

NORTHERN TERRITORY OF AUSTRALIA
JUSTICE LEGISLATION AMENDMENT ACT (NO. 2) 2006

Act No. 35 of 2006

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 35 of 2006

AN ACT

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

[Assented to 3 November 2006]
[Second reading 30 August 2006]

The Legislative Assembly of the Northern Territory enacts as follows:

PART 1 – PRELIMINARY MATTERS

1. Short title

This Act may be cited as the *Justice Legislation Amendment Act (No. 2) 2006*.

PART 2 – AMENDMENT OF ASSOCIATIONS ACT

2. Act amended

This Part amends the *Associations Act*.

3. New section 13A

After section 13

insert

13A. Prohibition on disbursing profits or assets to members

(1) This section does not apply to an incorporated trading association.

(2) An incorporated association must not distribute profits, or dispose of assets, of the association to its members.

(3) Subsection (2) does not apply to:

(a) reasonable remuneration of a member of the association for work done by the member:

(i) for or on behalf of the association; and

(ii) at the request of the association; or

(b) any payments or dispositions incidental to activities carried on by the association in accordance or consistently with its objects.

(4) In this section:

"member", of an association, includes:

(a) a former member of the association; and

(b) an associate of a member of the association; and

(c) an associate of a former member of the association.

4. Amendment of section 37 (Special resolutions)

Section 37, at the end

insert

Note for paragraph (b)

A special resolution must be passed by three-quarters of the votes actually cast (whether directly or by proxy) at the meeting. A special resolution is not required to be passed by three-quarters of all members eligible to vote.

5. Amendment of section 72 (Application of Corporations Act 2001 to winding up)

(1) Section 72, heading

omit

winding up

substitute

external administration

- (2) Section 72

omit

winding up

substitute

external administration

**PART 3 – AMENDMENT OF COMMERCIAL AND PRIVATE AGENTS
LICENSING ACT**

6. Act amended

This Part amends the *Commercial and Private Agents Licensing Act*.

7. Amendment of section 17K (Commissioner may vary, suspend or cancel licence)

- (1) Section 17K(1)(a)

omit, substitute

(a) a licence is obtained by misrepresentation; or

(ab) an agent has used harassing tactics when performing a function as an agent; or

- (2) Section 17K(1)(d), at the end

insert

or

8. New section 44

After section 43

insert

44. Offence to use harassing tactics

An agent must not use harassing tactics when performing a function as an agent.

Maximum penalty: 500 penalty units.

PART 4 – AMENDMENT OF *DOMESTIC VIOLENCE ACT*

9. Act amended

This Part amends the *Domestic Violence Act*.

10. Repeal and substitution of section 7

Section 7

repeal, substitute

7. Power to remove and detain

- (1) This section applies if a police officer believes:
 - (a) reasonable grounds exist for making a restraining order against a person; and
 - (b) it is necessary to remove the person to avert an imminent risk of personal injury to someone else for whose protection the order is to be sought or made.
- (2) The police officer may:
 - (a) enter premises on or in which the officer believes on reasonable grounds the person to be; and
 - (b) take the person into custody; and
 - (c) remove the person to the nearest police station or other place where the person can be conveniently detained until a restraining order is made and served.
- (3) However, the person must not be detained for more than 4 hours after the person was first taken into custody.
- (4) When exercising the power under subsection (2), the police officer:
 - (a) may apply reasonable force; and
 - (b) has the same power and protection as a police officer has when arresting a person for an offence.

11. Amendment of section 10 (Breach of order)

(1) Section 10(1)

omit, substitute

(1) Subject to subsections (1D) and (3), a person is guilty of a regulatory offence if:

- (a) there is a restraining order in force against the person; and
- (b) the person has been served with a copy of the order; and
- (c) the person contravenes the order.

(2) After section 10(1C)

insert

(1D) If a restraining order has been varied, the person against whom the order is made is not guilty of an offence against subsection (1) for a contravention of the order as varied unless:

- (a) the person has been served with a copy of the order as varied; or
- (b) if the person has not been served with a copy of the order as varied – the person's conduct would also constitute a contravention of the order in the form in which it was last served on the person.

(3) Section 10(2)

omit

For the purposes of subsection (1)

substitute

For subsections (1)(a) and (1D)(a)

PART 5 – AMENDMENT OF *INTERPRETATION ACT*

12. Act amended

This Part amends the *Interpretation Act*.

