

2008

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Justice and Community Safety Legislation Amendment Bill 2008

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(Attorney-General)

Justice and Community Safety Legislation Amendment Bill 2008

A Bill for

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

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

J2007-587

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

1 **1 Name of Act**

2 This Act is the *Justice and Community Safety Legislation*
3 *Amendment Act 2008*.

4 **2 Commencement**

5 This Act commences on the 21st 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 Legislation amended—sch 1**

9 This Act amends the legislation mentioned in schedule 1.

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

2 (see s 3)

3 **Part 1.1** **Administration and Probate Act**
4 **1929**

5 **[1.1] Section 41A (1)**

6 *substitute*

7 (1) The following are assets for the payment of the funeral,
8 testamentary and administrative expenses and the debts and other
9 liabilities of a deceased person:

10 (a) the real and personal property of the person, to the extent of the
11 person's beneficial interest in it;

12 (b) any real and personal property disposed of by the person's will
13 in exercise of a general power.

14 **[1.2] Section 41B (1)**

15 *omit*

16 person dying on or after 1 January 1966

17 *substitute*

18 deceased person

19 **[1.3] Section 41B (2) and (3)**

20 *omit*

1 **[1.4] Sections 41C (1) and (2) and 41D (1)**

2 *omit*

3 person who dies on or after 1 January 1966

4 *substitute*

5 deceased person

6 **[1.5] Section 50 (3)**

7 *omit*

8 **[1.6] Section 87C (4)**

9 *omit*

10 powers and duties

11 *substitute*

12 functions

13 **[1.7] Section 87C (4), new note**

14 *insert*

15 *Note* **Function** includes authority, duty and power (see Legislation Act, dict,
16 pt 1).

17 **[1.8] Section 87C (7) and (9)**

18 *omit*

19 powers and duties

20 *substitute*

21 functions

- 1 **[1.9] Section 89 (1)**
- 2 *omit*
- 3 powers, rights, and obligations
- 4 *substitute*
- 5 functions
- 6 **[1.10] Section 89 (1), new note**
- 7 *insert*
- 8 *Note* **Function** includes authority, duty and power (see Legislation Act, dict,
- 9 pt 1).
- 10 **[1.11] Section 89 (2) (b)**
- 11 *omit*
- 12 rights and duties
- 13 *substitute*
- 14 functions
- 15 **[1.12] Section 91 (1)**
- 16 *substitute*
- 17 (1) The following cease on the grant of probate or administration under
- 18 section 90:
- 19 (a) all the interest and functions of the public trustee (except rights
- 20 given by this section) in relation to the estate of the deceased
- 21 person whose estate is affected by the grant;
- 22 (b) all liabilities of the public trustee under any contract or
- 23 agreement entered into in relation to the estate, or any part of
- 24 the estate.

1 **[1.13] Section 91 (1), new note**

2 *insert*

3 *Note* **Function** includes authority, duty and power (see Legislation Act, dict,
4 pt 1).

5 **[1.14] Section 91 (2)**

6 *omit*

7 rights and obligations

8 *substitute*

9 functions

10 **Part 1.2 Court Procedures Act 2004**

11 **[1.15] Section 12, definition of *essential services consumer*
12 *council***

13 *substitute*

14 ***energy and water consumer council*** means the Energy and Water
15 Consumer Council established under the *Utilities Act 2000*,
16 section 169.

17 **[1.16] Section 12, definition of *tribunal*, paragraph (e)**

18 *omit*

19 essential services consumer council

20 *substitute*

21 energy and water consumer council

1 **Part 1.3** **Crimes (Restorative Justice) Act**
2 **2004**

3 **[1.17] Section 22, table 22, item 1, column 2**

4 *after*

5 chief executive
6 (children and young people)

7 *insert*

8 police officer

9 **[1.18] Section 37, new definition of *referring entity***

10 *insert*

11 *referring entity*—see section 38.

12 **[1.19] New section 39 (3)**

13 *insert*

14 (3) The chief executive must ensure, before the conference begins, that
15 the convenor has received sufficient legal training to—

16 (a) advise the participants of their rights and duties at law and
17 under this Act; and

18 (b) otherwise exercise the functions of a convenor under this Act.

