



Australian Capital Territory

Justice and Community Safety Legislation Amendment Act 2021

A2021-3

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J2020-1595

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 2021

A2021-3

An Act to amend legislation about justice and community safety

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 2021*.

2 Commencement

- (1) This Act (other than section 39) commences on the 7th day after its notification day.

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

- (2) Section 39 commences on the commencement of the *Residential Tenancies Amendment Act 2020 (No 2)*, section 25.

3 Legislation amended

This Act amends the following legislation:

- [ACT Civil and Administrative Tribunal Act 2008](#)
- [ACT Civil and Administrative Tribunal Regulation 2009](#)
- [Administration and Probate Act 1929](#)
- [Associations Incorporation Act 1991](#)
- [Civil Law \(Wrongs\) Act 2002](#)
- [Crimes Act 1900](#)
- [Crimes \(Sentence Administration\) Act 2005](#)
- [Guardianship and Management of Property Act 1991](#)
- [Legal Profession Act 2006](#)
- [Legislation Act 2001](#)
- [Lotteries Act 1964](#)
- [Mental Health Act 2015](#)
- [Powers of Attorney Act 2006](#)

- *Public Sector Management Act 1994*
- *Public Trustee and Guardian Act 1985*
- *Residential Tenancies Act 1997*
- *Retirement Villages Regulation 2013*
- *Security Industry Regulation 2003*
- *Wills Act 1968.*

Part 3 ACT Civil and Administrative Tribunal Regulation 2009

5 Sections 9 and 10

substitute

9 Use of trust amounts—Act, s 115C

- (1) The following purposes in relation to the *Agents Act 2003* (the *Agents Act*) are prescribed:
 - (a) promoting education and understanding of the *Agents Act* for licensed agents, registered salespeople and the public;
 - (b) providing dispute resolution services for disputes involving licensed agents or registered salespeople;
 - (c) paying additional amounts to the compensation fund;
 - (d) researching issues of concern to licensed agents and people using the services of licensed agents, whether or not the issues arise under the *Agents Act*;
 - (e) paying or reimbursing costs, incurred by the commissioner for fair trading on behalf of the Territory, for applications to the ACAT in relation to a licensed agent or registered salesperson;
 - (f) paying reasonable costs and expenses incurred by an administrator under the *Agents Act*, section 143 (Remuneration of administrators);
 - (g) reimbursing the Territory for the cost of administering the *Agents Act*.
- (2) The purposes mentioned in the *Residential Tenancies Act 1997*, section 28 (Interest on amounts in trust account) are prescribed.

- (3) The following purposes in relation to the *Retirement Villages Act 2012* are prescribed:
- (a) providing advisory and advocacy services to residents and prospective residents of retirement villages;
 - (b) reimbursing the Territory for the cost of administering that Act.
- (4) In this section:

compensation fund—see the *Agents Act*, dictionary.

licensed agent—see the *Agents Act*, dictionary.

registered salesperson—see the *Agents Act*, dictionary.

resident, of a retirement village—see the *Retirement Villages Act 2012*, dictionary.

retirement village—see the *Retirement Villages Act 2012*, section 10.

Part 4 Administration and Probate Act 1929

6 Section 38A

substitute

38A Estate to vest in public trustee and guardian until grant

- (1) This section applies if—
 - (a) a person dies; and
 - (b) representation has not been granted.
- (2) The person's real and personal estate vests in the public trustee and guardian.
- (3) The public trustee and guardian may undertake the administration of the person's estate while the person's property is vested in the public trustee and guardian.
- (4) However, subsection (3) does not require the public trustee and guardian—
 - (a) to administer the estate; or
 - (b) act as trustee of any trust created by the person's will; or
 - (c) exercise any discretion, power or authority of a personal representative, trustee or devisee.

7 Section 46

substitute

46 Entitlement of children

- (1) This section applies to a person entitled under this division to the whole of, or a share in, an intestate estate (the *relevant interest*) who, at the time of the death of the intestate, is a child.
- (2) The child is entitled to take the relevant interest in the estate immediately.

