



Australian Capital Territory

Justice and Community Safety Legislation Amendment Act 2008 (No 3)

A2008-29

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended—sch 1	2
Schedule 1	
Part 1.1	
Part 1.2	
Part 1.3	
Part 1.4	
Part 1.5	
Part 1.6	
Legislation amended	3
Administration and Probate Act 1929	3
Agents Act 2003	4
Civil Law (Sale of Residential Property) Regulation 2004	4
Civil Law (Wrongs) Act 2002	6
Crimes Act 1900	7
Crimes (Restorative Justice) Act 2004	8

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

Contents

		Page
Part 1.7	Discrimination Act 1991	11
Part 1.8	Legal Profession Act 2006	12
Part 1.9	Legal Profession Regulation 2007	17
Part 1.10	Magistrates Court Act 1930	17
Part 1.11	Regulatory Services Legislation Amendment Act 2008	18



Australian Capital Territory

Justice and Community Safety Legislation Amendment Act 2008 (No 3)

A2008-29

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

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

1 Name of Act

This Act is the *Justice and Community Safety Legislation Amendment Act 2008 (No 3)*.

2 Commencement

This Act commences on the 14th day after its notification day.

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

3 Legislation amended—sch 1

This Act amends the legislation mentioned in schedule 1.

Schedule 1 Legislation amended

(see s 3)

Part 1.1 Administration and Probate Act 1929

[1.1] Section 25 (1) (a)

omit

3 months

substitute

6 months

[1.2] Section 44, definition of *eligible partner*

after

spouse

insert

or civil partner

[1.3] Section 44, definition of *partner*, paragraph (a)

after

spouse

insert

or civil partner

[1.4] Section 45A heading

substitute

45A Distribution between spouse or civil partner and eligible partner

[1.5] Section 45A (1)

after

spouse

insert

or civil partner

Part 1.2 Agents Act 2003

[1.6] Section 162 (2)

substitute

- (2) As soon as practicable after the beginning of a financial year, the Minister must determine an amount for the compensation fund, if the Minister considers it necessary to increase the amount in the compensation fund to meet the likely claims against the fund during the financial year.

Part 1.3 Civil Law (Sale of Residential Property) Regulation 2004

[1.7] Section 7 (7)

substitute

- (7) For subsection (1), AS 4349.1 is taken to be modified as follows:
- (a) omit section 2 (Inspection agreement);

(b) in clause C4.2 (Report content commentary), insert the following new paragraph (e):

(e) An assessment of the property in relation to cosmetic or minor maintenance matters.

Examples of cosmetic or minor maintenance matters

- 1 leaking taps
- 2 exposed nail heads
- 3 peeling paint

(c) omit clause 4.2.4.2 (Minor defects);

(d) omit clause C4.2.4.2 (Minor defects commentary);

(e) in clause 4.2.8 (Conclusion), omit the following words:

and an opinion regarding the incidence of minor defects, relative to the average condition of similar buildings of approximately the same age that have been reasonably well maintained.

(f) omit clause C4.2.8 (Conclusion commentary).

[1.8] Section 7 (8), definition of AS 4349.1 and note

substitute

AS 4349.1 means Australian Standard 4349.1 (*Inspection of buildings – Pre-purchase inspections – Residential buildings*), as in force from time to time.

Note This standard may be obtained on the internet at the web site www.standards.org.au.

[1.9] Section 10 (6), definition of AS 4349.3 and note

substitute

AS 4349.3 means Australian Standard 4349.3 (*Inspection of buildings – Timber pest inspections*), as in force from time to time.

Note This standard may be obtained on the internet at the web site www.standards.org.au.

Part 1.4 Civil Law (Wrongs) Act 2002

[1.10] New part 2.2A

insert

Part 2.2A Food donors

11A Definitions—pt 2.2A

In this part:

donor—

- (a) means a person who donates food—
 - (i) in good faith for a charitable or benevolent purpose; and
 - (ii) with the intention that the consumer of the food would not have to pay for it; but
- (b) does not include a person who distributes food donated by another person for human consumption.

fit for human consumption, in relation to food, means food that is not unsafe or unsuitable.

food—see the *Food Act 2001*, section 8.

unsafe, in relation to food—see the *Food Act 2001*, section 12.

unsuitable, in relation to food—see the *Food Act 2001*, section 13.

11B Protection of food donors from liability

A donor does not incur civil liability for any personal injury that results from the consumption of food donated by the donor if—

- (a) the food was fit for human consumption when it left the possession or control of the donor; and
- (b) for food that is required to be handled in a particular way to ensure it remains fit for human consumption—the donor told the person to whom the donor gave the food about the handling requirements for the food; and
- (c) for food that would remain fit for human consumption for only a limited amount of time after it leaves the possession or control of the donor—the donor told the person to whom the donor gave the food about the time limit on the consumption of the food.