13. Repeal and substitution of section 6B

Section 6B

repeal, substitute

6B. References to commencement

A reference in an Act to the commencement or the day or time of commencement of the Act or part of the Act, or another Act or part of another Act, (the "provisions concerned") is a reference to:

- (a) if the provisions concerned commence on a single day or at a particular time – that day or time; or
- (b) if different parts of the provisions concerned commence on different days or at different times – the last of those days or times.

14. Amendment of section 17 (Definitions)

Section 17

insert (in alphabetical order)

"see", when used to define a term, means the term has the same meaning as in the law or provision mentioned in that definition;

15. New section 51

After section 50

insert

51. Reference to Act includes reference to statutory instruments under Act

(1) In an Act, a reference (either generally or specifically) to a law or statutory instrument, or a provision of a law or statutory instrument, includes a reference to the statutory instruments in force under the law, instrument or provision.

(2) In this section:

"law" includes an Act of the Commonwealth or a State or Territory.

16. Amendment of section 57 (Numbering of subordinate legislation)

Section 57(2)

omit

all the words from "after" to "2006"

17. Amendment of Part VII, Division 2 heading

Part VII, Division 2 heading

omit

and other papers

18. New sections 65C and 65D

After section 65B

insert

65C. Subordinate legislation may provide for exemption, waiver or refund of fees

If a power is conferred under an Act for subordinate legislation to prescribe a fee, the power includes power to provide for the following:

- (a) the exemption from payment of the fee;
- (b) the waiver (wholly or partly) of the fee;
- (c) the refund (wholly or partly) of the fee.

65D. Subordinate legislation may provide for infringement notice offences

If an Act authorises the making of subordinate legislation under the Act, the power enables subordinate legislation to be made providing for:

- (a) the payment of a prescribed amount instead of a penalty that may otherwise be imposed for an offence against the Act or the subordinate legislation; and
- (b) the service of a notice relating to payment of the amount on a person alleged to have committed the offence; and
- (c) the particulars to be included in the notice.

19. Repeal of section 67

Section 67

repeal

20. New section 67

Before section 68 in Part VII, Division 3

insert

67. Tabling documents in Legislative Assembly

(1) A document is tabled in the Legislative Assembly under an Act if the document is:

- (a) tabled in the Assembly under the Standing Orders of the Assembly;
or
- (b) delivered to the Clerk of the Assembly and recorded in the Minutes of Proceedings of the Assembly.

(2) The document must be tabled under subsection (1) within the period specified in the Act.

(3) If the Act provides for a specified person to table the document, the document may be tabled by anyone acting for the person.

(4) In this section:

"Act" includes the *Northern Territory (Self-Government) Act 1978* (Cth);

"document" includes a report and a statutory instrument.

21. Further amendments

The Schedule has effect.

PART 6 – AMENDMENT OF JUSTICES ACT

22. Act amended

This Part amends the *Justices Act*.

23. Amendment of section 23 (Summons to witness)

Section 23

omit (all references)

information or complaint

substitute

information, complaint or application

PART 7 – AMENDMENT OF *LEGAL AID ACT*

24. Act amended

This Part amends the *Legal Aid Act*.

25. Amendment of section 8 (Duties of Commission)

(1) Section 8

omit

shall –

substitute

must do the following:

(2) Section 8(k), at the end

omit

and

(3) Section 8, at the end

insert

(n) initiate and carry out educational programs designed to promote an understanding by the public (and by sections of the public having special needs in this respect) of their rights, powers, privileges and duties under the laws in force in the Territory.

PART 8 – AMENDMENT OF SUPREME COURT ACT

26. Act amended

This Part amends the *Supreme Court Act*.

27. Repeal of section 31

Section 31

repeal

28. Amendment of section 51 (Right of appeal)

Section 51(1)

omit

the Master or a referee,

29. Amendment of section 52 (Exercise of appellate jurisdiction)

Section 52(3)

omit

, subject to section 53,

30. Repeal and substitution of section 53

Section 53

repeal, substitute

53. Appeal from interlocutory judgment

(1) A party to a proceeding may not appeal under section 51(1) from an interlocutory judgment except by leave of the Court of Appeal.

(2) An application for leave to appeal from an interlocutory judgment must be determined in the first instance on the papers by the Court of Appeal consisting of one Judge.

