



# Law and Justice Legislation Amendment Act (No. 4) 1992

No. 143 of 1992

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## An Act to amend various Acts relating to law and justice

[Assented to 7 December 1992]

The Parliament of Australia enacts:

### Short title

1. This Act may be cited as the *Law and Justice Legislation Amendment Act (No. 4) 1992*.

### 5 Commencement

2.(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

10 (2) The amendment of section 19 of the *Bankruptcy Act 1966* made by this Act commences on the 28th day after the day on which this Act receives the Royal Assent.

(3) The amendments of the *Family Law Act 1975* (other than the amendment inserting a new section 37C of that Act), and the amendments of the *Judges (Long Leave Payments) Act 1979* and the *Judges' Pensions Act 1968*, made by this Act are taken to have commenced on 1 November 1991.

### **Amendments of Acts**

3. The Acts specified in the Schedule are amended as set out in the Schedule.

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## **SCHEDULE**

Section 3

### **AMENDMENTS OF ACTS**

#### ***Bankruptcy Act 1966***

#### **After subsection 19(1C):**

Insert:

“(1D) The trustee must cause a copy of a notice referred to in subsection (1B) that is given after the commencement of this subsection to be given to the Official Receiver as soon as practicable after it is given to each of the bankrupt’s creditors.”.

#### **Paragraphs 31(1)(ba) and (d):**

Omit the paragraphs.

#### **Paragraph 31(1)(c):**

Omit the paragraph, substitute:

“(c) proceedings in connection with the consideration of an annulment of a bankruptcy under section 153B;”.

#### **Paragraphs 43(2)(a), (b) and (c):**

Omit the paragraphs, substitute:

“(a) he or she is discharged by force of subsection 149(1) or in accordance with Division 3 of Part VII; or  
(b) his or her bankruptcy is annulled by force of subsection 74(5) or 153A(1) or under section 153B.”.

#### **Paragraphs 55(8)(a), (b) and (c):**

Omit the paragraphs, substitute:

“(a) he or she is discharged by force of subsection 149(1) or in accordance with Division 3 of Part VII; or  
(b) his or her bankruptcy is annulled by force of subsection 74(5) or 153A(1) or under section 153B.”.

#### **Paragraphs 56(16)(a), (b) and (c):**

Omit the paragraphs, substitute:

“(a) he or she is discharged by force of subsection 149(1) or in accordance with Division 3 of Part VII; or

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- (b) his or her bankruptcy is annulled by force of subsection 74(5) or 153A(1) or under section 153B.”.

**Paragraphs 57(10)(a), (b) and (c):**

Omit the paragraphs, substitute:

- “(a) he or she is discharged by force of subsection 149(1) or in accordance with Division 3 of Part VII; or
- (b) his or her bankruptcy is annulled by force of subsection 74(5) or 153A(1) or under section 153B.”.

**Paragraph 59(1)(d):**

Add at the end “and”.

**Paragraphs 59(1)(e) and (f):**

Omit the paragraphs, substitute:

- “(e) a transaction that, by virtue of section 120, 121 or 122, is void as against the trustee in the earlier bankruptcy continues to be void as against that trustee.”.

**Paragraph 116(2)(h):**

Omit the paragraph.

**Subsections 310(3) and (3A):**

Omit the subsections, substitute:

“(3) Where:

- (a) a bankrupt is discharged from bankruptcy by force of subsection 149(1) or in accordance with Division 3 of Part VII; or
- (b) the bankruptcy of a person is annulled by force of subsection 74(5) or 153A(1) or under section 153B;

the Registrar must cause notice of that fact, specifying the name, address and description of the bankrupt, the date of the bankruptcy and the date on which he or she was discharged or on which the bankruptcy was annulled to be published in the *Gazette* and in such other manner (if any) as is prescribed.”.

***Complaints (Australian Federal Police) Act 1981***

**Subsection 22(8):**

Omit “sections 52B and 56”, substitute “sections 56 and 57”.

**Paragraph 22(8)(c):**

- (a) Omit “52B(2)”, substitute “57(2)”.
- (b) Omit “subsections 6(2) and 6(3)”, substitute “subsection 6(2)”.
- (c) Omit “references to subsections 24(2) and (2A) of this Act, respectively”, substitute “a reference to subsection 24(2) of this Act”.

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**Paragraph 22(8)(d):**

Omit “section 52A”, substitute “subsection 57(7)”.

*Family Law Act 1975*

**After subsection 22(2B):**

Insert:

“(3) A Judge may resign office by writing under his or her hand addressed to the Governor-General.

