



Australian Capital Territory

# Justice and Community Safety Legislation Amendment Act 2008

A2008-7

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Australian Capital Territory

# **Justice and Community Safety Legislation Amendment Act 2008**

**A2008-7**

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

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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*.

**2 Commencement**

This Act commences on the 21st 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.

**4 Repeal of Powers of Attorney Regulation 2007 (No 2)**

The *Powers of Attorney Regulation 2007 (No 2)* (SL2007-11) is repealed.

## Schedule 1      Legislation amended

(see s 3)

### Part 1.1                      Administration and Probate Act 1929

#### [1.1]      Section 32

*substitute*

#### 32                      Discharge or removal of executors and administrators

(1) In this section:

*administrator* includes an administrator appointed under this section.

*Note*      *Administrator* includes any person to whom administration is granted (see dict).

*executor* means an executor who has been granted representation.

(2) This section applies if an executor or administrator—

- (a) remains out of the ACT for more than 2 years; or
- (b) wants to be discharged from the office of executor or administrator; or
- (c) after the grant of representation or appointment—
  - (i) refuses to act in the office; or
  - (ii) is unfit to act in the office; or
  - (iii) is incapable of acting in the office.

- (3) The Supreme Court may order, on the terms and conditions it considers appropriate—
  - (a) the discharge or removal of the executor or administrator (the *old executor or administrator*); and
  - (b) the appointment of someone else as administrator (the *new administrator*) in place of the old executor or administrator.
- (4) For subsection (3), the Supreme Court may make—
  - (a) orders for vesting the estate in the new administrator; or
  - (b) orders about accounts; or
  - (c) any order about costs.
- (5) The old executor or administrator is not liable for an act done or omission made after the date of the order.
- (6) On appointment of a new administrator—
  - (a) the property and rights of the estate vested in the old executor or administrator vest in the new administrator; and
  - (b) the liabilities properly incurred in the administration of the estate by the old executor or administrator vest in the new administrator; and
  - (c) the new administrator has the same functions as if probate of the estate had originally been granted to the new administrator.
- (7) If the Supreme Court considers it necessary, notice of an application for the discharge or removal of the old executor or administrator may be served on anyone the Supreme Court directs.

**[1.2] Section 43A (c)**

*omit*

in this division called

**[1.3] Section 44 (2)**

*omit*

**[1.4] New section 44A**

*in division 3A.2, insert*

**44A Whole blood or half-blood relationships**

For this division, a relationship may be of the whole blood or the half-blood.

**[1.5] Section 49AA (3)**

*omit*

\$150 000

*substitute*

\$200 000

**[1.6] Section 49D (3)**

*omit*

\$150 000

*substitute*

\$200 000

**[1.7] Section 64 (3)**

*omit*

he or she shall not be liable

*substitute*

the executor or administrator is not liable

**[1.8] Section 71**

*omit*

**[1.9] Part 4**

*omit*

**[1.10] Section 87B**

*substitute*

**87B Estates valued at \$30 000 or less**

- (1) The public trustee may administer the estate of a deceased person if satisfied that—
  - (a) the net value of the estate is not more than \$30 000; and
  - (b) application has not been made for a grant of probate of the will, or administration of the estate, of the deceased person.
- (2) For subsection (1), the public trustee may do any of the following:
  - (a) call in the estate;
  - (b) sell and convert into money the part of the estate that does not consist of money;
  - (c) pay any of the deceased person's debts and liabilities;
  - (d) deal with the balance (if any) of the estate as if probate of the will or administration of the estate had been granted by the Supreme Court.
- (3) If any money remains after the estate is administered in accordance with subsection (2), the public trustee must deal with the money as follows:
  - (a) if the public trustee is of the opinion that the person died testate—as if probate of the last will of the person had been granted to the public trustee by the Supreme Court;



- (b) in any other case—as if administration of the estate had been granted to the public trustee by the Supreme Court.
- (4) The public trustee must not administer an estate under this section unless notice of intention to do so has been given by advertisement or otherwise, in the way and form the public trustee considers appropriate.
- (5) If the public trustee holds or acquires the will of a deceased person whose estate is being, or has been, administered under this section, the public trustee must file the will in the Supreme Court.

