



Australian Capital Territory

Justice and Community Safety Legislation Amendment Act 2005 (No 3)

A2005-43

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2004 140B

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

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Australian Capital Territory

Justice and Community Safety Legislation Amendment Act 2005 (No 3)

A2005-43

An Act to amend laws relating to justice and community safety, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

2004 140B

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 Name of Act

This Act is the *Justice and Community Safety Legislation Amendment Act 2005 (No 3)*.

2 Commencement

- (1) Schedule 1, part 1.10 (Remuneration Tribunal Act 1995) commences on the commencement of the *Human Rights Commission Legislation Amendment Act 2005*, schedule 1, part 1.12 (Remuneration Tribunal Act 1995).
- (2) Schedule 1, part 1.12 (Standard Time and Summer Time Act 1972) commences on 1 September 2005.
- (3) The remaining provisions commence on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

3 Legislation amended—sch 1

This Act amends the legislation mentioned in schedule 1.

4 Legislation repealed

The following legislation is repealed:

- *Supreme Court (Remuneration) Regulation 1995* SL1995-14
- *Trading Stamps Act 1972* A1972-2.

Schedule 1 Legislation amended

(see s 3)

Part 1.1 Administrative Appeals Tribunal Act 1989

[1.1] Section 19

substitute

19 Conduct of proceedings

- (1) A proceeding to which division 4.5 (Land, planning and environment applications) applies must be conducted in the land and planning division.
- (2) Any other proceeding must be conducted in the general division or, if a regulation provides for the proceeding to be conducted in another division, the other division.

Part 1.2 Civil Law (Wrongs) Act 2002

[1.2] Section 50 (2) (a)

substitute

- (a) a claim for compensation under the *Workers Compensation Act 1951*; or

[1.3] New section 50 (3) and (4)

insert

- (3) Also, part 5.2 (Claims procedures) does not apply to a claim for damages for personal injury if a claim for compensation has been

made under the *Workers Compensation Act 1951* in relation to the injury.

- (4) Despite subsection (3), part 5.2 (Claims procedures) applies to a claim for damages for personal injury if the *Road Transport (General) Act 1999*, part 10 applies to the claim, even though a claim for compensation may have been made under the *Workers Compensation Act 1951* in relation to the injury.

[1.4] Section 51 (3) (b)

omit

1 month

substitute

4 months

[1.5] New section 51 (6)

insert

- (6) Without limiting subsection (5), an excuse is reasonable if it is prescribed by regulation for this section.

[1.6] Section 51 (6)

renumber as section 51 (7)

[1.7] Section 51 (7)

omit

subsection (6)

substitute

subsection (7)

[1.8] Section 51 (7) (as amended)

renumber as section 51 (8)

[1.9] New section 226

insert

226 Application provisions—notices under s 51

- (1) This section applies to a notice of claim given under section 51 after the commencement of the *Justice and Community Safety Legislation Amendment Act 2005* and before the commencement of this section.
- (2) Section 51 (3) (b) applies to the notice of claim as if the amendment of the paragraph made by the *Justice and Community Safety Legislation Amendment Act 2005 (No 3)* had been in force immediately before the notice was given.
- (3) This section expires 1 year after the day it commences.
- (4) Subsections (1) and (2) are declared to be provisions to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

Part 1.3 Civil Law (Wrongs) Regulation 2003

[1.10] New section 6A

insert

6A Reasonable excuse for delay in giving notice—Act, s 51 (6)

- (1) If a claimant does not give notice under the Act, section 51 within the period required under the Act, section 51 (3) because the claim is being conciliated under the *Human Rights Commission Act 2005*, part 4 the claimant has a reasonable excuse for the delay.

- (2) The reference in subsection (1) to the *Human Rights Commission Act 2005*, part 4 includes a reference to the *Community and Health Services Complaints Act 1993*, part 4.
- (3) Subsection (2) and this subsection expire on the day the *Human Rights Commission Act 2005* commences.

Part 1.4 Conveyancing Act 1919

[1.11] Dictionary, definition of *trustee company*

substitute

trustee company, means a trustee company under the *Trustee Companies Act 1947*.