“(4) The resignation takes effect on:

- (a) the day on which it is received by the Governor-General; or
- (b) a later day specified in the resignation document.”.

**Section 23:**

Add at the end:

“(10) If:

- (a) a person’s commission of appointment as a Judge of a particular kind terminates; and
- (b) a new commission of appointment of the person as a Judge of that kind takes effect immediately after the termination;

the day of appointment of the person as a Judge of that kind is, for the purposes of this section, the day on which the earlier appointment took effect and not the day on which the later appointment took effect.

“(11) Subsection (10) applies to the termination of a commission of appointment however it occurs (whether because of resignation or because of the expiration of the term of the appointment or otherwise).”.

**Section 26K:**

Repeal the section, substitute:

**Resignation**

“26K.(1) A Judicial Registrar may resign office by writing under his or her hand addressed to the Governor-General.

“(2) The resignation takes effect on:

- (a) the day on which it is received by the Governor-General; or
- (b) a later day specified in the resignation document.”.

**After section 37B:**

Insert in Division 6:

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**Oath or affirmation of office**

“37C. A Principal Registrar, Registrar or Deputy Registrar shall, before proceeding to discharge the duties of the office, take, before the Chief Judge or another Judge of the Family Court, an oath or affirmation in the following form:

‘I, \_\_\_\_\_, do swear that I will well and truly serve in the office of (*Principal Registrar, Registrar or Deputy Registrar*, as the case may be) of the Family Court of Australia and that I will do right to all manner of people according to law, without fear or favour, affection or illwill, So help me God.’

or

‘I, \_\_\_\_\_, do solemnly and sincerely promise and declare that’  
(*as above, omitting the words ‘So help me God’.*)”.

***Federal Court of Australia Act 1976***

**After section 18X:**

Insert in Division 4 of Part IIA:

**Oath or affirmation of office**

“18Y. The Registrar, a District Registrar, a Deputy Registrar or a Deputy District Registrar shall, before proceeding to discharge the duties of the office, take, before the Chief Judge or a Judge of the Court, an oath or affirmation in the following form:

‘I, \_\_\_\_\_, do swear that I will well and truly serve in the office of (*Registrar, District Registrar, Deputy Registrar or Deputy District Registrar*, as the case may be) of the Federal Court of Australia and that I will do right to all manner of people according to law, without fear or favour, affection or illwill, So help me God.’

or

‘I, \_\_\_\_\_, do solemnly and sincerely promise and declare that’  
(*as above, omitting the words ‘So help me God’.*)”.

**Subsection 43(1):**

Omit “The Court”, substitute “Subject to subsection (1A), the Court”.

**After subsection 43(1):**

Insert:

“(1A) In a representative proceeding commenced under Part IVA or a proceeding of a representative character commenced under any other Act that authorises the commencement of a proceeding of that character, the Court or Judge may not award costs against a person on whose behalf the proceeding has been commenced (other than a party

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to the proceeding who is representing such a person) except as authorised by:

- (a) in the case of a representative proceeding commenced under Part IVA—section 33Q or 33R; or
- (b) in the case of a proceeding of a representative character commenced under another Act—any provision in that Act.”.

***Freedom of Information Act 1982***

**Section 47:**

Add at the end:

“(2) On and after the abolition of the National Companies and Securities Commission:

- (a) subsection (1) is taken to have effect as if paragraphs (1)(c) and (d) were omitted; and
- (b) a document that:
  - (i) was an exempt document because of paragraph (1)(c) or (d) immediately before that day; or
  - (ii) is a copy of or a part of, or contains an extract from, such an exempt document;is an exempt document if it is in the possession of a Minister or an agency.

Note: The National Companies and Securities Commission was abolished on 31 July 1992, being a day fixed by Proclamation in accordance with subsection 2(10) of the *Corporations Legislation Amendment Act 1991*.”.

**Subsection 56(5):**

Omit “, at the applicant’s request,”.

**Paragraph 58(5A)(a):**

Omit all the words after “cause”, substitute “that document of an agency to be an exempt document for a reason referred to in subsection 33(1); or”.

**Paragraph 58(5A)(b):**

Omit the paragraph, substitute:

- “(b) in a case where the certificate was given under subsection 33A(4):
  - (i) cause that document of an agency to be an exempt document for a reason referred to in subsection 33A(1); and
  - (ii) not cause that document of an agency to be a document containing matter the disclosure of which under this Act would be, on balance, in the public interest.”.

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**Sub-subparagraph 58C(2)(a)(vi)(A):**

Omit all the words after “cause”, substitute “that document of an agency to be an exempt document for a reason referred to in subsection 33(1); or”.