**[1.11] Section 87C heading**

*substitute*

**87C Estates valued at \$150 000 or less**

**[1.12] Section 87C (1) (b) and (8)**

*omit*

\$100 000

*substitute*

\$150 000

**[1.13] Section 98**

*substitute*

**98 Proceedings for estates administered by the public trustee**

- (1) This section applies in relation to an estate administered by the public trustee under this part.
- (2) The following must be decided by the Supreme Court:
- (a) all disputes and matters about the collection, management or administration of the estate;

(b) all claims on the estate.

- (3) However, if the Supreme Court considers that it should not decide a matter mentioned in subsection (2), the Supreme Court may direct that other proceedings to decide the matter be begun.

**[1.14] Schedule 6, part 6.1, item 2**

*omit*

\$150 000

*substitute*

\$200 000

**[1.15] Dictionary, new definitions**

*insert*

*dwelling house*, for division 3A.3 (Rights of partners to intestate dwelling houses)—see section 49F.

*eligible partner*, of an intestate, for part 3A (Intestacy)—see section 44.

*intestate*, for part 3A (Intestacy)—see section 44.

*intestate estate*, in relation to an intestate, for part 3A (Intestacy)—see section 44.

*original executor*, for division 3.4 (Position of executor of an executor)—see section 43A.

*partner*, for part 3A (Intestacy)—see section 44.

*personal chattels*, in relation to an intestate, for part 3A (Intestacy)—see section 44.

*personal representative*, in relation to an intestate, for part 3A (Intestacy)—see section 44.

**[1.16] Dictionary, definition of *representation***

*substitute*

***representation***—

- (a) for this Act generally—means the probate of a will and administration; and
- (b) in relation to an intestate, for division 3A.3 (Rights of partners to intestate dwelling houses)—see section 49F.

**[1.17] Further amendments, references to *shall***

*omit*

shall

*substitute*

must

*in*

- section 41C (2)
- section 49C (2)
- section 50 (3)

## **Part 1.2                      Administrative Appeals Tribunal Act 1989**

**[1.18] Section 26 (8)**

*omit*

**[1.19] Sections 26 (9) (a) and (10) and 49 (2)**

*omit*

or (8)

**[1.20]      Section 49 (3) (a)**

*omit*

or (8) (a) or (b)

**Part 1.3                      Bail Act 1992**

**[1.21]      New section 31 (2) (d)**

*insert*

(d) for an accused person who is at a correctional centre—the person in charge of the centre.

**Part 1.4                      Civil Law (Sale of Residential  
Property) Act 2003**

**[1.22]      Section 10**

*substitute*

**10              Proposed contract etc to be available for inspection**

- (1) A seller of residential property commits an offence if all the required documents are not available for inspection by a prospective buyer (or an agent for a prospective buyer) at all reasonable times when an offer to buy the property may be made to the seller.

Maximum penalty: 10 penalty units.

- (2) Subsection (1) does not apply in relation to a failure by a seller to make all the required documents available for inspection by a prospective buyer if—
- (a) the seller engaged a lawyer to prepare the proposed contract for the sale of the property; and

- (b) the lawyer did not give the seller the required documents to which the failure relates; and
  - (c) the seller believed on reasonable grounds that he or she had received all the required documents; and
  - (d) the seller made all the required documents given to the seller by the lawyer available for inspection in accordance with subsection (1).
- (3) An offence against this section is a strict liability offence.

**[1.23] New section 18 (2)**

*insert*

- (2) In this section:

*cost*, of a report, does not include any amount paid for an additional service in relation to the report.

**Example**

A seller pays an amount additional to the ordinary cost of obtaining an inspection report to obtain the report within a shorter than usual period. The buyer is not liable to reimburse the seller the additional amount.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## **Part 1.5 Civil Law (Wrongs) Act 2002**

**[1.24] Schedule 4, section 4.2, new definitions**

*insert*

*another jurisdiction* means a State or Territory other than this jurisdiction.

*appropriate council*, in relation to another jurisdiction, means the authority that, under the corresponding law of the jurisdiction, has

functions that are substantially the same as the council's functions under this schedule.

*corresponding law* means a law of another jurisdiction that corresponds to this schedule, and includes a law of another jurisdiction that is declared by regulation to be a corresponding law of the jurisdiction for this Act.

*interstate scheme* means a scheme that—

- (a) has been prepared under a corresponding law; and
- (b) operates, or indicates an intention to operate, as a scheme of this jurisdiction.

**[1.25] Schedule 4, section 4.2, definition of *scheme***

*after*

association

*insert*

, and includes an interstate scheme

**[1.26] Schedule 4, section 4.2, new definition of *this jurisdiction***

*insert*

*this jurisdiction* means the ACT.

