

NORTHERN TERRITORY OF AUSTRALIA
JUSTICE PORTFOLIO (MISCELLANEOUS AMENDMENTS) ACT 2005

Act No. 20 of 2005

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 20 of 2005

AN ACT

to amend and repeal various Acts administered by the Minister for Justice and Attorney-General

[Assented to 6 May 2005]
[Second reading 23 March 2005]

The Legislative Assembly of the Northern Territory enacts as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Justice Portfolio (Miscellaneous Amendments) Act 2005*.

2. Commencement

(1) Part 2 (other than section 5) is taken to have come into operation on 1 July 2002 immediately after the commencement of the *Administration and Probate Amendment Act 2002*.

(2) Section 5 and Parts 3, 6, 7 and 13 come into operation on the day on which the Administrator's assent to this Act is declared.

(3) The remaining provisions of this Act come into operation on the date, or respective dates, fixed by the Administrator by notice in the *Gazette*.

PART 2 – AMENDMENT OF ADMINISTRATION AND PROBATE ACT

3. Principal Act amended

This Part amends the *Administration and Probate Act*.

4. Amendment of section 104 (Rejection of small claim)

Section 104(1)(a) –

omit (all references)

in excess of

substitute

not exceeding

5. New Part IX

After section 152A –

insert

**PART IX – TRANSITIONAL MATTERS FOR JUSTICE PORTFOLIO
(MISCELLANEOUS AMENDMENTS) ACT 2005**

153. Section 104: rejection of claims in excess of prescribed amount

If, on or after 1 July 2002 but before the day on which the Administrator's assent to the *Justice Portfolio (Miscellaneous Amendments) Act 2005* is declared, a professional personal representative served a notice under section 104(1) in relation to a claim in excess of the prescribed amount –

- (a) the validity of the notice is not affected because of the amendment effected by section 4 of that Act; and
- (b) section 104 is taken to apply, and always to have applied, in relation to the claim as if that amendment had not been effected.

PART 3 – AMENDMENT OF AGENTS LICENSING ACT

6. Principal Act amended

This Part amends the *Agents Licensing Act*.

7. Amendment of section 44B (Powers of Board after inquiry)

Section 44B(1)(b) –

omit

\$500

substitute

5 penalty units

8. Amendment of section 51 (Notification of account)

Section 51, penalty provision –

omit

\$500

substitute

20 penalty units

9. Amendment of section 56 (Receipt for trust moneys)

Section 56, penalty provision –

omit

\$500

substitute

20 penalty units

10. Amendment of section 59 (Audit)

Section 59, penalty provision –

omit

\$500

substitute

20 penalty units

11. Amendment of section 69 (Powers of Board after inquiry)

Section 69(1)(b) –

omit

\$5,000

substitute

50 penalty units

PART 4 – AMENDMENT OF CONSUMER AFFAIRS AND FAIR TRADING ACT

12. Principal Act amended

This Part amends the *Consumer Affairs and Fair Trading Act*.

13. Amendment of section 29 (Power of Commissioner to establish investigation committee)

Section 29(7), penalty provision –

omit, substitute

Penalty for an offence against subsection (7):

If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

14. Amendment of section 36 (Special provisions as to notification of recall (including voluntary recall))

Section 36(2) and (3), penalty provision –

omit, substitute

Penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

15. Repeal of section 56

Section 56 –

repeal

16. New Division 1A

After section 60 –

insert

Division 1A – Pyramid Selling

60A. Definitions for Division 1A

In this Division, unless the contrary intention appears –

"new participant", in a pyramid selling scheme, includes a person who has applied, or been invited, to participate in the scheme;

"participant", in a pyramid selling scheme, means a person who participates in the scheme;

"participate", in a pyramid selling scheme, means –

- (a) establish or promote the scheme (whether alone or together with another person); or
- (b) take part in the scheme in any capacity (whether or not as an employee or agent of a person who establishes or promotes the scheme or otherwise takes part in the scheme);

"participation payment" has the meaning in section 60B(1)(a);

"payment", to a person or received by a person, means –

- (a) the provision of a financial or non-financial benefit to or for the benefit of the person; or
- (b) the provision of a financial or non-financial benefit partly to or for the benefit of the person, and partly to or for the benefit of someone else;

"pyramid selling scheme" has the meaning in section 60B;

"recruitment payment" has the meaning in section 60B(1)(b).