**Sub-subparagraph 58C(2)(a)(vi)(B):**

Omit all the words after “cause”, substitute “subsection (2A) to apply to that document of an agency; and”.

**After subsection 58C(2):**

Insert:

“(2A) For the purpose of sub-subparagraph 58C(2)(a)(vi)(B), this subsection applies to a document of an agency if the information (as mentioned in subparagraph 58C(2)(a)(vi)) would:

- (a) cause that document of an agency to be an exempt document for a reason referred to in subsection 33A(1); and
- (b) not cause that document of an agency to be a document containing matter the disclosure of which under this Act would be, on balance, in the public interest.”.

***Judges (Long Leave Payments) Act 1979***

**Section 3 (definition of “retirement”):**

After “death”, insert “(see also section 3A)”.

**After section 3:**

Insert:

**Consecutive appointments**

“3A.(1) If:

- (a) a person’s appointment as a Judge terminates; and
- (b) a new appointment of the person as a Judge takes effect immediately after the termination;

the person is taken, for the purposes of this Act, not to retire when the earlier appointment terminates.

“(2) This section applies to the termination of an appointment however it occurs (whether because of resignation or because of the expiration of the term of the appointment or otherwise).”.

***Judges’ Pensions Act 1968***

**Subsection 4(1) (definition of “retires”):**

After “meaning”, insert “(see also sections 4B and 5)”.

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**SCHEDULE—continued**

**After section 4A:**

Insert:

**Consecutive appointments**

“4B.(1) If:

- (a) a person’s appointment as a Judge terminates; and
- (b) a new appointment of the person as a Judge takes effect immediately after the termination;

the person is taken, for the purposes of this Act, not to retire when the earlier appointment terminates.

“(2) This section applies to the termination of an appointment however it occurs (whether because of resignation or because of the expiration of the term of the appointment or otherwise).”.

***Privacy Act 1988***

**Subsection 6(1):**

Insert:

“‘**credit enhancement**’, in relation to a loan, means:

- (a) the process of insuring risk associated with purchasing or funding the loan by means of a securitisation arrangement; or
- (b) any other similar process related to purchasing or funding the loan by those means;

‘**securitisation arrangement**’ means an arrangement:

- (a) involving the funding, or proposed funding, of:
  - (i) loans that have been, or are to be, provided by a credit provider; or
  - (ii) the purchase of loans by a credit provider;by issuing instruments or entitlements to investors; and
- (b) under which payments to investors in respect of such instruments or entitlements are principally derived, directly or indirectly, from such loans;”.

**After subsection 6(5C):**

Insert:

“(5D) A reference in this Act to the purchase of a loan includes a reference to the purchase of rights to receive payments under the loan.”.

**After subsection 11B(4):**

Insert:

“(4A) Subsection (4B) applies to a person who carries on a business that is involved in one or both of the following:



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- (a) a securitisation arrangement;
- (b) managing loans that are the subject of a securitisation arrangement.

“(4B) While a person to whom this subsection applies is performing a task that is reasonably necessary for purchasing, funding or managing, or processing an application for, a loan by means of a securitisation arrangement (being a loan that has been provided by, or in respect of which application has been made to, a credit provider):

- (a) the person:
  - (i) is taken, for the purposes of this Act, to be another credit provider; and
  - (ii) is subject to the same obligations under this Act as any other credit provider; and
- (b) for the purposes of this Act, the loan is taken to have been provided by, or the application for the loan is taken to have been made to, both the person and the first-mentioned credit provider.

“(4C) Nothing in this Act prevents a report (within the meaning of subsection 18N(9)) to which section 18N applies being disclosed if:

- (a) the disclosure is reasonably necessary for purchasing, funding or managing, or processing an application for, a loan by means of a securitisation arrangement (being a loan that has been provided by, or in respect of which an application has been made to, a credit provider); and
- (b) the disclosure takes place between a person to whom subsection (4B) applies in relation to that loan and:
  - (i) the credit provider; or
  - (ii) another person to whom that subsection applies in relation to that loan.

“(4D) A reference in subsection (4B) or (4C) to purchasing or funding a loan by means of a securitisation arrangement includes a reference to credit enhancement of the loan.

“(4E) A reference in subsection (4B) or (4C) to managing a loan does not include a reference to an act relating to the collection of overdue payments in respect of the loan if the act is undertaken by a person whose primary function in relation to the loan is the collection of overdue payments.”