Part 5 Associations Incorporation Act 1991

8 Definitions—pt 5 Section 70B, definition of *reviewer*, paragraph (a)

omit

a member or

substitute

an

Part 6 Civil Law (Wrongs) Act 2002

9 Membership of council Schedule 4, new section 4.38 (2)

after the notes, insert

- (2) The [Legislation Act](#), division 19.3.3 (Appointments—Assembly consultation) does not apply to the appointment of a person who is a member of an appropriate council in another jurisdiction.

10 Chairperson and deputy chairperson of council Schedule 4, new section 4.39 (1A)

after the notes, insert

- (1A) The [Legislation Act](#), division 19.3.3 (Appointments—Assembly consultation) does not apply to the appointment of a person who is a member of an appropriate council in another jurisdiction.

11 Deputies of members Schedule 4, new section 4.40 (1A)

insert

- (1A) The [Legislation Act](#), division 19.3.3 (Appointments—Assembly consultation) does not apply to the appointment of a person who is a member of an appropriate council in another jurisdiction.

Part 7 Crimes Act 1900

12 Trial for murder—provocation New section 13 (2) (b) (iii)

insert

- (iii) as to have formed an intent to cause serious harm to the deceased;

13 New section 13 (7)

insert

- (7) In this section:

serious harm—see the [Criminal Code](#), dictionary.

Part 8 Crimes (Sentence Administration) Act 2005

14 **Victims register—young offenders**
Section 215A (6)

omit

15 **Disclosures to registered victims—young offenders**
Section 216A (5), definition of *director-general*

omit

Part 9 Guardianship and Management of Property Act 1991

16 ACAT directions etc for enduring powers of attorney Section 62 (1)

omit

if the principal has impaired decision-making capacity

17 Section 62 (4) and (5)

substitute

- (4) If the ACAT revokes an enduring power of attorney and the person who was the principal for the power has impaired decision-making capacity, the ACAT may appoint a guardian or manager for the person.
- (5) If the ACAT suspends an enduring power of attorney and the person who was the principal for the power has impaired decision-making capacity, the ACAT may appoint a guardian or manager for the person for the period of the suspension.

18 Request for accounts—enduring powers of attorney Section 64 (1)

omit

19 Section 64 (2)

omit

the enduring

substitute

an enduring

Part 10 Legal Profession Act 2006

20 Suitability matters New section 11 (1) (ba)

insert

- (ba) whether the person is, or was, a legal practitioner director of an incorporated legal practice while the practice is or was a Chapter 5 body corporate;

21 External administration proceedings under Corporations Act Section 125 (6)

omit

22 Register of disciplinary action New section 448 (2A)

insert

- (2A) However, if a person named in the register dies, the relevant council must remove from the register all the information about the person mentioned in subsection (2).

23 Dictionary, new definition of *Chapter 5 body corporate*

insert

Chapter 5 body corporate—see the [Corporations Act](#), section 9.

24 Dictionary, definition of *show-cause event*, new paragraph (aa)

insert

- (aa) if the person is a legal practitioner director of an incorporated legal practice—the incorporated legal practice becoming a Chapter 5 body corporate; or

Part 11 Legislation Act 2001

25 Making of certain statutory instruments by Executive Section 41 (2) (b)

substitute

- (b) the signing Ministers include the Chief Minister and the responsible Minister.

26 Section 41 (4)

substitute

- (4) If the Chief Minister or responsible Minister cannot sign because that Minister is absent from the ACT, ill or on leave, the signing Ministers need not include that Minister.

27 Exercise of functions of Executive Section 253 (3)

substitute

- (3) Despite subsection (1), a statutory instrument (other than a subordinate law or disallowable instrument) to be made by the Executive must be signed by the Chief Minister and 1 or more other Ministers who are members of the Executive.