60B. Pyramid selling scheme

(1) A pyramid selling scheme is a scheme with both the following characteristics:

- (a) to take part in the scheme, some or all new participants must make a payment (a "participation payment") to another participant or participants in the scheme;

- (b) the participation payments are entirely or substantially induced by the prospect held out to new participants that they will be entitled to a payment (a "recruitment payment") in relation to the introduction to the scheme of further new participants.
- (2) A scheme may be a pyramid selling scheme regardless of –
 - (a) who holds out to new participants the prospect of entitlement to recruitment payments;
 - (b) who is to make recruitment payments to new participants; or
 - (c) who is to make introductions to the scheme of further new participants.
- (3) A scheme may be a pyramid selling scheme even if it has any or all of the following characteristics:
 - (a) the participation payments may or must be made after the new participants begin to take part in the scheme;
 - (b) making a participation payment is not the only requirement for taking part in the scheme;
 - (c) the holding out of the prospect of entitlement to recruitment payments does not give any new participant a legally enforceable right;
 - (d) arrangements for the scheme are not recorded in writing (whether entirely or partly);
 - (e) the scheme involves the marketing of goods or services (or both).

60C. Marketing schemes

(1) To decide whether a scheme that involves the marketing of goods or services (or both) is a pyramid selling scheme, a court may have regard to the following matters in working out whether participation payments under the scheme are entirely or substantially induced by the prospect held out to new participants of entitlement to recruitment payments:

- (a) the extent to which the participation payments bear a reasonable relationship to the value of the goods or services that participants are entitled to be supplied under the scheme (as assessed, if appropriate, by reference to the price of comparable goods or services available elsewhere);
- (b) the emphasis given in the promotion of the scheme to the entitlement of participants to the supply of goods and services by

comparison with the emphasis given to their entitlement to recruitment payments.

(2) Subsection (1) does not limit the matters to which the court may have regard.

60D. Participation in pyramid selling scheme

(1) A person must not participate in a pyramid selling scheme.

(2) A person must not induce, or attempt to induce, a person to participate in a pyramid selling scheme.

17. Amendment of Part 6 heading

Part 6, heading –

omit

DIVISION 1

substitute

DIVISIONS 1 AND 1A

18. Amendment of section 88 (Offences)

(1) Section 88(1) –

omit

Division 1 of Part 5

substitute

Part 5, Division 1 or 1A

(2) Section 88(1), at the end –

insert

Penalty: If the offender is a natural person – 500 penalty units.

If the offender is a body corporate – 2 500 penalty units.

- (3) Section 88(2) –

omit, substitute

(2) Subsection (1) does not apply to an offence for which a different penalty is applicable by virtue of section 29(7) or 36(2) or (3).

- (4) Section 88(3)(a) and (4)(a) –

omit

Division 1 of Part 5

substitute

Part 5, Division 1 or 1A

- (5) Section 88(4) –

omit

subsection (2)

substitute

subsection (1)

- (6) Section 88(5) and (6) –

omit (all references)

Division 1 of Part 5

substitute

Part 5, Division 1 or 1A

19. Amendment of section 177 (Disqualifications resulting from revocation, cancellation or suspension of licence)

Section 177(3), penalty provision –

omit, substitute

Penalty for an offence against subsection (3):

If the offender is a natural person – 500 penalty units.

If the offender is a body corporate – 2 500 penalty units.

20. Amendment of section 190 (Application for licence)

Section 190(4) and (6), penalty provision –

omit, substitute

Penalty: If the offender is a natural person – 50 penalty units.

If the offender is a body corporate – 250 penalty units.

21. Amendment of section 207 (Determination of appeal concerning disciplinary action)

Section 207(1)(b) –

omit

\$5,000

substitute

50 penalty units if the appellant is an individual or 250 penalty units if the appellant is a body corporate

22. Amendment of section 231 (Disciplinary action)

Section 231(1)(b) –

omit

\$8,000

substitute

500 penalty units if the defendant is an individual or 2 500 penalty units if the defendant is a body corporate

23. Further amendments

The Schedule has effect.

PART 5 – AMENDMENT OF *CRIMINAL RECORDS (SPENT CONVICTIONS) ACT*

24. Principal Act amended

This Part amends the *Criminal Records (Spent Convictions) Act*.

