

Explanatory Statement

JUSTICE AND LICENSING LEGISLATION AMENDMENT BILL 2022 SERIAL NO. 43

LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY

ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

GENERAL OUTLINE

The Justice and Licensing Legislation Amendment Bill 2022 provides:

- (a) for the removal from the *Agents Licensing Act 1979* of a reference to the Commissioner of Consumer Affairs and its replacement with a reference to the Registrar of Land, Business and Conveyancing Agents;
- (b) for the amendment of the *Business Names (National Uniform Legislation) Implementation Act 2012* so that the powers and functions of the Commissioner of Consumer Affairs under that Act can be performed by the Chief Executive Officer of the agency responsible for the administration of that Act;
- (c) for the abolition of the Publications and Films Review Board established under the *Classification of Publications, Films and Computer Games Act 1985*;
- (d) for the amendment of the *Victims of Crime Rights and Services Act 2006* so that a health practitioner can be appointed as a member of the Crime Victims Advisory Committee;
- (e) for the amendment of the *Agents Licensing Act 1979*, *Accommodation Providers Act 1981*, *Administration and Probate Act 1969*, *Administration of Probate Regulations 1983*, *Business Tenancies (Fair Dealings) Act 2003* and the *Unit Titles Act 1975* so that amounts expressed in terms of dollars are expressed in terms of monetary units under the *Monetary Units Act 2018*; and
- (f) for the correction of a drafting error in section 162 of the *Local Court (Criminal Procedure) Act 1928*.

NOTES ON CLAUSES

Part 1 Preliminary matters

Clause 1. Short title

This is a formal clause providing for the citation of the Bill. The Bill, when passed, may be cited as *Justice and Licensing Legislation Amendment Act 2022*.

Clause 2. Commencement

This is a formal clause that provides that the provisions of the Act commence on the date or dates fixed by the Administrator but if no date is fixed, the day of commencement is 1 February 2024.

Part 2 Amendment of Accommodation Providers Act 1981

Clause 3. Act Amended

This clause provides that Part 2 of the Bill deals with amendments to the *Accommodation Providers Act 1981*.

Clause 4. Section 6 amended (Restriction of accommodation provider's liability)

Section 6 of the *Accommodation Providers Act 1981* provides for the maximum amount that can, in circumstances specified in the Act, be claimed for loss of property at a place of accommodation. The amount, set in 1981, is increasing from \$200 to 750 monetary units.

Clause 5. Section 13 inserted

This clause inserts new section 13.

13. Transitional matters for Justice and Licensing Legislation Amendment Act 2022

This clause provides that a notice in force immediately before the commencement of the amendment Act remains valid following the commencement of the legislation.

Clause 6. Schedule amended

The schedule provides for the notice that must be provided for the purposes of section 6. The schedule is being amended so that it no longer refers to \$200 but instead refers to the amount determined in accordance with section 6.

Part 3 Amendment of Agents Licensing Act 1979

Clause 7. Act Amended

This clause provides that Part 3 of the Bill deals with amendments to the *Agents Licensing Act 1979*.

Clause 8. Section 7 amended (appointment of members and tenure)

This clause amends section 7 by removing references to the Commissioner of Consumer Affairs and replacing them with references to the Registrar (of Land, Business and Conveyancing Agents).

The Registrar rather than the Commissioner is responsible for regulatory and administrative issues under the Act. Additionally, the Commissioner is no longer a statutory officer of the agency responsible for the administration of the *Agents Licensing Act 1979*.

Clause 9. Act further amended

This clause provides for schedule 1 which provides for other amendments to the *Agents Licensing Act 1979*.

Part 4 Amendment of Business Names (National Uniform Legislation) Implementation Act 2012

Clause 10. Act amended

This clause provides that Part 4 of the Bill amends the *Business Names (National Uniform Legislation) Implementation Act 2012*.

Clause 11. Section 4A inserted

This clause inserts section 4A.

4A Powers may be exercised by CEO

New section 4A provides that the powers of the Commissioner of Consumer Affairs under the *Business Names (National Uniform Legislation) Implementation Act 2012* may be exercised by the Chief Executive Officer of the agency responsible for the administration of that Act.

Part 5 Amendment of Classification of Publications, Films and Computer Games Act 1985

Clause 12. Act amended

This clause provides that Part 5 of the Bill amends the *Classification of Publications, Films and Computer Games Act 1985*.

