Law and Justice Legislation Amendment Act 2004

No. 62, 2004

An Act to amend various Acts relating to law and justice, and for related purposes

Note: An electronic version of this Act is available in SCALEplus (http://scaleplus.law.gov.au/html/comact/browse/TOCN htm)

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Law and Justice Legislation Amendment Act 2004

No. 62, 2004

An Act to amend various Acts relating to law and justice, and for related purposes

[*Assented to 26 May 2004*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Law and Justice Legislation Amendment Act 2004*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	26 May 2004
2. Schedule 1, item 1	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
3. Schedule 1, item 2	Immediately after the commencement of item 1 of Schedule 6 to the *Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002*.	1 January 2003
4. Schedule 1, items 3 to 9	The day after this Act receives the Royal Assent.	27 May 2004
5. Schedule 1, item 10	The day after this Act receives the Royal Assent. However, the provision(s) do not commence at all if item 1 of Schedule 1 to the Act introduced into Parliament as the Australian Human Rights Commission Legislation Bill 2003 does not commence on or before the day on which this Act receives the Royal Assent.	27 May 2004
6. Schedule 1, items 11 and 12	The day after this Act receives the Royal Assent.	27 May 2004

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
7. Schedule 1, item 13	Immediately after the commencement of item 17 of Schedule 1 to the *Measures to Combat Serious and Organised Crime Act 2001*.	12 October 2001
8. Schedule 1, items 14 to 37	The day after this Act receives the Royal Assent.	27 May 2004
9. Schedule 1, item 38	The day after this Act receives the Royal Assent. However, the provision(s) do not commence at all if item 1 of Schedule 1 to the Act introduced into Parliament as the Australian Human Rights Commission Legislation Bill 2003 commences on or before the day on which this Act receives the Royal Assent.	27 May 2004
10. Schedule 1, item 39	31 August 1998.	31 August 1998
11. Schedule 1, items 40 to 45	The day after this Act receives the Royal Assent.	27 May 2004
12. Schedule 1, items 46 to 50	Immediately after the commencement of section 3 of the *Legislative Instruments Act 2003*.	
13. Schedule 1, items 51 to 54	The day after this Act receives the Royal Assent.	27 May 2004
14. Schedule 1, items 55 and 56	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
15. Schedule 1, items 57 to 59	The day after this Act receives the Royal Assent.	27 May 2004

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Aboriginal and Torres Strait Islander Commission Act 1989

1 Subclause 28(1) of Schedule 4

Omit “, the forms to be used and the fees to be paid by parties”, substitute “and the forms to be used”.

Administrative Decisions (Judicial Review) Act 1977

2 Paragraph (z) of Schedule 1 (the paragraph (z) inserted by item 1 of Schedule 6 to the *Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002*)

Reletter as paragraph (ya).

3 Paragraph (k) of Schedule 2

Omit “Aboriginal and Torres Strait Islander Commercial Development Corporation”.

4 Paragraph (k) of Schedule 2

Omit “Housing Loans Insurance Corporation;”, substitute “Indigenous Business Australia;”.

Admiralty Act 1988

5 Subsection 3(1) (definition of *Civil Liability Convention*)

Repeal the definition, substitute:

> ***Civil Liability Convention*** has the same meaning as ***the Convention*** has in the *Protection of the Sea (Civil Liability) Act 1981*.

Australian Crime Commission Act 2002

6 Schedule 2

Omit “Australian Shipping Commission”.

7 Schedule 2

Omit “Housing Loans Insurance Corporation”.

8 Schedule 2

Omit “Pipeline Authority”.

9 Schedule 2

Omit “Superannuation Fund Investment Trust”.

Australian Human Rights Commission Act 1986

10 Subsection 36(10)

Omit “subsection (1)”, substitute “subsection (2) or (3)”.

Note: If item 1 of Schedule 1 to the Bill introduced into Parliament as the Australian Human Rights Commission Legislation Bill 2003 has not commenced on or before the day on which this Act receives the Royal Assent, then this item does not commence at all (see item 5 of the table in subsection 2(1)).

Bankruptcy Act 1966

11 After paragraph 262(2)(b)

Insert:

(ba) an employee of the Commonwealth who is:

(i) authorised under paragraph 3(c) of the *Consular Fees Act 1955*; and

(ii) exercising his or her function in that place;

(bb) an employee of the Australian Trade Commission who is:

(i) authorised under paragraph 3(d) of the *Consular Fees Act 1955*; and

(ii) exercising his or her function in that place;

12 Paragraph 262(2)(d)

Omit “paragraph (aa), (a), (b) or (c)”, substitute “any of paragraphs (aa) to (c)”.

Crimes Act 1914

13 Paragraph 15H(c)

Omit “subsection 15I(1) or (3)”, substitute “subsection 15I(1) or (2)”.

Director of Public Prosecutions Act 1983

14 Subsection 15(3) (definition of *relevant proceedings*)

Repeal the definition.

