



Australian Capital Territory

# Justice and Community Safety Legislation Amendment Act 2017 (No 3)

A2017-38

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Australian Capital Territory

# **Justice and Community Safety Legislation Amendment Act 2017 (No 3)**

**A2017-38**

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An Act to amend legislation about justice and community safety, and for other purposes

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

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Justice and Community Safety Legislation Amendment Act 2017 (No 3)*.

### 2 Commencement

- (1) This Act (other than the following provisions) commences on the 7th day after its notification day:
- part 10 (Family Violence Act 2016)
  - part 11 (Freedom of Information Act 2016)
  - part 17 (Territory Records Act 2002).

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

- (2) Part 10 commences on the later of—
- (a) the day a regulation for section 115, definition of *corresponding law*, commences; and
  - (b) the commencement of this Act, section 3.
- (3) Parts 11 and 17 commence on the later of—
- (a) the commencement of the *Freedom of Information Act 2016*, section 3; and
  - (b) the commencement of this Act, section 3.

### 3 Legislation amended

This Act amends the legislation mentioned in parts 2 to 17.

### 4 Legislation repealed

The *Coroners Regulation 1994* (SL1994-28) is repealed.



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## Part 2 Associations Incorporation Act 1991

### 5 New section 3A

*insert*

#### 3A Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The [Criminal Code](#), ch 2 applies to the following offences against this Act (see Code, pt 2.1):

- s 63B (Disqualification from office—disqualified under other legislation).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

### 6 New section 63B

*insert*

#### 63B Disqualification from office—disqualified under other legislation

- (1) A person commits an offence if the person—
  - (a) has been disqualified from managing a corporation or an Aboriginal and Torres Strait Islander corporation under—
    - (i) any of the following provisions of the [Corporations Act](#):
      - (A) section 206B (1) (a) and (b) (Convictions);

- (B) section 206B (3) and (4) (Bankruptcy or personal insolvency agreement);
- (C) section 206E (Court power of disqualification—repeated contraventions of Act); or
- (ii) any of the following provisions of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cwlth):
  - (A) section 279-5 (1) (a) and (b) (Convictions);
  - (B) section 279-5 (3) and (4) (Bankruptcy or personal insolvency agreement);
  - (C) section 279-25 (Court power of disqualification—repeated contraventions of Act); and
- (b) accepts an appointment or acts as the public officer or a member of the committee of an incorporated association while the person is disqualified; and
- (c) does not have the Supreme Court’s leave to do so.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A person mentioned in subsection (1) may, after giving the registrar-general at least 21 days written notice, apply to the Supreme Court for leave to—
  - (a) accept an appointment or to act as the public officer; or
  - (b) a member of the committee of an incorporated association.
- (3) On hearing an application, the Supreme Court may—
  - (a) give leave, including on any condition the court considers appropriate; or
  - (b) refuse to give leave.

- (4) On the application of the registrar-general, the Supreme Court may revoke or vary leave granted to a person by the court.
- (5) A person commits an offence if the person fails to comply with any condition imposed by the court under subsection (3) (a).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**7 Vacancy in office of public officer**  
**New section 64 (2) (fa)**

*insert*

- (fa) is disqualified from managing a corporation or an Aboriginal and Torres Strait Islander corporation under—
- (i) any of the following provisions of the [Corporations Act](#):
    - (A) section 206B (1) (a) and (b) (Convictions);
    - (B) section 206B (3) and (4) (Bankruptcy or personal insolvency agreement);
    - (C) section 206E (Court power of disqualification—repeated contraventions of Act); or
  - (ii) any of the following provisions of the [Corporations \(Aboriginal and Torres Strait Islander\) Act 2006](#) (Cwlth):
    - (A) section 279-5 (1) (a) and (b) (Convictions);
    - (B) section 279-5 (3) and (4) (Bankruptcy or personal insolvency agreement);
    - (C) section 279-25 (Court power of disqualification—repeated contraventions of Act); or

## Part 3 Associations Incorporation Regulation 1991

**8 Model rules**  
**Schedule 1, section 16 (e)**

*omit*

**9 Schedule 1, section 16 (g)**

*omit*

section 63 (1)

*substitute*

section 63 or section 63B

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## Part 4 Co-operatives National Law (ACT) Act 2017

### 10 Exclusion of Legislation Act New section 8 (2A)

*insert*

(2A) Also, the [Legislation Act](#), part 6.3 (Making of certain statutory instruments about fees) and chapter 7 (Presentation, amendment and disallowance of subordinate laws and disallowable instruments) apply to the provisions of the *Co-operatives National Law (ACT)* modified by the following:

- (a) schedule 1, modifications 1.1A to 1.1E;
- (b) schedule 1, modification 1.5A;
- (c) schedule 1, modifications 1.5C and 1.5D;
- (d) schedule 1, modification 1.12A;
- (e) schedule 1, modifications 1.15 and 1.16.

