



Australian Capital Territory

# Justice and Community Safety Legislation Amendment Act 2022

A2022-21

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Australian Capital Territory

# Justice and Community Safety Legislation Amendment Act 2022

A2022-21

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An Act to amend legislation about justice and community safety

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

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J2022-251

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Justice and Community Safety Legislation Amendment Act 2022*.

### 2 Commencement

This Act 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)).

### 3 Legislation amended

This Act amends the following legislation:

- [Agents Act 2003](#)
- [Civil Law \(Wrongs\) Act 2002](#)
- [COVID-19 Emergency Response Act 2020](#)
- [Gaming Machine Act 2004](#)
- [Land Titles Act 1925](#)
- [Limitation Act 1985](#)
- [Residential Tenancies Act 1997](#).

## Part 2                      Agents Act 2003

### 4                      Application of pt 6                             New section 99 (c)

*insert*

(c) a business or professional practice.

## Part 3 Civil Law (Wrongs) Act 2002

### 5 Notice of claim Section 51 (11)

*omit*

### 6 Section 114A

*substitute*

## Part 8A.1 Definitions and application— ch 8A

### 114A Meaning of *child abuse claim*

In this Act:

*child abuse claim*, by or on behalf of a person, means a claim in relation to a personal injury that arises from child abuse to which the person was subjected when the person was a child.

### 114AA Meaning of *child abuse*—ch 8A

(1) In this chapter:

*child abuse* means physical abuse or sexual abuse of a child.

(2) In this section:

*physical abuse* does not include conduct that is justified or excused under a law applying in the Territory.

*sexual abuse*, of a child, includes any of the following involving the child:

- (a) an offence of a sexual nature;
- (b) misconduct of a sexual nature.



**7 New section 114BA and part 8A.2 heading***insert***114BA Time when child abuse etc happens**

This chapter applies in relation to child abuse or alleged child abuse of a person who is the subject of a child abuse claim, regardless of when the abuse or alleged abuse happened.

**Part 8A.2 Institutional child abuse—  
proceedings against  
unincorporated bodies****8 Sections 114C and 114G***omit*

chapter

*substitute*

part

**9 New part 8A.3***insert***Part 8A.3 Institutional child abuse—setting aside abuse settlement agreements****114I Object—pt 8A.3**

The object of this part is to provide a way, for a person who is the subject of a child abuse claim because the person suffered child abuse, to seek to have an abuse settlement agreement set aside if—

- (a) when the agreement was made there were legal barriers to the person being fully compensated through a legal cause of action; or
- (b) when the agreement is sought to be set aside the agreement is, in all the circumstances, not a just and reasonable agreement.

**114J Definitions—pt 8A.3**

- (1) In this part:

*abuse settlement agreement* means an agreement—

- (a) that settles a child abuse claim and prevents the exercise of an action on a cause of action to which the *Limitation Act 1985*, section 21C (Personal injury resulting from child abuse) applies; and
- (b) that—
  - (i) happened before the commencement of the *Limitation Act 1985*, section 21C, and at a time when a limitation period applying to the cause of action had ended; or

- (ii) happened before the commencement of this part, and the agreement is not just and reasonable in the circumstances.

*applicant*—see section 114K (1).

- (2) For the definition of *abuse settlement agreement*, a limitation period that ended at a particular time is taken to have ended even if it were possible to seek the leave of a court to extend the period at the time the period ended.

#### **114K Court may set aside abuse settlement agreement**

- (1) This section applies if a person (the *applicant*) is prevented from exercising an action on a cause of action because of an abuse settlement agreement.
- (2) The applicant may—
  - (a) begin a proceeding on the cause of action in a court with jurisdiction to hear the proceeding; and
  - (b) apply to the court to set aside the agreement.
- (3) The court may set aside the agreement if the court is satisfied that—
  - (a) when the agreement was made there were legal barriers to the person being fully compensated through a legal cause of action; or
  - (b) when the application is made to set aside the agreement, the agreement is, in all the circumstances, not a just and reasonable agreement.
- (4) The court may consider the following in deciding whether to set aside the agreement:
  - (a) the amount paid to the applicant under the agreement;
  - (b) the bargaining position of the parties to the agreement;

- (c) the conduct of the following people in relation to the agreement:
    - (i) a party other than the applicant;
    - (ii) a legal representative of a party other than the applicant;
  - (d) any other matter the court considers relevant.
- (5) The *Evidence Act 2011*, section 131 (1) (Exclusion of evidence of settlement negotiations) does not prevent evidence being adduced in a proceeding begun under this section, even if the evidence is of a communication made, or a document prepared, in connection with an attempt to negotiate a settlement of the dispute to which the agreement relates.