25. Amendment of section 10 (Revival of convictions which are spent convictions)

(1) Section 10(1) and (2) –

omit

, and this Act then applies as if the criminal record had never been a spent conviction

(2) After section 10(2) –

insert

(3) If, pursuant to subsection (1) or (2), a criminal record ceases to be a spent conviction, on the conviction of the person for a subsequent offence that criminal record may again become a spent conviction pursuant to section 6.

(4) However, for section 6(2), the period commences immediately after the date of conviction for the subsequent offence.

PART 6 – AMENDMENT OF *DIRECTOR OF PUBLIC PROSECUTIONS ACT*

26. Principal Act amended

This Part amends the *Director of Public Prosecutions Act*.

27. Repeal and substitution of section 32

Section 32 –

repeal, substitute

32. Delegation

The Director may, in writing, delegate to any suitable person any of the Director's powers and functions under this or any other Act.

PART 7 – AMENDMENT OF *INTERPRETATION ACT*

28. Principal Act amended

This Part amends the *Interpretation Act*.

29. Amendment of section 18 (Definitions of government expressions)

(1) Section 18, definition of "Consolidated Revenue Account" –

omit

(2) Section 18 –

insert (in alphabetical order)

"Central Holding Authority" means the Central Holding Authority established under the *Financial Management Act*;

"Consolidated Revenue Account" means the Central Holding Authority;

"law of the Territory" means –

- (a) an Act;
- (b) an instrument of a legislative or administrative character;
- (c) an existing law of the Territory within the meaning of section 57 of the *Northern Territory (Self-Government) Act 1978* (Cth) that is not a law referred to in paragraph (a) or (b); or
- (d) the common law;

"police officer" means a member of the Police Force;

"public sector employee" means an employee within the meaning of the *Public Sector Employment and Management Act*;

"sitting day", of the Legislative Assembly, means a day on which the Assembly meets;

"State" means a State of the Commonwealth;

"table", in the Legislative Assembly, means to lay before the Assembly;

"Territory" means a Territory of the Commonwealth;

"the Agency" means the Agency administering the provision of the Act in which the expression occurs;

"the Chief Executive Officer" means the Chief Executive Officer of the Agency administering the provision of the Act in which the expression occurs;

"the Regulations" means the Regulations made under the Act in which the expression occurs;

"this Act" includes an instrument of a legislative or administrative character under the Act in which the expression occurs;

30. Amendment of section 19 (Definitions generally)

- (1) Section 19, definitions of "AFIC (NT) Code", "AFIC (NT) Regulations", "Financial Institutions (NT) Code" and "Financial Institutions (NT) Regulations" –

omit

- (2) Section 19 –

insert (in alphabetical order)

"contravene" includes fail to comply with;

"public holiday" means a day declared to be a public holiday under the *Public Holidays Act*;

"regulate" includes prohibit;

31. Repeal and substitution of section 21

Section 21 –

repeal, substitute

21. By, under or pursuant to Act

In an Act, "by", "under", "pursuant to" or "in pursuance of" that Act or another Act means by, under, pursuant to or in pursuance of that Act or other Act or an instrument of a legislative or administrative character under that Act or other Act.

32. Repeal and substitution of section 24

Section 24 –

repeal, substitute

24. Gender and number

(1) In an Act, words indicating a gender include each other gender.

(2) In an Act –

(a) words in the singular include the plural; and

(b) words in the plural include the singular.

24A. Range of numbers, words or other things

If an Act refers to a range of numbers, words or other things, the numbers, words or things indicating the beginning and end of the range are included in the range.

Examples for section 24A –

1. *A reference to sections 56 to 60 includes sections 56 and 60.*
2. *A reference to all the words from "eagle" to "kite" includes "eagle" and "kite".*
3. *A reference to Monday to Friday includes Monday and Friday.*

33. Amendment of section 28 (Reckoning of time)

Section 28(3) –

omit, substitute

(3) In an Act, a reference to time must be read as a reference to standard time declared by section 3 of *The Standard Time Act, 1898* (SA) as it applies in the Territory.

(4) A reference in an Act to a thing existing or having effect from time to time is a reference to the thing existing or having effect at any time.

(5) A reference in an Act to a thing existing or having effect for the time being is a reference to the thing existing or having effect at that time.

34. Amendment of section 38C (Penalties at foot of sections and subsections)

After section 38C(1) –

insert

(1A) For subsection (1), a penalty is taken to be at the foot of a section or subsection even if an example or note appears after the penalty.

