

2007

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Attorney-General)

# Justice and Community Safety Legislation Amendment Bill 2007

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## **Justice and Community Safety Legislation Amendment Bill 2007**

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### **A Bill for**

An Act to amend the law relating to justice and community safety

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

1 **1 Name of Act**

2 This Act is the *Justice and Community Safety Legislation*  
3 *Amendment Act 2007*.

4 **2 Commencement**

5 This Act commences on the day after its notification day.

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

8 **3 Notes**

9 A note included in this Act is explanatory and is not part of this Act.

10 *Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of  
11 notes.

12 **4 Legislation amended—sch 1**

13 This Act amends the legislation mentioned in schedule 1.

14 **5 Repeal of Powers of Attorney Regulation 2007**

15 The *Powers of Attorney Regulation 2007* is repealed.

1 **Schedule 1**            **Legislation amended**

2 (see s 4)

3 **Part 1.1**                    **Agents Act 2003**

4 **[1.1] Section 22 (1) (b) (ii)**

5 *substitute*

6 (ii) pretends to be a licensed employment agent.

7 **[1.2] Section 70 (2)**

8 *substitute*

9 (2) A licensed agent commits an offence if—

10 (a) the licensed agent—

11 (i) is employed to be responsible for the day-to-day  
12 management of another licensed agent's place of  
13 business; and

14 (ii) provides services for 2 or more licensed agents at the  
15 place; and

16 (b) the licensed agents to whom the services are provided are not  
17 in partnership with each other.

18 Maximum penalty: 100 penalty units.

1 **Part 1.2** **Civil Law (Wrongs) Act 2002**

2 **[1.3] New section 16 (3A)**

3 *insert*

4 (3A) However, damages mentioned in subsection (3) (b) (i) may be  
5 recovered if—

6 (a) the cause of action related to a personal injury resulting from  
7 an asbestos-related disease; and

8 (b) the person gave notice under section 51 (Notice of claim)  
9 before the person's death; and

10 (c) the person died either—

11 (i) as a result of the asbestos-related disease; or

12 (ii) the asbestos-related disease was a contributing factor to  
13 the person's death.

14 **[1.4] Section 16 (7), new definition of *asbestos-related disease***

15 *insert*

16 *asbestos-related disease* means any of the following diseases:

17 (a) asbestosis;

18 (b) asbestos induced carcinoma;

19 (c) asbestos-related pleural diseases;

20 (d) mesothelioma;

21 (e) a disease prescribed by regulation.

1 **[1.5] New section 84 (2) and (3)**

2 *insert*

3 (2) However, an expert who has provided a health service for a claimant  
4 in relation to the claim may also give expert medical evidence in the  
5 proceeding.

6 (3) In this section:

7 *health service*—see the *Health Professionals Act 2004*, section 15.

8 **[1.6] Section 97 (3)**

9 *substitute*

10 (3) For subsection (1) (a), the presumption can be rebutted if the injured  
11 person establishes, on the balance of probabilities, that—

12 (a) the injury suffered by the injured person was less serious than  
13 it would have been if the injured person had been wearing a  
14 seatbelt at the time of the accident; or

15 (b) the injured person was not capable of fastening a seatbelt  
16 without assistance from someone else.

17 **[1.7] Schedule 4, section 4.2, new definitions of *amount***  
18 ***payable* and *costs***

19 *insert*

20 *amount payable*, under an insurance policy in relation to an  
21 occupational liability—see section 4.2A.

22 *costs* includes fees, charges, disbursements and expenses.

Amendment [1.8]

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- 1 **[1.8] Schedule 4, section 4.2, definition of *damages***
- 2 *substitute*
- 3 *damages* means—
- 4 (a) damages awarded in relation to a claim or counter-claim or
- 5 claim by way of set-off; or
- 6 (b) costs in relation to the proceedings ordered to be paid in
- 7 relation to such an award (other than costs incurred in
- 8 enforcing a judgment or incurred on an appeal made by a
- 9 defendant); or
- 10 (c) any interest payable on the amount of the damages or costs.

11 **[1.9] Schedule 4, new section 4.2A**

12 *insert*

13 **4.2A Amount payable under an insurance policy—sch 4**

14 In this schedule:

15 *amount payable*, under an insurance policy in relation to an

16 occupational liability, includes—

- 17 (a) defence costs payable in relation to a claim, or notification that
- 18 may lead to a claim (other than reimbursement of the defendant
- 19 for time spent in relation to the claim), but only if the costs are
- 20 payable out of the one sum insured under the policy in relation
- 21 to the occupational liability; and
- 22 (b) the amount payable under or in relation to the policy by way of
- 23 excess.