**After subparagraph 18E(1)(b)(i):**

Insert:

- “(ia) a person who is a credit provider because of the application of subsection 11B(4B) having sought a credit report in relation to the individual for the purpose of assessing:

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- (A) the risk in purchasing a loan by means of a securitisation arrangement; or
- (B) the risk in undertaking credit enhancement of a loan that is, or is proposed to be, purchased or funded by means of a securitisation arrangement; being a loan given to, or applied for by, the individual or a person in relation to whom the individual is, or is proposing to be, a guarantor; or”.

**Subparagraph 18E(1)(b)(ii):**

After “the individual” insert “, or to a person in relation to whom the individual is, or is proposing to be, a guarantor”.

**Paragraph 18F(2)(a):**

After “subparagraph (i)” insert “, (ia)”.

**After paragraph 18K(1)(a):**

Insert:

“(ab) the information:

- (i) is contained in a credit report given to a person who is a credit provider because of the application of subsection 11B(4B); and
- (ii) the person requested the report for the purpose of assessing the risk in purchasing a loan by means of a securitisation arrangement, being a loan given to or applied for by:
  - (A) the individual; or
  - (B) a person in relation to whom the individual is, or is proposing to be, a guarantor; or

(ac) the information:

- (i) is contained in a credit report given to a person who is a credit provider because of the application of subsection 11B(4B); and
- (ii) the person requested the report for the purpose of assessing the risk in undertaking credit enhancement of a loan that is, or is proposed to be, purchased or funded by means of a securitisation arrangement, being a loan given to or applied for by:
  - (A) the individual; or
  - (B) a person in relation to whom the individual is, or is proposing to be, a guarantor; or”.

**Paragraph 18K(1)(d):**

Add at the end:

“(iii) the risk of the individual being unable to meet a liability that

**SCHEDULE**—continued

might arise under a guarantee entered into, or proposed to be entered into, in respect of mortgage credit given by a credit provider to another person; or”.

**Before paragraph 18L(1)(a):**

Insert:

- “(aa) the report was obtained under paragraph 18K(1)(a) or (ab) and the credit provider uses the report or information for the purpose of assessing the risk in purchasing a loan by means of a securitisation arrangement, being a loan given to or applied for by:
- (i) the individual; or
  - (ii) a person in relation to whom the individual is, or is proposing to be, a guarantor; or
- (ab) the report was obtained under paragraph 18K(1)(a) or (ac) and the credit provider uses the report or information for the purpose of assessing the risk in undertaking credit enhancement of a loan that is, or is proposed to be, purchased or funded by means of a securitisation arrangement, being a loan given to or applied for by:
- (i) the individual; or
  - (ii) a person in relation to whom the individual is, or is proposing to be, a guarantor; or”.

**Paragraph 18L(1)(a):**

Omit “the individual”, substitute “a person”.

**After paragraph 18L(1)(d):**

Insert:

- “(da) the report was obtained under paragraph 18K(1)(h) and the credit provider uses the report or information for the purpose of the collection of payments that are overdue in respect of commercial credit provided to a person by the credit provider; or”.

**Section 18M:**

Add at the end:

“(3) If:

- (a) a credit provider refuses an application by an individual for credit (including an application made jointly by that individual and one or more other persons); and
- (b) the refusal is based wholly or partly on information derived from a credit report relating to another person who was proposing to be a guarantor in respect of the credit;

the credit provider must give that individual a written notice stating:

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- (c) that the application has been refused; and
- (d) that the refusal was based wholly or partly, as the case requires, on information derived from a credit report relating to that person that a credit reporting agency has given to the credit provider.”.

**Paragraph 18N(1)(bg):**

Omit the paragraph, substitute:

“(bg) the report or information is disclosed to a person who is a guarantor in respect of, or who has provided property as security for, a loan given by the credit provider to the individual concerned, and:

- (i) the individual has specifically agreed to the disclosure of the report or information to any such person; or
- (ii) the following circumstances apply:

- (A) the guarantee or security was given before the commencement of this paragraph;

- (B) the report or information is disclosed for the purpose of giving to the person information that is relevant to the amount or possible amount of the person’s liability under the contract of guarantee or security;

- (C) the credit provider has, prior to the disclosure, informed the individual that such disclosures may take place; or

(bh) the report or information is disclosed to a person for the purpose of that person considering whether to offer to act as guarantor in respect of, or to offer property as security for:

- (i) a loan given by the credit provider to the individual concerned; or

- (ii) a loan for which the individual concerned has applied to the credit provider;

and the individual has specifically agreed to the disclosure of the report or information to any such person for that purpose; or”.

**Sub-subparagraph 18N(1)(c)(iii)(B):**

Omit “or”, substitute “and”.

