



Australian Capital Territory

Justice and Community Safety Legislation Amendment Act 2021 (No 2)

A2021-33

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Australian Capital Territory

Justice and Community Safety Legislation Amendment Act 2021 (No 2)

A2021-33

An Act to amend legislation about justice and community safety

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

J2021-970

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Part 1 Preliminary

1 Name of Act

This Act is the *Justice and Community Safety Legislation Amendment Act 2021 (No 2)*.

2 Commencement

- (1) This Act (other than the following provisions) commences on the 7th day after its notification day:
- part 3
 - part 8
 - part 10
 - part 11
 - part 16.

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

- (2) Part 3 (Births, Deaths and Marriages Registration Act 1997) commences on the 21st day after this Act's notification day.
- (3) Part 8 (Criminal Code 2002) commences on the day after this Act's notification day.
- (4) Part 10 (Freedom of Information Act 2016) commences on the later of—
- (a) 1 January 2022; and
 - (b) the commencement of this Act, section 3.
- (5) Part 11 (Guardianship and Management of Property Act 1991) commences 3 months after this Act's notification day.

- (6) Part 16 (Public Trustee and Guardian Act 1985) commences on the later of—
- (a) the commencement of the *Courts and Other Justice Legislation Amendment Act 2021*, part 9; and
 - (b) the commencement of this Act, section 3.

3 Legislation amended

This Act amends the following legislation:

- *Administration and Probate Act 1929*
- *Births, Deaths and Marriages Registration Act 1997*
- *Crimes (Assumed Identities) Act 2009*
- *Crimes (Controlled Operations) Act 2008*
- *Crimes (Protection of Witness Identity) Act 2011*
- *Crimes (Surveillance Devices) Act 2010*
- *Criminal Code 2002*
- *Family Provision Act 1969*
- *Freedom of Information Act 2016*
- *Guardianship and Management of Property Act 1991*
- *Land Titles Act 1925*
- *Legal Aid Act 1977*
- *Liquor Act 2010*
- *Magistrates Court (Infringement Notices) Amendment Act 2020*
- *Public Trustee and Guardian Act 1985*
- *Trustee Act 1925*
- *Wills Act 1968*.

Part 2 Administration and Probate Act 1929

4 Section 64

substitute

64 Distribution of assets

- (1) The executor or administrator of the estate of a testator or intestate may distribute the assets of the estate, or part of the assets, among the people entitled only if the executor or administrator—
 - (a) gave public notice for creditors or anyone else to give the executor or administrator their claims against the estate within the time stated in the notice; and
 - (b) had regard to each claim the executor or administrator received within the time stated in the notice; and
 - (c) applied under the *Births, Deaths and Marriages Registration Act 1997* for a search of the register for information about the parents or any children—
 - (i) of the deceased person; or
 - (ii) of any other person known by the executor or administrator to be relevant to the distribution of the assets; and
 - (d) had taken into account any relevant information or documents obtained from the registrar-general as a result of the search.
- (2) A notice under subsection (1) (a) must state that—
 - (a) after the later of the time set out in the notice and 6 months after the date of death of the deceased person, the executor or administrator intends to distribute the deceased person's estate; and

- (b) in the distribution of the deceased person's estate, the executor or administrator will only have regard to claims which are notified to the executor or administrator at the time of the distribution.

Note Public notice given under subsection (1) (a) is also required before making a distribution under the following provisions:

- (a) the *Family Provision Act 1969*, s 21 (Protection of administrator);
 - (b) the *Trustee Act 1925*, s 60 (Distribution after notice).
- (3) The executor or administrator is not liable to any person for any distributed assets if the executor or administrator—
- (a) complied with subsection (1) (c) and (d); and
 - (b) did not have notice of the person's claim when the distribution was made.

Part 3 Births, Deaths and Marriages Registration Act 1997

5 Registration of change of name Section 20 (2) (c)

substitute

- (c) if the application is under section 19 and relates to a child who is at least 14 years old (other than a young person mentioned in paragraph (d))—that the child either consents to the change of name or cannot understand the meaning or implications of the change of name; and
- (d) if the application is for registration of a change of any of a young person's given names under section 19, and the application relates to a young person who has been granted leave by the ACAT for registration of a change of any of the young person's given names under section 29H—that the young person consents to the change of given name.

6 Application by young person for leave to apply for change of given name or sex etc Section 29E (1), new note

insert

Note If leave is granted under this part to a young person, no further leave is needed by the young person for any further application of the same kind—see s 29H (3).

7 New section 29EA*insert***29EA Copy of birth certificate for ACAT**

- (1) If an application for leave is made under section 29E, the ACAT may ask the registrar-general, in writing, for a copy of the applicant's birth certificate.
- (2) The registrar-general must, if asked under subsection (1), give the ACAT a copy of the applicant's birth certificate.

**8 Notification about application
New section 29F (4)***insert*

- (4) For notification under subsection (1) (a), the ACAT—
 - (a) may give each parent or person with parental responsibility for the young person any of the following:
 - (i) an extract of information taken from the application;
 - (ii) a copy of the application;
 - (iii) documents or evidence attached to the application (in full or in part); and
 - (b) must give the public advocate the following:
 - (i) a copy of the application;
 - (ii) documents or evidence attached to the application (in full).

