

2012

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Attorney-General)

# Justice and Community Safety Legislation Amendment Bill 2012

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended—sch 1	2
4 Legislation repealed	3
<b>Schedule 1</b>	
<b>Legislation amended</b>	4
<b>Part 1.1</b>	
<b>ACT Civil and Administrative Tribunal Act 2008</b>	4
<b>Part 1.2</b>	
<b>Administrative Decisions (Judicial Review) Act 1989</b>	7
<b>Part 1.3</b>	
<b>Court Procedures Act 2004</b>	7

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Contents

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		Page
<b>Part 1.4</b>	<b>Crimes (Sentence Administration) Act 2005</b>	8
<b>Part 1.5</b>	<b>Emergencies Act 2004</b>	9
<b>Part 1.6</b>	<b>Emergencies Regulation 2004</b>	13
<b>Part 1.7</b>	<b>Legal Aid Act 1977</b>	14
<b>Part 1.8</b>	<b>Magistrates Court Act 1930</b>	14
<b>Part 1.9</b>	<b>Trustee Companies Act 1947</b>	15
<b>Part 1.10</b>	<b>Unclaimed Money Act 1950</b>	16
<b>Part 1.11</b>	<b>Wills Act 1968</b>	17

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## **Justice and Community Safety Legislation Amendment Bill 2012**

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### **A Bill for**

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:

1 **1 Name of Act**

2 This Act is the *Justice and Community Safety Legislation*  
3 *Amendment Act 2012*.

4 **2 Commencement**

5 (1) This Act (other than schedule 1, part 1.11 (Wills Act 1968))  
6 commences on the day after its notification day.

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

9 (2) Schedule 1, part 1.11 commences on a day fixed by the Minister by  
10 written notice.

11 *Note* A single day or time may be fixed, or different days or times may be  
12 fixed, for the commencement of different provisions (see Legislation  
13 Act, s 77 (1)).

14 (3) However, the Minister may not fix a day for the commencement of  
15 schedule 1, part 1.11 that is before the day the *Convention providing*  
16 *a Uniform Law on the Form of an International Will 1973* comes  
17 into force in Australia.

18 *Note* The *Convention providing a Uniform Law on the Form of an*  
19 *International Will 1973* is accessible at [www.unidroit.org](http://www.unidroit.org).

20 (4) If schedule 1, part 1.11 has not commenced within 2 years  
21 beginning on its notification day, it automatically commences on the  
22 first day after that period.

23 (5) The Legislation Act, section 79 (Automatic commencement of  
24 postponed law) does not apply to schedule 1, part 1.11.

25 **3 Legislation amended—sch 1**

26 This Act amends the legislation mentioned in schedule 1.

1 **4 Legislation repealed**

2           The *Fair Trading (Australian Consumer Law) (Transitional*  
3           *Provisions) Regulation 2011* (SL2011-4) is repealed.

## **Schedule 1            Legislation amended**

(see s 3)

## **Part 1.1                ACT Civil and Administrative Tribunal Act 2008**

### **[1.1]            Section 9, new note**

*insert*

*Note*     A registrar may help a person make an application to the tribunal as the registrar considers appropriate—see s 112 (1) (aa).

### **[1.2]            Sections 13 and 14**

*omit*

### **[1.3]            New section 16 (ha)**

*insert*

(ha) an application for an order under the Australian Consumer Law (ACT);

### **[1.4]            Section 88 (2) to (4)**

*omit*

### **[1.5]            New section 89 (2A)**

*insert*

(2A) However, for an interim application, the general president may allocate any of the following to the tribunal for the application:

- (a) 1 or more of the members allocated to the tribunal for the application under subsection (1);
- (b) any other tribunal member the general president considers appropriate.

1 **[1.6] New section 89 (5)**

2 *insert*

3 (5) In this section:

4 *interim application* means—

5 (a) an application under section 53 (Interim orders); or

6 (b) an application for an order of a procedural nature.

7 **Examples—order of a procedural nature**

8 adjournment, order for default judgment, order joining a party to a proceeding

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

12 **[1.7] New section 105A**

13 *insert*

14 **105A Advising Attorney-General about systemic problems**

15 (1) This section applies if it appears to the tribunal that applications to  
16 the tribunal indicate a systemic problem in relation to—

17 (a) the operation of an authorising law; or

18 (b) other matters that come to the tribunal's attention in the course  
19 of the tribunal exercising its functions.

20 (2) The general president must tell the Attorney-General about the  
21 problem.

1 **[1.8] New section 112 (1) (aa)**

2 *before paragraph (a), insert*

3 (aa) to take reasonably practical steps to help a person make an  
4 application, as the registrar considers appropriate.

