

Serial 49
Justice Legislation Amendment Bill 2006
Dr Toyne

**A BILL
for
AN ACT**

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

NORTHERN TERRITORY OF AUSTRALIA
JUSTICE LEGISLATION AMENDMENT ACT 2006

Act No. [] of 2006

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2006

AN ACT

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

[Assented to [] 2006]
[Second reading [] 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 2006*.

2. Commencement

(1) Parts 2 and 4 (other than sections 13 and 14) come into operation on the day on which the Administrator's assent to this Act is declared.

(2) Sections 13 and 14 come into operation on the day on which section 66 of the *Construction Contracts (Security of Payments) Act* commences.

(3) Parts 7 and 11 come into operation on 1 July 2006.

(4) 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 AGENTS LICENSING ACT

3. Act amended

This Part amends the *Agents Licensing Act*.

4. Repeal and substitution of Part XII, Division 1 heading

Part XII, Division 1, heading

repeal, substitute

Division 1 – Educational schemes and grants to industry bodies

5. New section 93

After section 92

insert

93. Grants to industry bodies

(1) The Minister may determine that an amount of the money of the Fund be paid to an industry body if the Minister is satisfied the body has expended, or will expend, money for one or more of the following purposes:

- (a) improving regulatory compliance;
- (b) improving the quality of services provided by persons regulated under this Act.

(2) The Minister must not make the determination unless the Minister has first consulted with:

- (a) the Fund regarding the ability to pay the money; and
- (b) the industry body to whom it is proposed to pay the money regarding the purpose to which the money has been, or is to be, put; and
- (c) the Board; and
- (d) the Consumer Affairs Council established by section 13 of the *Consumer Affairs and Fair Trading Act*.

(3) The determination may impose terms and conditions for the payment of the money to the industry body.

(4) An industry body may apply to the Minister for payment of money from the Fund.

- (5) The application must:
- (a) specify the period during which the body has expended, or proposes to expend, money for the purposes referred to in subsection (1)(a) or (b); and
 - (b) include details of the money expended, or proposed to be expended, including the purpose to which it has been, or is to be, put.

- (6) In this section:

"industry body" means an industry representative body that has a role in improving the service the industry provides.

Examples for definition of "industry body" in subsection (6)

1. *Real Estate Institute of the Northern Territory.*
2. *Australian Institute of Conveyancers.*

6. Amendment of section 95B (Moneys of fund)

After section 95B(2)(d)

insert

- (e) the amount of money determined by the Minister to be paid to an industry body under section 93(1);

PART 3 – AMENDMENT OF ASSOCIATIONS ACT

7. Act amended

This Part amends the *Associations Act*.

8. Amendment of section 3 (Excluded matter for Corporations Act 2001)

- (1) Section 3(1)

omit

in subsection (2)

substitute

in subsections (2) and (2A)

(2) Section 3(2)

omit

provisions referred to in subsection (1) are the following:

substitute

following provisions are not excluded matters for section 5F of the Corporations Act 2001:

(3) After section 3(2)

insert

(2A) If consent under section 56(2), or a direction under section 63(1)(b), is given to an association to apply to become incorporated under the Corporations Act 2001, that Act applies to the extent necessary for the association to make the application and to become incorporated under Chapter 5B of that Act.

9. Amendment of section 4 (Definitions)

Section 4, definition of "committee"

omit, substitute

"committee", for an association, means:

- (a) the committee (however described or comprised) established under the constitution of the association; or
- (b) the person having the management of the affairs of the association;

10. Amendment of section 46 (Audits of tier 1 incorporated association)

Section 46(1)(b) and (c)

omit

a partner

substitute

the spouse or de facto partner or a business partner

PART 4 – AMENDMENT OF *CONSTRUCTION CONTRACTS (SECURITY OF PAYMENTS) ACT*

11. Act amended

This Part amends the *Construction Contracts (Security of Payments) Act*.

12. Amendment of section 45 (Determination may be enforced as judgment)

(1) Section 45(1)

omit, substitute

(1) A determination may be enforced as a judgment for a debt in a court of competent jurisdiction.

(2) After section 45(2)

insert

(3) Subsection (1) applies regardless of whether the determination is made before or after the commencement of this subsection.

13. Repeal and substitution of Part 7 heading

Part 7, heading

repeal, substitute

PART 7 – REPEALS AND TRANSITIONAL MATTERS

14. New section 67

After section 66

insert

67. Transitional provision

(1) This section applies to a contract made before the repeal of the repealed Act.

(2) The repealed Act continues to apply to the contract as if it had not been repealed.

(3) This section does not limit section 12 of the *Interpretation Act*.

(4) In this section:

"repealed Act" means the *Workmen's Liens Act* as in force immediately before the commencement of section 66.