(3) If the application is refused, the party is entitled to have the application determined by the Court of Appeal consisting of not less than 3 Judges.

(4) An appeal from an interlocutory judgment of the Master or a referee must be heard by the Court of Appeal consisting of:

(a) one Judge – if leave to appeal is granted under subsection (2); or

- (b) 3 Judges – if leave to appeal is granted under subsection (3).

31. Amendment of section 55 (Form of judgment on appeal)

- (1) Section 55(2)(a), at the end

insert

and

- (2) Section 55(2)(b) and (c)

omit, substitute

- (b) may set aside the judgment appealed from, in whole or in part, and substitute its own judgment; and
- (c) may remit the proceeding for further hearing and determination, subject to the directions the Court of Appeal considers appropriate, to:
- (i) for an appeal from the Master or referee – the Master or referee (as the case may be); or
- (ii) for an appeal from the Court – the Court consisting of the Judge who gave the judgment; and
- (d) may set aside a verdict or finding of a jury in a civil proceeding and enter a judgment despite the verdict or finding; and

32. Repeal and substitution of section 87

Section 87

repeal, substitute

87. Regulations

- (1) The Administrator may make regulations under this Act.
- (2) The regulations may prescribe fees payable under this Act.

PART 9 – AMENDMENT OF UNIT TITLES ACT

33. Act amended

This Part amends the *Unit Titles Act*.

34. Amendment of section 4 (Interpretation)

- (1) Section 4(1), definition of "building lot", after "in accordance"

insert

with

- (2) Section 4(1)

insert (in alphabetical order)

"building management corporation" means a body corporate constituted under section 28(1);

"estate management corporation" means a body corporate constituted under section 27(1) in relation to an estate development;

- (3) Section 4(9)(b)

omit

unit plan

substitute

units plan

35. Amendment of Part IV heading

Part IV, heading

omit

UNIT PLANS

substitute

UNITS PLANS

36. Amendment of section 26ZI (Lodging of building development plan)

Section 26ZI(3)

omit

is to be in the prescribed form and

substitute

must comply with the prescribed requirements and must be

37. Amendment of section 26ZM (Failure of developer to complete building development)

- (1) Section 26ZM(1)(a), after "parties,"

insert

the developer,

- (2) Section 26ZM(2), all the words after "cannot be reached,"

omit, substitute

anyone who may be a party to that agreement may apply to the Minister for the disclosure statement to be varied.

- (3) Section 26ZM(3)

omit

consent to a disclosure statement being changed –

substitute

allow the application:

- (4) Section 26ZM(3)(a)

omit

change;

substitute

variation; and

38. Amendment of section 26ZS (Easements created by this Act)

Section 26ZS(2)

omit

are to be taken

substitute

is taken

39. Amendment of section 26ZU (Conversion of units into building lots)

Section 26ZU(5)(a), all the words after "units"

omit, substitute

is taken to be a body corporate constituted under section 28; and

40. Amendment of section 27 (Incorporation of proprietors of units)

(1) Section 27, heading

omit, substitute

Body corporate – units plan other than building development plan

(2) Section 27(2)

omit

a corporation referred to in subsection (1)

substitute

the body corporate

(3) After section 27(2)

insert

(3) However, if a new body corporate ("the new corporation") is constituted under this Act because of a subdivision of a part of the parcel to which the units plan relates:

(a) the new corporation must be regarded as a member of the body corporate ("the parent corporation") constituted on the registration of the units plan; and

(b) the proprietors of the units resulting from the subdivision must not be regarded as members of the parent corporation.

(4) If subsection (3) applies, a reference in this Part to a proprietor constituting the parent corporation:

(a) includes a reference to the new corporation; and

(b) does not include a reference to the proprietors mentioned in subsection (3)(b).

(5) In this section:

- (a) a reference to a units plan does not include a reference to a building development plan; and
- (b) a reference to a body corporate does not include a reference to a building management corporation.

41. Amendment of section 28 (Incorporation of proprietors of building lots)

- (1) Section 28, heading

omit, substitute

Body corporate – building development plan

- (2) Section 28(2)

omit

a body corporate

substitute

the body corporate

- (3) Section 28(3)

omit

A name under subsection (2) –

substitute

That other name:

- (4) Section 28(4)

omit

a corporation referred to in subsection (1)

substitute

the body corporate

(5) After section 28(4)

insert

(5) However, if a new body corporate ("the new corporation") is constituted under this Act because of a subdivision of a part of the parcel to which the building development plan relates:

(a) the new corporation must be regarded as a member of the body corporate ("the parent corporation") constituted on the registration of the building development plan; and

(b) the proprietors of the units resulting from the subdivision must not be regarded as members of the parent corporation.

