

2009

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

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

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J2009-442

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THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

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

A Bill for

An Act to amend legislation about justice and community safety

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

J2009-442

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 2009 (No 3)*.

4 **2 Commencement**

- 5 (1) Schedule 1, part 1.6 (Crimes (Sentencing) Act 2005) commences on
6 the day after this Act's notification day.

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

- 9 (2) Schedule 1, part 1.10 (Firearms Act 1996) and part 1.11 (Firearms
10 Regulation 2008) commence, or are taken to have commenced, on
11 the earlier of—

12 (a) the day after this Act's notification day; and

13 (b) 14 January 2010.

- 14 (3) The remaining provisions commences on the 28th day after this
15 Act's notification day:

16 **3 Legislation amended—sch 1**

17 This Act amends the legislation mentioned in schedule 1.

18 **4 Fair Trading Regulation 2009—sch 2**

- 19 (1) The provisions set out in schedule 2 are taken, on the
20 commencement of this section, to be a regulation made under the
21 *Fair Trading Act 1992*, section 54 (Regulation-making power).

- 22 (2) To remove any doubt and without limiting subsection (1), the
23 provisions set out in schedule 2 may be amended or repealed as if
24 they had been made as a regulation by the Executive under the *Fair*
25 *Trading Act 1992*, section 54.

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

13 **5 Legislation repealed**

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

1 **Schedule 1** **Legislation amended**

2 (see s 3)

3 **Part 1.1** **ACT Civil and Administrative**
4 **Tribunal Act 2008**

5 **[1.1] Section 10 (1) (b)**

6 *substitute*

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

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

10 **[1.2] Section 22L (4) (a)**

11 *substitute*

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

16 **[1.3] Section 29 (5)**

17 *substitute*

18 (5) The tribunal may, by written notice to the parties to an application,
19 join a person as a new party to the application if—

20 (a) the person has an interest in the application; or

21 (b) for an appeal—the person was a party to the original decision.

1 **[1.4] Section 75 (2), except notes**

2 *substitute*

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

7 **[1.5] Section 81 (1) (b) (ii)**

8 *substitute*

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

10 **[1.6] Section 83 (1) and (2)**

11 *substitute*

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

18 **[1.7] Section 85**

19 *substitute*

20 **85 Tribunal may not deal with appeals more suited to**
21 **Supreme Court**

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

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

13 **[1.8] New section 86 (1) (c)**

14 *insert*

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

17 **[1.9] Section 87 (2), definition of *Supreme Court proceeding*,**
18 **paragraph (c)**

19 *omit*

20 **[1.10] Section 110 (1)**

21 *substitute*

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

1 **[1.11] Further amendments, mentions of *the registrar***

2 *omit*

3 the registrar

4 *substitute*

5 a registrar

6 *in*

- 7 • section 13 (1)
- 8 • section 25
- 9 • section 37
- 10 • section 53
- 11 • section 74
- 12 • section 76
- 13 • section 110 (2)
- 14 • section 111
- 15 • section 112 (1), note (1st mention)
- 16 • sections 113 to 116

1 **Part 1.2** **ACT Civil and Administrative**
2 **Tribunal (Transitional Provisions)**
3 **Regulation 2009**

4 **[1.12] Section 67 (1), inserted section 301A**

5 *omit*

6 **Part 1.3** **Agents Act 2003**

7 **[1.13] New section 105 (7)**

8 *insert*

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

11 **[1.14] New section 105A**

12 *insert*

13 **105A Opening trust accounts—exemptions**

14 (1) If a licensed agent does not receive or hold trust money, the
15 commissioner for fair trading may, in writing, exempt the agent
16 from the requirements under section 105 (Opening trust accounts).

17 (2) The exemption ends if the licensed agent receives or holds trust
18 money.

19 (3) The exemption may be conditional.

20 (4) A regulation may prescribe the matters to be considered by the
21 commissioner for fair trading in deciding whether to exempt a
22 licensed agent under subsection (1), or amend or revoke an
23 exemption.