1 **[1.10] Schedule 4, section 4.17**

2 *substitute*

3 **4.17 Limitation of liability by insurance arrangements**

4 A person to whom a scheme applies, and against whom a  
5 proceeding relating to occupational liability is brought, is not liable  
6 in damages in relation to the cause of action above the monetary  
7 ceiling if the person can satisfy the court that—

8 (a) the person has the benefit of an insurance policy insuring the  
9 person against the occupational liability to which the cause of  
10 action relates; and

11 (b) the amount payable under the policy for the occupational  
12 liability is at least the amount of the monetary ceiling stated in  
13 the scheme in relation to the class of person and the kind of  
14 work to which the cause of action relates.

15 **[1.11] Schedule 4, section 4.18 (a)**

16 *omit*

17 when the act or omission giving rise to the cause of action happened

18 **[1.12] Schedule 4, section 4.18 (b) (ii)**

19 *substitute*

20 (ii) the net current market value of the business assets and the  
21 amount payable under the policy for the occupational  
22 liability, if combined, would total an amount that is at  
23 least the amount of the monetary ceiling stated in the  
24 scheme in relation to the class of person and the kind of  
25 work to which the cause of action relates.

Amendment [1.13]

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1 **[1.13] Schedule 4, section 4.19 (1) (a) (ii)**

2 *substitute*

- 3 (ii) under which the amount payable for the occupational  
4 liability is at least an amount (the *limitation amount*) that  
5 is a reasonable charge for the services provided by the  
6 person or which the person failed to provide and to which  
7 the cause of action relates, multiplied by the multiple  
8 stated in the scheme in relation to the class of person and  
9 the kind of work to which the cause of action relates; or

10 **[1.14] Schedule 4, section 4.19 (1) (c) (ii)**

11 *substitute*

- 12 (ii) the net current market value of the assets and the amount  
13 payable under the policy for the occupational liability, if  
14 combined, would total an amount that is at least the  
15 limitation amount.

16 **[1.15] Schedule 4, new section 4.22A**

17 *insert*

18 **4.22A Liability in damages not reduced to below relevant limit**

19 The liability in damages of a person to whom a scheme applies is  
20 not reduced below the relevant limitation imposed by a scheme in  
21 force under this schedule because the amount available to be paid to  
22 the claimant under the insurance policy required for this schedule  
23 for the liability is less than the relevant limitation.

24 *Note* Section 4.2A allows a defence costs inclusive policy for this schedule,  
25 which may reduce the amount available to be paid to a client for  
26 occupational liability covered by the policy. Section 4.22A makes it  
27 clear that this does not reduce the cap on the liability of the scheme  
28 participant to the client, and accordingly the scheme participant will

1 continue to be liable to the client for any difference between the amount  
2 payable to the client under the policy and the amount of the cap.

3 **[1.16] Schedule 4, section 4.24 (2)**

4 *omit*

5 when the act or omission happened

6 *substitute*

7 when the act or omission giving rise to the cause of action  
8 concerned happened

9 **[1.17] Schedule 4, new section 4.59A**

10 *insert*

11 **4.59A Validation of schemes etc**

- 12 (1) A scheme approved under this schedule before the commencement  
13 of the *Justice and Community Safety Legislation Amendment*  
14 *Act 2007* (the **amending Act**) is taken to be, and always to have  
15 been, a valid scheme if it would have been valid had the  
16 amendments made by the amending Act been in force when the  
17 scheme was approved.
- 18 (2) Anything done or omitted to be done in relation to such a scheme is  
19 taken to be, and always to have been, validly done or omitted.
- 20 (3) In particular, an insurance policy required by this schedule before a  
21 limitation on liability in damages of a person to whom such a  
22 scheme applies is reduced is taken to comply, and always to have  
23 complied, with this schedule if it would have complied had the  
24 amendments made by the amending Act been in force when the  
25 policy was issued.
- 26 (4) This section extends to proceedings pending in a court on the  
27 commencement of this section.

Amendment [1.18]

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1    **[1.18]     Dictionary, new definition of *amount payable***

2                    *insert*

3                    *amount payable*, under an insurance policy in relation to an  
4                    occupational liability, for schedule 4 (Professional standards)—see  
5                    schedule 4, section 4.2A.

