



Australian Capital Territory

Justice and Community Safety Legislation Amendment Act 2007

A2007-22

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J2006-695

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 2007

A2007-22

An Act to amend the law relating to justice and community safety

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

J2006-695

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 2007*.

2 Commencement

This Act commences on the day after its notification day.

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

This Act amends the legislation mentioned in schedule 1.

5 Repeal of Powers of Attorney Regulation 2007

The *Powers of Attorney Regulation 2007* is repealed.

Schedule 1 Legislation amended

(see s 4)

Part 1.1 Agents Act 2003

[1.1] Section 22 (1) (b) (ii)

substitute

- (ii) pretends to be a licensed employment agent.

[1.2] Section 70 (2)

substitute

- (2) A licensed agent commits an offence if—
 - (a) the licensed agent—
 - (i) is employed to be responsible for the day-to-day management of another licensed agent's place of business; and
 - (ii) provides services for 2 or more licensed agents at the place; and
 - (b) the licensed agents to whom the services are provided are not in partnership with each other.

Maximum penalty: 100 penalty units.

Part 1.2 Civil Law (Wrongs) Act 2002

[1.3] New section 16 (3A)

insert

- (3A) However, damages mentioned in subsection (3) (b) (i) may be recovered if—
- (a) the cause of action related to a personal injury resulting from an asbestos-related disease; and
 - (b) the person gave notice under section 51 (Notice of claim) before the person's death; and
 - (c) the person died either—
 - (i) as a result of the asbestos-related disease; or
 - (ii) the asbestos-related disease was a contributing factor to the person's death.

[1.4] Section 16 (7), new definition of *asbestos-related disease*

insert

asbestos-related disease means any of the following diseases:

- (a) asbestosis;
- (b) asbestos induced carcinoma;
- (c) asbestos-related pleural diseases;
- (d) mesothelioma;
- (e) a disease prescribed by regulation.

[1.5] New section 84 (2) and (3)

insert

- (2) However, an expert who has provided a health service for a claimant in relation to the claim may also give expert medical evidence in the proceeding.
- (3) In this section:
health service—see the *Health Professionals Act 2004*, section 15.

[1.6] Section 97 (3)

substitute

- (3) For subsection (1) (a), the presumption can be rebutted if the injured person establishes, on the balance of probabilities, that—
 - (a) the injury suffered by the injured person was less serious than it would have been if the injured person had been wearing a seatbelt at the time of the accident; or
 - (b) the injured person was not capable of fastening a seatbelt without assistance from someone else.

[1.7] Schedule 4, section 4.2, new definitions of *amount payable* and *costs*

insert

amount payable, under an insurance policy in relation to an occupational liability—see section 4.2A.

costs includes fees, charges, disbursements and expenses.

[1.8] Schedule 4, section 4.2, definition of *damages*

substitute

damages means—

- (a) damages awarded in relation to a claim or counter-claim or claim by way of set-off; or
- (b) costs in relation to the proceedings ordered to be paid in relation to such an award (other than costs incurred in enforcing a judgment or incurred on an appeal made by a defendant); or
- (c) any interest payable on the amount of the damages or costs.

[1.9] Schedule 4, new section 4.2A

insert

4.2A *Amount payable under an insurance policy—sch 4*

In this schedule:

amount payable, under an insurance policy in relation to an occupational liability, includes—

- (a) defence costs payable in relation to a claim, or notification that may lead to a claim (other than reimbursement of the defendant for time spent in relation to the claim), but only if the costs are payable out of the one sum insured under the policy in relation to the occupational liability; and
- (b) the amount payable under or in relation to the policy by way of excess.

[1.10] Schedule 4, section 4.17

substitute

4.17 Limitation of liability by insurance arrangements

A person to whom a scheme applies, and against whom a proceeding relating to occupational liability is brought, is not liable in damages in relation to the cause of action above the monetary ceiling if the person can satisfy the court that—

- (a) the person has the benefit of an insurance policy insuring the person against the occupational liability to which the cause of action relates; and
- (b) the amount payable under the policy for the occupational liability is at least the amount of the monetary ceiling stated in the scheme in relation to the class of person and the kind of work to which the cause of action relates.