Part 1.5 Crimes Act 1900

[1.11] Section 54 (1)

omit

who knows that that other person does not consent, or who is reckless as to whether that other person consents,

substitute

who is reckless as to whether that other person consents

[1.12] Section 54 (2)

omit

who knows that that other person does not consent, or who is reckless as to whether that other person consents,

substitute

who is reckless as to whether that other person consents

[1.13] New section 54 (3)

insert

- (3) For this section, proof of knowledge or recklessness is sufficient to establish the element of recklessness.

Part 1.6 Crimes (Restorative Justice) Act 2004

[1.14] Section 24 (1) (c) (except note)

substitute

- (c) an explanation has been given under section 25 to the eligible offender, before the offender agrees to take part in restorative justice.

[1.15] Section 25

omit everything before paragraph (a), substitute

25 Explanation of restorative justice

Before an offence is referred for restorative justice, the referring entity must ensure that reasonable steps are taken to explain to the eligible offender (in language that the offender can readily understand)—

[1.16] Section 25 (c)

omit

person

substitute

offender

[1.17] Section 27 (1) (c) (ii)

substitute

- (ii) the court considers that it is appropriate to refer the offence for restorative justice, and the court has ensured that an explanation has been given under section 25 (Explanation of restorative justice) to the offender.

[1.18] Section 28 (3) and (5) (a)

omit

victim and parent mentioned in section 27 (1) (c) (ii)

substitute

person of whom the court is aware who is a victim, or a parent of a child victim, of the offence

[1.19] Section 32 (3)

omit

If the

substitute

Subject to section 32A, if the

[1.20] New section 32A

insert

32A Explanation of restorative justice—before consent

Before obtaining written consent under section 32 (3), the chief executive must ensure that reasonable steps are taken to explain to each eligible victim and parent, and the offender (in language that the victim, parent or offender can readily understand)—

- (a) the purpose of restorative justice generally and for the particular offence; and
- (b) the nature of restorative justice, including the following:
 - (i) the nature of a restorative justice conference;
 - (ii) who may take part in a restorative justice conference;
 - (iii) the nature of a restorative justice agreement; and
- (c) that the person may seek independent legal advice about taking part in restorative justice; and
- (d) that no-one is under an obligation to take part, or continue to take part, in restorative justice after it has started; and
- (e) if the offender has not entered a plea for the offence—that the acceptance of responsibility for the commission of the offence by the offender for the purpose of restorative justice does not prevent the offender from pleading not guilty to the offence; and

- (f) if a sentence-related order has not been made for the offender—that, if the offender is found guilty of the offence, a court, in sentencing the offender—
- (i) may consider whether the offender accepts responsibility for the offence to take part in restorative justice, but is not required to reduce the severity of any sentence as a result; and
 - (ii) must not consider whether the offender has chosen not to take part, or not to continue to take part, in restorative justice.

[1.21] Section 40 (2) (b) (i)

omit

at law and

substitute

in relation to restorative justice

Part 1.7 Discrimination Act 1991

[1.22] New section 121A

insert

121A Acts and omissions of representatives

- (1) This section applies to doing an act (*conduct*) that is unlawful under 1 or more of the following provisions:
- (a) part 3 (Unlawful discrimination);
 - (b) part 5 (Sexual harassment);
 - (c) section 66 (Unlawful vilification—race, sexuality etc);

(d) part 7 (Other unlawful acts).

Note 1 Complaints about these matters may be made under the HRC Act (see HRC Act, s 42 (1) (c)).

Note 2 **Doing** an act—see s 4A.

- (2) Conduct engaged in on behalf of a person by a representative of the person is taken to have been engaged in by the person if the conduct was within the scope of the representative's actual or apparent authority.
- (3) However, subsection (2) does not apply if the person establishes that the person took all reasonable steps to prevent the representative from engaging in the conduct.

(4) In this section:

representative, of a person, means an employee or agent of the person.

Part 1.8 Legal Profession Act 2006

[1.23] **Section 21 (5), definition of *government agency* and note**
omit

[1.24] **Section 38 (2) (a)**
omit

legal officer

substitute

lawyer

[1.25] **Section 390 (8), definition of *government agency***
omit

[1.26] Section 428

substitute

**428 Powers of disciplinary tribunal in relation to witnesses
etc**

- (1) The disciplinary tribunal may, by subpoena given to a person, require the person, at a stated time and place, to appear before the disciplinary tribunal to do 1 or more of the following:

- (a) produce a stated document or other thing relevant to a hearing;
- (b) give evidence.

Note 1 Documents may be produced electronically in certain circumstances (see *Electronic Transactions Act 2001*).

Note 2 For non-compellability of certain witnesses, see s 469.

