

2008

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Justice and Community Safety Legislation Amendment Bill 2008 (No 2)

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended—sch 1	2
Schedule 1	
Legislation amended	3
Part 1.1	
Administration and Probate Act 1929	3
Part 1.2	
Agents Act 2003	4
Part 1.3	
Civil Law (Sale of Residential Property) Regulation 2004	4

J2007-588

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

Contents

		Page
Part 1.4	Civil Law (Wrongs) Act 2002	6
Part 1.5	Crimes Act 1900	7
Part 1.6	Crimes (Restorative Justice) Act 2004	8
Part 1.7	Discrimination Act 1991	11
Part 1.8	Legal Profession Act 2006	12
Part 1.9	Legal Profession Regulation 2007	17
Part 1.10	Magistrates Court Act 1930	17
Part 1.11	Regulatory Services Legislation Amendment Act 2008	18

2008

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Justice and Community Safety Legislation Amendment Bill 2008 (No 2)

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:

1 **1 Name of Act**

2 This Act is the *Justice and Community Safety Legislation*
3 *Amendment Act 2008 (No 2)*.

4 **2 Commencement**

5 This Act commences on the 14th 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 25 (1) (a)**

6 *omit*

7 3 months

8 *substitute*

9 6 months

10 **[1.2] Section 44, definition of *eligible partner***

11 *after*

12 spouse

13 *insert*

14 or civil partner

15 **[1.3] Section 44, definition of *partner*, paragraph (a)**

16 *after*

17 spouse

18 *insert*

19 or civil partner

- 1 **[1.4] Section 45A heading**
- 2 *substitute*
- 3 **45A Distribution between spouse or civil partner and eligible**
- 4 **partner**
- 5 **[1.5] Section 45A (1)**
- 6 *after*
- 7 spouse
- 8 *insert*
- 9 or civil partner

10 **Part 1.2 Agents Act 2003**

- 11 **[1.6] Section 162 (2)**
- 12 *substitute*
- 13 (2) As soon as practicable after the beginning of a financial year, the
- 14 Minister must determine an amount for the compensation fund, if
- 15 the Minister considers it necessary to increase the amount in the
- 16 compensation fund to meet the likely claims against the fund during
- 17 the financial year.

18 **Part 1.3 Civil Law (Sale of Residential**

19 **Property) Regulation 2004**

- 20 **[1.7] Section 7 (7)**
- 21 *substitute*
- 22 (7) For subsection (1), AS 4349.1 is taken to be modified as follows:
- 23 (a) omit section 2 (Inspection agreement);

1 (b) in clause C4.2 (Report content commentary), insert the
2 following new paragraph (e):

3 (e) An assessment of the property in relation to cosmetic or
4 minor maintenance matters.

5 **Examples of cosmetic or minor maintenance matters**

- 6 1 leaking taps
7 2 exposed nail heads
8 3 peeling paint

9 (c) omit clause 4.2.4.2 (Minor defects);

10 (d) omit clause C4.2.4.2 (Minor defects commentary);

11 (e) in clause 4.2.8 (Conclusion), omit the following words:

12 and an opinion regarding the incidence of minor defects,
13 relative to the average condition of similar buildings of
14 approximately the same age that have been reasonably well
15 maintained.

16 (f) omit clause C4.2.8 (Conclusion commentary).

17 **[1.8] Section 7 (8), definition of AS 4349.1 and note**

18 *substitute*

19 *AS 4349.1* means Australian Standard 4349.1 (*Inspection of*
20 *buildings – Pre-purchase inspections – Residential buildings*), as in
21 force from time to time.

22 *Note* This standard may be obtained on the internet at the web site
23 www.standards.org.au.

1 **[1.9] Section 10 (6), definition of AS 4349.3 and note**

2 *substitute*

3 *AS 4349.3* means Australian Standard 4349.3 (*Inspection of*
4 *buildings – Timber pest inspections*), as in force from time to time.

5 *Note* This standard may be obtained on the internet at the web site
6 www.standards.org.au.

7 **Part 1.4 Civil Law (Wrongs) Act 2002**

8 **[1.10] New part 2.2A**

9 *insert*

10 **Part 2.2A Food donors**

11 **11A Definitions—pt 2.2A**

12 In this part:

13 *donor*—

14 (a) means a person who donates food—

15 (i) in good faith for a charitable or benevolent purpose; and

16 (ii) with the intention that the consumer of the food would
17 not have to pay for it; but

18 (b) does not include a person who distributes food donated by
19 another person for human consumption.

20 *fit for human consumption*, in relation to food, means food that is
21 not unsafe or unsuitable.

22 *food*—see the *Food Act 2001*, section 8.

23 *unsafe*, in relation to food—see the *Food Act 2001*, section 12.