6    **[1.19]     Dictionary, definition of *costs***

7                    *substitute*

8                    *costs*—

9                    (a) for chapter 14 (Limitations on legal costs)—see section 180;  
10                    and

11                    (b) for schedule 4 (Professional standards)—see schedule 4,  
12                    section 4.2.

13    **Part 1.3                                  Classification (Publications,**  
14    **Films and Computer Games)**  
15    **(Enforcement) Regulation 1995**

16    **[1.20]     Section 2**

17                    *omit everything before paragraph (a), substitute*

18    **2             Prescribed areas for X 18+ films—Act, s 9 (2) (c) and**  
19                    **s 21 (b)**

20                    The following areas are prescribed:

1 **Part 1.4** **Community Title Act 2001**

2 **[1.21] Section 52 (4)**

3 *omit*

4 section 7

5 *substitute*

6 section 8

7 **Part 1.5** **Crimes Act 1900**

8 **[1.22] Section 441 (10), definition of *prescribed penalty***

9 *omit*

10 1 penalty unit

11 *substitute*

12 \$100

13 **Part 1.6** **Criminal Code 2002**

14 **[1.23] Section 10 (1), definition of *default application date***

15 *omit*

16 1 July 2007

17 *substitute*

18 1 July 2009

Amendment [1.24]

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- 1 **[1.24] Section 300, definition of *territory public official*, new**  
2 **paragraph (k)**  
3 *insert*  
4 (k) an authorised person, or a territory service authorised person,  
5 under the *Utilities Act 2000*.

6 **Part 1.7 Criminal Code Regulation 2005**

- 7 **[1.25] Section 4A**  
8 *omit*

9 **Part 1.8 Discrimination Act 1991**

- 10 **[1.26] New section 77A**  
11 *insert*

12 **77A Power to strike out complaints**

13 Despite section 77, the tribunal may refuse to hear, or further hear, a  
14 complaint if the complainant fails to comply with a reasonable  
15 direction of the tribunal in relation to the hearing of the complaint.

- 16 **[1.27] Dictionary, definition of *compulsory conference***  
17 *omit*

1 **Part 1.9** **Domestic Violence Agencies Act**  
2 **1986**

3 **[1.28] Sections 6, 7 and 8**

4 *substitute*

5 **6 Membership of council**

6 (1) The council consists of—

7 (a) the coordinator; and

8 (b) 12 other members (each of whom is an *appointed member*)  
9 appointed by the Minister.

10 *Note 1* For the making of appointments (including acting appointments),  
11 see the Legislation Act, pt 19.3.

12 *Note 2* In particular, a person may be appointed for a particular provision  
13 of a law (see Legislation Act, s 7 (3)) and an appointment may be  
14 made by naming a person or nominating the occupant of a  
15 position (see Legislation Act s 207).

16 *Note 3* Certain Ministerial appointments require consultation with a  
17 Legislative Assembly committee and are disallowable (see  
18 Legislation Act, div 19.3.3).

19 (2) The appointed members must consist of—

20 (a) at least 6 people as community members, including—

21 (i) at least 1 person who the Minister considers is capable of  
22 representing the views and interests of people of  
23 Aboriginal and Torres Strait Islands descent; and

24 (ii) at least 1 person who the Minister considers is capable of  
25 representing the views and interests of people of  
26 non-English speaking background; and

Amendment [1.28]

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- 1 (iii) at least 1 representative of the Domestic Violence Crisis  
2 Service Incorporated; and
- 3 (b) other people who are—
- 4 (i) statutory office holders; or
- 5 (ii) public servants; or
- 6 (iii) police officers.
- 7 (3) The instrument making or evidencing the appointment of a person  
8 as an appointed member must state the capacity in which the person  
9 is appointed.
- 10 (4) The Minister may appoint a person to the council as a community  
11 member only if the Minister considers that the person is familiar  
12 with the views and interests of the community on matters relating to  
13 domestic violence and is capable of representing those views and  
14 interests.
- 15 (5) The Minister may appoint a statutory office holder to the council  
16 only if satisfied that the exercise of the functions of the office  
17 requires its holder to have experience and expertise that would assist  
18 the council to exercise its functions.
- 19 (6) The Minister may appoint a public servant or police officer to the  
20 council only if—
- 21 (a) the person has a position the functions of which involve  
22 dealing with matters that are relevant to a function of the  
23 council; and
- 24 (b) the Minister considers that the person has the experience and  
25 expertise that would assist the council to exercise its functions.