19 **[1.20] Section 40 (1), note 3**

20 *omit*

- 1 **[1.21] Section 40 (2) (b)**
2 *after*
3 is satisfied that the convenor has received
4 *insert*
5 , or has the capacity to receive,

6 **Part 1.4 Crimes (Sentencing) Act 2005**

7 **[1.22] New section 140A**

8 *insert*

9 **140A References to *charge*—s 140**

- 10 (1) A reference in section 140 to an offender charged with an offence
11 includes a reference to an offender in relation to whom—
12 (a) an information or indictment (including an amended or
13 substituted information or indictment) is, or has been, filed in a
14 court for the offence; and
15 (b) if the offender is committed under the *Magistrates Court*
16 *Act 1930*, section 90A (Plea of guilty in committal
17 proceeding)—the Supreme Court decides, or has decided, to
18 deal with the offender under section 90A (11) of that Act.
19 (2) For subsection (1), it does not matter whether a charge is filed in
20 relation to an offence for which an earlier charge has been laid.
21 (3) If section 140 (1) applies to an offender because of subsection (2),
22 and the charge was filed before 2 June 2006, the charge must be
23 disregarded for section 140 (2).

1 **Part 1.5** **Human Rights Commission Act**
2 **2005**

3 **[1.23] Section 6**

4 *substitute*

5 **6 Main objects of Act**

- 6 (1) The main object of the Act is to promote the human rights and
7 welfare of people living in the ACT.
- 8 (2) The main object is to be achieved by establishing a commission that
9 will—
- 10 (a) promote the provision of community education, information
11 and advice in relation to human rights; and
- 12 (b) identify and examine issues that affect the human rights and
13 welfare of vulnerable groups in the community; and
- 14 (c) make recommendations to government and non-government
15 agencies on legislation, policies, practices and services that
16 affect vulnerable groups in the community; and
- 17 (d) promote understanding and acceptance of, and compliance
18 with, the *Discrimination Act 1991* and the *Human Rights*
19 *Act 2004*; and
- 20 (e) promote improvements in the provision of disability services,
21 health services, services for children and young people and
22 services for older people; and
- 23 (f) promote the rights of users of disability services, health
24 services, services for children and young people and services
25 for older people; and
- 26 (g) promote an awareness of the rights and responsibilities of users
27 and providers of services to which this Act relates; and

- 1 (h) provide an independent, fair and accessible process for the
2 resolution of discrimination complaints and complaints
3 between users and providers of disability services, health
4 services, services for children and young people and services
5 for older people; and
- 6 (i) provide a process to encourage and assist users and providers
7 of disability services, health services, services for children and
8 young people, and services for older people, to make
9 improvements in the provision of services, particularly by
10 encouraging and assisting service users and providers to
11 contribute to the review and improvement of service quality;
12 and
- 13 (j) foster community discussion, and the provision of community
14 education and information, about—
- 15 (i) this Act and related Acts; and
- 16 (ii) the operation of the commission; and
- 17 (iii) the procedures for making complaints.

18 **[1.24] Sections 19BA, 21A, 23A, 25A and 27A**

19 *after*
20 another territory law to
21 *insert*
22 another commissioner or

23 **[1.25] Section 43 (1)**

24 *after*
25 an act
26 *insert*
27 or service

1 **[1.26] Section 43 (1) (a)**

2 *after*
3 the act
4 *insert*
5 or service

6 **[1.27] Section 45 (2) (c)**

7 *substitute*
8 (c) unless section 45 (3) applies—before considering the
9 complaint, tell the complainant and the person complained
10 about, in writing, that the complaint is to be considered; and

11 **[1.28] New section 45 (3) and (4)**

12 *insert*
13 (3) However, the commission need not consider a complaint if satisfied
14 that—
15 (a) the complaint—
16 (i) is frivolous, vexatious or not made honestly; or
17 (ii) lacks substance; or
18 (iii) is to be referred to another statutory officer-holder; or
19 (iv) cannot be made by the complainant under the Act; or
20 (v) cannot otherwise be made under the Act; or
21 (b) the complainant has been given a reasonable explanation and
22 the complaint needs no further action by the commission; or
23 (c) the matters raised by the complaint have been, or are being,
24 dealt with by a court or tribunal or have been dealt with by the
25 commission.

- 1 (4) Also, the commission need not give notice under subsection (2) to
2 the person complained of if, because of subsection (3), it decides—
3 (a) not to consider the complaint; or
4 (b) not to consider the complaint further.

5 **[1.29] New section 47 (4)**

6 *insert*

- 7 (4) Also, a complaint may be referred to another entity under
8 section 53A (Referral to appropriate statutory office-holder).

9 **[1.30] Section 48 (1) (a)**

10 *substitute*

- 11 (a) an act or service that appears to the commission to be an act or
12 service about which a person could make, but has not made, a
13 complaint under this Act; or

14 **[1.31] Section 48 (3) (b), example 1**

15 *substitute*

- 16 1 The complaint appears to reveal a systemic problem about an activity or a
17 service.