5 **Examples—help**

6 1 advising person about the role of the tribunal

7 2 helping person to put application in writing

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

11 **[1.9] Section 112 (1), note**

12 *omit*

13 **[1.10] Dictionary, note 2**

14 *insert*

- 15 • Australian Consumer Law (ACT)

16 **[1.11] Dictionary, new definition of *application***

17 *insert*

18 ***application*—**

19 (a) for this Act generally—means an application under section 9;  
20 and

21 (b) for parts 5 to 9 includes—

22 (i) a matter referred or appealed to the tribunal under any  
23 authorising law; and

24 (ii) a matter heard or dealt with by the tribunal on its own  
25 initiative.

26 **Examples—authorising laws under which a matter may be referred to  
27 the tribunal**

28 1 *Crimes Act 1900*, s 331 (Referral to ACAT)



1 2 *Human Rights Commission Act 2005*, s 53A (Referral of  
2 discrimination complaints)

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

## 6 Part 1.2 Administrative Decisions 7 (Judicial Review) Act 1989

### 8 [1.12] Section 5 (1), new note

9 *insert*

10 *Note* The *Human Rights Act 2004*, s 40B (1) (b) makes it unlawful for a  
11 public authority to fail to give proper consideration to a relevant human  
12 right when making a decision.

## 13 Part 1.3 Court Procedures Act 2004

### 14 [1.13] Section 9 (2) (b) and note 1

15 *substitute*

16 (b) a resident judge appointed by the Chief Justice;

### 17 [1.14] Section 10 heading

18 *substitute*

## 19 10 Delegation by Chief Justice and Chief Magistrate

### 20 [1.15] Section 10 (2)

21 *omit*

### 22 [1.16] Section 10 (4)

23 *omit*

24 , the President

- 1 **[1.17] New section 11 (2) (ea)**
- 2 *insert*
- 3 (ea) a presidential member of the ACAT appointed by the general
- 4 president of the ACAT;
- 5 **[1.18] Section 29 (2) (d)**
- 6 *omit*
- 7 21 days
- 8 *substitute*
- 9 28 days

10 **Part 1.4 Crimes (Sentence**

11 **Administration) Act 2005**

- 12 **[1.19] Section 17 (3) (b), except examples**
- 13 *substitute*
- 14 (b) must state—
- 15 (i) when and where the remanding authority orders the
- 16 return of the remandee to the remanding authority; or
- 17 (ii) that the remanding authority order the return of the
- 18 remandee—
- 19 (A) to the remanding authority at the time and place
- 20 decided by the registrar; or
- 21 (B) to another remanding authority at the time and place
- 22 decided by the registrar.

1 **[1.20] Section 18 (1) (b)**

2 *substitute*

3 (b) return the remandee to the remanding authority, or another  
4 remanding authority, as ordered by the remanding authority.

5 **Part 1.5 Emergencies Act 2004**

6 **[1.21] Section 29 heading**

7 *substitute*

8 **29 Chief officer—fire and rescue**

9 **[1.22] Section 38 (1), example, except note**

10 *substitute*

11 **Example**

12 The chief officer (fire and rescue) may determine standards about members'  
13 duties that are not inconsistent with the guidelines.

14 **[1.23] Section 41 (2) (a), example**

15 *omit*

16 fire brigade

17 *substitute*

18 fire and rescue

19 **[1.24] Part 4.2 heading**

20 *substitute*

21 **Part 4.2 Fire and rescue**

1	<b>[1.25]</b>	<b>Division 4.2.1 heading</b>
2		<i>substitute</i>
3		<b>Division 4.2.1      Fire and rescue</b>
4	<b>[1.26]</b>	<b>Section 43</b>
5		<i>substitute</i>
6	<b>43</b>	<b>Establishment of fire and rescue</b>
7		ACT Fire and Rescue is established.
8	<b>[1.27]</b>	<b>Section 44 heading</b>
9		<i>substitute</i>
10	<b>44</b>	<b>Functions of fire and rescue</b>
11	<b>[1.28]</b>	<b>Section 45 heading</b>
12		<i>substitute</i>
13	<b>45</b>	<b>Constitution of fire and rescue</b>
14	<b>[1.29]</b>	<b>Section 46 heading</b>
15		<i>substitute</i>
16	<b>46</b>	<b>Ranks for fire and rescue members</b>
17	<b>[1.30]</b>	<b>Section 57 (2) (b), example</b>
18		<i>substitute</i>
19		<b>Example</b>
20		assisting police officers, or fire and rescue or ambulance service members
21		in dealing with any incident or emergency

1 **[1.31] Dictionary, definition of *chief officer*, paragraph (b)**

2 *substitute*

3 (b) for fire and rescue—the chief officer (fire and rescue); and

4 **[1.32] Dictionary, definition of *chief officer (fire brigade)***

5 *substitute*

6 *chief officer (fire and rescue)*—see section 29.