[1.11] Schedule 4, section 4.18 (a)

omit

when the act or omission giving rise to the cause of action happened

[1.12] Schedule 4, section 4.18 (b) (ii)

substitute

- (ii) the net current market value of the business assets and the amount payable under the policy for the occupational liability, if combined, would total an amount that is at least the amount of the monetary ceiling stated in the scheme in relation to the class of person and the kind of work to which the cause of action relates.

[1.13] Schedule 4, section 4.19 (1) (a) (ii)

substitute

- (ii) under which the amount payable for the occupational liability is at least an amount (the *limitation amount*) that is a reasonable charge for the services provided by the person or which the person failed to provide and to which the cause of action relates, multiplied by the multiple stated in the scheme in relation to the class of person and the kind of work to which the cause of action relates; or

[1.14] Schedule 4, section 4.19 (1) (c) (ii)

substitute

- (ii) the net current market value of the assets and the amount payable under the policy for the occupational liability, if combined, would total an amount that is at least the limitation amount.

[1.15] Schedule 4, new section 4.22A

insert

4.22A Liability in damages not reduced to below relevant limit

The liability in damages of a person to whom a scheme applies is not reduced below the relevant limitation imposed by a scheme in force under this schedule because the amount available to be paid to the claimant under the insurance policy required for this schedule for the liability is less than the relevant limitation.

Note Section 4.2A allows a defence costs inclusive policy for this schedule, which may reduce the amount available to be paid to a client for occupational liability covered by the policy. Section 4.22A makes it clear that this does not reduce the cap on the liability of the scheme participant to the client, and accordingly the scheme participant will continue to be liable to the client for any difference between the amount payable to the client under the policy and the amount of the cap.

[1.16] Schedule 4, section 4.24 (2)

omit

when the act or omission happened

substitute

when the act or omission giving rise to the cause of action concerned happened

[1.17] Schedule 4, new section 4.59A

insert

4.59A Validation of schemes etc

- (1) A scheme approved under this schedule before the commencement of the *Justice and Community Safety Legislation Amendment Act 2007* (the **amending Act**) is taken to be, and always to have been, a valid scheme if it would have been valid had the amendments made by the amending Act been in force when the scheme was approved.
- (2) Anything done or omitted to be done in relation to such a scheme is taken to be, and always to have been, validly done or omitted.
- (3) In particular, an insurance policy required by this schedule before a limitation on liability in damages of a person to whom such a scheme applies is reduced is taken to comply, and always to have complied, with this schedule if it would have complied had the amendments made by the amending Act been in force when the policy was issued.
- (4) This section extends to proceedings pending in a court on the commencement of this section.

[1.18] Dictionary, new definition of *amount payable*

insert

amount payable, under an insurance policy in relation to an occupational liability, for schedule 4 (Professional standards)—see schedule 4, section 4.2A.

[1.19] Dictionary, definition of *costs*

substitute

costs—

- (a) for chapter 14 (Limitations on legal costs)—see section 180; and
- (b) for schedule 4 (Professional standards)—see schedule 4, section 4.2.

Part 1.3 **Classification (Publications, Films and Computer Games) (Enforcement) Regulation 1995**

[1.20] Section 2

omit everything before paragraph (a), substitute

2 Prescribed areas for X 18+ films—Act, s 9 (2) (c) and s 21 (b)

The following areas are prescribed:

Part 1.4 **Community Title Act 2001**

[1.21] Section 52 (4)

omit

section 7

substitute

section 8

Part 1.5 **Crimes Act 1900**

[1.22] Section 441 (10), definition of *prescribed penalty*

omit

1 penalty unit

substitute

\$100

Part 1.6 Criminal Code 2002

[1.23] Section 10 (1), definition of *default application date*

omit

1 July 2007

substitute

1 July 2009

[1.24] Section 300, definition of *territory public official*, new paragraph (k)

insert

(k) an authorised person, or a territory service authorised person, under the *Utilities Act 2000*.

Part 1.7 Criminal Code Regulation 2005

[1.25] Section 4A

omit

Part 1.8 Discrimination Act 1991

[1.26] New section 77A

insert

77A Power to strike out complaints

Despite section 77, the tribunal may refuse to hear, or further hear, a complaint if the complainant fails to comply with a reasonable direction of the tribunal in relation to the hearing of the complaint.

