

2009

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

**JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT
BILL 2009 (No 3)**

EXPLANATORY STATEMENT

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JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2009 (No 3)

Overview of Bill

The Justice and Community Safety Legislation Amendment Bill 2009 (No 3) (the Bill) amends a number of laws administered by the Department of Justice and Community Safety. The laws amended include the:

- *ACT Civil and Administrative Tribunal Act 2008;*
- *ACT Civil and Administrative Tribunal (Transitional Provisions) Regulation 2009;*
- *Agents Act 2003;*
- *Consumer Credit Act 1995;*
- *Consumer Credit Regulation 1996;*
- *Court Procedures Act 2004;*
- *Crimes (Sentencing) Act 2005;*
- *Door-to-Door Trading Act 1991;*
- *Fair Trading Act 1992;*
- *Firearms Act 1996;*
- *Firearms Regulation 2008;*
- *Guardianship and Management of Property Act 1991;*
- *Independent Competition and Regulatory Commission Act 1997;*
- *Residential Tenancies Act 1997;* and
- *Supreme Court Act 1933.*

The amendments are detailed below.

Additionally, one new regulation will be created by this Bill, the *Fair Trading Regulation 2009*. The new regulation is also detailed below.

ACT Civil and Administrative Tribunal Act 2008

These amendments affect the appointment of tribunal registrars, the referral of appeals to the Supreme Court, and the procedure for joining new parties to a proceeding.

The amendments will incorporate provisions from the ACT Civil and Administrative Tribunal (Transitional Provisions) Regulation 2009. Section 67 of the regulation contains a provision intended to be included in the Act. The regulation allows for more than one person to be appointed as a tribunal registrar under the Act. This amendment will incorporate that provision into the Act itself and remove it from the regulation.

The amendments dealing with referrals to the Supreme Court will mean that, under section 85, if the appeal president refuses to deal with an appeal, it will be the responsibility of the applicants to seek review, if desired, in the Supreme Court under section 86. The appeal president will no longer be

responsible for referring the matters that fall under section 85 to the Supreme Court.

The amendment to section 29 will require that, in order to be joined to an ongoing proceeding, a new party must have an interest in the proceeding. If the proceeding is an appeal, the new party must have been a party to the original proceeding. These criteria are inserted to ensure that new parties are only joined to a proceeding in appropriate circumstances.

ACT Civil and Administrative Tribunal (Transitional Provisions) Regulation 2009

The amendment will remove from the regulation those provisions that will be included in the *ACT Civil and Administrative Tribunal Act 2008* by this Bill.

Agents Act 2003

The amendment will allow the commissioner for fair trading to exempt certain real estate agents from the requirement to keep a trust account. The exemption will be used for agents who do not hold or receive any money in trust. In order to maintain a licence, these agents are currently required to hold an empty trust account. In those circumstances, the trust account serves no consumer protection or other function. The amendment allows for an exemption to the rule, to avoid the unnecessary creation of trust accounts by licensed agents.

Consumer Credit Act 1995

The amendment will preserve the Territory's cap on interest rates for consumer credit contracts at 48 percent per year. Consumer credit regulation is gradually being transferred from States and Territories to the Commonwealth. This process will eventually result in a repeal of existing ACT consumer credit legislation, to be replaced by Commonwealth legislation. The Commonwealth has agreed that those States and Territories which have interest rate caps may keep them until the Commonwealth adopts its own position on the subject.

This amendment will preserve the Territory's cap on interest rates by transferring relevant provisions from the *Consumer Credit Act 1995* to the *ACT Fair Trading Act 1992*.

Consumer Credit Regulation 1996

These amendments are consequential to the *Consumer Credit Act 1995* amendments. The parts of this regulation dealing with interest rate caps will be removed. These provisions will be recreated in the Fair Trading Regulation 1992 by this Bill.

