



Australian Capital Territory

Courts and Other Justice Legislation Amendment Act 2021

A2021-13

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Australian Capital Territory

Courts and Other Justice Legislation Amendment Act 2021

A2021-13

An Act to amend legislation about courts, and for other purposes

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

Part 1 Preliminary

1 Name of Act

This Act is the *Courts and Other Justice Legislation Amendment Act 2021*.

2 Commencement

- (1) Parts 5 and 8 commence 3 months after this Act's notification day.

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

- (2) Part 9 commences on a day fixed by the Minister by written notice.

Note 1 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)).

Note 2 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see [Legislation Act](#), s 79).

- (3) The remaining provisions commence on the 7th day after this Act's notification day.

3 Legislation amended

This Act amends the following legislation:

- [ACT Civil and Administrative Tribunal Act 2008](#)
- [Common Boundaries Act 1981](#)
- [Coroners Act 1997](#)
- [Guardianship and Management of Property Act 1991](#)
- [Judicial Commissions Act 1994](#)
- [Magistrates Court Act 1930](#)

- *Powers of Attorney Act 2006*
- *Public Trustee and Guardian Act 1985*
- *Supreme Court Act 1933.*

Part 2

ACT Civil and Administrative Tribunal Act 2008

4 Section 7

substitute

7 Tribunal principles

In exercising its functions under this Act, the tribunal must—

- (a) seek to ensure the procedures of the tribunal—
 - (i) are as simple, quick, inexpensive and informal as is consistent with achieving justice; and
 - (ii) are implemented in a way that facilitates the resolution of the issues between the parties so that the cost to the parties and the tribunal is proportionate to the importance and complexity of the subject matter of the proceeding; and
- (b) observe natural justice and procedural fairness.

7A Duties of parties, authorised representatives and others

Each party to a proceeding, their authorised representative and anyone else accompanying the party or allowed to participate in the proceeding has a duty—

- (a) to cooperate with the tribunal to give effect to the tribunal principles mentioned in section 7; and
- (b) to comply with the Act and any directions.

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

5 Section 23

substitute

23 Tribunal decides own procedure

- (1) The tribunal may decide its own procedure at any stage in dealing with an application if no procedure is prescribed for the application under this Act or an authorising law.

Note 1 The procedures of the tribunal must be as simple, quick, inexpensive and informal as is consistent with achieving justice (see s 7 (a)).

Note 2 A reference to an Act includes a reference to any statutory instrument made or in force under the Act (see [Legislation Act](#), s 104).

- (2) The tribunal may, by order, dispense with the application of a provision of the rules to a particular proceeding on any conditions it considers appropriate.
- (3) The tribunal may make an order under subsection (2) on application by a party, another person or on its own initiative.

**6 Mediation for applications
Section 35 (1)**

omit everything before paragraph (a), substitute

- (1) This section applies if the tribunal considers that a matter to which an application relates—

7 Section 35 (2) (a)

omit

subject

**8 Procedure in absence of party
Section 44**

omit

9 New section 47A*insert***47A Procedure in absence of party**

- (1) This section applies if—
 - (a) the tribunal requires a party to appear either personally or by a representative before the tribunal in relation to an application; and
 - (b) the party fails to appear.
- (2) The tribunal may—
 - (a) if the party is the applicant—dismiss the application; or
 - (b) if the party is the respondent—decide the application; or
 - (c) if the party is not the applicant or respondent—remove the party from the application; or
 - (d) do any of the following:
 - (i) continue with the hearing in the absence of the party either generally or in relation to any relief claimed in the application;
 - (ii) order that the application be set down for hearing at another time;
 - (iii) order that stated steps be taken before the hearing takes place as the tribunal directs;

- (iv) make any other orders that the tribunal considers appropriate.

Note 1 The procedures of the tribunal must be as simple, quick, inexpensive and informal as is consistent with achieving justice and the tribunal must observe natural justice and procedural fairness (see s 7).

Note 2 If the tribunal makes an order after hearing an application in the absence of a party, the tribunal may, on application by a party, amend or set aside the order (see s 56 (c) (i)).

10 Interim orders Section 53 (1)

substitute

- (1) This section applies if, at any stage before an application is finalised in the tribunal—
- (a) a party to an application applies to the tribunal for an order under this section; and
 - (b) the tribunal is satisfied that, if an order under this section were not made, the party applying for the order would be disadvantaged or suffer harm.

11 Section 53 (3)

substitute

- (3) An interim order remains in force until—
- (a) the tribunal orders otherwise; or
 - (b) the application is finalised in the tribunal.

**12 Decisions without hearing
New section 54 (1A)**

before subsection (1), insert

- (1A) The tribunal may, on application by a party or on its own initiative, decide an application on the basis of documents, without the parties, their representatives or witnesses appearing at a hearing.