Note 3 If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) A person is taken to have complied with a subpoena under subsection (1) (a) if the person gives the document or other thing to the disciplinary tribunal before the date stated in the subpoena for its production.
- (3) The disciplinary tribunal may give a party leave to inspect a document produced under a subpoena.
- (4) A judicial member may require a person appearing before the disciplinary tribunal at the hearing of an application to give evidence to do 1 or more of the following:
- (a) take an oath;
 - (b) answer a question relevant to the hearing;

- (c) produce a stated document or other thing relevant to the hearing.

Note 1 The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

Note 2 **Oath** includes affirmation and **take** an oath includes make an affirmation (see Legislation Act, dict, pt 1).

- (5) If a subpoena is issued to give evidence under subsection (1) (b), the subpoena must—

- (a) state the time and place at which the person must appear before the disciplinary tribunal; and

- (b) contain a statement to the effect that the person may be represented before the disciplinary tribunal by an Australian legal practitioner, or with the disciplinary tribunal's leave under section 425 (5), someone else and that the person may wish to obtain legal advice in relation to the subpoena.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for a subpoena, the form must be used.

428A Arrest warrant for failing to appear

- (1) If a person who is subpoenaed to appear before the disciplinary tribunal under section 428 does not appear, a judicial member may, on proof of the service of the subpoena, issue a warrant to arrest the person and bring the person before the tribunal.

- (2) However, the judicial member may only issue a warrant if satisfied that—

- (a) the disciplinary tribunal has taken reasonably practicable steps to contact the person; and

- (b) the issue of a warrant is in the interests of justice.

- (3) In deciding whether it is in the interests of justice to issue a warrant, the judicial member must consider the following:
- (a) the importance of the evidence that the member expects the person to give;
 - (b) whether the evidence could be obtained by other means;
 - (c) the nature of the application;
 - (d) the degree of urgency to resolve the matter;
 - (e) the likelihood that issuing the warrant would secure the person's attendance at the hearing;
 - (f) if the disciplinary tribunal has contacted the person—
 - (i) the reason (if any) given by the person for not attending under the subpoena; and
 - (ii) the impact of using the warrant for the arrest of the person.

428B Executing a warrant

- (1) This section applies if a judicial member issues a warrant under section 428A.
- (2) The warrant authorises a police officer to—
 - (a) arrest the person named in the warrant; and
 - (b) bring the person before the disciplinary tribunal.
- (3) A police officer executing the warrant—
 - (a) may, with necessary assistance and force, enter any premises to arrest the person named in the warrant; and
 - (b) must use not more than the minimum amount of force necessary to arrest the person and remove the person to the place stated in the warrant; and

- (c) must, before removing the person, explain to the person the purpose of the warrant; and
 - (d) must bring the person immediately before a judicial member; and
 - (e) if a person is under a legal disability—must inform a parent or guardian of the person of the arrest.
- (4) If, after arresting the person, the police officer believes on reasonable grounds that the person cannot be brought immediately before a judicial member, the police officer must immediately release the person.

[1.27] Dictionary, new definition of *government agency*

insert

government agency means—

- (a) a government department (however described) of the Territory, the Commonwealth or another jurisdiction; or

Note ***Jurisdiction*** means a State or Territory (see dict).

- (b) an entity prescribed by regulation as a government agency.

[1.28] Dictionary, definition of *government lawyer*

substitute

government lawyer means an Australian lawyer, or a person eligible to be admitted as an Australian lawyer, employed by—

- (a) the Territory, the Commonwealth or another jurisdiction; or

Note ***Jurisdiction*** means a State or Territory (see the dictionary).

- (b) a government agency.

Part 1.9 Legal Profession Regulation 2007

[1.29] Section 8 (2), definition of *government agency*

omit

[1.30] Section 16 heading

substitute

**16 Prescribed agency—Act, dict, def *government agency*,
par (b)**

[1.31] Dictionary, note 3, new dot point

insert

- government agency

Part 1.10 Magistrates Court Act 1930

[1.32] Section 216 (2)

after

conviction

insert

or sentence

Part 1.11 Regulatory Services Legislation Amendment Act 2008

[1.33] Section 2

substitute

2 Commencement—pt 5

- (1) Part 5 (Door-to-Door Trading Act 1991) commences on a day fixed by the Minister by written notice.

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

Note 2 Parts 2 to 4 and parts 6 to 8 commenced on 1 July 2008 by written notice by the Minister.

- (2) If part 5 does not commence before 15 October 2009, it automatically commences on that day.
- (3) The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to this Act.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 3 July 2008.

2 Notification

Notified under the Legislation Act on 13 August 2008.

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 2008 (No 3), which originated in the Legislative Assembly as the Justice and Community Safety Legislation Amendment Bill 2008 (No 2) and was passed by the Assembly on 5 August 2008.

Clerk of the Legislative Assembly

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