18 **[1.32] New section 53A**

19 *in division 4.2, insert*

20 **53A Referral to appropriate statutory office-holder**

- 21 (1) This section applies if—
22 (a) the commission considers that the act or service to which a
23 complaint relates is a matter that could—
24 (i) have been complained about to a statutory office-holder;
25 and

- 1 (ii) be dealt with more conveniently or effectively by the
2 statutory office-holder; and
- 3 (b) the commission considers it would be appropriate for the
4 complaint to be referred to the statutory office-holder; and
- 5 (c) the commission has consulted the statutory office-holder about
6 the referral.
- 7 (2) The commission may—
- 8 (a) decide not to deal with, or further deal with, the complaint; and
- 9 (b) if paragraph (a) applies—must refer the complaint, together
10 with any relevant documents or information in its possession or
11 control, to the statutory office-holder.
- 12 (3) In this section:
- 13 *statutory office-holder* means an office established under a territory
14 law (other than this Act) or a law of the Commonwealth, a State or
15 another Territory.
- 16 (4) To remove any doubt, this section is in addition to, and does not
17 limit, section 51A (Referral of advocacy matters).

18 **[1.33] Section 78 (2) (e)**

- 19 *substitute*
- 20 (e) the complaint has been dealt with to the commission's
21 satisfaction; or
- 22 (f) the complaint has been referred under section 53A (Referral to
23 appropriate statutory office-holder); or
- 24 (g) the complaint has otherwise been resolved.

1 **[1.34] Section 82 (1) and (2)**

2 *substitute*

- 3 (1) The final report in relation to a discrimination complaint must
4 include a discrimination referral statement.

5 *Note* ***Discrimination referral statement***—see s 88.

- 6 (2) However, subsection (1) does not apply if—

- 7 (a) the parties to the complaint have made a conciliation
8 agreement in relation to the complaint; or
9 (b) the complainant has withdrawn the complaint.

10 **[1.35] Section 88**

11 *substitute*

12 **88 Discrimination referral statements**

13 A ***discrimination referral statement*** is a statement in a notice in
14 relation to a complaint to the effect that—

- 15 (a) the commission has closed the complaint; and
16 (b) the complainant may ask the commission to refer the complaint
17 to the discrimination tribunal within 60 days after the day the
18 notice is given to the complainant; and
19 (c) after the 60-day period, the complainant may apply to the
20 discrimination tribunal under the *Discrimination Act 1991*,
21 section 78 (Late application in exceptional circumstances) for
22 the complaint to be heard.

23 *Note* The commission must refer the complaint to the tribunal if the
24 complainant asks it to refer the complaint within the 60-day period (see
25 s 53).

1 **Part 1.6** **Magistrates Court Act 1930**

2 **[1.36] Section 266 (b)**

3 *omit*

4 essential services consumer council

5 *substitute*

6 energy and water consumer council

7 **Part 1.7** **Ombudsman Act 1989**

8 **[1.37] Section 5 (2) (o)**

9 *substitute*

10 (o) action taken by the energy and water consumer council under
11 the *Utilities Act 2000*.

12 **[1.38] Section 6B (1) (c)**

13 *substitute*

14 (c) the energy and water consumer council under the *Utilities*
15 *Act 2000*;

1 **Part 1.8 Partnership Act 1963**

2 **[1.39] Section 57 (2) (a)**

3 *substitute*

4 (a) that the partnership is registered under the *Venture Capital*
 5 *Act 2002* (Cwlth), part 2 (Registration of limited partnerships)
 6 as a VCLP, ESVCLP or AFOF; or

7 *Note* VCLP is a venture capital limited partnership, an ESVCLP is an
 8 early stage venture capital limited partnership, and an AFOF is an
 9 Australian venture capital fund of funds.

10 **[1.40] Section 57 (2) (b)**

11 *after*

12 VCLP

13 *insert*

14 , ESVCLP

15 **[1.41] Section 58 (3) (g)**

16 *substitute*

17 (g) for an application by a partnership that is registered under the
 18 *Venture Capital Act 2002* (Cwlth), part 2 (Registration of
 19 limited partnerships) as a VCLP, ESVCLP or AFOF—be
 20 accompanied by a copy of a document proving its status as a
 21 VCLP, ESVCLP or AFOF; and

22 **[1.42] Section 58 (3) (h)**

23 *after*

24 VCLP

25 *insert*

26 , ESVCLP

1 **[1.43] Section 68 (4) (k)**

2 *substitute*

3 (k) takes any action, or participates in any action taken by any
4 other limited partner, for the purpose of registering or
5 maintaining the registration of the partnership or a general
6 partner in the partnership as a VCLP, ESVCLP or AFOF under
7 the *Venture Capital Act 2002* (Cwlth), part 2 (Registration of
8 limited partnerships).