1 **[1.16] Section 25 (c)**

2 *omit*

3 person

4 *substitute*

5 offender

6 **[1.17] Section 27 (1) (c) (ii)**

7 *substitute*

8 (ii) the court considers that it is appropriate to refer the
9 offence for restorative justice, and the court has ensured
10 that an explanation has been given under section 25
11 (Explanation of restorative justice) to the offender.

12 **[1.18] Section 28 (3) and (5) (a)**

13 *omit*

14 victim and parent mentioned in section 27 (1) (c) (ii)

15 *substitute*

16 person of whom the court is aware who is a victim, or a parent of a
17 child victim, of the offence

18 **[1.19] Section 32 (3)**

19 *omit*

20 If the

21 *substitute*

22 Subject to section 32A, if the

1 **[1.20] New section 32A**

2 *insert*

3 **32A Explanation of restorative justice—before consent**

4 Before obtaining written consent under section 32 (3), the chief
5 executive must ensure that reasonable steps are taken to explain to
6 each eligible victim and parent, and the offender (in language that
7 the victim, parent or offender can readily understand)—

- 8 (a) the purpose of restorative justice generally and for the
9 particular offence; and
- 10 (b) the nature of restorative justice, including the following:
- 11 (i) the nature of a restorative justice conference;
- 12 (ii) who may take part in a restorative justice conference;
- 13 (iii) the nature of a restorative justice agreement; and
- 14 (c) that the person may seek independent legal advice about taking
15 part in restorative justice; and
- 16 (d) that no-one is under an obligation to take part, or continue to
17 take part, in restorative justice after it has started; and
- 18 (e) if the offender has not entered a plea for the offence—that the
19 acceptance of responsibility for the commission of the offence
20 by the offender for the purpose of restorative justice does not
21 prevent the offender from pleading not guilty to the offence;
22 and

- 1 (f) if a sentence-related order has not been made for the
2 offender—that, if the offender is found guilty of the offence, a
3 court, in sentencing the offender—
- 4 (i) may consider whether the offender accepts responsibility
5 for the offence to take part in restorative justice, but is
6 not required to reduce the severity of any sentence as a
7 result; and
- 8 (ii) must not consider whether the offender has chosen not to
9 take part, or not to continue to take part, in restorative
10 justice.

11 **[1.21] Section 40 (2) (b) (i)**

- 12 *omit*
- 13 at law and
- 14 *substitute*
- 15 in relation to restorative justice

16 **Part 1.7 Discrimination Act 1991**

17 **[1.22] New section 121A**

18 *insert*

19 **121A Acts and omissions of representatives**

- 20 (1) This section applies to doing an act (*conduct*) that is unlawful under
21 1 or more of the following provisions:
- 22 (a) part 3 (Unlawful discrimination);
- 23 (b) part 5 (Sexual harassment);
- 24 (c) section 66 (Unlawful vilification—race, sexuality etc);

1 **[1.26] Section 428**

2 *substitute*

3 **428 Powers of disciplinary tribunal in relation to witnesses**
4 **etc**

5 (1) The disciplinary tribunal may, by subpoena given to a person,
6 require the person, at a stated time and place, to appear before the
7 disciplinary tribunal to do 1 or more of the following:

- 8 (a) produce a stated document or other thing relevant to a hearing;
9 (b) give evidence.

10 *Note 1* Documents may be produced electronically in certain circumstances
11 (see *Electronic Transactions Act 2001*).

12 *Note 2* For non-compellability of certain witnesses, see s 469.

13 *Note 3* If a form is approved under the *Court Procedures Act 2004*, s 8 for this
14 provision, the form must be used.

15 (2) A person is taken to have complied with a subpoena under
16 subsection (1) (a) if the person gives the document or other thing to
17 the disciplinary tribunal before the date stated in the subpoena for its
18 production.

19 (3) The disciplinary tribunal may give a party leave to inspect a
20 document produced under a subpoena.

21 (4) A judicial member may require a person appearing before the
22 disciplinary tribunal at the hearing of an application to give
23 evidence to do 1 or more of the following:

- 24 (a) take an oath;
25 (b) answer a question relevant to the hearing;

1 (c) produce a stated document or other thing relevant to the
2 hearing.

3 *Note 1* The Legislation Act, s 170 and s 171 deal with the application of the
4 privilege against selfincrimination and client legal privilege.

5 *Note 2* *Oath* includes affirmation and *take* an oath includes make an
6 affirmation (see Legislation Act, dict, pt 1).