**[1.27] Schedule 4, new section 4.4 (4)**

*insert*

- (4) A scheme prepared under this section may indicate an intention to operate as a scheme of this jurisdiction only, or of both this jurisdiction and another jurisdiction.

**[1.28] Schedule 4, new section 4.5 (2)**

*insert*

- (2) If the scheme indicates an intention to operate as a scheme of both this jurisdiction and another jurisdiction, the council must also publish a similar notice in the other jurisdiction in accordance with the requirements of the corresponding law of that jurisdiction that relates to the approval of a scheme prepared in that jurisdiction.

**[1.29] Schedule 4, new section 4.7 (3)**

*insert*

- (3) If the scheme indicates an intention to operate as a scheme of both this jurisdiction and another jurisdiction—
- (a) the council must also consider any matter that the appropriate council for the other jurisdiction would have to consider under the corresponding law of that jurisdiction that relates to the approval of a scheme prepared in that jurisdiction; and
  - (b) the matters to be considered by the council, whether under subsection (1) or paragraph (a), are to be considered in the context of each of the jurisdictions concerned.

**[1.30] Schedule 4, new section 4.9 (2)**

*insert*

- (2) If the scheme indicates an intention to operate as a scheme of both this jurisdiction and another jurisdiction, the council may also submit the scheme to the Minister administering the corresponding law of the other jurisdiction.

**[1.31] Schedule 4, section 4.10 (1)**

*substitute*

- (1) The Minister may approve a scheme submitted by—
  - (a) for an ACT scheme—the council; or
  - (b) for an interstate scheme—the appropriate council for the jurisdiction in which the scheme was prepared.

**[1.32] Schedule 4, new section 4.10 (3)**

*insert*

- (3) In this section, a reference to an interstate scheme includes a reference to an instrument amending an interstate scheme.

*Note* Subsection (3) applies s (1) and s (2) to instruments that amend an interstate scheme. Those subsections already apply, by virtue of s 4.14 (5), to instruments that amend a scheme that is not an interstate scheme.

**[1.33] Schedule 4, section 4.11 (2)**

*substitute*

- (2) This section is subject to any order of—
  - (a) the Supreme Court under section 4.12; and
  - (b) the Supreme Court of another jurisdiction under the corresponding law of that jurisdiction.
- (3) In this section, a reference to a scheme includes, for an interstate scheme, a reference to an instrument amending that scheme.



**[1.34] Schedule 4, section 4.12**

*substitute*

**4.12 Challenges to schemes**

- (1) This section applies to a person who is, or is reasonably likely to be, affected by a scheme approved by the Minister (including a person who is, or is reasonably likely to be, affected by a scheme that operates as a scheme of another jurisdiction).
- (2) For subsection (1), a person may, at any time before the scheme commences, apply to the Supreme Court for an order that the scheme is void for noncompliance with this schedule.
- (3) The Supreme Court may, on the making of the application or at any time before the scheme commences, order that the commencement of the scheme is stayed until further order of the court.
- (4) The Supreme Court may, in relation to the application—
  - (a) make or decline to make an order that the scheme is void for noncompliance with this schedule; or
  - (b) if the court has stayed the commencement of the scheme—give directions about the things that must be done so that the scheme may commence; or
  - (c) make any other order it considers appropriate.
- (5) The Supreme Court may make an order that an interstate scheme is void for failure to comply with this schedule because the scheme fails to comply with the provisions of the corresponding law of the jurisdiction in which it was prepared that relate to the contents of schemes prepared in that jurisdiction.
- (6) The Supreme Court may not make an order that an interstate scheme is void for failure to comply with this schedule because the scheme fails to comply with division 4.2.2 (Content of schemes).

- (7) This section does not prevent a scheme from being challenged other than under this section.
- (8) In this section, a reference to a scheme includes, for an interstate scheme, a reference to an instrument amending that scheme.

**[1.35]    Schedule 4, section 4.13 (3)**

*substitute*

- (3) A review may, but need not, be conducted to decide—
  - (a) for a scheme prepared under this schedule—whether the scheme should be amended or revoked or whether a new scheme should be made; or
  - (b) for an interstate scheme—whether the operation of the scheme should be ended in relation to this jurisdiction.