Part 1.5 Corrections Reform Amendment Act 2004

[1.12] Section 2

substitute

2 Commencement

This Act commences on 6 September 2006.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Part 1.6 Domestic Relationships Act 1994

[1.13] Section 33 (1) (d)

substitute

- (d) before the agreement was signed each party was given a certificate by a solicitor to the effect that the solicitor had advised the party, independently of the other party, about—
- (i) the effect of the agreement on the rights of the parties under this Act; and
 - (ii) the advantages and disadvantages for the party, at the time the advice was given, of making the agreement; and

Part 1.7 Legal Practitioners Act 1970

[1.14] Section 193 (2) (a) (iv)

substitute

- (iv) an employee of a trustee company under the *Trustee Companies Act 1947*; or

[1.15] Section 194 (2) (c)

substitute

- (c) an employee of a trustee company under the *Trustee Companies Act 1947*.

Part 1.8 Partnership Act 1963

[1.16] Section 7 (4) (b) and (c)

substitute

- (b) a contract for the remuneration of an employee or agent of a person engaged in a business by a share of the profits of the business does not, of itself, make the employee or agent a partner in relation to the business or liable as a partner in relation to the business; and
- (c) a domestic partner or child of a deceased partner who receives, by way of periodical payment, a part of the profits made in a business is not, only because the domestic partner or child receives part of the profits, a partner in relation to the business or liable as a partner in relation to the business; and

[1.17] Section 38

substitute

38 Dissolution of partnership by death, bankruptcy, charge etc

- (1) Subject to any agreement between the partners, a partnership is dissolved in relation to all the partners if a partner dies, becomes bankrupt, or executes a personal insolvency agreement under the *Bankruptcy Act 1966* (Cwlth).
- (2) If a partner's share in the partnership property is charged under this Act for the partner's separate debt, the other partners may dissolve the partnership.

[1.18] Section 41 (3)

substitute

- (3) If a person who is a partner in a firm dies, becomes bankrupt, or executes a personal insolvency agreement under the *Bankruptcy Act 1966* (Cwlth), the estate of the partner is not liable for the debts of the firm contracted after the date of the death, bankruptcy or executing of the personal insolvency agreement.

[1.19] Section 44

substitute

44 Continuing authority of partners for winding-up

- (1) After the dissolution of a partnership, the authority of each partner to bind the firm and the other rights and obligations of the partners continue, despite the dissolution, so far as necessary to wind up the affairs of the firm or to complete transactions started but unfinished at the time the partnership is dissolved, but not otherwise.
- (2) If a person (**A**) who was a partner in the firm becomes bankrupt, or executes a personal insolvency agreement under the *Bankruptcy Act 1966* (Cwlth), subsection (1) does not make another person (**B**) who was a partner in the firm liable for A's acts.
- (3) However, B is liable for A's acts if, after A became bankrupt or executed the personal insolvency agreement, B represented, or knowingly allowed a representation to be made, that A was his or her partner.

Part 1.9 Powers of Attorney Act 1956

[1.20] Section 1

substitute

1 Name of Act

This Act is the *Powers of Attorney Act 1956*.

[1.21] Section 2 (1), definitions of *donee, donor, enduring power of attorney and trustee company*

omit

[1.22] Section 2 (1), definitions (as amended)

relocate to dictionary

[1.23] Section 2, remainder

substitute

2 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

2A Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

2C **References to *property* in power of attorney**

- (1) In a power of attorney, a reference to *property* is a reference to real and personal property, unless the contrary intention appears in the instrument creating the power of attorney.
- (2) This section applies to a power of attorney whether it was created before or after the commencement of this section.

[1.24] Section 3

omit

, or under the *Real Property Act 1900*

[1.25] Section 11

substitute

11 **Effect of registration of powers of attorney**

- (1) This section applies in relation to an instrument (the *authorising instrument*) creating a power of attorney executed after the commencement of this Act.
- (2) A conveyance or deed, other than a lease or agreement for a lease for a term of not longer than 3 years, executed under the power of attorney does not have effect until the authorising instrument is registered.
- (3) On registration of the authorising instrument, the conveyance or deed takes effect as if the authorising instrument had been registered before the conveyance or deed was executed.
- (4) In this section:

registered means registered in the general register of deeds under the *Registration of Deeds Act 1957*.