1    **6A           Chairperson of council**

2           The Minister must appoint an appointed member as chairperson of  
3           the council.

4           *Note*     For the making of appointments (including acting appointments), see  
5           the Legislation Act, pt 19.3.

6    **7           Appointed members' term**

7           An appointed member must not be appointed for more than 3 years.

8           *Note*     A person may be reappointed to a position if the person is eligible to be  
9           appointed to the position (see Legislation Act, s 208 and dict, pt 1, def  
10          of *appoint*).

11   **8           Ending of appointed member appointments**

12          (1) A person appointed as a member because the person is a statutory  
13          office holder stops being a member if the person stops being the  
14          statutory office holder.

15          (2) A person appointed as a member because the person is a public  
16          servant or police officer stops being a member if the person ceases  
17          to occupy the office mentioned in section 6 (6) (a).

18          (3) The Minister must end the appointment of an appointed member—

19               (a) for misbehaviour; or

20               (b) for physical or mental incapacity; or

21               (c) if the member becomes bankrupt or executes a personal  
22               insolvency agreement; or

23               (d) if the member is absent, without the permission of the  
24               chairperson, from—

25                     (i) 3 consecutive meetings of the council; or

26                     (ii) 4 out of 6 consecutive meetings of the council; or

Amendment [1.29]

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- 1 (e) if the member is convicted, in the ACT, of an offence  
2 punishable by imprisonment for at least 1 year; or
- 3 (f) if the member is convicted outside the ACT, in Australia or  
4 elsewhere, of an offence that, if it had been committed in the  
5 ACT, would have been punishable by imprisonment for at least  
6 1 year.

7 *Note* A person's appointment also ends if the person resigns (see Legislation  
8 Act, s 210).

9 **[1.29] Dictionary, definition of *appointed member***

10 *substitute*

11 *appointed member*—see section 6 (1).

12 **[1.30] Dictionary, definition of *member***

13 *substitute*

14 *member* means a member of the council.

15 **Part 1.10 Human Rights Commission Act**  
16 **2005**

17 **[1.31] New section 6 (aa)**

18 *insert*

- 19 (aa) to promote understanding and acceptance of, and compliance  
20 with, the *Discrimination Act 1991* and the *Human Rights*  
21 *Act 2004*;

1 **[1.32] Section 6 (d)**

2 *substitute*

3 (d) to promote an awareness of the rights and responsibilities of  
4 users and providers of services to which this Act relates;

5 **[1.33] Section 6 (f)**

6 *omit*

7 **Part 1.11 Judicial Commissions Act 1994**

8 **[1.34] Section 61**

9 *substitute*

10 **61 Reports of proceedings—protection**

11 (1) The proceedings of a hearing before a commission are taken to be  
12 proceedings of public concern for the *Civil Law (Wrongs) Act 2002*,  
13 section 139 (Defences of fair report of proceedings of public  
14 concern).

15 (2) Subsection (1) does not apply in relation to the publication of a  
16 report of proceedings, or a part of proceedings, if a direction given  
17 under section 37 (3) restricts publication of the proceedings or part  
18 of them and the publication of the report contravenes the direction.

19 **Part 1.12 Powers of Attorney Act 2006**

20 **[1.35] Section 12, example 2**

21 *omit*

Amendment [1.36]

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1 **[1.36] Section 13 heading**

2 *substitute*

3 **13 Appointment of attorneys**

4 **[1.37] Section 13 (1) and (2)**

5 *omit*

6 authorise

7 *substitute*

8 appoint

9 **[1.38] Section 13 (3)**

10 *substitute*

11 (3) However, an adult must not, by a power of attorney, appoint a child  
12 as an attorney.

13 **[1.39] Section 15**

14 *substitute*

15 **15 Appointment of attorneys by name or position**

16 A principal may appoint a person to act under a power of attorney  
17 by—

18 (a) naming the person; or

19 (b) nominating the occupant of a position (however described), at  
20 a particular time or from time to time.

21 *Note* The principal may revoke a power of attorney if the principal has  
22 decision-making capacity.