### 11 Modifications—Co-operatives National Law Schedule 1, new modification 1.1AA

*before modification 1.1, insert*

#### [1.1AA] Section 4, new definition of *disallowable instrument*

*insert*

*disallowable instrument*—see the [Legislation Act 2001](#) (ACT), section 9.

**12 Schedule 1, new modifications 1.1A to 1.1E**

*insert*

**[1.1A] Section 26 (1) (b) (ii)**

*substitute*

- (ii) determined by the Minister by disallowable instrument;  
and

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

**[1.1B] Section 31 (b) (ii)**

*substitute*

- (ii) determined by the Minister by disallowable instrument;  
and

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

**[1.1C] Section 37 (b) (ii)**

*substitute*

- (ii) determined by the Minister by disallowable instrument;  
and

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

**[1.1D] Section 57 (2) (b)**

*omit*

(b) prescribed by the local regulations;  
for obtaining a copy of the rules from the Registrar.

*substitute*

(b) determined by the Minister by disallowable instrument;  
for obtaining a copy of the rules from the Registrar.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

**[1.1E] Section 57 (3) (b)**

*substitute*

(b) determined by the Minister by disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

**13 Schedule 1, new modifications 1.5A to 1.5D**

*insert*

**[1.5A] Section 92 (8) (b)**

*substitute*

(b) determined by the Minister by disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

**[1.5B] New section 214 (1) (a) (v)**

*insert*

(v) any disallowable instrument made under this Law;

**[1.5C] Section 214 (5) (b)**

*substitute*

(b) determined by the Minister by disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

**[1.5D] Section 243 (2) (c) and note**

*substitute*

(c) be accompanied by the filing fee:

(i) prescribed by the National Regulations, unless subparagraph (ii) applies; or

(ii) determined by the Minister by disallowable instrument.

*Note 1* See section 444 (4) (a) regarding the period within which a special resolution must be filed with the Registrar in connection with the voluntary winding up of a co-operative.

*Note 2* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

**14 Schedule 1, new modification 1.12A**

*insert*

**[1.12A] Section 522 (4) (b)**

*substitute*

(b) determined by the Minister by disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).



**15 Schedule 1, new modifications 1.15 and 1.16**

*insert*

**[1.15] Section 601 (5), definition of *prescribed fee*, paragraph (b)**

*substitute*

- (b) determined by the Minister by disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

**[1.16] Section 604 (b)**

*omit*

- (ii) prescribed by the local regulations;

has been paid.

*substitute*

- (ii) determined by the Minister by disallowable instrument;

has been paid.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

**Part 5** **Co-operatives National Law  
(ACT) Regulation 2017**

**16** **Prescribed fees**  
**Section 11**

*omit*

**17** **Prescribed fees**  
**Schedule 1**

*omit*

## Part 6 Coroners Act 1997

### 18 Coroner's jurisdiction in relation to deaths Section 13 (1) (c)

*omit*

(other than an operation or procedure prescribed by regulation for this paragraph)

### 19 Decision not to conduct hearing Section 34A (2)

*substitute*

- (2) A coroner must not dispense with a hearing into a death if the coroner has reasonable grounds for believing that the person died in custody.

## Part 7 Court Procedures Act 2004

### 20 Administrative functions of principal registrar Section 11B (2) (a) and note

*substitute*

- (a) employ staff on behalf of the Territory;

### 21 New section 11B (3)

*insert*

- (3) The principal registrar's staff must be employed under the *Public Sector Management Act 1994*.

*Note* The *Public Sector Management Act 1994*, div 8.2 applies to the principal registrar in relation to the employment of staff (see *Public Sector Management Act 1994*, s 152).

### 22 New section 11BA

*insert*

#### 11BA Delegation by principal registrar

The principal registrar may delegate the principal registrar's functions under a territory law to a member of the principal registrar's staff.