[1.26] New section 18A

insert

18A Recognition of enduring power of attorney made in a State or another Territory

- (1) This section applies if an enduring power of attorney is made in a State or another Territory (the *other jurisdiction*) and the power of attorney complies with the requirements of the law of the other jurisdiction about enduring powers of attorney.
- (2) For this Act, the enduring power of attorney is taken to be an enduring power of attorney made under, and to comply with the requirements of, this Act.
- (3) However, the enduring power of attorney has effect for this Act only to the extent that the powers it gives under the law of the other jurisdiction could validly have been given by an enduring power of attorney made under this Act.

[1.27] New dictionary

insert

Dictionary

(see s 2)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- Act
- ACT
- appoint
- doctor
- instrument
- Minister

- property
- public trustee
- solicitor
- year.

donee, of a power of attorney, means—

- (a) the person who is appointed attorney by the power of attorney;
or
- (b) if 2 or more people are appointed attorney by the power of attorney—each of them.

donor, of a power of attorney, means the person who appoints an attorney by the power of attorney.

enduring power of attorney means an instrument created in accordance with section 12 (1).

Note A reference to an enduring power of attorney may include a power of attorney made in a State or another Territory (see s 18A).

trustee company, means a trustee company under the *Trustee Companies Act 1947*.

Part 1.10 Remuneration Tribunal Act 1995

[1.28] Section 10 (3)

omit

[1.29] Section 10 (4) and (5)

renumber as section 10 (3) and (4)

[1.30] Schedule 1, part 1.1

omit

- judge

substitute

- acting judge

Part 1.11 Residential Tenancies Act 1997

[1.31] Section 51

omit

On application,

substitute

On application by a lessor,

[1.32] New section 71GA

in part 5A, insert

71GA Occupant may deposit bond with Territory

- (1) The occupant under an occupancy agreement may deposit the amount of any bond under the agreement with the Territory.
- (2) The deposit must be accompanied by a written notice that states—
 - (a) the names of, and addresses for service on, the occupant and the grantor; and
 - (b) the amount of bond being deposited.

Note If a form is approved under s 133 (Approved forms—Minister) for this provision, the form must be used.

- (3) If the Territory accepts the amount of the bond, the Territory must—
 - (a) give the occupant a receipt for the amount; and

- (b) give the grantor a copy of the notice under subsection (2).
- (4) If the Territory accepts the amount of the bond, the applied provisions apply in relation to the occupancy agreement as if—
- (a) the amount had been received by the Territory under part 3 (Bonds); and
 - (b) the occupancy agreement were a residential tenancy agreement; and
 - (c) the occupant were the tenant under the agreement; and
 - (d) the grantor were the lessor under the agreement; and
 - (e) any dispute between the occupant and the grantor about the bond were a tenancy dispute; and
 - (f) any other necessary changes, and any changes prescribed by regulation, were made.
- (5) In this section:
- applied provisions*** means the following provisions:
- section 27 (Payment of bond money into trust account)
 - section 28 (Interest)
 - division 3.4 (Release of bond money).

Part 1.12 Standard Time and Summer Time Act 1972

[1.33] Sections 3 to 6

substitute

2 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act.

Note 2 A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

3 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

4 Standard time

Standard time in the ACT is 10 hours in advance of coordinated universal time.

5 Summer time

During a summer time period, summer time in the ACT is 1 hour in advance of ACT standard time.

6 Declaration of summer time period

- (1) The Minister may, in writing, declare a period to be a summer time period for this Act.

- (2) A declaration is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

7 Meaning of references to time etc

- (1) This section applies if—
- (a) a legal instrument refers (expressly or impliedly) to a time; or
 - (b) the doing or failure to do anything at, before or after a time has an effect in law.
- (2) The time must be worked out using—
- (a) ACT standard time; or
 - (b) if the time is in relation to a summer time period—ACT summer time.
- (3) However, subsection (2) does not apply to a reference in a legal instrument if the legal instrument or another legal instrument expressly, or by a manifest contrary intention, provides for the reference to have another meaning.
- (4) Also, subsection (2) (b) does not affect—
- (a) the use of ACT standard time for the purposes of astronomy, meteorology or navigation, or
 - (b) the meaning of a reference in a document to a time in relation to any of those purposes.
- (5) To remove any doubt, a reference in this section to a *time* includes a reference to a period of time.
- (6) This section applies to a legal instrument even though the instrument was made before the commencement of this section.