Note For other material that the public advocate must be given—see s 29G (4).

9 Section 29G*substitute***29G ACAT hearing an application for leave etc**

- (1) An application for leave under section 29E may proceed to a hearing—
 - (a) if a submission under section 29E (4) (b) is made by the young person—
 - (i) after the end of the stated period under section 29F (2) (b) (ii); or
 - (ii) before the end of the stated period if the young person gives the ACAT written confirmation that the young person wants the application to proceed; or
 - (b) in any other case—14 days after the application is lodged.
- (2) The hearing must be held in private.
- (3) Subject to subsections (4) and (5), a private hearing is taken to be a hearing to which the *ACT Civil and Administrative Tribunal Act 2008*, section 39 (Hearings in private or partly in private) applies.

Note Requirements for keeping private hearings secret are set out in the *ACT Civil and Administrative Tribunal Act 2008*, s 40.
- (4) The ACAT must give the public advocate a copy of any document lodged with the ACAT or received in evidence for the hearing.
- (5) The public advocate—
 - (a) may attend the hearing at any stage (for the whole or any part of the hearing); and

- (b) may make submissions at the hearing about any matter relating to the application or the hearing.

Note The public advocate may also be required to report to the ACAT about a matter—see the *Human Rights Commission Act 2005*, s 27BA.

- (6) In addition to the young person and the public advocate, a parent or a person with parental responsibility for the young person may also make submissions at the hearing in relation to the application, but only about the matters mentioned in section 29H (1).
- (7) A person who attends a hearing, or makes a submission under subsection (5) or (6), is not a party to the application.
- (8) The ACAT may, by order, give directions prohibiting or restricting the disclosure by a person who attends a hearing, or makes a submission under subsection (5) or (6), of evidence given at the hearing, or of a matter contained in a document lodged with the tribunal or received in evidence by the tribunal for the hearing.
- Note* A similar order may be given to a party to the application under the *ACT Civil and Administrative Tribunal Act 2008*, s 39.
- (9) The ACAT may make an order under subsection (8) on application by the young person or on its own initiative.
- (10) A person must not contravene an order under subsection (8).

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

**10 ACAT deciding an application for leave
New section 29H (3)**

insert

- (3) If the ACAT grants the application for leave in relation to a young person—
- (a) for leave relating to registration of a change of any of the person's given names under section 19A—no further leave is required by the young person for any further application to register a change of any of the person's given names; or
 - (b) for leave relating to alteration of the record of the person's sex in the registration of the person's birth under section 24—no further leave is required by the young person for any further application to register alteration of the record of the person's sex; or
 - (c) for leave relating to a recognised details certificate under section 29A—no further leave is required by the young person for any further application for a recognised details certificate.

**11 Issue of certificates
Section 45 (4)**

substitute

- (4) In this section:

integrated birth certificate, in relation to an adopted person, means a certificate about the person's birth that includes information included on the register—

- (a) about the adopted person's parents, and any siblings included on the register at the time of registration of the person's birth; and

- (b) about the date of the adoption; and
- (c) about the adopted person's parents, and any siblings included on the register at the time of registration of the person's adoption; and
- (d) prescribed by regulation as required on an integrated birth certificate.

Part 5

**Crimes (Controlled
Operations) Act 2008**

**13 Delegation
Section 33 (3), definition of *senior officer*, paragraph (a)**

substitute

- (a) in relation to the Australian Federal Police—a police officer of the rank of commander (or a higher rank); or

Part 6 Crimes (Protection of Witness Identity) Act 2011

14 Delegation Section 23 (3), definition of *senior officer*, paragraph (a)

substitute

- (a) in relation to the Australian Federal Police—a police officer of the rank of commander (or a higher rank); or

Part 7 **Crimes (Surveillance Devices)
Act 2010**

15 **Delegation**
Section 44 (3), definition of *senior officer*, paragraph (a)

substitute

- (a) in relation to the Australian Federal Police—a police officer of the rank of commander (or a higher rank); or

Part 8 Criminal Code 2002

16 Mental impairment and criminal responsibility Section 28 (4) and (5)

substitute

- (4) A person is presumed not to have been suffering from a mental impairment that had an effect mentioned in subsection (1).
- (5) The presumption is displaced only if it is proved on the balance of probabilities (by the prosecution or defence) that the person was suffering from a mental impairment that had an effect mentioned in subsection (1).

Part 9 Family Provision Act 1969

17 Protection of administrator Section 21 (b)

substitute

- (b) before making the distribution, the administrator had given notice in accordance with the *Administration and Probate Act 1929*, section 64 and the time specified in the notice for sending in claims had expired.