(6) If subsection (5) applies, a reference in this Part to a proprietor constituting the parent corporation:

(a) includes a reference to the new corporation; and

(b) does not include a reference to the proprietors mentioned in subsection (5)(b).

42. Amendment of section 59 (First annual general meeting)

Section 59(3)(b)

omit

unit plan

substitute

units plan

43. New Part X

After section 110

insert

**PART X – TRANSITIONAL MATTERS FOR JUSTICE LEGISLATION
AMENDMENT ACT (NO. 2) 2006**

111. Body corporate incorporated under section 27 or 28

(1) This section applies in relation to the following amendments made by the *Justice Legislation Amendment Act (No. 2) 2006*:

- (a) the amendment to insert in section 4(1) of this Act the definitions of "building management corporation" and "estate management corporation";
- (b) the amendments to sections 27 and 28 of this Act.

(2) The amendments have effect in relation to a body corporate constituted under section 27 or 28 before, on or after the commencement of those amendments.

PART 10 – AMENDMENT OF *YOUTH JUSTICE ACT*

44. Act amended

This Part amends the *Youth Justice Act*.

45. Amendment of section 5 (Interpretation)

Section 5(1), definition of "responsible adult"

omit, substitute

"responsible adult", in respect of a youth, means a person who exercises parental responsibility for the youth, whether the responsibility is exercised in accordance with contemporary social practice, Aboriginal customary law and Aboriginal tradition or in any other way;

46. Amendment of section 65 (Court may remand youth)

- (1) Section 65(3)

omit

for detention or imprisonment of the youth

substitute

remanding the youth in custody

- (2) After section 65(3)

insert

Note for subsection (3)

Subsection (3) does not prevent the Court from making consecutive orders remanding the youth in custody that result in the youth remaining in custody in excess of 15 days.

47. New section 98A

After section 98, in Part 6, Division 7

insert

98A. Procedural matters

(1) If the Court makes an order suspending the sentence imposed on a youth, the youth must sign the order to signify acceptance of the terms before leaving the precincts of the Court.

(2) If the Court makes an order suspending the sentence imposed on a youth, it must ensure that a copy of the order is:

- (a) given to the youth; and
- (b) given to a responsible adult in respect of the youth, if in attendance at the Court; and
- (c) sent to the Director.

48. Repeal and substitution of section 136

Section 136

repeal, substitute

136. Certain findings of guilt not to be mentioned

(1) If a court finds a youth guilty of an offence but does not record a conviction, no evidence or mention of the offence may be made to, nor may the offence be taken into account by, a court other than the Youth Justice Court.

- (2) Subsection (1):
 - (a) applies whether the offence was committed, or the finding of guilt made, before or after the commencement of this section; but
 - (b) does not apply if the offence was committed after the youth had turned 15 years of age.

PART 11 – AMENDMENT OF YOUTH JUSTICE REGULATIONS

49. Amendment of Schedule

Schedule, Form 10, before "*Notes*"

insert

I, [*name of youth*]

fully understand the terms of this order. I accept those terms and will comply with the order.

[*Signed*]

Signed at [*place*]

on [*date*]

in the presence

of

Justice of the Peace

PART 12 – EXPIRY OF ACT

50. Expiry

This Act expires on the day after it commences.

SCHEDULE

Section 21

FURTHER AMENDMENTS OF *INTERPRETATION ACT*

Provision	Amendment	
	omit	substitute
Section 4, heading	regulations, &c.	statutory instruments
Section 6(1) and (2)	comes into operation	commences
Section 6(3)	come into operation	commence
	comes into operation	commences
Section 7, heading	, &c.	etc.
Section 8(1) and (2)(a)	comes into operation	commences
Section 9	come into operation (all references)	commence
	comes into operation	commences
Section 14	come into operation	commence
Sections 33, 38 and 38A, heading	, &c.	etc.
Section 38DB, heading	Corporation	Body corporate
Sections 40, 41, 48A and 59A, heading	, &c.,	etc.
Section 61, heading	regulations, &c.	statutory instruments
Section 63, heading	regulations, &c.	subordinate legislation