Court Procedures Act 2004

The amendment clarifies the power of security officers to require everyone entering the court to undergo screening. The Act already gives the courts this power. This amendment explicitly provides that security screenings may be of general application, to avoid any doubt or challenge. This amendment engages the right of privacy, but constitutes a proportionate limitation on that right because of the heightened risks associated with court premises. The changes introduced have been certified as human rights compliant for this reason.

Crimes (Sentencing) Act 2005

An amendment to the *Crimes (Sentencing) Act 2005* is needed to ensure that victim impact statements can still be tendered under part 4.3 following the commencement of the *Crimes Legislation Amendment Act 2008*. This amendment will also ensure that any further offences caught by the change in the summary threshold will not be excluded from the application of part 4.3 of the *Crimes (Sentencing) Act 2005*.

Door-to-Door Trading Act 1991

The amendment will consolidate two identical rules into one section to avoid confusion. The requirement for a dealer to provide a copy of a contract made by telephone to a consumer had been present in two different sections of the Act. This amendment will leave the requirement in only one section, to avoid confusion.

Fair Trading Act 1992

These amendments recreate the sections of the *Consumer Credit Act 1995* that will be repealed by this Bill. The purpose is to preserve the Territory's cap on interest rates for consumer credit contracts. No substantive changes to the legislation have been made. This amendment is merely a transfer of provisions from one Act to another.

Firearms Act 1996

This amendment will insert a transitional provision from the Firearms Regulation 2008. Section 81 of the Firearms Regulation 2008 was created with the intention that it would be inserted into the Act. The provision authorises possession of certain firearms with pistol grips for use in approved target shooting competitions. No change to the effect of former section 81 of the regulation is intended by its inclusion in the Act.

Firearms Regulation 2008

This amendment will remove the transitional provision from the regulation that will be included by this Bill in the *Firearms Act 1996*. The parts of the regulation removed will be recreated in the text of the Act.

Guardianship and Management of Property Act 1991

The amendment will give the ACT Civil and Administrative Tribunal (ACAT) a power that was previously exercised by the Guardianship Tribunal. During the course of the ACAT consequential amendments, the power to demand records and information was omitted on the basis that the ACAT Act would provide the necessary power to the ACAT. This amendment recreates a specific power to demand those records, in order to remove any doubt that the ACAT retains all the powers of the Guardianship Tribunal

Independent Competition and Regulatory Commission Act 1997

The amendment clarifies the structure of the commission. Current practice is to appoint one commissioner. The legislation might be construed to require three commissioners in order to have a valid commission. These amendments will avoid any dispute as to the elements of a properly constituted commission under the Act. The practice of appointing one commissioner will be explicitly permitted. Additional commissioners could still be appointed as a discretionary matter.

Residential Tenancies Act 1997

This amendment updates a reference to another provision within the *Residential Tenancies Act 1997*. The relevant provision was moved to a different section of the Act in February 2009 by consequential amendments following the implementation of the ACT Civil and Administrative Tribunal. The reference has been updated accordingly.

Supreme Court Act 1933

This amendment will omit section 36 of the Act. Section 36 gives the Supreme Court the power to make rules of court. The Supreme Court now holds these powers under the *Court Procedures Act 2004*. Section 36 is redundant and should be removed.

Fair Trading Regulation 2009

This regulation recreates sections of the Consumer Credit Regulation 1996 that will be repealed by this Bill. No substantive changes to the regulation have been made other than to create it anew under the *Fair Trading Act 1992*.

Clause Notes

Clause 1 – Name of Act – states the title of the Act as the *Justice and Community Safety Legislation Amendment Act 2009 (No 3)*.

Clause 2 – Commencement – sets out the commencement dates for the Act. The amendments to the *Crimes (Sentencing) Act 2005* will commence on the day after notification. The *Firearms Act 1996* and *Firearms Regulation 2008* amendments commence on either the day after notification, or 14 January 2010, whichever is earlier.

All other amendments in the Act will commence 28 days after notification.

Clause 3 – Legislation amended—sch 1 – provides that the Act amends the legislation identified in schedule 1 of the Act.