Part 12 Lotteries Act 1964

28 Determination of fees Section 18A (1)

omit

commission

substitute

Minister

Part 13 Mental Health Act 2015

29 Removing person from affected person register Section 133 (3)

substitute

- (3) However, before the director-general removes a person's information from the register under subsection (2), the director-general must give the person written notice of their intention to remove the information.

Note The director-general may delegate the function under this section, for example, to the Victims of Crime Commissioner (see [Public Sector Management Act 1994](#), s 20).

30 Section 133 (4)

omit

or the victims of crime commissioner

Part 14 Powers of Attorney Act 2006

31 Keeping records—enduring powers of attorney Section 47 (1)

omit

, while the principal has impaired decision-making capacity,

32 Section 47 (2) to (4)

omit

33 Keeping property separate—enduring powers of attorney Section 48 (1)

omit

, while the principal has impaired decision-making capacity,

34 Section 48 (1A), (3) and (4)

omit

Part 15 Public Sector Management Act 1994

35 Ministerial responsibility and functions of administrative units Section 14 (4)

substitute

- (4) Subsection (3) is subject to the [Legislation Act](#), section 41 (Making of certain statutory instruments by Executive) and section 253 (Exercise of functions of Executive).

Part 16 Public Trustee and Guardian Act 1985

36 Wills Section 22 (2) and (3)

substitute

- (2) The public trustee and guardian may accept a will for deposit with the public trustee and guardian, whether or not the public trustee and guardian is appointed as an executor of the will.

37 Public trustee and guardian may require information or documents Section 66 (1)

omit

(other than an individual)

38 Section 66 (1A), (3) and (4)

omit

Part 17 Residential Tenancies Act 1997

39 Certain types of agreements not occupancy agreements New section 71CA (da)

insert

(da) entered into by a person who is also a party to a related agreement entered into honestly for the sale or purchase of the premises;

40 Standard residential tenancy terms Schedule 1, clause 13 (1)

omit

commissioner for fair trading

substitute

director-general

Part 18 Retirement Villages Regulation 2013

41 Sections 35, 36 and 37 headings

substitute

- 35 Matters to be dealt with in proposed annual budget—Act, s 159 (5) (a)
- 36 Matters not to be financed by way of recurrent charges—Act, s 159 (5) (b)
- 37 Notice accompanying proposed annual budget—Act, s 159 (6) (d)

Part 19 Security Industry Regulation 2003

42	Exempt people—Act, s 9 Section 6 (1) (k)
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omit

Casino Control Act 1988

substitute

Casino Control Act 2006

Part 20 Wills Act 1968

43 Section 31C

substitute

31C Beneficiary not surviving deceased person

- (1) This section applies if—
 - (a) either—
 - (i) a deceased person, by will, devises or bequeaths property to, appoints property in favour of, or gives the power to appoint property to, a person; or
 - (ii) a person is entitled to take an interest in the estate of a deceased person on intestacy; and
 - (b) the person does not survive the deceased person by 30 days.
- (2) The person is taken to have predeceased the deceased person and the devise, bequest, appointment, power or entitlement lapses, unless the contrary intention appears from the will, or from evidence admitted under section 12B.
- (3) However, subsection (2) does not apply if the effect of the subsection is that the deceased person's estate would pass to the Territory under the *Administration and Probate Act 1929*, section 49CA (How distribution to the Territory is made).
- (4) A general requirement or condition in a will that a beneficiary survive the testator must not be taken to be an expression of a contrary intention for this section.
- (5) For subsection (1) (a) (ii), **person** includes a person conceived before, but born after, the deceased person's death.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 3 December 2020.

2 Notification

Notified under the [Legislation Act](#) on 19 February 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 Justice and Community Safety Legislation Amendment Bill 2021, which originated in the Legislative Assembly as the Justice and Community Safety Legislation Amendment Bill 2020 and was passed by the Legislative Assembly on 11 February 2021.

Clerk of the Legislative Assembly

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