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

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

5 **[1.15] Schedule 1, new items 15A to 15C**

6 *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

1 **Part 1.4 Consumer Credit Act 1995**

2 **[1.16] Section 2, notes 1 and 2**

3 *substitute*

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

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

10 **[1.17] Part 3A**

11 *omit*

12 **[1.18] Dictionary**

13 *omit the definitions of*
14 *annual percentage rate*
15 *code*
16 *contract document*
17 *credit*
18 *credit contract*
19 *credit fees and charges*

20 **Part 1.5 Consumer Credit** 21 **Regulation 1996**

22 **[1.19] Sections 5 and 6**

23 *omit*

1 **Part 1.6** **Crimes (Sentencing) Act 2005**

2 **[1.20] Section 48**

3 *substitute*

4 **48 Application—pt 4.3**

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

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

9 **Part 1.7** **Court Procedures Act 2004**

10 **[1.21] Section 45 (2)**

11 *substitute*

12 (2) A requirement made by a security officer under this section—

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

18 **Part 1.8** **Door-to-Door Trading Act 1991**

19 **[1.22] Section 7 (1) (d)**

20 *substitute*

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

1 **Part 1.9 Fair Trading Act 1992**

2 **[1.23] New part 4A**

3 *insert*

4 **Part 4A Maximum annual percentage rate**
5 **and disclosure**

6 **51C Definitions—pt 4A**

7 In this part:

8 *annual percentage rate*—see the code, section 25.

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

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

13 *credit*—see the code, section 4 (1).

14 *credit contract*—see the code, section 5.

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

17 **51D Maximum annual percentage rate**

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

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

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

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

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

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

16 **51E Disclosure of cost of credit**

17 (1) For the code, section 15 (C) (Annual percentage rate or rates), the
18 contract document must state an annual percentage rate worked out
19 on the basis of charges under the credit contract that are interest
20 charges (whether or not they are described in the credit contract as
21 interest charges).

22 (2) For the code, section 15 (E) (Total amount of interest charges
23 payable), the total amount of interest charges payable under the
24 contract includes an amount that is an interest charge (whether or
25 not it is described in the contract as an interest charge).

26 (3) For the code, section 14 (Precontractual disclosure), the
27 precontractual statement must also set out the matters mentioned in
28 subsections (1) and (2).

29 (4) The requirements under this section are additional to any other
30 requirements under the code, section 14 or section 15.

1 **[1.24] Dictionary, note 2**

2 *insert*

- 3 • Consumer Credit (Australian Capital Territory) Code

4 **[1.25] Dictionary, new definitions**

5 *insert*

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

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

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

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

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

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

1 **Part 1.10** **Firearms Act 1996**

2 **[1.26] New section 275**

3 *in part 17, insert*

4 **275 Authorised possession or use of prohibited firearms with**
5 **pistol grips for sport or target shooting**

6 (1) The holder of a category B licence issued for the genuine reason of
7 sport or target shooting is authorised to possess and use a registered
8 prohibited firearm (other than a prohibited pistol fitted with a pistol
9 grip) for the purposes of—

10 (a) taking part in any kind of approved shooting competition; and

11 (b) practising on an approved shooting range for the competition.

12 (2) The holder of a category B licence issued for the genuine reason of
13 sport or target shooting is authorised to possess and use a registered
14 prohibited rifle fitted with a pistol grip for the purposes of—

15 (a) taking part in an approved specialised target shooting
16 competition; and

17 (b) practising on an approved shooting range for the competition.

18 (3) In this section:

19 ***approved***, for a competition, means a competition that is—

20 (a) conducted or organised by an approved shooting club of which
21 the licence holder is a member; and

22 (b) approved by the registrar.

1 **Part 1.11 Firearms Regulation 2008**

2 **[1.27] Section 81**

3 *omit*

4 **Part 1.12 Guardianship and Management
5 of Property Act 1991**

6 **[1.28] New section 72C**

7 *insert*

8 **72C Power to obtain information and documents**

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

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

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

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

12 **Part 1.13** **Independent Competition and**

13 **Regulatory Commission Act 1997**

14 **[1.29] Section 6 (1)**

15 *substitute*

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

1 **[1.30] Schedule 2, section 2.1**

2 *substitute*

3 **2.1 Standing commissioners**

- 4 (1) The Executive must appoint 1 or more standing commissioners.

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

7 *Note 2* In particular, a person may be appointed for a particular provision of a
8 law (see Legislation Act, s 7 (3)) and an appointment may be made by
9 naming a person or nominating the occupant of a position (see
10 Legislation Act s 207).

- 11 (2) A standing commissioner holds office (subject to this Act) for a
12 term not longer than 5 years.

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

16 **2.1AA Arrangements if more than 1 standing commissioner**

- 17 (1) This section applies if the commission is constituted by more than
18 1 standing commissioner.

- 19 (2) The Executive must appoint 1 standing commissioner as senior
20 commissioner.

- 21 (3) If the senior commissioner ceases to hold office or is suspended
22 from office (under section 2.4 or section 2.5), the Minister must (by
23 instrument) nominate another standing commissioner as senior
24 commissioner.

- 25 (4) If a suspended senior commissioner resumes office as a
26 commissioner, he or she also resumes office in the capacity of
27 senior commissioner (and the nominated replacement ceases to hold
28 office in that capacity).