PART 6 – AMENDMENT OF *CO-OPERATIVES ACT*

15. Act amended

This Part amends the *Co-operatives Act*.

16. Amendment of section 9 (Exclusion of operation of Corporations Act 2001)

(1) Section 9(1)

omit

in subsection (2)

substitute

in subsections (2) and (2A)

(2) After section 9(2)

insert

(2A) If a co-operative applies under section 301(a) to be incorporated under the Corporations Act 2001, that Act applies to the extent necessary for the co-operative to make the application and become incorporated under Chapter 5B of that Act.

PART 7 – AMENDMENT OF *INTERPRETATION ACT*

17. Act amended

This Part amends the *Interpretation Act*.

18. Repeal and substitution of section 5

Section 5

repeal, substitute

5. When Acts commence

If an Act or provision of an Act commences on a particular day, it commences at the beginning of that day.

19. Amendment of section 6 (Commencement of Acts)

Section 6(4)

omit

20. New sections 6A and 6B

After section 6

insert

6A. Commencement notices

If an Act is expressed to commence on a day fixed by *Gazette* notice:

- (a) a single day or time may be fixed; or
- (b) different days or times may be fixed for different provisions of the Act.

6B. General references to commencement

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

- (a) if the provisions of the Act concerned (other than those providing for its long and short titles and commencement) commence, or are required to commence, on a single day or at a single time – the commencement of the remaining provisions; or
- (b) if paragraph (a) does not apply and the reference is in a provision of the Act concerned – the commencement of the provision; or
- (c) in any other case – the commencement of the relevant provision of the Act concerned.

21. Amendment of section 8 (Exercise of powers before commencement)

After section 8(1)

insert

(1A) Subsection (1B) applies if a power to appoint a person to an office or to establish an entity is exercised under subsection (1).

(1B) For the purposes mentioned in subsection (1):

- (a) the person appointed may act in the office; or

- (b) the entity may meet and exercise its powers and perform its functions.

22. Repeal of section 10

Section 10

repeal

23. Repeal and substitution of sections 17 to 19

Sections 17 to 19

repeal, substitute

17. Definitions

In an Act:

"Act" means an Act passed by the Legislative Assembly and assented to under the *Northern Territory (Self-Government) Act 1978* (Cth), and includes:

- (a) a Territory Ordinance; and
- (b) an Ordinance or Act of South Australia in its application to the Territory; and
- (c) a part of an Act;

"Acting Administrator" means a person appointed under the *Northern Territory (Self-Government) Act 1978* (Cth) to act in the office of Administrator;

"ADI" means an authorised deposit-taking institution within the meaning of the *Banking Act 1959* (Cth);

"Administrative Arrangements Order" has the meaning in section 35(1);

"Administrator" means the Administrator of the Territory, and includes an acting Administrator;

"adult" means an individual who is at least 18 years old;

"Agency" has the meaning in section 18A(1);

"Allocation" has the same meaning as in the *Financial Management Act*;

"ASIC" means the Australian Securities and Investments Commission continued in existence under the ASIC Act;

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"ASIC Act" means the *Australian Securities and Investments Commission Act 2001* (Cth);

"Attorney-General" has the same meaning as in section 7 of the *Law Officers Act*;

"Auditor-General" has the same meaning as in the *Audit Act*;

"bank" means an ADI that is permitted under the *Banking Act 1959* (Cth) to assume or use:

- (a) the word "bank", "banker" or "banking"; or
- (b) any other word (whether or not in English) that is of like import to a word mentioned in paragraph (a);

"bank cheque" or "banker's cheque" means a cheque that an ADI draws on itself;

"building society" means an ADI that is permitted under the *Banking Act 1959* (Cth) to assume or use:

- (a) the expression "building society"; or
- (b) any other expression (whether or not in English) that is of like import to the expression mentioned in paragraph (a);

"calendar month" means a period commencing at the beginning of any day of a named month and ending:

- (a) at the end of the day before the corresponding day of the next named month; or
- (b) if there is no such corresponding day – at the end of the next named month;

"calendar year" means the period of 12 months commencing on 1 January;

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

"Commissioner of Police" means the Commissioner of Police appointed or holding office under the *Police Administration Act*;

"committed for trial", in relation to a person, means:

- (a) committed to prison with a view to being tried before a judge and jury; or

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- (b) admitted to bail on a recognizance to appear and be tried before a judge and jury;

"Commonwealth" means the Commonwealth of Australia;

"Consolidated Revenue Account" means the Central Holding Authority;

"contravene" includes fail to comply with;

"Corporations Act 2001" means the *Corporations Act 2001* (Cth);

"court of competent jurisdiction" means a court having jurisdiction to hear and determine the legal proceeding mentioned in the Act in which the expression occurs;