Clause 4 – Fair Trading Regulation 2009—sch 2 – provides that the Fair Trading Regulation created by schedule 2 of the Act commences when clause 4 of the Act commences, and that it is a regulation that may be amended or repealed under section 54 of the *Fair Trading Act 1992*.

Clause 5 – Legislation repealed – repeals the *Dangerous Substances (Explosives) Regulation 2004-Form-Consumer fireworks authorised receipt (AF2009-129)*. This repeal follows the repeal of consumer fireworks sales provisions in the *Dangerous Substances (Explosives) Regulation 2004*.

Schedule 1 – Legislation amended

PART 1.1 – ACT Civil and Administrative Tribunal Act 2008

Clause 1.1 – Section 10(1)(b) – substitutes “a registrar” for “the registrar” to reflect the appointment of multiple registrars.

Clause 1.2 – Section 22L(4)(a) – removes a reference to a referral to the Supreme Court under section 85. This Act will end referrals to the Supreme Court under section 85.

Clause 1.3 – Section 29(5) – adds criteria that must be considered in joining a person as a new party to an application. In order to join a new person to an application, the person must either have an interest in the application, or in the case of an appeal, the person must have been a party to the original decision.

Clause 1.4 – Section 75(2), except notes – substitutes “a registrar” for “the registrar” to reflect the appointment of multiple registrars.

Clause 1.5 – Section 81(1)(b)(ii) – inserts a reference to the appeal president deciding not to deal with an appeal under section 85, to reflect the amendments to section 85. Appeals will no longer be referred to the Supreme Court under section 85.

Clause 1.6 – Section 83 (1) and (2) – inserts criteria for referring an application or appeal to the Supreme Court under section 83. The tribunal must now first consider that it is appropriate for the application or appeal to be dealt with by the Supreme Court.

Clause 1.7 – Section 85 – amends section 85 to remove the appeal president’s function of referring appeals under section 79 to the Supreme Court. With this amendment, where the appeal president decides not to deal with an appeal, it will be up to the parties to seek review by the Supreme Court under new section 86(1)(c). The appeal president will have no responsibility or capacity under section 85 to refer appeals to the Supreme Court.

Clause 1.8 – New section 86(1)(c) – inserts a reference to an appeal that the appeal president refuses to deal with under section 85. This will give parties whose tribunal appeals have been refused under section 85 the ability to appeal the matter to the Supreme Court.

Clause 1.9 – Section 87(2), definition of *Supreme Court proceeding*, paragraph (c) – omits a reference to a referred appeal under section 85, to reflect the fact that appeals will no longer be referred under that section.

Clause 1.10 – Section 110(1) – substitutes a provision from the ACT Civil and Administrative Tribunal (Transitional Provision) Regulation 2009, to clarify that more than one public servant may be appointed as a tribunal registrar.

Clause 1.11 – Further amendments, mentions of *the registrar* – substitutes “a registrar” for “the registrar” to reflect the appointment of multiple registrars, in the following sections:

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

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

Clause 1.12 – Section 67(1), inserted section 301A – omits this section, to reflect the inclusion of an identical provision in amended section 110(1) of the *ACT Civil and Administrative Tribunal Act 2008*.

PART 1.3 – Agents Act 2003

Clause 1.13 – New section 105(7) – inserts a new subsection (7), to refer to exemptions from the trust account requirements under new section 105A.

Clause 1.14 – New section 105A – inserts a provision that allows the commissioner to exempt licensed agents from the requirement to keep a trust account. The exemption would only be available to agents who do not receive or hold any trust money, as defined in section 102 of the Act. This provision is intended to operate in a way similar to the existing section 71, which gives the commissioner the power to exempt agents from the rules concerning licensed agents being in charge of more than one place of business.

Clause 1.15 – Schedule 1, new items 15A to 15C – inserts a decision under new section 105A into the schedule of reviewable decisions under the Act. This is to make the exemption for agents from the trust account retirement similar to the exemptions concerning agents managing multiple business premises in section 71 of the Act.