**[1.36]    Schedule 4, section 4.14 (1) to (4)**

*omit*

an amendment or revocation of

*substitute*

an instrument amending or revoking

**[1.37]    Schedule 4, section 4.14 (5)**

*substitute*

- (5) Sections 4.4 to 4.12 apply, with any necessary changes, to the amendment of a scheme by an instrument under this section.
- (6) Sections 4.4 to 4.11 (other than section 4.9) apply, with any necessary changes, to the revocation of a scheme by an instrument under this section.
- (7) This section does not apply to an interstate scheme.

**[1.38] Schedule 4, new sections 4.14A and 4.14B**

*in division 4.2.1, insert*

**4.14A Notification of revocation of schemes**

- (1) If the Minister approves an instrument revoking a scheme (other than an interstate scheme) that operates as a scheme of another jurisdiction, the Minister must notify the Minister administering the corresponding law of that jurisdiction of the revocation.
- (2) A notice that an interstate scheme has been revoked under the corresponding law of the jurisdiction in which it was prepared is a notifiable instrument.

*Note 1* A notifiable instrument must be notified under the Legislation Act.

*Note 2* Under s 4.28 (1B) (c), an interstate scheme will cease to have effect in this jurisdiction when it ceases to have effect in the other jurisdiction.

**4.14B Ending of operation of interstate schemes**

- (1) On application by an occupational association, the council may prepare an instrument ending, in relation to this jurisdiction, the operation of an interstate scheme that relates to members of the association.
- (2) The Minister may direct the council to prepare an instrument ending the operation of an interstate scheme in relation to this jurisdiction.
- (3) The council must comply with any direction under subsection (2).
- (4) The council may, on its own initiative, at any time while an interstate scheme remains in force, prepare an instrument ending the operation of the scheme in relation to this jurisdiction.
- (5) Sections 4.5 to 4.10 (other than section 4.9 (2) to the extent that it provides for the submission of a scheme that indicates an intention to operate as a scheme of another jurisdiction) extend, with any necessary modifications, to the ending of the operation of an interstate scheme under an instrument under that section.

- (6) The operation of an interstate scheme is ended, in relation to this jurisdiction, on—
  - (a) the day after the day of its publication as stated in the instrument; or
  - (b) if no day is stated—2 months after the day of its publication.

**[1.39]      Schedule 4, section 4.28 (1)**

*substitute*

- (1) A scheme must state a period of not longer than 5 years that it is to remain in force after its commencement.
- (1A) Subject to subsection (2), a scheme (other than an interstate scheme) remains in force until—
  - (a) the period stated under subsection (1) ends; or
  - (b) the scheme is revoked; or
  - (c) the scheme ceases to operate because of the operation of this schedule or another Territory law; or
  - (d) the scheme is declared void by an order made by—
    - (i) the Supreme Court under section 4.12; or
    - (ii) the Supreme Court of another jurisdiction under the corresponding law of that jurisdiction; or
  - (e) the scheme is disallowed under the Legislation Act, section 65 (Disallowance by resolution of Assembly).
- (1B) Subject to subsection (2), an interstate scheme remains in force in this jurisdiction until—
  - (a) the period stated under subsection (1) ends; or

- (b) the scheme's operation in relation to this jurisdiction is ended under section 4.14B (Ending of operation of interstate schemes); or
- (c) the scheme ceases to have effect in the jurisdiction in which it was prepared; or
- (d) the scheme is disallowed under the Legislation Act, section 65 (Disallowance by resolution of Assembly).

**[1.40] Schedule 4, section 4.37 (1) (j)**

*substitute*

- (j) any other functions given to it under this schedule, under any other territory law, or under the law of another jurisdiction.

**[1.41] Schedule 4, new section 4.37A**

*in division 4.6.1, insert*

**4.37A Cooperation with authorities in other jurisdictions**

If a scheme operates, or indicates an intention to operate, as a scheme of both this jurisdiction and another jurisdiction, the council may—

- (a) in the exercise of its functions under this schedule, act in conjunction with the appropriate council for the other jurisdiction; and
- (b) act in conjunction with the appropriate council for the other jurisdiction in the exercise of that council's functions under the corresponding law of that jurisdiction.

**[1.42]    Dictionary, new definitions**

*insert*

*another jurisdiction*, for schedule 4 (Professional standards)—see schedule 4, section 4.2.

*appropriate council*, in relation to another jurisdiction, for schedule 4 (Professional standards)—see schedule 4, section 4.2.