15 Subsection 32(1)

Repeal the subsection, substitute:

(1) The Director may arrange with the Chief Executive Officer of the AGS for the AGS to perform or exercise, in a State or Territory, all or any of the Director’s functions or powers under this Act:

(a) in the name of the Director; and

(b) subject to such conditions and restrictions as are specified in the arrangement.

If such an arrangement is made, the AGS may perform or exercise those functions or powers accordingly.

16 Paragraph 33A(b)

Omit “an officer of the Attorney-General’s Department who is a person referred to in subparagraph 32(1)(b)(ii) and is a legal practitioner”, substitute “an AGS lawyer (within the meaning of section 55I of the *Judiciary Act 1903*) authorised in writing by the Chief Executive Officer of the AGS (within the meaning of Part VIIIB of that Act)”.

Evidence Act 1995

17 Subsection 171(3) (paragraph (a) of the definition of *authorised person*)

Repeal the paragraph, substitute:

(a) if the evidence is given at a place outside Australia:

(i) an Australian Diplomatic Officer, or an Australian Consular Officer, within the meaning of the *Consular Fees Act 1955*, exercising his or her function in that place; or

(ii) an employee of the Commonwealth, authorised under paragraph 3(c) of the *Consular Fees Act 1955*, exercising his or her function in that place; or

(iii) an employee of the Australian Trade Commission, authorised under paragraph 3(d) of the *Consular Fees Act 1955*, exercising his or her function in that place; or

Federal Court of Australia Act 1976

18 Paragraph 20(5)(d)

Repeal the paragraph, substitute:

(d) make an order that the matter be dismissed for:

(i) failure to comply with a direction of the Court; or

(ii) failure of the applicant to attend a hearing relating to the matter; or

(da) vary or set aside an order under paragraph (c) or (d); or

19 Paragraph 25(2B)(bb)

Repeal the paragraph, substitute:

(bb) make an order that an appeal to the Court be dismissed for:

(i) failure to comply with a direction of the Court; or

(ii) failure of the appellant to attend a hearing relating to the appeal; or

(bc) vary or set aside an order under paragraph (ba) or (bb); or

20 Application of items 18 and 19

(1) The amendment made by item 18 applies to matters commenced on or after the day on which that item commences.

(2) The amendment made by item 19 applies to appeals commenced on or after the day on which that item commences.

Foreign Proceedings (Excess of Jurisdiction) Act 1984

21 Subsection 3(1) (definition of *foreign court*)

Omit “but does not include the Judicial Committee of the Privy Council in the exercise of jurisdiction in respect of appeals from any court in Australia”.

22 Subsection 8(3)

Omit “subsection (1)” (wherever occurring), substitute “subsection (2)”.

Freedom of Information Act 1982

23 Subsection 4(1) (definition of *request*)

Omit “in accordance with”, substitute “under”.

24 Subsection 45(1)

Omit “other than the Commonwealth”, substitute “(other than an agency or the Commonwealth)”.

25 Schedule 1

Omit “Coal Industry Tribunal or any other Tribunal, authority or body appointed in accordance with Part V of the *Coal Industry Act 1946*.”.

26 Part I of Schedule 2

Omit “Housing Loans Insurance Corporation”.

27 Part I of Schedule 2

Omit “National Debt Commission”.

28 Part I of Schedule 2

Omit “Pipeline Authority”.

29 Part II of Schedule 2

Omit “Aboriginal and Torres Strait Islander Commercial Development Corporation, in relation to documents in respect of its commercial activities”.

30 Part II of Schedule 2

Insert in its appropriate alphabetical position, determined on a letter-by-letter basis:

Indigenous Business Australia, in relation to documents in respect of its commercial activities

31 Part III of Schedule 2

Omit “*Australian Meat and Live-stock Corporation Act 1977*”.

32 Part III of Schedule 2

Omit “*Australian Wool Corporation Act 1991*”.

33 Part III of Schedule 2

Omit "*Australian Wool Realisation Commission Act 1991*".

34 Part III of Schedule 2

Omit "*Fishing Industry Research and Development Act 1987*".

35 Part III of Schedule 2

Omit "*Meat Research Corporation Act 1985*".

36 Part III of Schedule 2

Omit "*Rural Industries Research Act 1985*".

37 Schedule 3

Omit "*Social Security Act 1991*, subsections 1312(1) and 1336(3)".

Human Rights and Equal Opportunity Commission Act 1986

38 Subsection 36(10)

Omit "subsection (1)", substitute "subsection (2) or (3)".

Note: If item 1 of Schedule 1 to the Bill introduced into Parliament as the Australian Human Rights Commission Legislation Bill 2003 commences on or before the day on which this Act receives the Royal Assent, then this item does not commence at all (see item 9 of the table in subsection 2(1)).