- 1 **[1.31] Dictionary, definition of *assistant commissioner***
2 *omit*
- 3 **[1.32] Dictionary, definition of *senior commissioner***
4 *substitute*
5 *senior commissioner* means—
6 (a) if the commission is constituted by only 1 standing
7 commissioner—the commissioner; or
8 (b) if the commission is constituted by more than 1 standing
9 commissioner—the commissioner appointed or nominated as
10 senior commissioner under schedule 2, section 2.1AA.
- 11 **[1.33] Dictionary, definition of *standing commissioner***
12 *substitute*
13 *standing commissioner* means a commissioner appointed under
14 schedule 2, section 2.1.
- 15 **Part 1.14 Residential Tenancies Act 1997**
- 16 **[1.34] Section 48 (1) (b) (i)**
17 *substitute*
18 (i) has made an order under section 83 (b); and

1 **Part 1.15 Supreme Court Act 1933**

2 **[1.35] Section 36**

3 *omit*

4 **[1.36] Dictionary, definition of *rules***

5 *substitute*

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

1 **Schedule 2** **New Fair Trading Regulation**
2 **2009**

3 (see s 4)



Australian Capital Territory

4 **Fair Trading Regulation 2009**

5 **Subordinate Law SL2009-**

6 made under the

7 **Fair Trading Act 1992**

1 **1 Name of regulation**

2 This regulation is the *Fair Trading Regulation 2009*.

3 **2 Notes**

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

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

7 **3 Maximum annual percentage rate—Act, s 51D**

8 (1) The prescribed maximum annual percentage rate is 48% per annum
9 for all credit contracts to which the code applies.

10 (2) Interest charges, and all credit fees and charges, under a credit
11 contract must be included in working out the maximum annual
12 percentage rate under all credit contracts to which the code applies.

13 (3) The maximum annual percentage rate must be worked out in
14 accordance with section 4.

15 (4) Despite subsection (2), any credit fees or charges arising from the
16 establishment or maintenance of a temporary credit facility are not
17 required to be included for working out the maximum annual
18 percentage rate if—

19 (a) the credit provider is an authorised deposit-taking institution;
20 and

21 (b) the debtor has or had an existing credit contract or debit
22 account with the authorised deposit-taking institution when the
23 temporary credit facility is or was established; and

24 (c) the temporary credit facility is related to the existing credit
25 contract or debit account.

1 (5) In this section:

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

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

8 **4 Working out maximum annual percentage rate**

9 (1) For working out the maximum annual percentage rate under a credit
10 contract, the rate must be worked out as a nominal rate for each
11 year, together with the compounding frequency, in accordance with
12 this section.

13 (2) The maximum annual percentage rate is worked out as follows:

$$14 \quad nr100\%$$

15 (3) In subsection (2):

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

18 (a) if repayments are to be made weekly or fortnightly—***n*** is to be
19 52.18 or 26.09, respectively; and

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

23 ***r*** is the solution of the following:

$$24 \quad \sum_{j=0}^t \frac{A_j}{(1+r)^j} = \sum_{j=0}^t \frac{R_j + C_j}{(1+r)^j}$$

- 1 (4) In subsection (3):
- 2 j is the time, measured as a multiple (not necessarily integral) of the
- 3 interval between contractual repayments that will have elapsed since
- 4 the first amount of credit is provided under the credit contract,
- 5 except that if the contract does not provide for a constant interval
- 6 between repayments an interval of any kind is to be selected by the
- 7 credit provider as the unit of time.
- 8 t is the time, measured as a multiple of the interval between
- 9 contractual repayments (or other interval so selected), that will
- 10 elapse between the time when the first amount of credit is provided
- 11 and the time when the last repayment is to be made under the
- 12 contract.
- 13 A_j is the amount of credit to be provided under the contract at time j
- 14 (the value of j for the provision of the first amount of credit is taken
- 15 to be zero).
- 16 R_j is the repayment to be made at time j .
- 17 C_j is the fee or charge (if any) payable by the debtor at time j (j is
- 18 taken to be zero for any such fee or charge payable before the time
- 19 of the first amount of credit provided) in addition to the repayments
- 20 R_j , being a credit fee or charge that is ascertainable when the annual
- 21 percentage rate is worked out.
- 22 (5) The maximum annual percentage rate must be correct to at least the
- 23 nearest 0.001% for each year.
- 24 (6) In applying the formulas in this section, reasonable approximations
- 25 may be made if it would be impractical or unreasonably onerous to
- 26 make a precise calculation.
- 27 (7) The tolerances and assumptions under the code, section 158 to
- 28 section 160 apply in working out the maximum annual percentage
- 29 rate.

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

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2009.

2 Notification

Notified under the Legislation Act on 2009.

3 Republications of amended laws

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

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