Note The procedures of the tribunal must be as simple, quick, inexpensive and informal as is consistent with achieving justice and the tribunal must observe natural justice and procedural fairness (see s 7).

13 Section 54 (1)

omit

written

14 Section 54 (1) (a)

substitute

- (a) the tribunal proposes to decide the application on the basis of documents, without the parties, their representatives or witnesses appearing at a hearing; and

**15 Powers of tribunal if parties reach agreement
Section 55 (1) (b)**

substitute

- (b) the terms (the *agreed terms*) of the agreement are recorded by, or lodged with, the tribunal; and

**16 Other actions by tribunal
Section 56 (c) (i), note**

omit

s 44

substitute

s 47A

17 Section 56 (d), new example

insert

3 an order staying an order, pending an appeal

18 Section 82

substitute

82 Appeal tribunal—general powers

- (1) An appeal tribunal may, as the tribunal considers appropriate, deal with an appeal—
 - (a) as a new application; or
 - (b) as a review of all or part of the original decision on the application by the tribunal.
- (2) An appeal tribunal—
 - (a) has all the powers and duties of the tribunal that made the order appealed from; and
 - (b) may draw inferences of fact; and
 - (c) may, if leave is granted, receive further evidence about questions of fact, either orally in a hearing, by written statement or in another way; and

- (d) may make an order confirming, amending, setting aside or replacing the order of the tribunal appealed from; and
- (e) may make any other order it considers appropriate.

Part 3 Common Boundaries Act 1981

19 Section 4 (3) (b) and section 5 (3) (b)

omit

1 month has

substitute

30 days have

20 Application to ACAT—repair cost determination Section 6 (4) (b)

omit

14 days has

substitute

14 days have

21 Parties to applications New section 8 (e)

insert

(e) for an application to which section 9 applies—

(i) the applicant; and

(ii) either—

(A) the person to whom a document mentioned in section 9 (2) (a), (b) or (c) is given; or

(B) the person declared under an order under section 9 (2) (d) to be the respondent to the application.

22 Section 9*substitute***9 Non-compliant notices**

- (1) An applicant who fails to comply with a notice requirement under section 4 (3), section 5 (3) or section 6 (4) (the *relevant provision*) may apply to the ACAT for an order under this section.
- (2) The ACAT may, by order—
 - (a) accept a document given to the respondent as notice under the relevant provision; or
 - (b) correct a defect in a notice given to the respondent; or
 - (c) deal with the application as if the notice given to the respondent complied with the relevant provision; or
 - (d) if no notice has been given under the relevant provision—declare who the respondent to the application is.
- (3) If the parties consent, the ACAT may, by order, waive a requirement to—
 - (a) give written notice; or
 - (b) wait a certain period before making an application.

**23 ACAT powers—repair determination
New section 11 (3) (ba)***insert*

- (ba) the line where the fence should be erected; and

**24 Dealing with variations
Section 15***omit*

Part 4 Coroners Act 1997

25 Removal of body to place of post-mortem examination Section 26

omit

- (4) The ACAT may make an order under subsection (1)—
 - (a) on its own initiative; or
 - (b) on application by an interested person in relation to the protected person.
- (5) If the protected person or the guardian or manager has died, any application under subsection (4) (b) must be made—
 - (a) within 6 months after the day of the death; and
 - (b) if both the protected person and the guardian or manager have died—within 6 months after the day of the first death.

19B Compensation under s 19A and later civil proceeding

- (1) This section applies if—
 - (a) compensation for the failure of a guardian or manager to comply with this Act is paid in accordance with an order under section 19A; and
 - (b) a later civil proceeding is brought in relation to the same failure.
- (2) The payment of compensation must be taken into account in assessing damages in the civil proceeding.

19C Relief from personal liability by court

- (1) This section applies if a court considers that—
 - (a) a guardian or manager is, or may be, personally liable for a contravention of this Act; and
 - (b) the guardian or manager has acted honestly and reasonably and ought fairly to be excused for the contravention.
- (2) The court may relieve the guardian or manager from all or part of the guardian's or manager's personal liability for the contravention.

- (3) In deciding whether the guardian or manager should be relieved of liability, the court must consider the extent to which the guardian or manager has acted consistently with the decision-making principles.

19D ACAT may refer matter to Supreme Court

The ACAT may refer an application under section 19A (4) (b) to the Supreme Court.

Note See the [ACT Civil and Administrative Tribunal Act 2008](#), s 83 and s 84 for when an application to the ACAT may be referred to the Supreme Court.