[1.27] Dictionary, definition of *compulsory conference*

omit

**Part 1.9 Domestic Violence Agencies Act
1986**

[1.28] Sections 6, 7 and 8

substitute

6 Membership of council

- (1) The council consists of—
- (a) the coordinator; and
 - (b) 12 other members (each of whom is an *appointed member*) appointed by the Minister.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act s 207).

Note 3 Certain Ministerial appointments require consultation with a Legislative Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

- (2) The appointed members must consist of—
- (a) at least 6 people as community members, including—
 - (i) at least 1 person who the Minister considers is capable of representing the views and interests of people of Aboriginal and Torres Strait Islands descent; and

- (ii) at least 1 person who the Minister considers is capable of representing the views and interests of people of non-English speaking background; and
 - (iii) at least 1 representative of the Domestic Violence Crisis Service Incorporated; and
- (b) other people who are—
 - (i) statutory office holders; or
 - (ii) public servants; or
 - (iii) police officers.
- (3) The instrument making or evidencing the appointment of a person as an appointed member must state the capacity in which the person is appointed.
- (4) The Minister may appoint a person to the council as a community member only if the Minister considers that the person is familiar with the views and interests of the community on matters relating to domestic violence and is capable of representing those views and interests.
- (5) The Minister may appoint a statutory office holder to the council only if satisfied that the exercise of the functions of the office requires its holder to have experience and expertise that would assist the council to exercise its functions.
- (6) The Minister may appoint a public servant or police officer to the council only if—
 - (a) the person has a position the functions of which involve dealing with matters that are relevant to a function of the council; and
 - (b) the Minister considers that the person has the experience and expertise that would assist the council to exercise its functions.

6A Chairperson of council

The Minister must appoint an appointed member as chairperson of the council.

Note For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

7 Appointed members' term

An appointed member must not be appointed for more than 3 years.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def of *appoint*).

8 Ending of appointed member appointments

- (1) A person appointed as a member because the person is a statutory office holder stops being a member if the person stops being the statutory office holder.
- (2) A person appointed as a member because the person is a public servant or police officer stops being a member if the person ceases to occupy the office mentioned in section 6 (6) (a).
- (3) The Minister must end the appointment of an appointed member—
 - (a) for misbehaviour; or
 - (b) for physical or mental incapacity; or
 - (c) if the member becomes bankrupt or executes a personal insolvency agreement; or
 - (d) if the member is absent, without the permission of the chairperson, from—
 - (i) 3 consecutive meetings of the council; or
 - (ii) 4 out of 6 consecutive meetings of the council; or

- (e) if the member is convicted, in the ACT, of an offence punishable by imprisonment for at least 1 year; or
- (f) if the member is convicted outside the ACT, in Australia or elsewhere, of an offence that, if it had been committed in the ACT, would have been punishable by imprisonment for at least 1 year.

Note A person's appointment also ends if the person resigns (see Legislation Act, s 210).

[1.29] Dictionary, definition of *appointed member*

substitute

appointed member—see section 6 (1).

[1.30] Dictionary, definition of *member*

substitute

member means a member of the council.

Part 1.10 Human Rights Commission Act 2005

[1.31] New section 6 (aa)

insert

- (aa) to promote understanding and acceptance of, and compliance with, the *Discrimination Act 1991* and the *Human Rights Act 2004*;

[1.32] Section 6 (d)

substitute

- (d) to promote an awareness of the rights and responsibilities of users and providers of services to which this Act relates;

[1.33] Section 6 (f)

omit

Part 1.11 Judicial Commissions Act 1994

[1.34] Section 61

substitute

61 Reports of proceedings—protection

- (1) The proceedings of a hearing before a commission are taken to be proceedings of public concern for the *Civil Law (Wrongs) Act 2002*, section 139 (Defences of fair report of proceedings of public concern).
- (2) Subsection (1) does not apply in relation to the publication of a report of proceedings, or a part of proceedings, if a direction given under section 37 (3) restricts publication of the proceedings or part of them and the publication of the report contravenes the direction.

Part 1.12 Powers of Attorney Act 2006

[1.35] Section 12, example 2

substitute

2 donations (other than donations of non-regenerative tissue) under the *Transplantation and Anatomy Act 1978* by the principal to someone else

[1.36] Section 13 heading

substitute

13 Appointment of attorneys

[1.37] Section 13 (1) and (2)

omit

authorise

substitute

appoint

[1.38] Section 13 (3)

substitute

- (3) However, an adult must not, by a power of attorney, appoint a child as an attorney.