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

### 23 Subject matter for rules Schedule 1, section 6, new paragraph (ia)

*insert*

- (ia) security of court premises, including the use of electronic devices in court premises;

## Part 8 Crimes Act 1900

### 24 Court may order corporation to take certain actions Section 49E (7) and (8)

*omit*

director-general

*substitute*

regulator

## **Part 9                                      Emergencies Act 2004**

<b>25</b>	<b>Chief officer—fire and rescue service Section 29 (3) (d)</b>
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*omit*

## Part 10 Family Violence Act 2016

### 26 Section 198 heading

*substitute*

### 198 Definitions—pt 20

### 27 Section 198, new definition of *operational date*

*insert*

*operational date* means the day a regulation for section 115, definition of *corresponding law*, commences.

### 28 Existing registered orders under repealed Act Section 200 (1) (a) and (b)

*substitute*

- (a) registered under the [repealed Act](#), part 12 (Reciprocal arrangements) before the operational date; and
- (b) in force immediately before the operational date.

### 29 Preservation of repealed Act, pt 12 Section 200A

*omit*

the commencement of part 9 (National recognition of FVOs)

*substitute*

the day before the operational date

## Part 11 Freedom of Information Act 2016

### 30 Meaning of *agency* Section 15 (2), definition of *territory authority*

*substitute*

*territory authority* means a body established for a public purpose under an Act or statutory instrument but does not include—

- (a) the judicial council established under the *Judicial Commissions Act 1994*, section 5A; or
- (b) the law society established under the *Legal Profession Act 2006*, section 576.

### 31 Information officers—functions New section 19 (2) and (3)

*insert*

- (2) An information officer may delegate a function mentioned in subsection (1) (a) or (b) to a staff member in the information officer's agency.
- (3) However, the information officer must not delegate the function of—
  - (a) deciding an access application; or
  - (b) refusing to deal with an application.

### 32 Sections 32 (2), 57 (5) and 58 (5)

*omit*

5 working days

*substitute*

10 working days



**33 Ombudsman—functions  
New section 64 (2)**

*insert*

- (2) The ombudsman may delegate the ombudsman's functions under this Act to a member of the ombudsman's staff.

**34 Preventing disclosure of information  
Section 91**

*omit*

**35 Schedule 1, new section 1.1A**

*insert*

**1.1A Information in possession of a court or tribunal**

- (1) Information in the possession of a court or tribunal unless the information is administrative in nature.
- (2) In this section:
- court* includes—
- (a) a registry or other office of a court or tribunal; and
  - (b) the staff of the registry or office.

**36 Information disclosure of which is prohibited under law  
Schedule 1, section 1.3 (1)**

*omit everything after*

section 60

**37 Identities of people making disclosures  
Schedule 1, section 1.9 (b)**

*after*

mandatory

*insert*

or voluntary

**38 Information in possession of ombudsman  
Schedule 1, section 1.12, new paragraph (c)**

*insert*

- (c) a function exercised under the *Ombudsman Act 1989*, division 2.2A (Reportable conduct).

**39 Dictionary, definition of *principal officer*, paragraphs (b) to (d)**

*substitute*

- (b) for the Supreme Court, Magistrates Court, Coroner's Court or ACAT—the principal registrar appointed under the *Court Procedures Act 2004*, section 11A; or

## Part 12 Guardianship and Management of Property Act 1991

### 40 Surviving or substitute guardians etc Section 32 (4)

*substitute*

- (4) If the notice indicates that the public trustee and guardian or a person stated by the public trustee and guardian will act as guardian, the notice is taken to be an application for the appointment of the public trustee and guardian or person as the guardian.

### 41 Section 32 (6)

*after*

public trustee

*insert*

and guardian

## Part 13 Legal Profession Act 2006

### 42 Summary conclusion of complaint procedure by fine etc Section 413 (1) (c)

*substitute*

- (c) is satisfied that the practitioner is generally competent and diligent; and
- (d) is satisfied that the unsatisfactory professional conduct can be adequately dealt with under this section.