*corresponding law*, for schedule 4 (Professional standards)—see schedule 4, section 4.2.

*interstate scheme*, for schedule 4 (Professional standards)—see schedule 4, section 4.2.

**[1.43]    Dictionary, definition of *this jurisdiction***

*substitute*

*this jurisdiction*—

- (a) for chapter 9 (Defamation)—see section 116; and
- (b) for schedule 4 (Professional standards)—see schedule 4, section 4.2.

## **Part 1.6                            Civil Law (Wrongs) Regulation 2003**

**[1.44]    Section 13 (1)**

*substitute*

- (1) The following statement is prescribed:

Liability limited by a scheme approved under Professional Standards Legislation.

## **Part 1.7**                      **Crimes (Sentence Administration) Act 2005**

### **[1.45] Section 68 (2) (f), note**

*omit*

Section 70 requires

*substitute*

Section 69 and s 70 require

### **[1.46] Section 69 (2)**

*substitute*

- (2) The board must, as soon as practicable, cancel the offender's periodic detention under section 68.
- (3) To remove any doubt, this section does not limit the circumstances in which the board may cancel the offender's periodic detention under section 68.

### **[1.47] Section 70 (2)**

*substitute*

- (2) The board must, as soon as practicable, cancel the offender's periodic detention under section 68.
- (3) To remove any doubt, this section does not limit the circumstances in which the board may cancel the offender's periodic detention under section 68.

## Part 1.8                            Fair Trading Act 1992

### [1.48]    Section 29 (9), definition of *directory*

*omit*

Australian Telecommunications Commission

*substitute*

Telstra Corporation Limited

### [1.49]    Section 44 (2)

*omit*

, whether before or after the commencement of this subsection,

### [1.50]    Section 48

*substitute*

#### 48    Acts and omissions of representatives of individuals

- (1) In this section:

*fault element* includes intention, knowledge, recklessness, opinion, belief or purpose but does not include negligence.

*person* means an individual.

*Note*    See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

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

- (2) This section applies to proceedings under this part for an act or omission of a person to which part 2 (Unfair practices) applies.



- (3) Conduct engaged in by a representative of the person within the scope of the representatives' actual or apparent authority is also taken to have been engaged in by the person.
- (4) Subsection (3) also applies to conduct engaged in by another person directed by, or with the consent or agreement (whether express or implied) of, the representative.
- (5) However, subsection (3) does not apply if the person establishes that the person took all reasonable steps to prevent the conduct.
- (6) In deciding whether the person took all reasonable steps to prevent the conduct, a court must consider—
  - (a) any action the person took to ensure that the representative had a reasonable knowledge and understanding of the requirement to comply with the contravened provision; and
  - (b) the level of management, control or supervision that was appropriate for the person to exercise over the representative.
- (7) Subsection (6) does not limit the matters that the court may consider.
- (8) If it is relevant to prove that a person had a fault element or was negligent in relation to a physical element of an offence, it is enough to show that—
  - (a) the conduct relevant to the physical element was engaged in by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the fault element or was negligent in relation to the physical element.

## Part 1.9      Fair Trading (Consumer Affairs) Act 1973

### [1.51]      Section 26 (5) (b)

*omit*

or class of goods

### [1.52]      Section 26 (8) (b)

*omit*

or the class of goods

### [1.53]      Section 27

*substitute*

## 27      Consumer product safety orders

- (1) The Minister may make an order (a *consumer product safety order*) prohibiting or restricting the supply of goods.

*Note 1*      Power to make a consumer product safety order includes power to make an order about any 1 or more goods or a particular class of goods (see Legislation Act, s 48 (2)).

*Note 2*      A power given under an Act to make a statutory instrument (including a consumer product safety order) includes power to amend or repeal the instrument (see Legislation Act, s 46 (1)).

- (2) A consumer product safety order restricting the supply of goods may be conditional.
- (3) The Minister may make a consumer product safety order only if satisfied that—
  - (a) the goods are dangerous; and
  - (b) the supply of the goods should be prohibited or restricted.

(3) In this section:

*dangerous*—goods are *dangerous* if the possession, handling or use of the goods is, directly or indirectly, likely to cause death or injury to a person or affect a person's health.

(4) A consumer product safety order is a notifiable instrument.

*Note 1* A notifiable instrument must be notified under the Legislation Act.

