



Australian Capital Territory

Justice and Community Safety Legislation Amendment Act 2012

A2012-13

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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 2012

A2012-13

An Act to amend legislation about 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 2012*.

2 Commencement

- (1) This Act (other than schedule 1, part 1.11 (Wills Act 1968)) 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)).

- (2) Schedule 1, part 1.11 commences on a day fixed by the Minister by written notice.

Note 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)).

- (3) However, the Minister may not fix a day for the commencement of schedule 1, part 1.11 that is before the day the *Convention providing a Uniform Law on the Form of an International Will 1973* comes into force in Australia.

Note The *Convention providing a Uniform Law on the Form of an International Will 1973* is accessible at www.unidroit.org.

- (4) If schedule 1, part 1.11 has not commenced within 2 years beginning on its notification day, it automatically commences on the first day after that period.

- (5) The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to schedule 1, part 1.11.

3 Legislation amended—sch 1

This Act amends the legislation mentioned in schedule 1.

4 Legislation repealed

The *Fair Trading (Australian Consumer Law) (Transitional Provisions) Regulation 2011* (SL2011-4) is repealed.

Schedule 1 Legislation amended

(see s 3)

Part 1.1 ACT Civil and Administrative Tribunal Act 2008

[1.1] Section 9, new note

insert

Note A registrar may help a person make an application to the tribunal as the registrar considers appropriate—see s 112 (1) (aa).

[1.2] Sections 13 and 14

omit

[1.3] New section 16 (ha)

insert

(ha) an application for an order under the Australian Consumer Law (ACT);

[1.4] Section 88 (2) to (4)

omit

[1.5] New section 89 (2A)

insert

(2A) However, for an interim application, the general president may allocate any of the following to the tribunal for the application:

- (a) 1 or more of the members allocated to the tribunal for the application under subsection (1);
- (b) any other tribunal member the general president considers appropriate.

[1.6] New section 89 (5)

insert

(5) In this section:

interim application means—

- (a) an application under section 53 (Interim orders); or
- (b) an application for an order of a procedural nature.

Examples—order of a procedural nature

adjournment, order for default judgment, order joining a party to a proceeding

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).

[1.7] New section 105A

insert

105A Advising Attorney-General about systemic problems

- (1) This section applies if it appears to the tribunal that applications to the tribunal indicate a systemic problem in relation to—
 - (a) the operation of an authorising law; or
 - (b) other matters that come to the tribunal’s attention in the course of the tribunal exercising its functions.
- (2) The general president must tell the Attorney-General about the problem.

[1.8] New section 112 (1) (aa)

before paragraph (a), insert

- (aa) to take reasonably practical steps to help a person make an application, as the registrar considers appropriate.

Examples—help

- 1 advising person about the role of the tribunal
- 2 helping person to put application in writing

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).

[1.9] Section 112 (1), note

omit

[1.10] Dictionary, note 2

insert

- Australian Consumer Law (ACT)

[1.11] Dictionary, new definition of *application*

insert

application—

- (a) for this Act generally—means an application under section 9; and
- (b) for parts 5 to 9 includes—
 - (i) a matter referred or appealed to the tribunal under any authorising law; and
 - (ii) a matter heard or dealt with by the tribunal on its own initiative.

Examples—authorising laws under which a matter may be referred to the tribunal

- 1 *Crimes Act 1900*, s 331 (Referral to ACAT)

2 *Human Rights Commission Act 2005*, s 53A (Referral of discrimination complaints)

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 1.2 **Administrative Decisions (Judicial Review) Act 1989**

[1.12] Section 5 (1), new note

insert

Note The *Human Rights Act 2004*, s 40B (1) (b) makes it unlawful for a public authority to fail to give proper consideration to a relevant human right when making a decision.

Part 1.3 **Court Procedures Act 2004**

[1.13] Section 9 (2) (b) and note 1

substitute

(b) a resident judge appointed by the Chief Justice;

[1.14] Section 10 heading

substitute

10 Delegation by Chief Justice and Chief Magistrate

[1.15] Section 10 (2)

omit

[1.16] Section 10 (4)

omit

, the President

[1.20] Section 18 (1) (b)

substitute

- (b) return the remandee to the remanding authority, or another remanding authority, as ordered by the remanding authority.

Part 1.5 Emergencies Act 2004

[1.21] Section 29 heading

substitute

29 Chief officer—fire and rescue

[1.22] Section 38 (1), example, except note

substitute

Example

The chief officer (fire and rescue) may determine standards about members' duties that are not inconsistent with the guidelines.

[1.23] Section 41 (2) (a), example

omit

fire brigade

substitute

fire and rescue

[1.24] Part 4.2 heading

substitute

Part 4.2 Fire and rescue

[1.25] Division 4.2.1 heading

substitute

Division 4.2.1 Fire and rescue

[1.26] Section 43

substitute

43 Establishment of fire and rescue

ACT Fire and Rescue is established.