PART 1.4 – Consumer Credit Act 1995

Clause 1.16 – Section 2, notes 1 and 2 – substitutes new notes 1 and 2 to remove references to the examples of “annual percentage rate”, since these definitions are to be removed with these amendments.

Clause 1.17 – Part 3A – omits all of part 3A of the Act. The provisions of part 3A will be recreated in the *Fair Trading Act 1992*, and will provide identical interest rate cap protections. This amendment is intended only to transfer identical legislation to another Act.

Clause 1.18 – Dictionary – omits those definitions that were only used for part 3A of the Act, which is now omitted.

PART 1.5 – Consumer Credit Regulation 1996

Clause 1.19 – Sections 5 and 6 – omits these sections from the regulation. Identical provisions will be recreated in the *Fair Trading Regulation 2009*. As with the *Consumer Credit Act 1995* amendments, these amendments are only intended to transfer identical legislation and regulations to another Act and regulation.

PART 1.6 – Crimes (Sentencing) Act 2005

Clause 1.20 – Section 48 – inserts a technical amendment that removes the reference to an ‘indictable offence’ and inserts ‘an offence punishable by

imprisonment for longer than 1 year'. This amendment is necessary because the *Crimes Legislation Amendment Act 2008* altered the threshold for summary jurisdiction from a maximum penalty of one year imprisonment to a maximum penalty of two years imprisonment. The purpose of this amendment is to ensure that in crimes where the punishment may be a year or longer in prison, part 4.3 of the *Crimes (Sentencing) Act 2005* will continue to apply.

PART 1.7 – Court Procedures Act 2004

Clause 1.21 – Section 45(2) – substitutes new requirements for security screening and search requirements made under section 45. The new criteria are intended to clarify that a requirement for security screening may be applied generally, to everyone entering court premises, and not only on the basis of individual suspicion.

PART 1.8 – Door-to-Door Trading Act 1991

Clause 1.22 – Section 7(1)(d) – substitutes new language to remove a duplicate requirement. Section 7(1)(d) previously duplicated the requirement to give a contract to a consumer after making a contract by telephone. That requirement now exists in section 7(1)(fa) of the Act.

PART 1.9 – Fair Trading Act 1992

Clause 1.23 – New part 4A – inserts new sections 51C through 51E, which recreate omitted part 3A of the *Consumer Credit Act 1995*. These insertions merely transfer the provisions governing maximum annual percentage rates and disclosure to the *Fair Trading Act 1992* from the *Consumer Credit Act 1995*. No substantive change to the legislation previously contained in part 3A of the *Consumer Credit Act 1995* has been made by this amendment.

Clause 1.24 – Dictionary, note 2 – inserts a reference to the Consumer Credit (Australian Capital Territory) Code, to reflect the inclusion of the consumer credit provisions in the Act.

Clause 1.25 – Dictionary, new definitions – inserts the definitions that were removed from the *Consumer Credit Act 1995* by these amendments. These insertions recreate the definitions previously contained in the *Consumer Credit Act 1995* without any substantive change.

PART 1.10 – Firearms Act 1996

Clause 1.26 – New section 275 – This clause inserts into the *Firearms Act 1996* a new section 275 to authorise the possession and use of certain firearms. The *Firearms Amendment Act 2008* inserted into the *Firearms Act*, schedule 1, item 12, the term 'fitted with a pistol grip'. The effect of this amendment was to make certain firearms prohibited that were not previously prohibited.

In amending the Firearms Act to extend the coverage of item 12, it had always been the Government's intention to allow licensees to possess and use these firearms in limited circumstances. The circumstances in which such a firearm can be authorised under the new provision are where the use of the firearms is to be used for an approved competition or approved competitions.