"court of summary jurisdiction" means 2 justices of the peace or a magistrate sitting as a court for the making of summary orders or the summary punishment of offenders;

"credit union" has the same meaning as in section 47 of the *Financial Sector Reform (Northern Territory) Act*;

"Criminal Code" means the *Criminal Code Act*, Schedule 1;

"de facto partner" has the meaning in section 19A(3);

"de facto relationship" has the meaning in section 19A(3);

"department" means a department of the Public Service of the Territory;

"document" includes:

- (a) any of, or part of any of, the following things:
- (i) paper or other material on which there is writing;
 - (ii) a map, plan, drawing or photograph;
 - (iii) paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
 - (iv) an article or any material from which sounds, images or writings are capable of being reproduced with or without the aid of another article or device;
 - (v) an article on which information has been stored or recorded, either mechanically or electronically;
 - (vi) any other record or information; and

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- (b) a copy, reproduction or duplicate, or part of a copy, reproduction or duplicate, of a thing mentioned in paragraph (a);

"Electoral Commission" means the Northern Territory Electoral Commission established by the *Electoral Act*;

"Electoral Commissioner" means the person holding or occupying the office of Electoral Commissioner established by section 314 of the *Electoral Act*;

"estate" includes any estate or interest, charge, right, title, claim, demand, lien or encumbrance at law or in equity;

"Executive Council" means the Executive Council of the Territory;

"financial year" means the period of 12 months ending on 30 June;

"friendly society" has the same meaning as in section 48 of the *Financial Sector Reform (Northern Territory) Act*;

"function" includes duty;

"*Gazette*", "*Government Gazette*", "*Northern Territory Government Gazette*" or "*Gazette of the Northern Territory*" means the *Government Gazette of the Territory*;

"*Gazette* notice" means a notice published in the *Gazette*;

"Government Printer" includes a person printing with the authority of the Territory;

"husband" has the meaning in section 19A(2);

"Imperial Act" means an Act passed by the Parliament of the United Kingdom;

"indictable offence" includes an act or omission committed outside the Territory that would be an indictable offence if it were committed in the Territory;

"indictment" includes information;

"individual" means a natural person;

"infant" means a person who has not attained the age of 18 years;

"instrument of a legislative or administrative character" includes regulations, rules, by-laws, orders, determinations, proclamations,

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awards, documents and authorities made, granted or issued under a power conferred by an Act;

"Judge" means a Judge of the Supreme Court;

"Justice" means a justice of the peace;

"justice of the peace" means a justice of the peace within the meaning of the *Justices of the Peace Act*;

"land" includes all messuages, tenements and hereditaments, corporeal and incorporeal, of any tenure or description and whatever may be the estate or interest in the land;

"law of the Territory" means:

- (a) an Act; or
- (b) an instrument of a legislative character; or
- (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 mentioned in paragraph (a) or (b); or
- (d) the common law;

"legal practitioner" has the same meaning as in the *Legal Practitioners Act*;

"Legislative Assembly" means the Legislative Assembly of the Territory;

"Local Court" means the court established by the *Local Court Act*;

"magistrate" means a Magistrate within the meaning of the *Magistrates Act*;

"marriage" has the meaning in section 19A(2);

"medical practitioner" means a medical practitioner who has a right of practice under the *Health Practitioners Act*;

"member of the Police Force" means a member of the Police Force appointed or holding office under the *Police Administration Act*;

"minister" has the meaning in section 19(1);

"ministerial office" has the same meaning as in the *Northern Territory (Self-Government) Act 1978* (Cth);

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"month" means a calendar month;

"Northern Territory Government Account" means the official ADI account opened under the *Financial Management Act*;

"Ordinance" includes:

- (a) an Act; and
- (b) an Ordinance or Act of South Australia in its application to the Territory;

"Parliament" means the Legislative Assembly;

"party" includes a body politic and a body corporate;

"penalty unit" has the same meaning as in the *Penalty Units Act*;

"person" includes a body politic and a body corporate;

Note for definition of "person"

Section 24AA also deals with references to persons generally.