Part 10 Freedom of Information Act 2016

18 What is *open access information*? Section 23 (1), definition of *open access information*, of a Minister, paragraph (b) (i) (D)

substitute

- (D) the wellbeing impact assessment for the decision on
ACT Government priorities and emerging issues; but

Part 11 Guardianship and Management of Property Act 1991

19 Section 15

substitute

15 Expenses

- (1) A person who acts as a guardian or manager is entitled to reimbursement of the reasonable expenses incurred in acting as guardian or manager.
- (2) Amounts payable under this section are payable out of, and are a charge on, the relevant person's property or, if the manager concerned is manager of part only of the relevant person's property, that part.

20 Determination of fees Section 75 (1) and note

substitute

- (1) The Minister may determine fees for this Act, including fees payable under section 27 (4) by managers for the examination of accounts and documents by the public trustee and guardian.

Part 12 Land Titles Act 1925

21 Lodgment of instruments by self-represented parties— verification of identity and authority Section 48BC (2)

substitute

- (2) The registrar-general must not register the instrument unless the registrar-general—
- (a) is reasonably satisfied that the party's identity has been verified in accordance with the verification of identity rules as in force at the time of verification; and
 - (b) has verified the party's authority to deal with the land under the instrument in accordance with the verification of authority rules as in force at the time of verification.

Part 13 Legal Aid Act 1977

22 Section 92AA

substitute

92AA Exceptions to secrecy provisions

- (1) Sections 13 and 92 do not apply to the divulgence or communication of information, or the production of a document concerning the affairs of a person (a *disclosure*)—
 - (a) for the purpose of facilitating the investigation or prosecution of an offence against this Act; or
 - (b) with the express or implied consent of the person; or
 - (c) in response to a subpoena under the *ACT Civil and Administrative Tribunal Act 2008*, section 41 (Powers in relation to witnesses etc) in relation to an application to the ACAT under the *Legal Profession Act 2006*.
- (2) Section 92 does not apply to the disclosure made to a Commonwealth entity if—
 - (a) the disclosure is for the purpose of complying with a national agreement in relation to the provision of legal assistance services; and
Example
National Legal Assistance Partnership 2020-2025
 - (b) the disclosure is authorised, in writing, by the chief executive officer under the disclosure guidelines; and
 - (c) the chief executive officer is satisfied that the Commonwealth entity to which the disclosure is made is required to apply the Australian privacy principles in relation to the disclosed material; and

- (d) for divulgence or communication of information—the disclosure relates only to information collected on or after 1 July 2021; and
 - (e) for production of a document—the document was produced on or after 1 July 2021.
- (3) Section 92 does not apply to the disclosure made to an entity if—
- (a) the disclosure is for the purpose of conducting research in relation to improving access to justice or the provision of legal assistance services; and
 - (b) the disclosure is authorised, in writing, by the chief executive officer under the disclosure guidelines; and
 - (c) for the disclosure to a Commonwealth entity—the chief executive officer is satisfied that the Commonwealth entity is required to apply the Australian privacy principles in relation to the disclosed material; and
 - (d) for divulgence or communication of information—the disclosure relates only to information collected on or after 1 July 2021; and
 - (e) for production of a document—the document was produced on or after 1 July 2021.
- (4) The Minister may make guidelines about how the chief executive officer authorises the disclosure of information for this section.
- (5) A disclosure guideline is a disallowable instrument.

(6) In this section:

Australian privacy principles means the principles set out in the *Privacy Act 1988* (Cwlth), schedule 1.

Commonwealth entity—

- (a) includes a Commonwealth department; and
- (b) includes the Australian Bureau of Statistics; but
- (c) does not include an entity carrying out work for the Commonwealth under a contract.

disclosure guidelines—see subsection (4).

Part 14 Liquor Act 2010

23 **What is an *RSA certificate*?** **Section 193 (1), definition of *RSA certificate*, paragraph (a)**

omit

a certificate by

substitute

a certificate issued by

24 **Section 193 (2), definition of *interstate RSA certificate***

substitute

interstate RSA certificate, for a person—

- (a) means a certificate issued by an interstate RSA training provider, or under a law in force in Australia, relating to the supply or consumption of liquor certifying that the person satisfactorily completed, on a stated day, a course about the responsible service of alcohol; and
- (b) includes a digital version of the certificate mentioned in paragraph (a) provided the validity and currency of the certificate can be verified by the Commissioner.

Part 15 Magistrates Court (Infringement Notices) Amendment Act 2020

25 Commencement Section 2 (2)

omit

2 years

substitute

4 years

Part 16 Public Trustee and Guardian Act 1985

**26 Appointment as person responsible for disposal of
unclaimed deceased person
Section 13A (5), definition of *unclaimed deceased person*,
paragraph (a)**

omit

registered

substitute

registrable

Part 17 Trustee Act 1925

27 Distribution after notice Section 60 (3)

omit

2 months

substitute

1 month

Part 18 Wills Act 1968

28	Rectification Section 12A (4) and (5) (a)
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omit

2 months

substitute

1 month

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 11 November 2021.

2 Notification

Notified under the [Legislation Act](#) on 10 December 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 (No 2), which originated in the Legislative Assembly as the Justice and Community Safety Legislation Amendment Bill 2021 and was passed by the Assembly on 1 December 2021.

Clerk of the Legislative Assembly

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