A provision allowing the registrar of firearms to issue such an authorisation was overlooked at the time of drafting the amending Bill. In response, this provision was inserted into the Firearms Regulation 2008 as a transitional provision in order to allow licensees to seek an authorisation from the registrar of firearms. As the transitional provisions in part 17 of the Firearms Regulation, it is now necessary to amend the Firearms Act in this way.

PART 1.11 – Firearms Regulation 2008

Clause 1.27 – Section 81 – This clause omits section 81 of the regulation. This transitional provision has been included in the *Firearms Act 1996* by this Act.

PART 1.12 – Guardianship and Management of Property Act 1991

Clause 1.28 – New Section 72C– this clause inserts new section 72C, which remakes former section 41 of the Act. This provision will give the ACT Civil and Administrative Tribunal (ACAT) a power, previously exercised by the Guardianship Tribunal, to request information and documents by written notice. This power does not derogate from or limit any other powers of the ACAT, either under this Act, the *ACT Civil and Administrative Tribunal Act 2008*, or any other applicable legislation.

PART 1.13 – Independent Competition and Regulatory Commission Act 1997

Clause 1.29 – Section 6(1) – amends section 6(1) to clarify that the commission is constituted by only one commissioner, but that other commissioners may be appointed to the commission. This amendment is intended to resolve any doubt as to the current law, which was meant to provide that the commission is validly constituted by only one commissioner.

Clause 1.30 – Schedule 2, section 2.1 – amends section 2.1 of schedule 2 to clarify that the executive may appoint only one commissioner, or more than one commissioner. The classification of “assistant commissioner” has been removed, so that there are only standing commissioners, one of whom must be a senior commissioner. It is not necessary to maintain the distinction for assistant commissioners, as that class of commissioner refers only to standing commissioners who are not senior commissioners.

This clause also inserts a new section 2.1AA to clarify the arrangements for appointing more than one standing commissioner. The Act now clearly provides that if more than one commissioner is appointed, one commissioner must be appointed as a senior commissioner. If only one commissioner is

appointed, that commissioner is taken to be the senior commissioner by definition.

Clause 1.31 – Dictionary, definition of *assistant commissioner* – omits this definition, as assistant commissioners are no longer included in the Act.

Clause 1.32 – Dictionary, definition of *senior commissioner* – substitutes a new definition to reflect the removal of references to assistant commissioners and the clarification that only one commissioner need be appointed. With the new definition, a senior commissioner is either the only standing commissioner, or in the case of multiple standing commissioners, the commissioner who is appointed or nominated as the senior commissioner.

Clause 1.33 – Dictionary, definition of *standing commissioner* – amends the definition of “standing commissioner” to clarify that a standing commissioner is any commissioner appointed under schedule 2, section 2.1 of the Act. This amendment removes from the definition all references to senior and assistant commissioners to avoid confusion.

PART 1.14 – Residential Tenancies Act 1997

Clause 1.34 – Section 48(1)(b)(i) – Amends section 48(1)(b)(i) to update a reference to a renumbered provision. Section 48 previously referred to former section 104. When the ACT Civil and Administrative Tribunal became operational, consequential amendments remade former section 104 into section 83(b). This amendment updates the reference to former section 104 accordingly.

PART 1.15 – Supreme Court Act 1933

Clause 1.35 – Section 36 – omits section 36 from the Act. Section 36 gave the Supreme Court the power to make rules. That power is now contained in the *Court Procedures Act 2004*. Section 36 has been omitted to remove the unnecessary duplication of the rule making power.

Clause 1.36 – Dictionary, definition of *rules* – omits section 36 from the Act. Section 36 gave the Supreme Court the power to make rules. That power is now contained in the *Court Procedures Act 2004*. Section 36 has been omitted to remove the unnecessary duplication of the rule making power.

Schedule 2 – Fair Trading Regulation 2009

This part creates the new *Fair Trading Regulation 2009*.

This regulation recreates former sections 5 and 6 of the Consumer Credit Regulation 1996. Those sections are intended to be transferred from the Consumer Credit Regulation to this regulation by these amendments, with no changes to the substantive regulations.