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

"prescribed" means prescribed by the Act in which the word is used or by a statutory instrument made, granted or issued under that Act;

"proclamation" means proclamation by the Administrator published in the *Gazette*;

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

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

"real property" includes a lease of land;

"Registrar-General" means the person holding or occupying the office of Registrar-General mentioned in section 5(1) of the *Registration Act*;

"regulatory offence" means an offence specified in an Act or subordinate legislation to be a regulatory offence;

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

"Speaker" means the Speaker of the Legislative Assembly;

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"spouse" has the meaning in section 19A(1);

"State" means a State of the Commonwealth;

"statutory corporation" means a corporation, commission or authority incorporated by name for a public purpose by a law of the Territory, but does not include a council within the meaning of the *Local Government Act* or the Authority or Council within the meaning of the *Jabiru Town Development Act*;

"statutory declaration" means a statutory declaration made in accordance with the *Oaths Act*;

"statutory instrument" means an instrument of a legislative or administrative character;

"stepchild" has the meaning in section 19A(4);

"step-relative" has the meaning in section 19A(5);

"subordinate legislation" means:

- (a) regulations, rules or by-laws to which section 63 applies; or
- (b) a statutory instrument that, under an Act, is an instrument to which section 63 applies;

"Supreme Court" means the Supreme Court of the Northern Territory of Australia established under the *Supreme Court Act*;

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

"Territory" means a Territory of the Commonwealth;

"the Agency" has the meaning in section 18A(2);

"the Chief Executive Officer" means the person holding or occupying the office of the Chief Executive Officer of the Agency administering the provision of the Act in which the expression occurs;

"the Minister" has the meaning in section 19(2);

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

"the Territory" means, according to the context, the body politic established by the *Northern Territory (Self-Government) Act 1978* (Cth) as the Northern Territory of Australia or the geographical area constituting the Northern Territory of Australia;

"this Act" includes a statutory instrument under the Act in which the expression occurs;

"Treasurer" means the Treasurer of the Northern Territory;

"Valuer-General" means the person holding or occupying the office of the Valuer-General mentioned in section 5(1) of the *Valuation of Land Act*;

"widow" has the meaning in section 19A(2);

"widower" has the meaning in section 19A(2);

"wife" has the meaning in section 19A(2).

18. Definitions to be read in context

Definitions in or applicable to an Act apply except so far as the context or subject matter otherwise indicates or requires.

18A. References relating to an Agency

(1) An Agency is a department or unit of a department, or other authority or body, nominated as an Agency in an Administrative Arrangements Order.

(2) A reference to "the Agency" in a provision of an Act is a reference to the Agency administering the provision in which the expression occurs.

(3) A reference to the Agency administering a provision of an Act or having responsibility for an area or activity of government is a reference to the Agency to which the administration of the provision or responsibility for the area or activity is allotted by an Administrative Arrangements Order or Act.

(4) A reference to a specified Agency (including a reference to an Agency that no longer exists) includes a reference to the department, authority or body to which the administration of the provision is allotted by an Administrative Arrangements Order or Act.

19. Ministerial references

(1) A minister is a person holding a ministerial office.

(2) A reference in an Act to "the Minister":

(a) is a reference to:

(i) the minister administering the Act in or for which the expression is used; or

(ii) if different ministers are administering the Act in different respects, each of the ministers to the extent the minister is administering it in the relevant respect; and

(b) includes a minister acting for the Minister.

(3) A reference to the minister administering a provision of an Act or having responsibility for an area or activity of government is a reference to the minister to whom the provision or responsibility for the area or activity is allotted by an Administrative Arrangements Order or Act.

(4) A reference in a provision of an Act to the Minister or a specified minister (including a reference to a minister that no longer exists) includes a reference to the minister to whom the administration of the provision is allotted by an Administrative Arrangements Order or Act.

(5) If a reference is made in a provision of an Act to "the Minister" and the administration of the provision has not been allotted to a minister by an Administrative Arrangements Order or Act, the reference is a reference to any minister.

24. Repeal and substitution of section 20

Section 20

repeal, substitute

20. Construction of statutory instruments

(1) Words, expressions and provisions in a statutory instrument have the same interpretation, application and effect as they have in the Act under which the instrument is made, granted or issued.

(2) A reference in a statutory instrument to "the Act" is a reference to the Act under which the instrument is made, granted or issued.

25. New section 24AA

After section 24A

insert

24AA. References to persons generally

(1) In an Act, a reference to a person generally includes a reference to a body politic and body corporate as well as an individual.

Examples of references to persons generally in subsection (1)

1. "anyone".

2. "no-one".
3. "party".
4. "someone".

(2) Subsection (1) is not displaced merely because there is an express reference to either an individual, body politic or body corporate elsewhere in the Act.

26. Repeal and substitution of section 25

Section 25

repeal, substitute

25. Service of documents

(1) A person may serve a document on an individual or body (the "recipient"):

- (a) by giving it to:
 - (i) if the recipient is an individual – the recipient; or
 - (ii) if the recipient is a body – an executive officer of the body; or
 - (iii) in any case – a person authorised by the recipient to receive the document; or
- (b) by sending it by prepaid post addressed to the recipient at the recipient's address; or
- (c) by sending it to the recipient by fax; or
- (d) by leaving it, addressed to the recipient, at the recipient's address with someone who appears to be at least 16 years old and appears to live or be employed there.