Clause 13. Section 3 amended (Definitions)

This clause omits the definitions of “Chairperson”, “member” and “Territory Board”.

These definitions will no longer be necessary if the Board is abolished as proposed by clause 1.

Clause 14. Sections 7-17 repealed

This clause provides for the repeal of sections 7-17. The purpose of the repeal is to abolish the Northern Territory Publications and Films Review Board.

The Board has not operated since 1996 being the commencement of the current national scheme relating to the classification of publications, films and computer games. Under that scheme the Commonwealth Office of Film and Literature Classification classifies publications, films and computer games for the purposes of state and territory enforcement Acts such as the *Classification of Publications, Films and Computer Games Act 1985*.

Part 6 Victims of Crimes Rights and Services Act 2006

Clause 15. Act amended

This clause provides that Part 6 of the Bill amends the *Victims of Crime Rights and Services Act 2006*.

Clause 16. Section 4 amended (Definitions)

This clause provides a definition, by reference to the Health Practitioners Regulation National Law, of “health practitioner” (for the purposes of amended section 10).

Clause 17. Section 10 amended (Establishment and constitution of Advisory Committee)

This clause amends sections 10(2)(c)(i) and 10(2)(c)(ii) of the Act to enable one of the twelve member positions on the Crime Victims Advisory Committee to be held by a ‘health practitioner’ as opposed to a ‘medical practitioner’.

The term ‘health practitioner’, as defined under the Health Practitioner Regulation National Law, is broader than the term ‘medical practitioner’ and includes other health professionals such as Aboriginal and Torres Strait Islander health workers, counsellors and psychologists. Members of this wider group may have a greater interest in and understanding of victims and their health needs and experiences than might be the case for medical practitioners.

Part 7 Other laws amended

Clause 18. Other laws amended

This clause inserts schedule 2 providing for amendments to other laws.

Part 8 Repeal

Clause 19. Repeal of Act

This is a standard clause for parts of legislation that consists entirely of amendments to other legislation. It provides that the Act is repealed and ceases to have effect the day after it has performed its function of repealing or amending the other legislation.

Schedule 1 Agents Licensing Act amended

Schedule 1 provides for amendments to the *Agents Licensing Act 1979*. These amendments provide for dollar amounts in that Act to be expressed in terms of monetary units as provided for in the *Monetary Units Act 2018* with the current value of a monetary unit being \$1.02.

Amounts in legislation expressed in terms of monetary units automatically increase in value for each year in accordance with any increases in the cost of living index for Darwin.

The amounts that are affected relate to the operation of the Fidelity Fund. Each of the amounts has been reviewed in terms of cost of living increases since the time of its enactment.

For example, under section 92, the minimum size of the fund before payments can be made was set at \$250 000 in 1979. Inflation since then has been approximately 386 per cent. The monetary equipment, in today’s values, is \$1 216 800. This is rounded down so as to be expressed as 1 million monetary units. In the future this amount will maintain its value in real terms.

The other conversions relate to:

- Section 95B(2)(d) (setting amount of the fund required in order for monies to be used for educational purposes). The amount is rising from \$250 000 to 500 000 monetary units.
- Section 102(2) (maximum amount that can be paid out of the Fund in respect of the defalcation of any particular person). The amount is rising from \$200 000 to 300 000 monetary units.
- Section 104(1)(b) (right of agents who have acted in good faith to claim compensation for defalcations or misappropriations by partners or employers if the amount of the

defalcation is less than a specified amount). The amount in the legislation is changing from \$200 000 to 300 000 monetary units.

- Section 104(4) (sets the maximum amount of compensation for actions of partners and employees). The amount in formula in the legislation is changing from \$50 000 to 75 000 monetary units.
- Section 107 (no requirement for specified agents to pay contributions if the Fund is over a particular size). The amount in the legislation is changing from \$250 000 to 1 million monetary units.
- Section 108 (amount of levy). If the Fund is inadequate, a levy can be imposed. This is increasing from \$20 to 100 monetary units.

Schedule 2 Other laws amended

Schedule 2 provides for amendments to the *Administration and Probate Act 1969*, *Administration and Probate Regulations 1983*, *Business Tenancies (Fair Dealings) Act 2003* and the *Unit Titles Act 1975*. These amendments provide for monetary amounts in that Act to be expressed in terms of monetary units as provided for in the *Monetary Units Act 2018* with the current value of a monetary unit being \$1.02.