35. Repeal and substitution of section 42

Section 42 –

repeal, substitute

42. How power may be exercised

(1) A power under an Act to make, grant or issue an instrument of a legislative or administrative character may be exercised –

- (a) in whole or in part;
- (b) subject to any conditions, limitations or qualifications specified in the instrument;
- (c) to make different provision in relation to different matters or classes of matters; or
- (d) to apply differently by reference to exceptions or factors specified in the instrument.

(2) The power is not limited to making provision in relation to a particular matter or a particular aspect of a matter merely because the Act makes provision in relation to another matter or another aspect of the matter.

(3) If the power may be exercised to prescribe penalties not exceeding a specified amount or period of imprisonment, the power does not prevent the instrument from requiring the making of a statutory declaration.

(4) This section applies in relation to a power whether exercised before or after the commencement of this section.

36. Amendment of section 46 (Power to authorise another person to exercise power or perform function)

Section 46(3) –

omit, substitute

- (3) Authority may be conferred pursuant to subsection (1) on –
- (a) a person by name;
 - (b) a person by reference to the office, position or designation held or occupied by the person; or
 - (c) a person from time to time holding, acting in or performing the duties of a named office, designation or position.

37. Repeal and substitution of section 55

Section 55 –

repeal, substitute

55. Headings, schedules, examples and notes

- (1) The following are parts of an Act:
- (a) headings to Chapters, Parts, Divisions and Subdivisions of the Act;
 - (b) schedules to the Act;
 - (c) examples in the text of the Act;
 - (d) notes in the text of the Act.
- (2) An example or note in the text of an Act is part of the provision of the Act to which it relates.
- (3) The following are not parts of an Act:
- (a) headings to sections of the Act;
 - (b) marginal notes, footnotes, endnotes and any other notes that are not in the text of the Act.

38. New section 57A

After section 57, in Part VI –

insert

57A. Amendment of instruments by Act

(1) If an instrument of a legislative or administrative character under an Act ("the parent Act") has been amended by an Act, the instrument may be amended, varied, repealed, rescinded or revoked by an instrument of a legislative or administrative character under the parent Act.

(2) Subsection (1) applies in relation to amendments effected before or after the commencement of this section.

39. New sections 62C and 62D

After section 62B in Part VII, Division 1 –

insert

62C. Changes in drafting practice do not affect meaning

(1) Subsection (2) applies if –

- (a) a provision of an Act expresses an idea in particular words; and
- (b) a provision of the Act enacted later appears to express the same idea in different words for the purpose of implementing a different legislative drafting practice.

(2) The ideas must not be taken to be different merely because different words are used.

62D. Examples

If a provision of an Act includes an example –

- (a) the example is not exhaustive;
- (b) the example does not limit or extend the meaning of the provision; and
- (c) if the example is inconsistent with the provision, the provision prevails to the extent of the inconsistency.

PART 8 – AMENDMENT OF *LAND TITLE ACT*

40. Principal Act amended

This Part amends the *Land Title Act*.

41. Amendment of section 210 (Registrar-General's directions)

Section 210(5) and (6) –

omit, substitute

(5) Directions take effect on the date the Registrar-General gives notice in the *Gazette* that the directions have been issued.

(6) The notice must include advice that the directions are available for inspection by members of the public at the Land Titles Office, without charge, during normal office hours.

(7) The Registrar-General must comply with any direction from the Minister concerning an amendment to the Registrar-General's directions.

PART 9 – AMENDMENT OF *LAW OF PROPERTY ACT*

42. Principal Act amended

This Part amends the *Law of Property Act*.

43. Amendment of section 215 (Presumption of death)

Section 215(2) –

omit, substitute

(2) A will, trust, settlement, disposition, appointment or other instrument by which property devolves on the death of a person does not take effect unless a court of competent jurisdiction of the Commonwealth or a State or Territory has, on the basis of the criteria in subsection (1), made a finding that has the effect of presuming the person to be dead.

PART 10 – AMENDMENT OF *LEGAL PRACTITIONERS ACT*

44. Principal Act amended

This Part amends the *Legal Practitioners Act*.

45. Repeal and substitution of section 6A

Section 6A –

repeal, substitute

6A. Crown bound

This Act (other than Parts VII, VIII, VIIIA, IX, X, XIA and XII) binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

PART 11 – AMENDMENT OF *REGISTRATION OF INTERESTS IN MOTOR VEHICLES AND OTHER GOODS ACT*

46. Principal Act amended

This Part amends the *Registration of Interests in Motor Vehicles and Other Goods Act*.