(2) A document served under subsection (1)(b) is taken to be served when it would have been delivered in the ordinary course of post.

(3) Subject to evidence to the contrary, a document served under subsection (1)(c) is taken to be served when it was sent to a current fax number of the recipient.

(4) A document served under subsection (1)(d) is taken to be served when it was left with the person mentioned in the subsection.

(5) This section has effect for the service of a document whether or not the word "serve" is used in the law providing for the service of the document.

(6) In this section:

"address", of a recipient, includes the latest home and business addresses of the recipient that are recorded for a law in force in the Territory;

"body" includes an incorporated body;

"document" includes a notice and any other thing that may be sent by a method mentioned in subsection (1);

"executive officer", of a body, means:

(a) for an Agency – the Chief Executive Officer of the Agency;
or

(b) otherwise – a person (however described) who is concerned with, or participates in, the body's management.

27. Repeal of section 31

Section 31

repeal

28. Repeal of section 34B

Section 34B

repeal

29. Amendment of section 35 (Administrative Arrangements Orders)

Section 35(2)

omit, substitute

(2) It is sufficient compliance with the requirement under subsection (1) to publish the order in the *Gazette* if notice of its making, and of the place where copies of it may be purchased, is published in the *Gazette*.

30. Repeal of section 36

Section 36

repeal

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

After section 38C(1)

insert

(1AA) Subsection (1) applies regardless of whether the penalty is expressed as a maximum penalty.

32. New sections 38DA to 38DC

After section 38D

insert

38DA. Fine in addition to or instead of imprisonment

(1) An offence against an Act that is punishable by a term of imprisonment only (other than life) is punishable in addition to or instead of imprisonment by a maximum fine worked out under subsection (2).

(2) The maximum fine is worked out by multiplying 100 penalty units by the term of imprisonment expressed in years or a fraction of a year if the term is less than 12 months.

38DB. Corporation fines under penalty provision

(1) This section applies to a provision prescribing a fine for an offence only if the provision does not expressly prescribe a fine for a body corporate different from the fine for an individual.

(2) The fine is taken only to be the fine for an individual.

(3) If a body corporate is found guilty of the offence, the court may impose a fine of an amount equal to 5 times the fine for an individual.

38DC. Body corporate fines under provision authorising subordinate legislation

(1) This section applies to a provision of an Act authorising a maximum fine for an offence that may be imposed under subordinate legislation under the Act only if the provision does not expressly authorise a maximum fine for a body corporate different from the maximum fine for an individual.

(2) The maximum fine is taken only to be the maximum fine for an individual that may be imposed under the subordinate legislation.

(3) The maximum fine for a body corporate that may be imposed under the subordinate legislation is taken to be 5 times the maximum fine for an individual.

33. Repeal and substitution of section 38F

Section 38F

repeal, substitute

38F. Penalties for breach of subordinate legislation

(1) Subordinate legislation may prescribe a fine for an offence against the legislation.

(2) The fine prescribed must not exceed 100 penalty units.

Note for subsection (2)

Because of section 38DC, the maximum fine for a body corporate that may be imposed under the subordinate legislation is 500 penalty units.

(3) This section has effect subject to the Act under which the legislation is made.

34. Amendment of section 44 (Power to appoint includes power to remove and appoint temporarily)

(1) Section 44(1)

omit

office, position, designation or place

substitute

office or position

(2) Section 44(2)

omit, substitute

(2) If an Act authorises or requires a person or authority (the "appointer") to appoint a person to an office or position, the appointer may appoint a person, or 2 or more people, to act in the office or position:

(a) during a vacancy, or all vacancies, in the office or position whether or not an appointment has previously been made to the office or position; or

- (b) during any period, or all periods, when the holder of the office or position is unable to perform the duties of the office or position.

(3) Section 44(3)

omit

office or place

substitute

office or position

35. Repeal of section 47

Section 47

repeal

36. Repeal and substitution of section 55

Section 55

repeal, substitute

55. Material that is, and is not, part of an Act

(1) A heading to a Chapter, Part, Division or Subdivision of an Act is part of the Act.

(2) A heading to a section of an Act is part of the Act if:

(a) the Act is enacted after 1 July 2006; or

(b) the heading is amended or inserted after 1 July 2006.

(3) Subsection (2) does not prevent the amendment of a heading to a section by an Act.

(4) An example or note in the text of an Act is part of the provision of the Act to which it relates.

(5) A Schedule to an Act is part of the Act.

(6) A marginal note, footnote, endnote or any other note that is not part of the text of the Act is not part of the Act.