Amounts in legislation expressed in terms of monetary units automatically increase in value for each year in accordance with any increases in the cost of living index for Darwin.

Administration and Probate Act 1969

Section 68 provides, for a person who has died without leaving a will, for circumstances where monies paid to persons such as a child or grandchild before the death will be taken into account in determining what amounts will be paid to such a person from the estate. The circumstances are that the payment occurred within the five year period before the death and that the amount involved did not exceed \$1000. This amount was set in 1969 and is being increased to 10 000 monetary units.

Section 104(3) provides that for the purposes of dealing with small claims against the estate of a deceased person the personal representative can serve notice on the creditor requiring that proceedings be commenced. For the purposes of this section, a small claim is one less than \$1000 or such other amount as is prescribed in legislation. The \$1000 figure, as set in 2000, is being increased to 1500 monetary units.

Section 110A(8) sets the default amount in the absence of regulations for the informal administration of small value estates. This is changing from \$20 000 to 30 000 monetary units. Section 110B(1)(a) provides that a professional personal representative may elect to administer an estate (rather than apply for representation) if, amongst other matters, the value of the estate does not exceed the prescribed amount. Section 110B(6) provides that in the absence of any amount being prescribed in the regulations, the amount is \$85 000. This amount is being increased to 130 000 monetary units. Section 110C(1)(a) provides that a professional personal representative may, in respect of an unadministered part of an estate elect to administer an estate (rather than apply for probate) if, amongst other matters, the value of the unadministered part of the estate does not exceed the prescribed amount. Section 110C(6) provides that in the absence of any amount being prescribed in the regulations, the amount is \$85 000. This amount is being increased to 130 000 monetary units.

Administration and Probate Regulations 1983

Section 106 of the *Administration of Probate Act 1969* provides that an application for representation can be made direct to the Probate Registrar (rather than the Supreme Court) if the property in the estate is valued at an amount not greater than the prescribed amount. Regulation 2A(1) provides, for the purposes of section 106, that the amount is \$20 000. This amount (as set in 2016) is now to be 20 000 monetary units.

Regulation 2A(1) provides, for the purposes of section 108, that the amount is \$20 000. This amount (as set in 2016) is now to be 20 000 monetary units.

Regulation 2A(3) provide for prescribed amounts for the purposes of section 110A(1) . These prescribed amounts will no longer be necessary given the amendments made by this Bill to section 110A(8).

Regulation 2A(4) provide for prescribed amounts for the purposes of section 110B(1)(a). These prescribed amounts will no longer be necessary given the amendments made by this Bill to section 10B(6).

Business Tenancies (Fair Dealings) Act 2003

Section 36 of the *Business Tenancies (Fair Dealings) Act 2003* provides that a landlord cannot require contributions to a sinking fund if the amount in the sinking fund is more than \$250 000. . The amendment provides that the new limit is to be 250 000 monetary units.

Section 98 of the *Business Tenancies (Fair Dealings) Act 2003* provides that the Commissioner under that Act is not to be consider the matter if the monetary claim exceeds \$10 000. This is being amended so that the relevant amount is 15 000 monetary units.

Section 107 of the *Business Tenancies (Fair Dealings) Act 2003* provides that a plaintiff who takes action in court and receives less than \$10 000 in compensation is not, as general rule, entitled to costs. This amount is to be increased so that the amount is 15 000 monetary units.

Unit Titles Act 1975

Section 53(1A) of the *Unit Titles Act 1975* provides that, as a general rule, the maximum amount that a body corporate can spend on improvements to common property is, in the absence of an amount prescribed in the regulations, \$200 times the number of units. The reference to \$200 is being changed to 300 monetary units.

Local Court (Criminal Procedure) Act 1928

Schedule 2 also corrects a typographical error in section 162(1) of the *Local Court (Criminal Procedure) 1928*.

Section 162 deals with the circumstance where points of law raised in the Local Court may be reserved for consideration by the Supreme Court. Legislation enacted in 2016 inadvertently amended section 162 so that it reads as if it is the Supreme Court that makes a decision about when such questions of law should be reserved.

The correct policy, as in place until 2016, is that it is the Local Court that should decide whether it wants to refer legal issues to the Supreme Court.