## Part 14                      Liquor Act 2010

### 43            Section 216 (1) (d) (v) and (vi)

*substitute*

- (v) 1 member appointed to represent club licensees;
- (vi) 1 member appointed to represent on licensees, other than club licensees;

### 44            New section 216 (1) (d) (viiiia)

*insert*

- (viiiia) 1 member appointed to represent the late night economy;

### 45            Section 216 (1) (d), new example

*before the example, insert*

**Example—par (d) (viiiia)**  
a nightclub licensee

### 46            New part 23

*insert*

## Part 23                      Transitional—liquor advisory board appointments

### 266            Meaning of *commencement day*—pt 23

In this part:

*commencement day* means the day the *Justice and Community Safety Legislation Amendment Act 2017 (No 3)*, part 14 commences.

**267 Existing Clubs ACT appointment**

- (1) This section applies to a person who, immediately before the commencement day, was appointed to the liquor advisory board under section 216 (1) (d) (v).
- (2) The person is taken to be appointed to the liquor advisory board under section 216 (1) (d) (v) for the remaining term of the person's appointment.

**268 Existing Australian Hotels Association (ACT branch) appointment**

- (1) This section applies to a person who, immediately before the commencement day, was appointed to the liquor advisory board under section 216 (1) (d) (vi).
- (2) The person is taken to be appointed to the liquor advisory board under section 216 (1) (d) (vi) for the remaining term of the person's appointment.

**269 Expiry—pt 23**

This part expires on 15 October 2018.

*Note* Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

## Part 15 Road Transport (General) Act 1999

### 47 Definitions—pt 3 Section 21A, definition of *known user declaration*

*substitute*

***known user declaration*** means a statutory declaration or online declaration made by a person in relation to an infringement notice offence involving a registrable or rail vehicle that includes—

- (a) either—
  - (i) if the person is the responsible person for the vehicle—
    - (A) a statement that, at the time of the offence, the person was not in possession or control of the vehicle; and
    - (B) sufficient information to identify and locate the person last known to be in possession or control of the vehicle; or
  - (ii) if the person is not the responsible person for the vehicle—a statement that, at the time of the offence, the person was in possession or control of the vehicle; and
- (b) any information prescribed by regulation.

**48 Procedure if liability disputed  
Section 53 (3)**

*substitute*

- (3) The administering authority must discontinue a proceeding brought against the person for the offence if, before the hearing of the proceeding—
- (a) 1 of the following happens:
    - (i) the person pays the infringement notice penalty;
    - (ii) the person enters into an infringement notice management plan in relation to the offence;
    - (iii) an infringement notice in relation to the offence is added to an existing infringement notice plan; and
  - (b) the person pays—
    - (i) any costs prescribed by regulation for beginning the proceeding; and
    - (ii) any disbursements incurred by the administering authority up to the day payment is made.

**49 Section 53 (4)**

*omit*

the person paid the infringement notice penalty for

*substitute*

1 of the things mentioned in subsection (3) (a) happened in relation to



## Part 16 Road Transport (Offences) Regulation 2005

**50 Known user declaration—Act, s 21A, def *known user declaration*, par (c)  
Section 14G (a) and (b)**

*substitute*

- (a) if the person is the responsible person and an individual—a statement to the effect that the person was not the person who was in possession or control of the vehicle at the time of the offence;
- (b) if the person is not the responsible person and is an individual—a statement to the effect that the person was the person (the *known user*) who was in possession or control of the vehicle at the time of the offence;
- (ba) the name and home address or business address of the known user;

**51 Sold vehicle declaration—Act, s 21A, def *sold vehicle declaration*, par (c)  
Section 14H (d) and (e), except notes 1 and 2**

*omit*

## Part 17 Territory Records Act 2002

### 52 Meaning of *agency* Section 7, definition of *agency*, paragraph (b)

*substitute*

- (b) the public service; or

### 53 Meaning of *principal officer* Section 8, definition of *principal officer*, paragraphs (a) to (e)

*substitute*

- (a) for the Executive—the head of service; or
- (b) for the public service—the head of service; or
- (c) for the Supreme Court, Magistrates Court, Coroner’s Court or ACAT—the principal registrar appointed under the *Court Procedures Act 2004*, section 11A; or

### 54 Section 8 (j)

*substitute*

- (j) for a royal commission, board of inquiry, judicial commission or the judicial council—the head of service; or

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 21 September 2017.

**2 Notification**

Notified under the [Legislation Act](#) on 9 November 2017.

**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 2017 (No 3), which originated in the Legislative Assembly as the Justice and Community Safety Legislation Amendment Bill 2017 (No 2) and was passed by the Assembly on 31 October 2017.

Acting Clerk of the Legislative Assembly

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