28 Sections 32JB (2) and 37 (2)

omit

29 Dictionary, note 2

insert

- Supreme Court

30 Dictionary, definition of *interested person*

substitute

interested person—see the [Powers of Attorney Act 2006](#), section 74.

Part 6 Judicial Commissions Act 1994

31 Offence—disclosure of information by members etc Section 28 (2)

after

for this Act

insert

or the *Integrity Commission Act 2018*, section 59 (Other entities may refer corruption complaints)

Part 8 Powers of Attorney Act 2006

33 Section 50 heading

substitute

50 Compensation for failure to comply with Act—Supreme Court order

34 Section 50 (1)

omit

exercise of a power

substitute

exercise, or purported exercise, of a power

35 New section 50A

insert

50A ACAT may order compensation etc

- (1) The ACAT may order an attorney for a principal to pay an amount to the principal or, if the principal has died, the principal's estate—
 - (a) to compensate for a loss caused by the attorney's failure to comply with this Act in the exercise, or purported exercise, of a power; or
 - (b) to account for any profits the attorney has accrued as a result of the attorney's failure to comply with this Act in the exercise, or purported exercise, of a power.
- (2) However, the ACAT must not order the attorney to make a payment under both subsection (1) (a) and (b) in relation to the same exercise, or purported exercise, of power.

- (3) Subsection (1) applies whether or not the attorney is convicted of an offence in relation to the attorney's failure.
- (4) The ACAT may make an order under subsection (1)—
 - (a) on its own initiative; or
 - (b) on application by an interested person in relation to the power of attorney.
- (5) If the principal or the attorney has died, any application under subsection (4) (b) must be made—
 - (a) within 6 months after the day of the death; and
 - (b) if both principal and attorney have died—within 6 months after the day of the first death.
- (6) In this section:
interested person—see section 74.

36 Section 52 heading*substitute***52 Relief from personal liability****37 New section 52 (4)***insert*

- (4) In this section:
court includes the ACAT.

38 **New part 7.2**

insert

Part 7.2 **ACAT referral****75** **ACAT may refer matter to Supreme Court**

The ACAT may refer an application under section 50A (4) (b) to the Supreme Court.

Note See the *ACT Civil and Administrative Tribunal Act 2008*, s 83 and s 84 for when an application to the ACAT may be referred to the Supreme Court.

39 **Dictionary, note 2**

insert

- Supreme Court

- (b) is not responsible for arranging the removal of the unclaimed deceased person's body from the place where the person died.

Note If a person dies, the person's estate vests in the public trustee and guardian from the time the person dies until someone is appointed as administrator of the estate or a grant of representation is made (see the [Administration Act](#), s 38A).

- (3) The public trustee and guardian must comply with any guideline made by the Minister for this section.
- (4) A guideline is a disallowable instrument.
- (5) In this section:

unclaimed deceased person means a person—

- (a) whose death is registered under the [Births, Deaths and Marriages Registration Act 1997](#); and
- (b) the executor of whose estate, or whose next of kin—
- (i) has not been found, despite reasonable inquiries by the police; or
 - (ii) is unwilling or unable to make funeral arrangements for the person; and
- (c) whose body—
- (i) is held at a place in the ACT; and
 - (ii) has not been claimed by anyone who has a right to claim the body under the law of another State.

Part 10 Supreme Court Act 1933

42 Section 37V

substitute

37V Acting judge—conditions of appointment

An acting judge is appointed on the conditions decided by the Executive, subject to this Act and any determination under the [Remuneration Tribunal Act 1995](#).

43 Section 41B

substitute

41B Master—conditions of appointment

The master is appointed on the conditions decided by the Executive, subject to this Act and any determination under the [Remuneration Tribunal Act 1995](#).

44 Section 60A

substitute

60A Power to complete part-heard proceedings

- (1) This section applies if a proceeding (including a proceeding in the Full Court or the Court of Appeal) is not finally determined when a judge or associate judge (the *former judge or associate judge*) hearing the proceeding ceases to hold office.
- (2) The former judge or associate judge—
 - (a) is taken to continue to hold office for the purpose of determining the proceeding; and

- (b) may continue to exercise the court's jurisdiction for the purpose of hearing and determining the proceeding, including giving judgment, making an order or completing or otherwise continuing to deal with any matter relating to the proceeding.
- (3) However, the former judge or associate judge is not entitled to any remuneration, allowances or entitlements under this Act for holding office under this section.
- (4) This section does not apply if a judge or associate judge is removed from office.
- (5) Nothing in this section prevents a person being appointed as an acting judge.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 20 April 2021.

2 Notification

Notified under the [Legislation Act](#) on 9 June 2021.

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 Courts and Other Justice Legislation Amendment Bill 2021, which was passed by the Legislative Assembly on 3 June 2021.

Clerk of the Legislative Assembly

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