9 **[1.44] Section 78 (1) (b) (i)**

10 *substitute*

11 (i) registered as a VCLP, ESVCLP or AFOF under the
12 *Venture Capital Act 2002* (Cwlth), part 2 (Registration of
13 limited partnerships);

14 **[1.45] Section 91 (1)**

15 *substitute*

16 (1) An incorporated limited partnership that was incorporated on the
17 basis that it intended to apply for registration of the partnership as a
18 VCLP, ESVCLP or AFOF under the *Venture Capital Act 2002*
19 (Cwlth), part 2 (Registration of limited partnerships) must, within
20 1 month after being registered, give the commissioner for fair
21 trading a copy of a document proving its status as a VCLP,
22 ESVCLP or AFOF.

23 **[1.46] Section 91 (3) (a)**

24 *after*

25 VCLP

26 *insert*

27 , ESVCLP

1 **Part 1.9 Residential Tenancies Act 1997**

2 **[1.47] Section 42 (1)**

3 *substitute*

4 (1) This section applies to a conditional termination and possession
5 order.

6 *Note* A *conditional termination and possession order* is made under s 49 (3)
7 (see also dict).

8 (1A) The order expires on the date stated by the tribunal in the order.

9 **[1.48] Section 42A (1) (a)**

10 *substitute*

11 (a) the tribunal has issued a conditional termination and possession
12 order; and

13 **[1.49] Section 42A (1) (c)**

14 *omit*

15 enforcement

16 **[1.50] Section 42A (2) (b)**

17 *before*

18 termination and possession order

19 *insert*

20 conditional

1 **[1.51] Section 42B (4) (a) to (c)**

2 *substitute*

- 3 (a) confirm the conditional termination and possession order; or
4 (b) make another conditional termination and possession order; or
5 (c) set aside the conditional termination and possession order.

6 **[1.52] Section 48 (1)**

7 *substitute*

8 (1) On application by a lessor, the tribunal may make a termination and
9 possession order if—

10 (a) satisfied that—

11 (i) the tenant has breached the standard residential tenancy
12 terms (other than by failing to pay rent due and payable);
13 and

14 (ii) the lessor has served a termination notice on the tenant
15 based on the breach; and

16 (iii) the tenant did not vacate the premises in accordance with
17 the notice; and

18 (iv) the breach of the standard residential tenancy terms was
19 not in accordance with a term of the residential tenancy
20 agreement endorsed by the tribunal; and

21 (v) the breach justifies the termination of the tenancy; or

22 (b) the tribunal—

23 (i) has made an order under section 104 (b); and

24 (ii) is satisfied that the tenant has breached that order.

1 **[1.53] Section 49 (3)**

2 *after*

3 the tribunal may order

4 *insert*

5 *(conditional termination and possession order)*

6 **[1.54] Section 102 (3)**

7 *substitute*

8 (3) The tribunal may, on application by a party, while a conditional
9 termination and possession order is in force, do either of the
10 following:

11 (a) amend the order, whether by extending it to a stated date or
12 otherwise;

13 (b) set the order aside.

14 (4) Subsection (3) applies whether or not a notice has been served under
15 section 42A (2) (b) (Failure to comply with conditional order).

16 **[1.55] Section 112 (4), note**

17 *substitute*

18 **Example**

19 The president may appoint a tribunal member to hear a matter about which the
20 parties consent, such as the endorsement of inconsistent terms under s 10.

21 *Note 1* The president may appoint a member to the tribunal for the hearing of a
22 particular class of matters (see Legislation Act s 48 (1)).

23 *Note 2* An example is part of the Act, is not exhaustive and may extend, but
24 does not limit, the meaning of the provision in which it appears (see
25 Legislation Act, s 126 and s 132).

1 **[1.56] Dictionary, new definition of *conditional termination and***
2 ***possession order***

3 *insert*

4 *conditional termination and possession order* means a termination
5 and possession order under section 49 (3).

6 **[1.57] Dictionary, definition of *enforcement condition***

7 *omit*

8 **Part 1.10 Utilities Act 2000**

9 **[1.58] Part 11 heading**

10 *substitute*

11 **Part 11 Energy and Water Consumer** 12 **Council**

13 **[1.59] Section 169**

14 *omit*

15 Essential Services Consumer Council

16 *substitute*

17 Energy and Water Consumer Council

18 **[1.60] Section 254 (2)**

19 *omit*

20 (Essential Services Consumer Council)

21 *substitute*

22 (Energy and Water Consumer Council)

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2008.

2 Notification

Notified under the Legislation Act on 2008.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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