- 21 **[2.188] New section 37E (5)**
- 22 *insert*
- 23 (5) In this section:
- 24 ***registrar*** includes a deputy registrar.

Amendment [2.189]

1 **[2.189] Section 37H (1), last dot point**
2 *substitute*
3 • section 37O (2) (which provides for the enforcement of an
4 order).

5 **[2.190] Sections 37H (3) and 37J (1) (d) and (e)**
6 *omit*
7 a judgment
8 *substitute*
9 an order

10 **[2.191] Section 37J (1) (f)**
11 *substitute*
12 (f) including, removing or substituting a party;

13 **[2.192] Section 37O heading**
14 *substitute*

15 **37O Orders on appeal**

16 **[2.193] Section 37O (1)**
17 *omit*
18 judgment
19 *substitute*
20 order

21 **[2.194] Section 37O (1) (a)**
22 *substitute*
23 (a) to confirm, reverse or amend the order;

1 **[2.195] Section 37O (1) (b) and (c)**

2 *omit*

3 judgment

4 *substitute*

5 order

6 **[2.196] Section 37O (1) (f)**

7 *substitute*

8 (f) to award enforcement of any order, or remit the proceeding to
9 the court constituted by a single judge for enforcement of the
10 order.

11 **[2.197] Section 37O (2)**

12 *substitute*

13 (2) If an order of the Court of Appeal is remitted for enforcement under
14 subsection (1) (f), the court constituted by a single judge must
15 enforce the order of the Court of Appeal as if it were that judge's
16 own order.

17 **[2.198] Section 37O (3)**

18 *omit*

19 decision

20 *substitute*

21 order

22 **[2.199] Section 37O (3) (a)**

23 *substitute*

24 (a) despite any application in the notice of appeal that part only of
25 the order be reversed or amended; and

Amendment [2.200]

- 1 **[2.200] Section 37O (3) (b)**
2 *omit*
3 decision
4 *substitute*
5 order
- 6 **[2.201] Section 37O (4)**
7 *substitute*
8 (4) An interlocutory order from which there has been no appeal does
9 not prevent the Court of Appeal from making any order on the
10 appeal it considers just.
- 11 **[2.202] Sections 49, 53A, 54, 55, 56 and 57**
12 *omit*
- 13 **[2.203] Section 58**
14 *relocate to the Court Procedures Act 2004 as section 66*
- 15 **[2.204] Sections 59 and 60**
16 *relocate to the Court Procedures Act 2004 as sections 67 and 68*
- 17 **[2.205] Section 60A (4)**
18 *substitute*
19 (4) An order (including an order for costs) made in transitional
20 proceedings is a valid exercise of the court's jurisdiction, and may
21 be enforced accordingly.
- 22 **[2.206] Sections 73 and 74**
23 *omit*

1 **[2.207] Dictionary, definition of *judgment***

2 *substitute*

3 *judgment* includes an order or sentence.

4 **[2.208] Dictionary, new definition of *order***

5 *insert*

6 *order* includes a judgment, decree, direction or decision.

7 **Part 2.31 Victims of Crime (Financial**
8 **Assistance) Act 1983**

9 **[2.209] Section 61**

10 *substitute*

11 **61 Appeals to Supreme Court**

12 The defendant against whom an order for restitution is made, or the
13 Territory, may appeal to the Supreme Court against the order.

14 *Note* See the *Court Procedures Rules 2006*, r 5052 (Appeals to Supreme
15 Court—general powers) and r 5103 (Appeals to Supreme Court—time
16 for filing notice of appeal).

17 **Part 2.32 Wills Act 1968**

18 **[2.210] Section 4, definition of *registrar***

19 *substitute*

20 *registrar* means the registrar of the Supreme Court.

Amendment [2.211]

1 **[2.211] Section 20A (4)**

2 *substitute*

- 3 (4) For this section, a marriage is taken to be *terminated* if—
- 4 (a) the marriage ends by divorce under the Family Law Act; or
- 5 (b) a decree of nullity is made under the Family Law Act in
- 6 relation to the marriage; or
- 7 (c) the marriage is annulled in accordance with the law of a place
- 8 outside Australia if the annulment is recognised in Australia
- 9 under the Family Law Act.

10 **Part 2.33 Workers Compensation Act 1951**

11 **[2.212] Section 207**

12 *omit*

13 **Part 2.34 Workers Compensation Rules**

14 **2002**

15 **[2.213] New part 14**

16 *insert*

17 **Part 14 Expiry of rules**

18 **71 Expiry of rules**

19 These rules expire on 1 January 2007.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2006.

2 Notification

Notified under the Legislation Act on 2006.

3 Republications of amended laws

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

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