[1.27] Section 44 heading

substitute

44 Functions of fire and rescue

[1.28] Section 45 heading

substitute

45 Constitution of fire and rescue

[1.29] Section 46 heading

substitute

46 Ranks for fire and rescue members

[1.30] Section 57 (2) (b), example

substitute

Example

assisting police officers, or fire and rescue or ambulance service members
in dealing with any incident or emergency

[1.31] Dictionary, definition of *chief officer*, paragraph (b)

substitute

(b) for fire and rescue—the chief officer (fire and rescue); and

[1.32] Dictionary, definition of *chief officer (fire brigade)*

substitute

chief officer (fire and rescue)—see section 29.

[1.33] Dictionary, new definition of *fire and rescue*

insert

fire and rescue means ACT Fire and Rescue established under section 43.

[1.34] Dictionary, new definition of *rural fire service*

insert

rural fire service means the ACT Rural Fire Service established under section 51.

[1.35] Dictionary, definition of *SES*

substitute

SES means the ACT State Emergency Service established under section 56.

[1.36] Further amendments, mentions of *the fire brigade*

omit

the fire brigade

substitute

fire and rescue

in

- section 3 (c)
- section 29
- sections 44 to 46
- section 49 (3) (b)
- section 52
- sections 65 to 69
- sections 99 and 100
- section 121 (1) (a)
- section 189 (1) (b)
- section 190 (2)
- dictionary, definition of *emergency service*

[1.37] Further amendments, mentions of *(fire brigade)*

omit

(fire brigade)

substitute

(fire and rescue)

in

- section 29
- section 30 (3) (c)
- sections 45 to 50
- section 64 (3), example 1

- section 65 (2)
- section 67
- section 69 (1)
- sections 86 and 87
- sections 91 and 92
- section 96 (3)
- sections 99 and 100
- section 142 (1) (d)
- section 188 (b)

Part 1.6 Emergencies Regulation 2004

[1.38] Section 8

substitute

8 Attendance by fire and rescue members at public events

- (1) This section applies to public entertainment or a public meeting if the chief officer (fire and rescue) considers that because of the nature of the entertainment or meeting, or the decorations, appliances or lighting used at the entertainment or meeting, the attendance of fire and rescue is needed.
- (2) The chief officer (fire and rescue) may direct 1 or more fire and rescue members to attend all or part of the entertainment or meeting.

Note A fee may be determined under the Act, s 201 for the attendance.

Part 1.7 Legal Aid Act 1977

[1.39] New section 68B

insert

68B Application of merit principle to re-engagements of statutory officers

Section 68A (1) and (2) does not apply in relation to a second or subsequent engagement of a person to exercise the functions of the chief executive officer, or an assistant executive officer, if—

- (a) the period of the second or subsequent engagement is to commence immediately on the end of the period of the previous engagement; and
- (b) the president of the commission has certified in writing that the president is satisfied that it would be in the interests of the commission for the person to be re-engaged to exercise the functions.

Part 1.8 Magistrates Court Act 1930

[1.40] New section 216

substitute

216 Stay of execution pending appeal in certain cases

- (1) If a person (the *appellant*) appeals under this division—
 - (a) the enforcement or execution of the decision, conviction, order, sentence or penalty that is the subject of the appeal is stayed until the appeal is decided or is abandoned or discontinued; and
 - (b) if the appellant is in custody—the appellant may, if not detained for another reason, apply for bail under the *Bail Act 1992*.

- (2) Unless the appellant is detained for another reason, the appellant remains in the custody of the person who had custody of the appellant immediately before the enforcement or execution of the conviction or sentence was stayed until—
- (a) the appellant is granted bail under the *Bail Act 1992*; or
 - (b) the appellant is remanded in custody.

Part 1.9 **Trustee Companies Act 1947**

[1.41] Section 34B heading

substitute

34B Transfer determinations

[1.42] Section 34B (1), new note

insert

Note 1 Under the Corporations Act, s 601WBA ASIC may make—

- (a) a compulsory transfer determination if ASIC has cancelled the licence of the transferring company; or
- (b) a voluntary transfer determination if the transferring company has applied for the determination.

Part 1.10 Unclaimed Money Act 1950

[1.43] New part 6

before section 34, insert

Part 6 Miscellaneous

33A Unclaimed money register

- (1) The public trustee may keep a register of unclaimed money that is paid to the public trustee under—
 - (a) this Act; or
 - (b) the *Legal Profession Act 2006*, section 259; or
 - (c) the *Agents Act 2003*, section 124.
- (2) The register may include the name of the owner of the money and any other information the public trustee considers appropriate.
- (3) The register may be kept in any form, including electronically, that the public trustee decides.
- (4) The register may be kept in 1 or more parts, as the public trustee considers appropriate.
- (5) The public trustee must make information in the register available so that a person who is entitled to make a claim for unclaimed money can find out about the entitlement.
- (6) The public trustee may decide how the information in the register is made available.

Part 1.11 Wills Act 1968

[1.44] New part 3B

insert

Part 3B International wills

16J Definitions—pt 3B

In this part:

convention means the *Convention providing a Uniform Law on the Form of an International Will 1973* signed in Washington DC in the United States of America on 26 October 1973.