7 (5) If a subpoena is issued to give evidence under subsection (1) (b), the
8 subpoena must—

9 (a) state the time and place at which the person must appear before
10 the disciplinary tribunal; and

11 (b) contain a statement to the effect that the person may be
12 represented before the disciplinary tribunal by an Australian
13 legal practitioner, or with the disciplinary tribunal’s leave
14 under section 425 (5), someone else and that the person may
15 wish to obtain legal advice in relation to the subpoena.

16 *Note* If a form is approved under the *Court Procedures Act 2004*, s 8 for a
17 subpoena, the form must be used.

18 **428A Arrest warrant for failing to appear**

19 (1) If a person who is subpoenaed to appear before the disciplinary
20 tribunal under section 428 does not appear, a judicial member may,
21 on proof of the service of the subpoena, issue a warrant to arrest the
22 person and bring the person before the tribunal.

23 (2) However, the judicial member may only issue a warrant if satisfied
24 that—

25 (a) the disciplinary tribunal has taken reasonably practicable steps
26 to contact the person; and

27 (b) the issue of a warrant is in the interests of justice.

- 1 (3) In deciding whether it is in the interests of justice to issue a warrant,
2 the judicial member must consider the following:
- 3 (a) the importance of the evidence that the member expects the
4 person to give;
- 5 (b) whether the evidence could be obtained by other means;
- 6 (c) the nature of the application;
- 7 (d) the degree of urgency to resolve the matter;
- 8 (e) the likelihood that issuing the warrant would secure the
9 person's attendance at the hearing;
- 10 (f) if the disciplinary tribunal has contacted the person—
- 11 (i) the reason (if any) given by the person for not attending
12 under the subpoena; and
- 13 (ii) the impact of using the warrant for the arrest of the
14 person.

15 **428B Executing a warrant**

- 16 (1) This section applies if a judicial member issues a warrant under
17 section 428A.
- 18 (2) The warrant authorises a police officer to—
- 19 (a) arrest the person named in the warrant; and
- 20 (b) bring the person before the disciplinary tribunal.
- 21 (3) A police officer executing the warrant—
- 22 (a) may, with necessary assistance and force, enter any premises to
23 arrest the person named in the warrant; and
- 24 (b) must use not more than the minimum amount of force
25 necessary to arrest the person and remove the person to the
26 place stated in the warrant; and

- 1 (c) must, before removing the person, explain to the person the
2 purpose of the warrant; and
- 3 (d) must bring the person immediately before a judicial member;
4 and
- 5 (e) if a person is under a legal disability—must inform a parent or
6 guardian of the person of the arrest.
- 7 (4) If, after arresting the person, the police officer believes on
8 reasonable grounds that the person cannot be brought immediately
9 before a judicial member, the police officer must immediately
10 release the person.

11 **[1.27] Dictionary, new definition of *government agency***

12 *insert*

13 ***government agency*** means—

- 14 (a) a government department (however described) of the Territory,
15 the Commonwealth or another jurisdiction; or

16 *Note* ***Jurisdiction*** means a State or Territory (see dict).

- 17 (b) an entity prescribed by regulation as a government agency.

18 **[1.28] Dictionary, definition of *government lawyer***

19 *substitute*

20 ***government lawyer*** means an Australian lawyer, or a person eligible
21 to be admitted as an Australian lawyer, employed by—

- 22 (a) the Territory, the Commonwealth or another jurisdiction; or

23 *Note* ***Jurisdiction*** means a State or Territory (see the dictionary).

- 24 (b) a government agency.

1 **Part 1.9** **Legal Profession Regulation**
2 **2007**

3 **[1.29] Section 8 (2), definition of *government agency***

4 *omit*

5 **[1.30] Section 16 heading**

6 *substitute*

7 **16 Prescribed agency—Act, dict, def *government agency*,**
8 **par (b)**

9 **[1.31] Dictionary, note 3, new dot point**

10 *insert*

- 11
 - government agency

12 **Part 1.10** **Magistrates Court Act 1930**

13 **[1.32] Section 216 (2)**

14 *after*

15 conviction

16 *insert*

17 or sentence

1 **Part 1.11** **Regulatory Services Legislation**
2 **Amendment Act 2008**

3 **[1.33] Section 2**

4 *substitute*

5 **2 Commencement—pt 5**

- 6 (1) Part 5 (Door-to-Door Trading Act 1991) commences on a day fixed
7 by the Minister by written notice.

8 *Note 1* The naming and commencement provisions automatically commenced
9 on the notification day (see Legislation Act, s 75 (1)).

10 *Note 2* Parts 2 to 4 and parts 6 to 8 commenced on 1 July 2008 by written
11 notice by the Minister.

- 12 (2) If part 5 does not commence before 15 October 2009, it
13 automatically commences on that day.

- 14 (3) The Legislation Act, section 79 (Automatic commencement of
15 postponed law) does not apply to this Act.

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.

© Australian Capital Territory 2008