37. Repeal and substitution of section 57

Section 57

repeal, substitute

57. Numbering of subordinate legislation

(1) This section applies to subordinate legislation other than:

- (a) rules of court that relate only to dates of sittings of a court; or
- (b) by-laws made by the Commissioner for Public Employment under the *Public Sector Employment and Management Act*; or
- (c) subordinate legislation that expressly provides this section does not apply to it.

(2) Subordinate legislation made in each calendar year after the commencement of the *Justice Legislation Amendment Act 2006* must be numbered in regular arithmetical series, beginning with the number one, as close as possible to the order in which it is made.

(3) Subordinate legislation may, without prejudice to any other method of citation, be cited by the number given to it and the calendar year in which it is made.

38. Amendment of section 61 (Construction of subordinate legislation)

(1) Section 61

omit

Where

substitute

(1) If

(2) Section 61

omit

any instrument of a legislative or administrative character

substitute

a statutory instrument

- (3) Section 61, at the end

insert

(2) It is presumed, unless the contrary is proved, that all conditions and steps required for the making, granting or issuing of a statutory instrument have been satisfied and carried out.

39. Repeal and substitution of Part VII, Division 2 heading

Part VII, Division 2, heading

repeal, substitute

Division 2 – Statutory instruments and other papers

40. Amendment of section 63 (Procedure for making subordinate legislation)

Section 63(6) to (11)

omit, substitute

(6) If subordinate legislation is required by an Act to be published or notified in the *Gazette*, it is sufficient compliance with the requirement if notice of the making of the legislation, and of the place where copies of it may be purchased, is published in the *Gazette*.

(7) Subordinate legislation or a provision of subordinate legislation must not be expressed to take effect or be in terms that it takes effect from a date before the date of notification in the *Gazette* if:

- (a) the rights of a person (other than the Territory or a statutory corporation) existing at the date of notification would be affected in a manner prejudicial to the person; or
- (b) liabilities would be imposed on a person (other than the Territory or a statutory corporation) in relation to anything done or omitted to be done before the date of notification.

(7A) Subordinate legislation or a provision of subordinate legislation made in contravention of subsection (7) is of no effect.

(8) If subordinate legislation is not tabled in the Legislative Assembly in accordance with subsection (1)(c) or (3)(c), it is of no effect.

(9) If the Legislative Assembly passes a resolution of which notice has been given at any time within 12 sitting days after subordinate legislation has been tabled in the Assembly disallowing the legislation or provisions of it, the

disallowance has, subject to subsection (10), the same effect as a repeal of the legislation or provisions.

(10) If a provision of disallowed subordinate legislation (the "disallowed provision") amended or repealed a provision of other subordinate legislation in force immediately before the commencement of the disallowed provision, the disallowance revives the other provision from the date of the disallowance as if the disallowed provision had not been made.

41. Repeal and substitution of section 64

Section 64

repeal, substitute

64. Subordinate legislation not to be made in terms of disallowed subordinate legislation

(1) This section applies if, under section 63, the Legislative Assembly passes a resolution disallowing subordinate legislation or provisions of subordinate legislation (the "disallowed legislation").

(2) Subordinate legislation or provisions of subordinate legislation that is the same in substance or has the same effect as the disallowed legislation must not be made within 6 months after the disallowance unless the Legislative Assembly rescinds the resolution for disallowance.

(3) Subordinate legislation or provisions of subordinate legislation made in contravention of subsection (2) is of no effect.

65. Power to make subordinate legislation

(1) If an Act authorises or requires the making of subordinate legislation under the Act, the power enables subordinate legislation to be made with respect to any matter that:

- (a) is required or permitted to be prescribed by the Act; or
- (b) is necessary or convenient to be prescribed for carrying out or giving effect to the Act.

(2) Subsection (1) applies even though the Act also authorises the making of subordinate legislation for a particular purpose.

(3) Power conferred by the Act to make subordinate legislation for a particular purpose is in addition to, and does not limit the effect of, power conferred by the Act to make subordinate legislation under the Act unless the Act expressly provides otherwise.

65A. Subordinate legislation may prohibit

If an Act authorises or requires a matter to be regulated by subordinate legislation, the power may be exercised by prohibiting by subordinate legislation the matter or any aspect of the matter.

65B. Subordinate legislation may provide for review or appeal

(1) Subordinate legislation may provide for the review of, or a right of appeal against, a decision made under the legislation or the Act under which the legislation is made or in force.

(2) For subsection (1), the subordinate legislation may confer jurisdiction on any court, tribunal, person or body.

42. New section 71

After section 70

insert

71. Amendment in same session

An Act may be amended or repealed in the session of the Legislative Assembly in which it was passed.