47. New sections 14C and 14D

After section 14B in Part III –

insert

14C. Priority of registrable interests

(1) Subject to section 14A and subsection (3) –

(a) a registered interest ranks in priority over any unregistered interest with respect to all debts and other pecuniary obligations (including contingent obligations) and all other obligations secured under the registered interest whenever arising; and

(b) registered interests rank in priority in the order in which they are registered with respect to all debts and other pecuniary obligations (including contingent obligations) and all other obligations respectively secured under the registered interests whenever arising.

(2) If the creditor in whom a registrable interest is vested (whether or not it is a registered interest) takes possession of the goods, that registrable interest ranks in priority over any registered interest with respect to those goods that was registered after possession of the goods was taken.

(3) In this section –

"unregistered interest" means a registrable interest that is not registered.

14D. Effect on priorities of agreements and Corporations Act 2001

The order of priority of registrable interests established by this Act is subject to any express contrary provision of the Corporations Act 2001 and to any agreement between the creditors under the registrable interests concerned.

PART 12 – AMENDMENT OF *SENTENCING ACT*

48. Principal Act amended

This Part amends the *Sentencing Act*.

49. Amendment of section 11 (Release on bond without conviction)

Section 11(2) and (3) –

omit

50. Amendment of section 13 (Release on bond following conviction)

Section 13(2) and (3) –

omit

51. Amendment of section 15 (Breach of order for release of bond)

After section 15(3B) –

insert

(3C) If the Supreme Court is satisfied an offender who is before that Court has failed without reasonable excuse to comply with a condition of an order made by the Court of Summary Jurisdiction under section 11 or 13 –

(a) for subsection (3A), the Supreme Court is taken to have made the order; and

(b) the Supreme Court may deal with the offender under this section.

52. Amendment of section 34 (Community work order)

Section 34(3) –

omit

53. Amendment of section 43 (Breach of order suspending sentence)

After section 43(4C) –

insert

(4D) If the Supreme Court is satisfied in respect of an offender before that Court that, during the operational period of a suspended sentence imposed on the offender by the Court of Summary Jurisdiction, the offender committed another offence against a law in force in the Territory or elsewhere that is punishable by imprisonment –

- (a) for subsection (4A), the Supreme Court is taken to have imposed the suspended sentence; and
- (b) the Supreme Court may deal with the offender under this section.

(4E) If the Supreme Court is satisfied in respect of an offender before that Court that the offender has breached a condition of an order made by the Court of Summary Jurisdiction suspending a sentence imposed on the offender –

- (a) for subsection (4B), the Supreme Court is taken to have made the order; and
- (b) the Supreme Court may deal with the offender under this section.

54. Amendment of section 44 (Home detention order)

Section 44(4) and (5) –

omit

55. Repeal and substitution of Part 6, Division 1 heading

Part 6, Division 1, heading –

omit, substitute

Division 1 – Conditions, requirements and signing of orders

56. New section 102A

After section 102 in Part 6, Division 1 –

insert

102A. Signing of orders

- (1) This section applies to the following orders:

Justice Portfolio (Miscellaneous Amendments) Act 2005

- (a) an order made under section 11, 13, 34, 40, 44 or 78K;
- (b) an order varying or confirming an order referred to in paragraph (a).

(2) On the making of the order, the offender must not leave the precincts of the court without signing the order.

(3) A police officer may, without a warrant, arrest an offender who the member suspects, on reasonable grounds, has failed to comply with subsection (2).

PART 13 – REPEAL OF ACTS

57. Repeals

The following Acts are repealed:

- (a) *Prisons (Correctional Services) Amendment Act 2001* (Act No. 21 of 2001);
 - (b) *Validation (Chief Magistrate) Act 2001* (Act No. 57 of 2001).
-

SCHEDULE

Section 23

FURTHER AMENDMENTS OF *CONSUMER AFFAIRS AND FAIR TRADING ACT*

| Provision | Amendment | |
|--|--|--------------------------|
| | omit | substitute |
| Sections 87(1), 89(1)(a), 90, 91(1), 92(b), 93(1) and (3), 94(1), 95(1), (2), (3) and (4) and 96(1)(a) | Division 1 of Part 5 (all references) | Part 5, Division 1 or 1A |