Industrial Relations (Consequential Provisions) Act 1988

39 Section 79

Repeal the section, substitute:

79 Abolition of Australian Industrial Court

(1) Despite the repeal of the *Conciliation and Arbitration Act 1904*, the Australian Industrial Court is taken to continue in existence until 31 August 1998 as if that Act had not been repealed.

(2) At the end of that day, the Australian Industrial Court ceases to exist.

Note: The last remaining judge of the Australian Industrial Court resigned on 31 August 1998.

International Arbitration Act 1974

40 Subsection 2(1)

Omit “2, 3 and 4”, substitute “2 and 3”.

41 Section 4

Repeal the section.

42 Subsection 10(2)

Omit “in accordance with section 4”.

Judiciary Act 1903

43 Subsection 55U(3)

Repeal the subsection.

Law Officers Act 1964

44 Section 13

Repeal the section, substitute:

13 Solicitor-General entitled to rights and privileges as a barrister

The Solicitor-General, in his or her official capacity:

(a) is entitled to practise as a barrister:

(i) in a federal court or in a court of a State or Territory; or

(ii) in a tribunal of the Commonwealth, a State or a Territory; and

(b) is entitled to all the rights and privileges of a barrister in that court or tribunal;

whether or not he or she would, but for this section, be entitled to practise in that court or tribunal.

45 Subsection 17(6)

Omit “*Telephonic Communications (Interception) Act 1960*”, substitute “*Telecommunications (Interception) Act 1979*”.

Legislative Instruments Act 2003

46 Subsection 7(1) (table item 20)

Omit “persons, as members”, substitute “persons as members”.

47 Subsection 7(2)

Repeal the subsection, substitute:

(2) The inclusion of a kind of instrument in the table in subsection (1) does not imply that an instrument of that kind would be a legislative instrument if it were not included in the table.

48 Subparagraphs 42(2)(b)(i) and (3)(c)(i)

Omit “, the motion has not been called on, and the House has not passed a resolution deferring its consideration”, substitute “and the motion has not been called on”.

49 At the end of section 44

Add:

(3) The inclusion of a kind of instrument in the table in subsection (2) does not imply that every instrument of that kind is a legislative instrument.

50 At the end of section 54

Add:

(3) The inclusion of a kind of instrument in the table in subsection (2) does not imply that every instrument of that kind is a legislative instrument.

Native Title Act 1993

51 Subsection 187(2)

Repeal the subsection.

52 Subsection 194(2)

Repeal the subsection.

53 Subsection 199D(2)

Repeal the subsection.

Public Order (Protection of Persons and Property) Act 1971

54 Section 13A (definition of *court premises*)

Repeal the definition, substitute:

> ***court premises***, in relation to a court, means any premises occupied or used (whether permanently or temporarily or under a lease or otherwise) in connection with the sittings, or any other operations, of the court.

Statutory Declarations Act 1959

55 Paragraph 8(a)

Omit "the form in the Schedule", substitute "the prescribed form".

56 The Schedule

Repeal the Schedule.

Workplace Relations Act 1996

57 At the end of section 415

Add:

(3) Subsection (1) does not, in relation to matters referred to in that subsection, require the jurisdiction of the Court to be exercised by a Full Court to:

(a) join or remove a party; or

(b) make an order (including an order for costs) by consent disposing of a matter; or

(c) make an order that a matter be dismissed for want of prosecution; or

(d) make an order that a matter be dismissed for:

(i) failure to comply with a direction of the Court; or

(ii) failure of the applicant to attend a hearing relating to the matter; or

(e) vary or set aside an order under paragraph (c) or (d); or

(f) give directions about the conduct of a matter, including directions about:

(i) the use of written submissions; and

(ii) limiting the time for oral argument.

(4) The Rules of Court may make provision enabling the powers mentioned in subsection (3) to be exercised, subject to conditions prescribed by the Rules, without an oral hearing.

58 Subsection 340(3) of Schedule 1B

Repeal the subsection, substitute:

(3) Subsection (1) does not, in relation to matters referred to in that subsection, require the jurisdiction of the Court to be exercised by a Full Court to:

(a) join or remove a party; or

(b) make an order (including an order for costs) by consent disposing of a matter; or

(c) make an order that a matter be dismissed for want of prosecution; or

(d) make an order that a matter be dismissed for:

(i) failure to comply with a direction of the Court; or

(ii) failure of the applicant to attend a hearing relating to the matter; or

(e) vary or set aside an order under paragraph (c) or (d); or

(f) give directions about the conduct of a matter, including directions about:

(i) the use of written submissions; and

(ii) limiting the time for oral argument.

(4) The Rules of Court may make provision enabling the powers mentioned in subsection (3) to be exercised, subject to conditions prescribed by the Rules, without an oral hearing.

59 Application of items 57 and 58

The amendments made by items 57 and 58 apply to matters commenced on or after the day on which those items commence.

[*Minister's second reading speech made in—*
House of Representatives on 24 March 2004
Senate on 1 April 2004]

(36/04)