43. New Part VIII

After section 72

insert

PART VIII – TRANSITIONAL MATTERS FOR *JUSTICE LEGISLATION AMENDMENT ACT 2006*

73. Subordinate legislation

(1) This section applies if, immediately before the commencement of this section, a reference in an Act to regulations is construed as a reference to rules or by-laws because of the definition of "regulations" in section 18 as in force immediately before the commencement.

(2) Despite the repeal of the definition, the reference is taken to include a reference to rules or by-laws if the context permits or requires.

74. Numbering of subordinate legislation

Regulations, rules and by-laws numbered under section 57 before the commencement of this section are taken to have been numbered as subordinate

legislation under section 57 as in force on the commencement and may be cited accordingly.

Example for section 74

Regulations No. 5 of 2005 may be cited as Subordinate Legislation No. 5 of 2005.

44. Further amendments

Schedule 1 has effect.

PART 8 – AMENDMENT OF *LAND TITLE ACT*

45. Act amended

This Part amends the *Land Title Act*.

46. Amendment of section 10 (Execution of certain instruments)

(1) Section 10(1), after "a lot"

insert

, other than a mortgage,

(2) After section 10(1)

insert

(1A) A mortgage may be executed by:

(a) the mortgagee; or

(b) a solicitor or other agent of the mortgagee.

47. Amendment of section 99 (Amending easement or easement in gross)

After section 99(2)

insert

(3) An instrument of amendment must include the consents of all registered mortgagees of the lot burdened by the easement or easement in gross.

48. Amendment of section 113 (Amending covenant or covenant in gross)

After section 113(2)

insert

(3) An instrument of amendment must include the consents of all registered mortgagees of the lot burdened by the covenant or covenant in gross.

49. Amendment of section 123 (Amending instrument of profit a prendre)

After section 123(2)

insert

(3) An instrument of amendment must include the consents of all registered mortgagees of the lot burdened by the profit a prendre.

50. Amendment of section 142 (Automatic lapsing of caveat)

(1) Section 142(6)(b)

omit

the caveator notifies

substitute

the caveator, or the authorised agent of the caveator, notifies

(2) Section 142(7)

omit

a caveator has notified

substitute

a caveator, or the authorised agent of the caveator, has notified

51. Amendment of section 201 (Protection from liability)

Section 201(1), after "under this"

insert

or any other

PART 9 – AMENDMENT OF *LANDS AND MINING TRIBUNAL ACT*

52. Act amended

This Part amends the *Lands and Mining Tribunal Act*.

53. Repeal and substitution of long title

Long title

repeal, substitute

An Act to establish the Lands, Planning and Mining Tribunal

54. Amendment of section 1 (Short title)

Section 1, after "*Lands*"

insert

, *Planning*

55. Repeal and substitution of section 17

Section 17

repeal, substitute

17. Decisions and reasons for decisions

(1) The presiding member must:

- (a) make a decision about the matter the subject of a proceeding; and
- (b) give the decision, the reasons for the decision and any relevant findings of fact in writing to:
 - (i) the parties to the proceeding; and
 - (ii) for a proceeding referred to in section 5(ba), (c) or (e) – the relevant Minister.

(2) The decision, reasons and findings of fact must be given by the presiding member within:

- (a) 2 months after hearing a proceeding; or
- (b) if another Act specifies a different period – the period specified.

(3) However, the validity of a decision of the presiding member is not affected merely because of a failure to comply with subsection (1) or (2).

(4) In this section:

"decision" includes the following:

- (a) a recommendation referred to in section 5(a), (ba), (c), (e) or (g);
- (b) a determination referred to in section 5(b), (d), (f), (ga) or (h);

"relevant Minister" means the Minister responsible for the administration of the Act under which it is proposed to grant the extractive mineral interest or do the prescribed mining or petroleum act.

56. Amendment of section 24 (Determination of compensation)

(1) Section 24

omit

Subject to

substitute

(1) Subject to

(2) Section 24, at the end

insert

(2) However, if all parties to the proceeding consent to the making of an order, the Tribunal may make an order in the terms consented to.

(3) An order under subsection (2) may be made at any stage of the proceeding.

57. Amendment of section 27 (Enforcement of determinations and orders)

(1) Section 27(2)

omit, substitute

(1A) An order of costs payable by one party to another party is recoverable as a debt due to the party in whose favour the order is made by the party ordered to pay the costs.

(2) A claimant may register a determination referred to in subsection (1) or a party may register an order referred to in subsection (1A) in a court of competent jurisdiction by filing in the court:

- (a) a copy of the determination or order, certified by the Registrar to be a true copy; and
- (b) an affidavit stating the amount unpaid under the determination or order.

- (2) Section 27(3), after "determination"

insert

or order

58. Repeal and substitution of sections 28 to 30

Sections 28 to 30

repeal, substitute

28. Membership

(1) The Tribunal consists of a Chairperson and other members.