[1.34] New dictionary

insert

Dictionary

(see s 2)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- Act
- ACT
- instrument
- statutory instrument
- writing.

ACT standard time means standard time as fixed by section 4.

ACT summer time means summer time as fixed by section 5.

coordinated universal time means Co-ordinated Universal Time (UTC) as determined by the International Bureau of Weights and Measures and maintained under the *National Measurement Act 1960* (Cwlth), section 8AA.

legal instrument means—

- (a) an Act or statutory instrument; or
- (b) a contract or agreement (whether oral or in writing or both); or
- (c) a deed or other instrument having legal effect.

summer time period means—

- (a) a period starting at 2 am on the last Sunday in October in a year and ending at 2 am on the last Sunday in the following March; or

- (b) if the Minister declares a different period under section 6—that period.

Part 1.13 Supreme Court Act 1933

[1.35] Section 37J (1) (h)

substitute

- (h) dismissal of an appeal or other proceeding for want of prosecution or for any other reason prescribed under the rules;
- (i) dismissal of an appeal or other proceeding on the application of the appellant or other applicant;
- (j) directions about the conduct of the appeal (including directions about use of written submissions and limiting time for oral argument);
- (k) any other question of practice and procedure in the Court of Appeal;
- (l) costs and other matters incidental to a matter mentioned in paragraphs (a) to (k).

[1.36] New section 37J (3)

insert

- (3) The rules may provide that the jurisdiction and powers of the Court of Appeal may be exercised by a single judge in particular kinds of proceedings.

[1.37] Section 37U (1)

omit

while another resident judge holds office as a judge of the Federal Court

[1.38] Section 37U (3) (i)

omit

died.

substitute

died; and

[1.39] New section 37U (3) (j)

insert

- (j) all other necessary changes, and any changes prescribed by regulation, were made.

[1.40] New section 37U (4)

insert

- (4) To remove any doubt, for the application of the *Judges' Pensions Act 1968* (Cwlth) to a person to whom this section applies a reference in that Act to the ***appropriate current judicial salary*** is—
- (a) for a person who was Chief Justice—a reference to salary at the rate that would be payable to the person as Chief Justice if the person had not died or retired; and
- (b) for a person who was President—a reference to salary at the rate that would be payable to the person as President if the person had not died or retired.
- (5) For subsection (4), ***salary*** includes salary (however described) payable under a determination of the remuneration tribunal.

[1.41] Section 37V

substitute

37V Entitlements of acting judges

An acting judge is entitled to the same entitlements, other than in relation to leave or pension, as a judge.

Part 1.14 Trustee Act 1925

[1.42] Dictionary, definition of *trustee company*

substitute

trustee company, means a trustee company under the *Trustee Companies Act 1947*.

Part 1.15 Trustee Companies Act 1947

[1.43] Sections 2 and 3

substitute

2 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*books*—see the Corporations Act, section 9.’ means that the term ‘books’ is defined in that section and the definition applies to this Act.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

3 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

[1.44] Section 5 (2)

omit

the court

substitute

the Supreme Court

[1.45] Section 10

substitute

10 Assets of company to be liable for proper administration of estates

- (1) This section applies if probate or letters of administration are granted to a trustee company in relation to an estate.
- (2) The paid and unpaid capital and all other assets of the trustee company are liable for the proper administration of the estate.

[1.46] Section 11 (1)

omit

, judge

[1.47] Section 15 heading

substitute

15 Application for consent under s 14

[1.48] Section 15 (1)

substitute

- (1) Notice of an intended application for consent under section 14, and of the date when it is intended to be made, must be advertised once in a daily newspaper circulating generally in the ACT at least 7 days before the day the application is made.