1 **[1.40] Section 21 (1) (b) and (2) (b)**

2 *omit*

3 authorised

4 *substitute*

5 appointed

6 **[1.41] Section 22 (2) (d)**

7 *substitute*

8 (d) at the time the principal gave the direction to sign the power of  
9 attorney, the principal appeared to the witness to understand  
10 the nature and effect of making the power of attorney.

11 **[1.42] Part 3.3 heading**

12 *substitute*

13 **Part 3.3 Authorisation of 2 or more**  
14 **attorneys**

15 **[1.43] Section 25 heading**

16 *substitute*

17 **25 Authorisation of 2 or more attorneys under power of**  
18 **attorney**

19 **[1.44] Section 31 (2)**

20 *substitute*

21 (2) While the principal has decision-making capacity, the power of  
22 attorney operates as a general power of attorney in relation to  
23 property matters.

Amendment [1.45]

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- 1 **[1.45] Section 36 (b)**  
2 *substitute*  
3 (b) making or revoking a power of attorney for the principal;

- 4 **[1.46] Sections 43 (1) and 53**  
5 *omit*  
6 authorisation  
7 *substitute*  
8 appointment

- 9 **[1.47] Section 83 heading**  
10 *substitute*

11 **83 Assistance by public trustee**

- 12 **[1.48] Section 83 (3)**  
13 *omit*  
14 must  
15 *substitute*  
16 may

17 **Part 1.13 Utilities Act 2000**

- 18 **[1.49] Section 20 (2) (b)**  
19 *substitute*  
20 (b) the *Emergencies Act 2004*;

1 **[1.50] Section 171 (2) (b) (ii)**

2 *substitute*

- 3 (ii) the effect of the *Magistrates Court Act 1930*, section 266  
4 (Complaints under Utilities Act, pt 12).

5 **[1.51] New section 206 (1) (d)**

6 *insert*

- 7 (d) a capital contribution charge imposed by a utility is excessive.

8 **[1.52] Section 206 (2)**

9 *substitute*

- 10 (2) The council may—

11 (a) for a complaint that a capital contribution charge is  
12 excessive—give a direction under section 209A (Reviewable  
13 capital contribution charges); or

- 14 (b) in any other case—

15 (i) give any written directions to the utility that it considers  
16 necessary requiring the utility to remedy the matter  
17 mentioned in subsection (1); or

18 (ii) give any other direction under this division; or

19 (iii) make a declaration under this division.

20 **[1.53] New section 209A**

21 *insert*

22 **209A Reviewable capital contribution charges**

- 23 (1) This section applies if the council is satisfied that a capital  
24 contribution charge imposed by a utility is excessive.

Amendment [1.54]

---

- 1 (2) The council may give the utility a written direction to reduce the  
2 charge to the amount stated in the direction.
- 3 (3) For subsection (2), the council must state an amount that it considers  
4 reasonable having regard to—
- 5 (a) the cost of the work to which the charge relates; and  
6 (b) the relevant industry code.
- 7 (4) However, the amount stated in the direction must not be more  
8 than—
- 9 (a) \$10 000; or  
10 (b) if another amount is prescribed by regulation—that amount.
- 11 (5) To remove any doubt, this section is additional to, and does not  
12 limit—
- 13 (a) section 207 (Continuity of services—nonpayment of customer  
14 debt); and  
15 (b) section 208 (Discharge of customer debt).

16 **Part 1.14** **Victims of Crime Act 1994**

17 **[1.54] New section 18A**

18 *in division 3.2, insert*

19 **18A Delegation by coordinator**

20 The coordinator may delegate the coordinator's functions under this  
21 Act to a public servant.

22 *Note 1* For the making of delegations and the exercise of delegated functions,  
23 see the Legislation Act, pt 19.4.



1 *Note 2* A reference to an Act includes a reference to the statutory instruments  
2 made or in force under the Act, including a regulation (see Legislation  
3 Act, s 104).

4 **Part 1.15** **Victims of Crime (Financial**  
5 **Assistance) Act 1983**

6 **[1.55] New section 61AA**

7 *after section 61, insert*

8 **61AA Order for restitution—judgment debt**

9 The amount ordered to be paid by a court under an order for  
10 restitution is a judgment debt owing to the Territory.

11 *Note* An amount owing under a law may be recovered as a debt in a court of  
12 competent jurisdiction (see Legislation Act, s 177).

13 **[1.56] Sections 61AA and 61A**

14 *renumber as sections 61A and 61B*

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**Endnotes**

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2007.

**2 Notification**

Notified under the Legislation Act on 2007.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).