Note The *Convention providing a Uniform Law on the Form of an International Will 1973* is accessible at www.unidroit.org.

international will means a will made in accordance with the requirements of the annex to the convention.

16K Application of convention

The annex to the convention has the force of law in the ACT.

Note The annex to the convention is set out in sch 1.

16L Persons authorised to act in connection with international wills

- (1) For this part, the following people are authorised to act in connection with an international will:
 - (a) an Australian legal practitioner;
 - (b) a public notary of any Australian jurisdiction.

- (2) For this part, a reference in the annex to the convention to a person authorised to act in connection with international wills is a reference to:
- (a) a person mentioned in subsection (1) who is acting in Australia; or
 - (b) any other person who is acting as an authorised person under the law of a state (other than Australia) that is a party to the convention.

Note This section gives effect to articles 2 and 3 of the convention.

- (3) In this section:

Australian legal practitioner—see the *Legal Profession Act 2006*, section 8.

16M Application of Act to international wills

To remove any doubt, the provisions of this Act that apply to wills extend to international wills.

[1.45] New schedules 1 and 2

insert

**Schedule 1 Annex to Convention providing
a Uniform Law on the Form of
an International Will 1973**

(see s 16K)

Article 1

1. A will shall be valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and of the nationality, domicile or residence of the testator, if it is made in the form of an international will complying with the provisions set out in Articles 2 to 5 hereinafter.
2. The invalidity of the will as an international will shall not affect its formal validity as a will of another kind.

Article 2

This law shall not apply to the form of testamentary dispositions made by two or more persons in one instrument.

Article 3

1. The will shall be made in writing.
2. It need not be written by the testator himself.
3. It may be written in any language, by hand or by any other means.

Article 4

1. The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is his will and that he knows the contents thereof.

2. The testator need not inform the witnesses, or the authorized person, of the contents of the will.

Article 5

1. In the presence of the witnesses and of the authorized person, the testator shall sign the will or, if he has previously signed it, shall acknowledge his signature.
2. When the testator is unable to sign, he shall indicate the reason therefor to the authorized person who shall make note of this on the will. Moreover, the testator may be authorized by the law under which the authorized person was designated to direct another person to sign on his behalf.
3. The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

Article 6

1. The signatures shall be placed at the end of the will.
2. If the will consists of several sheets, each sheet shall be signed by the testator or, if he is unable to sign, by the person signing on his behalf or, if there is no such person, by the authorized person. In addition, each sheet shall be numbered.

Article 7

1. The date of the will shall be the date of its signature by the authorized person.
2. This date shall be noted at the end of the will by the authorized person.

Article 8

In the absence of any mandatory rule pertaining to the safekeeping of the will, the authorized person shall ask the testator whether he wishes to make a declaration concerning the safekeeping of his will. If so and at the express request of the testator the place where he intends to have his will kept shall be mentioned in the certificate provided for in Article 9.

Article 9

The authorized person shall attach to the will a certificate in the form prescribed in Article 10 establishing that the obligations of this law have been complied with.

Article 10

The certificate drawn up by the authorized person shall be in the following form or in a substantially similar form:

CERTIFICATE

(Convention of October 26, 1973)

1. I, (name, address and capacity), a person authorized to act in connection with international wills
2. Certify that on (date) at (place)
3. (testator)..... (name, address, date and place of birth) in my presence and that of the witnesses
4. (a)..... (name, address, date and place of birth)
(b)..... (name, address, date and place of birth)
has declared that the attached document is his will and that he knows the contents thereof.
5. I furthermore certify that:
6. (a) in my presence and in that of the witnesses

(1) the testator has signed the will or has acknowledged his signature previously affixed.

*(2) following a declaration of the testator stating that he was unable to sign his will for the following reason.....

—I have mentioned this declaration on the will

*—the signature has been affixed by..... (name, address)

7. (b) the witnesses and I have signed the will;
8. *(c) each page of the will has been signed by and numbered;
9. (d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;
10. (e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;
11. *(f) the testator has requested me to include the following statement concerning the safekeeping of his will:.....
12. PLACE
13. DATE
14. SIGNATURE and, if necessary, SEAL

Article 11

The authorized person shall keep a copy of the certificate and deliver another to the testator.

Article 12

In the absence of evidence to the contrary, the certificate of the authorized person shall be conclusive of the formal validity of the instrument as a will under this Law.

Article 13

The absence or irregularity of a certificate shall not affect the formal validity of a will under this Law.

Article 14

The international will shall be subject to the ordinary rules of revocation of wills.

Article 15

In interpreting and applying the provisions of this law, regard shall be had to its international origin and to the need for uniformity in its interpretation.

*To be completed if appropriate

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 23 February 2012.

2 Notification

Notified under the Legislation Act on 11 April 2012.

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 2012, which was passed by the Legislative Assembly on 27 March 2012.

Clerk of the Legislative Assembly

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