(2) A person who is a magistrate is a member of the Tribunal.

29. Chairperson

(1) The Administrator may appoint in writing a magistrate to be the Chairperson of the Tribunal.

(2) The Chairperson holds office for the period (not exceeding 5 years) specified in the instrument of appointment but is eligible for re-appointment.

(3) The Chairperson may resign by writing signed by the Chairperson and given to the Administrator.

(4) The appointment of the Chairperson terminates if the Chairperson ceases to be a magistrate.

59. Amendment of section 31 (Acting members)

- (1) Section 31(2)

omit

- (2) Section 31(3)

omit

or (2) during a vacancy in an office must not act in that

substitute

during a vacancy in the office of the Chairperson must not act in the

- (3) Section 31(4)

omit

- (4) Section 31(5)

omit

or (2)

60. Repeal of section 32

Section 32

repeal

61. New Part 6

After section 39

insert

PART 6 – TRANSITIONAL MATTERS FOR *JUSTICE LEGISLATION AMENDMENT ACT 2006*

40. Terms and conditions of Chairperson

The person who is the Chairperson immediately before the commencement of Part 9 of the *Justice Legislation Amendment Act 2006*, holds office for the period and on the terms and conditions (including terms and conditions relating to remuneration and allowances) specified in the instrument of appointment.

62. Further amendments

Schedule 2 has effect.

PART 10 – AMENDMENT OF *PROFESSIONAL STANDARDS ACT*

63. Act amended

This Part amends the *Professional Standards Act*.

64. Amendment of section 52 (Professional Standards Council Fund)

Section 52(1)

omit

in the Public Account

65. New section 53A

After section 53, in Part 6, Division 4

insert

53A. Agreement with States or other Territories

(1) The Chief Executive Officer may enter into the agreements the Chief Executive Officer considers appropriate with a person acting for a State or another Territory for the exercise and discharge by an officer or authority of the State or other Territory for the Territory of the powers and functions of the Council under this Act.

(2) The agreement may make provision for all or any matters necessary or convenient to be provided for or incidental to carrying out the agreement.

Example for subsection (2)

The agreement may specify the extent to which a person acting for a State or another Territory must comply with Territory legislation, including the Audit Act, Financial Management Act and Procurement Act.

PART 11 – AMENDMENT OF *SENTENCING ACT*

66. Act amended

This Part amends the *Sentencing Act*.

67. Amendment of section 16 (Power to fine)

Section 16(2)(b)

omit, substitute

(b) if there is no such maximum fine – 20 penalty units.

68. Repeal of sections 118 and 119

Sections 118 and 119

repeal

SCHEDULE 1

Section 44

FURTHER AMENDMENTS OF *INTERPRETATION ACT*

Provision	Amendment	
	omit	substitute
Section 4(a)	instruments of a legislative or administrative character	statutory instruments
Section 4(b)(i)	such instruments of a legislative or administrative character	statutory instruments
Section 6(3)(b) and (4)	an instrument of a legislative or administrative character	a statutory instrument
Section 7(3)	regulations	subordinate legislation
Section 7(3)(a) and (b)	regulations were	subordinate legislation was
Section 8(1)	an instrument of a legislative or administrative character	a statutory instrument
Sections 14 and 15(1)	, or a regulation,	
Section 21	an instrument of a legislative or administrative character	a statutory instrument
Section 34(2)(a)	or regulations made under an Act or of a provision or part of an Act or regulations made under an Act	or subordinate legislation or provisions of an Act or subordinate legislation
Section 42(1)	an instrument of a legislative or administrative character	a statutory instrument

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Section 43	any instrument of a legislative or administrative character	a statutory instrument
Section 45(1)	an instrument of a legislative or administrative character	a statutory instrument
Section 46(1)	an instrument of a legislative or administrative character made, granted or issued under or in pursuance of an Act	a statutory instrument
Section 57A(1)	an instrument of a legislative or administrative character (all references)	a statutory instrument
Section 66	any instrument of a legislative or administrative character (first reference)	a statutory instrument
Section 66(a)	any instrument of a legislative or administrative character made	a statutory instrument
Section 66	instruments of a legislative or administrative character shall	a statutory instrument must

SCHEDULE 2

Section 62

FURTHER AMENDMENTS OF *LANDS AND MINING TRIBUNAL ACT*

Provision	Amendment	
	omit	substitute
Section 3		
– definitions of "Registrar" and "Tribunal"	Lands and Mining Tribunal	Lands, Planning and Mining Tribunal
Sections 4 and 33(1)	Lands and Mining Tribunal	Lands, Planning and Mining Tribunal
Section 33(2)	employees within the meaning of the <i>Public Sector Employment and Management Act</i>	public sector employees