*Note 2* An amendment or repeal of a consumer product safety order is also a notifiable instrument (see Legislation Act, s 46 (2)).

#### **[1.54] Section 29 (2)**

*substitute*

(2) The Minister may, at any time while the interstate order is in force, make an order (a *consumer product safety order*)—

- (a) if the interstate order prohibits the supply of goods—prohibiting the supply of the goods in the ACT; or
- (b) if the interstate order imposes conditions or restrictions on the supply of goods—imposing conditions or restrictions on the supply of the goods in the ACT.

*Note 1* Power to make a consumer product safety order includes power to make an order about any 1 or more goods or a particular class of goods (see Legislation Act, s 48 (2)).

*Note 2* A power given under an Act to make a statutory instrument (including a consumer product safety order) includes power to amend or repeal the instrument (see Legislation Act, s 46 (1)).

## Part 1.10            Juries Act 1967

### [1.55]            Section 10 (d)

*omit*

### [1.56]            Schedule 2, part 2.2, item 3

*omit*

schoolmaster or schoolteacher

*substitute*

or school principal or teacher,

### [1.57]            Schedule 2, part 2.2, new items 8 and 9

*insert*

8            a person who is totally or partially blind

9            a person who is totally or partially deaf

### [1.58]            Dictionary, definition of *sheriff*

*substitute*

*sheriff*—

(a) for this Act generally—means the sheriff of the Territory; and

(b) for part 5 (Jury precepts and summonses)—see section 21.

## **Part 1.11                      Leases (Commercial and Retail)    Act 2001**

### **[1.59]           Section 123 (1) (c), new note**

*insert*

*Note*      For the requirement to give a tenant notice of a breach, see the *Civil Law (Property) Act 2006*, s 426 (1).

### **[1.60]           Dictionary, definition of *dispute***

*substitute*

*dispute*—

- (a) for this Act generally—means a dispute to which this Act applies under section 17; and
- (b) in relation to an application, for part 14 (Dispute resolution)—see section 143.

### **[1.61]           Dictionary, new definition of *party***

*insert*

*party*, to an application, for part 14 (Dispute resolution)—see section 143.

## **Part 1.12                      Magistrates Court (Domestic    Animals Infringement Notices)    Regulation 2005**

### **[1.62]           Section 15**

*omit*

**Part 1.13**                      **Magistrates Court (Environment  
Protection Infringement Notices)  
Regulation 2005**

**[1.63]      Section 13**

*omit*

**Part 1.14**                      **Magistrates Court (Food  
Infringement Notices) Regulation  
2005**

**[1.64]      Section 15**

*omit*

**Part 1.15**                      **Magistrates Court (Nature  
Conservation Infringement  
Notices) Regulation 2005**

**[1.65]      Section 13**

*omit*

**Part 1.16**                      **Magistrates Court (Sale of Motor  
Vehicles Infringement Notices)  
Regulation 2005**

**[1.66]      Section 14**

*omit*

## **Part 1.17 Powers of Attorney Act 2006**

### **[1.67] Sections 92 and 93**

*substitute*

#### **92 Application of Act to powers of attorney**

- (1) This Act applies to a general power of attorney or enduring power of attorney whenever entered into (whether before or after the commencement of this Act).
- (2) However, if a general power of attorney or enduring power of attorney made before the commencement of this Act complied with the *Powers of Attorney Act 1956* when made, the power of attorney is not taken to be invalid only because it does not comply with a provision of this Act about the making of powers of attorney.

#### **93 Powers of attorney forms under Powers of Attorney Act 1956**

- (1) This section applies to a general power of attorney or enduring power of attorney made after the commencement of this Act and before 1 December 2007 using a form under the *Powers of Attorney Act 1956*, schedule 1.
- (2) This Act applies to the power of attorney.
- (3) However, if the power of attorney when made complied with the *Powers of Attorney Act 1956*, the power of attorney—
  - (a) is not taken to be invalid only because it does not comply with a provision of this Act about the making of powers of attorney; and
  - (b) to remove any doubt, operates to the extent that it is not otherwise inconsistent with this Act.

**94 Powers of attorney to consent to body part donations etc under Powers of Attorney Act 1956**

- (1) This section applies to an enduring power of attorney in force immediately before the commencement of this Act if the power of attorney included a power to consent to a donation under the *Powers of Attorney Act 1956*, section 13 (1) (b) (ii).
- (2) Despite section 35 (b) (Things that cannot be lawfully done by attorneys), the power of attorney continues to authorise the attorney to consent to the donation.