**After sub-subparagraph 18N(1)(c)(iii)(B):**

Insert:

“(C) information of a kind referred to in subparagraph 18E(1)(b)(viii) or (ix); or”.

**SCHEDULE—continued**

**After paragraph 18N(1)(c):**

Insert:

“(ca) the report (not being a credit report) or information:

- (i) is disclosed to a person or body carrying on a business or undertaking that involves the collection of debts on behalf of others; and
- (ii) is disclosed for the purpose of the collection of payments that are overdue in respect of commercial credit provided to a person by the credit provider; and
- (iii) does not contain or include any personal information derived from a credit report, other than information of a kind referred to in paragraph 18E(1)(a) or subparagraph 18E(1)(b)(viii) or (ix); or”.

**After paragraph 18N(1)(f):**

Insert:

“(fa) the report or information is disclosed to another credit provider in the following circumstances:

- (i) the credit provider and the other credit provider have each provided to the individual concerned mortgage credit in respect of which the same real property forms all or part of the security;
- (ii) the individual is at least 60 days overdue in making a payment in respect of the mortgage credit provided by either credit provider;
- (iii) the disclosure is for the purpose of either credit provider deciding what action to take in relation to the overdue payment; or”.

**Paragraph 18N(1)(ga):**

Omit “given”, substitute “disclosed”.

**After paragraph 18N(1)(ga):**

Insert:

“(gb) the report or information is disclosed in the following circumstances:

- (i) the individual concerned maintains an account with the credit provider;
- (ii) the report or information relates to the operation of the account;
- (iii) the report or information is disclosed to another person who is authorised by the individual to operate the account;
- (iv) either:

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- (A) the report or information contains no information about the credit worthiness, credit standing, credit history or credit capacity of the individual concerned, other than basic transaction information; or
- (B) the disclosure takes place in the ordinary course of the other person operating the account in the way authorised by the individual concerned; or”.

**Subsection 18N(1B):**

Omit the subsection, substitute:

“(1B) For the purposes of paragraphs (1)(bg) and (bh), the individual’s agreement to the disclosure of the report or information must be in writing unless:

- (a) the disclosure relates to an application for a loan that was initially made orally; and
- (b) the application has not yet been made in writing.”.

**After subsection 18N(1C):**

Insert:

“(1D) For the purposes of paragraph (1)(gb), basic transaction information is any one or more of the following:

- (a) the account balance;
- (b) the amount of available credit in relation to the account;
- (c) the minimum payment (if any) due on the account;
- (d) information relating to transactions on the account by the other person.”.

**After paragraph 18P(1)(b):**

Insert:

“(ba) assessing the risk of the individual concerned being unable to meet a liability that might arise under a guarantee entered into, or proposed to be entered into, in respect of mortgage credit given by the credit provider to another person; or”.

**Subsection 18P(7):**

After “this section” insert “(other than subsection (3))”.

**Subsection 18Q(1A):**

Omit the subsection.

**Subsection 18Q(5):**

Omit “(bg),”.

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**SCHEDULE—continued**

**Subsections 18Q(6) and (7):**

Omit the subsections, substitute:

“(6) If:

- (a) a person was, because of the application of subsection 11B(4B), a credit provider in relation to a loan; and
- (b) the person has ceased to be such a credit provider in relation to the loan; and
- (c) the person had, while such a credit provider in relation to the loan, obtained possession or control of a credit report;

the person must not use the report, or any personal information derived from the report, otherwise than for a purpose for which, or in circumstances under which, a credit provider would be permitted under section 18L to use the report or information.

“(7) Subject to subsection (7A), if:

- (a) a person was, because of the application of subsection 11B(4B), a credit provider in relation to a loan; and
- (b) the person has ceased to be such a credit provider in relation to the loan; and
- (c) the person had, while such a credit provider in relation to the loan, obtained possession or control of a report (within the meaning of subsection 18N(9));

the person must not disclose the report, or any personal information derived from the report, to another person otherwise than for the purposes for which, or in circumstances under which, a credit provider would be permitted under section 18N to disclose the report or information to another person.

“(7A) For the purposes of the application of subsection (7) to a person other than a corporation, a record or information (other than a credit report) is not taken to be a report for the purposes of that subsection unless it is being or has been prepared by or for a corporation.”.

**Subsection 18Q(8):**

Omit “(bg),”.

**Subsection 18Q(9):**

Omit “subsection (1), (1A), (2), (3), (4) or (5)”, substitute “this section”.

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*[Minister's second reading speech made in—  
House of Representatives on 14 October 1992  
Senate on 9 November 1992]*