[1.39] Section 15

substitute

15 Appointment of attorneys by name or position

A principal may appoint a person to act under a power of attorney by—

- (a) naming the person; or
- (b) nominating the occupant of a position (however described), at a particular time or from time to time.

Note The principal may revoke a power of attorney if the principal has decision-making capacity.

[1.40] Section 21 (1) (b) and (2) (b)

omit

authorised

substitute

appointed

[1.41] Section 22 (2) (d)

substitute

- (d) at the time the principal gave the direction to sign the power of attorney, the principal appeared to the witness to understand the nature and effect of making the power of attorney.

[1.42] Part 3.3 heading

substitute

Part 3.3 Authorisation of 2 or more attorneys

[1.43] Section 25 heading

substitute

25 Authorisation of 2 or more attorneys under power of attorney

[1.44] Section 31 (2)

substitute

- (2) While the principal has decision-making capacity, the power of attorney operates as a general power of attorney in relation to property matters.

[1.45] Section 36 (b)

substitute

- (b) making or revoking a power of attorney for the principal;

[1.46] Sections 43 (1) and 53

omit

authorisation

substitute

appointment

[1.47] Section 83 heading

substitute

83 Assistance by public trustee

[1.48] Section 83 (3)

omit

must

substitute

may

**Part 1.13 Powers of Attorney
 Regulation 2007 (No 2)**

[1.49] Section 4 heading

substitute

4 Modification of Act, ch 20, new section 152B—Act, s 156

[1.50] Section 4, new section 152C

omit

Part 1.14 Utilities Act 2000

[1.51] Section 20 (2) (b)

substitute

- (b) the *Emergencies Act 2004*;

[1.52] Section 171 (2) (b) (ii)

substitute

- (ii) the effect of the *Magistrates Court Act 1930*, section 266 (Complaints under Utilities Act, pt 12).

[1.53] New section 206 (1) (d)

insert

- (d) a capital contribution charge, of an amount of not more than \$10 000, imposed by a utility is excessive.

[1.54] Section 206 (2)

substitute

- (2) The council may—
- (a) for a complaint that a capital contribution charge is excessive—give a direction under section 209A (Reviewable capital contribution charges); or
- (b) in any other case—
- (i) give any written directions to the utility that it considers necessary requiring the utility to remedy the matter mentioned in subsection (1); or
- (ii) give any other direction under this division; or
- (iii) make a declaration under this division.

[1.55] New section 209A

insert

209A Reviewable capital contribution charges

- (1) This section applies if the council is satisfied that a capital contribution charge imposed by a utility is excessive.
- (2) The council may give the utility a written direction to reduce the charge to the amount stated in the direction.
- (3) For subsection (2), the council must state an amount that it considers reasonable having regard to—
 - (a) the cost of the work to which the charge relates; and
 - (b) the relevant industry code.
- (4) The council may only give a direction under subsection (2) in relation to a capital contribution charge of not more than \$10 000.
- (5) To remove any doubt, this section is additional to, and does not limit—
 - (a) section 207 (Continuity of services—nonpayment of customer debt); and
 - (b) section 208 (Discharge of customer debt).

Part 1.15 **Victims of Crime Act 1994**

[1.56] New section 18A

in division 3.2, insert

18A Delegation by coordinator

The coordinator may delegate the coordinator's functions under this Act to a public servant.

Note 1 For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

Note 2 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including a regulation (see Legislation Act, s 104).

Part 1.16 **Victims of Crime (Financial Assistance) Act 1983**

[1.57] New section 61AA

after section 61, insert

61AA Order for restitution—judgment debt

The amount ordered to be paid by a court under an order for restitution is a judgment debt owing to the Territory.

Note An amount owing under a law may be recovered as a debt in a court of competent jurisdiction (see Legislation Act, s 177).

[1.58] Sections 61AA and 61A

renumber as sections 61A and 61B

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 31 May 2007.

2 Notification

Notified under the Legislation Act on 5 September 2007.

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 2007, which was passed by the Legislative Assembly on 21 August 2007.

Clerk of the Legislative Assembly

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