**95 Powers of attorney made under Medical Treatment Act 1994**

- (1) This section applies to a power of attorney made under the *Medical Treatment Act 1994* that was in force immediately before the commencement of this Act.
- (2) The power of attorney is taken to be an enduring power of attorney made under this Act for a health care matter.
- (3) However, if the power of attorney complied with the *Medical Treatment Act 1994* when made, the power of attorney is not taken to be invalid only because it does not comply with a provision of this Act about the making of powers of attorney.

**96 Approved forms**

- (1) The Minister may approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

*Note* The Legislation Act contains provisions about forms (see s 255).

- (3) An approved form is a notifiable instrument.

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



**97 Regulation-making power**

The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

**[1.68] Section 152**

*omit*

**[1.69] Section 154**

*omit*

**Part 1.18 Public Trustee Act 1985**

**[1.70] Section 5**

*omit*

performing the duties

*substitute*

exercising the functions

**[1.71] Section 6**

*substitute*

**6 Deputy public trustee**

- (1) A Deputy Public Trustee is a person exercising the functions of deputy public trustee (however described) in the public service.
- (2) A deputy public trustee may exercise the functions of the public trustee, subject to any direction of the public trustee.
- (3) A person dealing with a deputy public trustee need not inquire whether the deputy public trustee, in exercising a function in relation to a dealing—

- (a) was subject to a direction of the public trustee; or
- (b) complied with a direction of the public trustee to which the deputy public trustee was subject.

**[1.72] Section 29A**

*substitute*

**29A Payment of money without grant of administration**

- (1) This section applies if—
  - (a) before a person dies, the public trustee holds an amount or personal property for the person; and
  - (b) on the person's death, the total of the amount and the value of the personal property as estimated by the public trustee is not more than \$20 000; and
  - (c) the public trustee has no knowledge of an application for probate of the person's will or for letters of administration of the person's estate.
- (2) The public trustee may pay the amount, and transfer the personal property, to a person the public trustee considers is entitled to the amount or property (the *entitled person*) without proof of the entitled person having obtained probate of the deceased person's will or administration of the deceased person's estate.
- (3) For subsection (2), the public trustee may require the entitled person to give an undertaking, whether by statutory declaration or otherwise, that the amount or personal property will be administered by the entitled person for the deceased person's estate.

*Note* The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.
- (4) An amount paid, or personal property given, under subsection (2) is taken to have been paid to the deceased person's estate.

- (5) This section does not affect any right of a person to claim or recover an amount paid, or personal property given, under subsection (2) from a person other than the public trustee.

**[1.73] Section 66**

*omit*

**[1.74] Dictionary, definition of *deputy public trustee***

*omit*

the

*substitute*

a

## **Part 1.19 Residential Tenancies Act 1997**

**[1.75] New section 115D**

*in division 7.1, insert*

### **115D Decisions on matters agreed to by parties**

- (1) The president of the tribunal may delegate the endorsement of consent decisions to another member of the tribunal.

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

- (2) In this section:

***consent decision*** means a decision in relation to an application to the tribunal agreed to by the parties to the application.

## Part 1.20 Trustee Act 1925

### [1.76] Sections 47 (3) (a) and (b)

*omit*

\$500

*substitute*

\$6 000

### [1.77] Section 47 (3) (b)

*omit*

\$2 000

*substitute*

\$25 000

### [1.78] Section 83 (1)

*omit*

\$2 000

*substitute*

\$25 000

## Part 1.21 Victims of Crime Regulation 2000

### [1.79] Sections 23 (2) (d) and 41 (f) (viii)

*omit*

*Community and Health Services Complaints Act 1993*

*substitute*

*Human Rights Commission Act 2005*

## **Part 1.22                      Wills Act 1968**

### **[1.80]      Section 12A (3) (a)**

*omit*

section 87B (3)

*substitute*

section 87B (4)

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### **Endnotes**

**1      Presentation speech**

Presentation speech made in the Legislative Assembly on 6 December 2007.

**2      Notification**

Notified under the Legislation Act on 16 April 2008.

**3      Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Justice and Community Safety Legislation Amendment Bill 2008, which originated in the Legislative Assembly as the Justice and Community Safety Legislation Amendment Bill 2007 (No 2) and was passed by the Assembly on 3 April 2008.

Clerk of the Legislative Assembly

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