#### **114L Court may also set aside other things**

- (1) If the court decides to set aside an abuse settlement agreement under this part, it may also set aside any of the following that gives effect to the agreement:
- (a) a contract, deed or other agreement;
  - (b) an order or judgment of the court or of a lower court.
- (2) However, the court must not set aside the following:
- (a) a deed of release signed by or on behalf of the applicant in acceptance of an offer under the national redress scheme and an agreement relating to a relevant prior payment that has been taken into account in the offer;
  - (b) an agreement to the extent to which—
    - (i) the agreement settled a cross-claim between 2 or more defendants; or
    - (ii) one defendant indemnified another;
  - (c) a contract of insurance.

- (3) In this section:

*national redress scheme* means the National Redress Scheme for Institutional Child Sexual Abuse established under the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cwlth), section 8.

#### **114M Effect of setting aside abuse settlement agreement**

- (1) A court may set aside an abuse settlement agreement or anything else in accordance with this part only to the extent that it relates to the applicant.
- (2) An agreement and anything else set aside in accordance with this part is void but only to the extent that it relates to the applicant.
- (3) An amount paid, including legal costs or disbursements, or other consideration given under the agreement—
- (a) is not recoverable despite the agreement being void; and
  - (b) may be taken into account by a court in deciding damages in a proceeding on a cause of action to which the agreement relates.

### **10 Dictionary, new definitions**

*insert*

*abuse settlement agreement*, for part 8A.3 (Institutional child abuse—setting aside abuse settlement agreements)—see section 114J.

*applicant*, for part 8A.3 (Institutional child abuse—setting aside abuse settlement agreements)—see section 114K (1).

**11 Dictionary, definitions of *child abuse* and *child abuse claim***

*substitute*

*child abuse*, for chapter 8A (Institutional child abuse)—see section 114AA.

*child abuse claim*—see section 114A.

## Part 4 COVID-19 Emergency Response Act 2020

### 12 Reports for Legislative Assembly New section 3 (1A) and (1B)

*insert*

- (1A) However, subsection (1) does not apply in relation to a COVID-19 measure if—
- (a) the provision of an Act or regulation inserted or amended by the measure has been subsequently amended by another Act or regulation (a *subsequent amendment*); and
  - (b) the effect of the subsequent amendment is to continue the operation of the measure to a time when a COVID-19 declaration is no longer in force.
- (1B) Also, subsection (1) does not apply in relation to a COVID-19 measure if the provision of an Act or regulation inserted or amended by the measure has been repealed and not remade, the same in substance, in the Act or regulation or another law.

### 13 Section 3 (4) New definition of *remade*

*insert*

*remade* includes re-enacted.

## Part 5 Gaming Machine Act 2004

### 14 Review of gaming machine tax rebate Section 179A (1)

*omit*

2022

*substitute*

2023

### 15 Section 179A (2)

*substitute*

- (2) This section expires on 8 April 2024.



## Part 6 Land Titles Act 1925

### 16 Signature and witnessing requirements—legal practitioners and mortgagee corporations Section 48BD (1), note

*omit*

div 2

*substitute*

div 1

## Part 7                      Limitation Act 1985

### 17                      Section 21C heading

*substitute*

### 21C                      Personal injury resulting from child abuse

### 18                      Section 21C (1) (a)

*omit*

sexual abuse

*substitute*

child abuse

### 19                      Section 21C (4)

*substitute*

(4) In this section:

*child abuse*—see the *Civil Law (Wrongs) Act 2002*, section 114AA.

*subjected*, in relation to child abuse, includes witness.

### 20                      Special provision in relation to children—claims relating to health services Section 30B (1) (b) (ii)

*omit*

(Personal injury resulting from sexual abuse of child)

*substitute*

(Personal injury resulting from child abuse)

## Part 8 Residential Tenancies Act 1997

### 21 Lessor's obligations Section 12 (4), definition of *asbestos advice*

*substitute*

*asbestos advice* means an advice notified under the [Dangerous Substances Act 2004](#), section 47M.

### 22 Co-tenant may leave residential tenancy agreement Section 35A (4) (b)

*omit*

(2) (a)

*substitute*

(2)

### 23 Repayment of bond to leaving co-tenant Section 35B (6), note

*omit*

s 83 (c)

*substitute*

s 83 (1) (c)

### 24 Standard residential tenancy terms Schedule 1, clause 100

*omit*

joint tenants

*substitute*

co-tenants

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 9 June 2022.

**2 Notification**

Notified under the [Legislation Act](#) on 9 December 2022.

**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 2022, which was passed by the Legislative Assembly on 22 November 2022.

Clerk of the Legislative Assembly

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