[1.49] Section 18A (1) and (2)

omit

, other than probate, death, succession or estate duties

[1.50] Section 20 (2)

omit

, either by action or other ordinary procedure of the court or in any summary way by motion

[1.51] Section 21 (1)

omit

or a judge, on motion or summons, after notice to the company, but without action or petition

[1.52] Section 21 (2) to (4)

substitute

- (2) The Supreme Court may—
 - (a) if the court considers that a sufficient account has not been given by the trustee company—order the company to give the account the court considers just; or
 - (b) in any other case—dismiss the application.

- (3) The Supreme Court may make any order about costs that it considers appropriate, including an order for payment of costs out of the estate.

[1.53] Section 22 (1)

omit

or a judge

[1.54] Section 22 (3)

omit

or judge

[1.55] Section 23 (1)

omit

or a judge

[1.56] Section 23 (2)

omit

or a judge in a summary way

[1.57] Section 23 (2)

omit

or judge

[1.58] Section 24 (1) (c)

substitute

(c) deposit of its own funds with a bank; or

[1.59] Section 27

substitute

27 Power to deposit amounts with banks

A trustee company may deposit any amount that it has control of under this Act with a bank.

[1.60] Section 28 (5)

substitute

- (5) The Minister must pay each amount paid to the Minister under this section to a trust banking account under the *Financial Management Act 1996*.

[1.61] Section 29 (1)

omit

or a judge

[1.62] Section 30 (1)

omit

or a judge, on motion or summons after notice to the trustee company but without action or petition for an account,

[1.63] Section 30 (1)

omit

rendered

substitute

given

[1.64] Section 30 (2) to (4)

substitute

- (2) The Supreme Court may—
 - (a) if the court considers that a sufficient account has not been given by the trustee company—order the company to give the account the court considers just; or
 - (b) in any other case—dismiss the application.
- (3) The Supreme Court may make any order about costs that it considers appropriate, including an order for payment of costs out of the estate.

[1.65] Section 31B (6)

substitute

- (6) The costs of an inquiry or audit under this section in relation to a trustee company—
 - (a) are payable by the trustee company, unless the Minister directs otherwise; and
 - (b) may be recovered as a debt owing to the Territory.

[1.66] Section 33

substitute

33 Testators may appoint own lawyers

- (1) This section applies if—
 - (a) a trustee company is the executor or administrator (or an executor or administrator) of the estate of a deceased person (the *testator*); and
 - (b) the testator has directed by will that a particular lawyer conduct the legal business of the testator's estate.

-
- (2) The lawyer is entitled to conduct that legal business as directed by the testator.
- (3) However—
- (a) the trustee company is not liable for any misconduct of the lawyer; and
 - (b) the lawyer may be removed by order of the Supreme Court on the application of the trustee company or of anyone interested in the estate.
- (4) If a lawyer is removed under subsection (3) (b), the Supreme Court may appoint a lawyer nominated by the trustee company.
- (5) In this section:
- will* includes codicil or other testamentary writing.
- misconduct* includes negligence, misfeasance and nonfeasance.

[1.67] New dictionary

insert

Dictionary

(see s 2)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- Act
- appoint
- bank
- corporation
- Corporations Act
- Executive
- lawyer

- Minister
- person
- Supreme Court.

books—see the Corporations Act, section 9.

first valuation day, in relation to a common trust fund, means the day determined under section 25B (6) for the purpose of valuing the fund.

officer, of a trustee company, means an officer of the company under the Corporations Act.

Note **Officer** of a corporation is defined in the Corporations Act, s 9.

trustee company means—

- (a) a company mentioned in schedule 1; or
- (b) a company authorised under a law of a State or Territory to act as executor, administrator and trustee in the State or Territory.

valuation day, in relation to a common trust fund, means—

- (a) a day mentioned in section 25F (1) (a) (i) or (ii); or
- (b) any other day when, under section 25F (1) (b), a valuation of the fund is carried out.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 30 June 2005.

2 Notification

Notified under the Legislation Act on 30 August 2005.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Justice and Community Safety Legislation Amendment Bill 2005 (No 3), which originated in the Legislative Assembly as the Justice and Community Safety Legislation Amendment Bill 2005 (No 2) and was passed by the Assembly on 25 August 2005.

Clerk of the Legislative Assembly

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