7 **[1.33] Dictionary, new definition of *fire and rescue***

8 *insert*

9 *fire and rescue* means ACT Fire and Rescue established under  
10 section 43.

11 **[1.34] Dictionary, new definition of *rural fire service***

12 *insert*

13 *rural fire service* means the ACT Rural Fire Service established  
14 under section 51.

15 **[1.35] Dictionary, definition of *SES***

16 *substitute*

17 *SES* means the ACT State Emergency Service established under  
18 section 56.

1    **[1.36]    Further amendments, mentions of *the fire brigade***

2            *omit*

3            the fire brigade

4            *substitute*

5            fire and rescue

6            *in*

- 7            • section 3 (c)
- 8            • section 29
- 9            • sections 44 to 46
- 10          • section 49 (3) (b)
- 11          • section 52
- 12          • sections 65 to 69
- 13          • sections 99 and 100
- 14          • section 121 (1) (a)
- 15          • section 189 (1) (b)
- 16          • section 190 (2)
- 17          • dictionary, definition of *emergency service*

18    **[1.37]    Further amendments, mentions of *(fire brigade)***

19            *omit*

20            (fire brigade)

21            *substitute*

22            (fire and rescue)

23            *in*

- 24          • section 29
- 25          • section 30 (3) (c)
- 26          • sections 45 to 50
- 27          • section 64 (3), example 1

- 1                   • section 65 (2)
- 2                   • section 67
- 3                   • section 69 (1)
- 4                   • sections 86 and 87
- 5                   • sections 91 and 92
- 6                   • section 96 (3)
- 7                   • sections 99 and 100
- 8                   • section 142 (1) (d)
- 9                   • section 188 (b)

## 10                   **Part 1.6                   Emergencies Regulation 2004**

### 11                   **[1.38]                   Section 8**

12                   *substitute*

#### 13                   **8                   Attendance by fire and rescue members at public events**

14                   (1) This section applies to public entertainment or a public meeting if  
15                   the chief officer (fire and rescue) considers that because of the  
16                   nature of the entertainment or meeting, or the decorations,  
17                   appliances or lighting used at the entertainment or meeting, the  
18                   attendance of fire and rescue is needed.

19                   (2) The chief officer (fire and rescue) may direct 1 or more fire and  
20                   rescue members to attend all or part of the entertainment or meeting.

21                   *Note*                   A fee may be determined under the Act, s 201 for the attendance.





- 1 (2) Unless the appellant is detained for another reason, the appellant  
2 remains in the custody of the person who had custody of the  
3 appellant immediately before the enforcement or execution of the  
4 conviction or sentence was stayed until—
- 5 (a) the appellant is granted bail under the *Bail Act 1992*; or  
6 (b) the appellant is remanded in custody.

## 7 **Part 1.9 Trustee Companies Act 1947**

### 8 **[1.41] Section 34B heading**

9 *substitute*

### 10 **34B Transfer determinations**

#### 11 **[1.42] Section 34B (1), new note**

12 *insert*

13 *Note 1* Under the Corporations Act, s 601WBA ASIC may make—

- 14 (a) a compulsory transfer determination if ASIC has cancelled the  
15 licence of the transferring company; or  
16 (b) a voluntary transfer determination if the transferring company has  
17 applied for the determination.

1            **Part 1.10                            Unclaimed Money Act 1950**

2            **[1.43]            New part 6**

3                            *before section 34, insert*

4            **Part 6                                    Miscellaneous**

5            **33A            Unclaimed money register**

- 6                            (1) The public trustee may keep a register of unclaimed money that is  
7    paid to the public trustee under—
- 8    (a) this Act; or
- 9    (b) the *Legal Profession Act 2006*, section 259; or
- 10     (c) the *Agents Act 2003*, section 124.
- 11                            (2) The register may include the name of the owner of the money and  
12    any other information the public trustee considers appropriate.
- 13                            (3) The register may be kept in any form, including electronically, that  
14    the public trustee decides.
- 15                            (4) The register may be kept in 1 or more parts, as the public trustee  
16    considers appropriate.
- 17                            (5) The public trustee must make information in the register available  
18    so that a person who is entitled to make a claim for unclaimed  
19    money can find out about the entitlement.
- 20                            (6) The public trustee may decide how the information in the register is  
21    made available.

1 **Part 1.11** **Wills Act 1968**

2 **[1.44] New part 3B**

3 *insert*

4 **Part 3B** **International wills**

5 **16J** **Definitions—pt 3B**

6 In this part:

7 *convention* means the *Convention providing a Uniform Law on the*  
8 *Form of an International Will 1973* signed in Washington DC in the  
9 United States of America on 26 October 1973.

10 *Note* The *Convention providing a Uniform Law on the Form of an*  
11 *International Will 1973* is accessible at [www.unidroit.org](http://www.unidroit.org).

12 *international will* means a will made in accordance with the  
13 requirements of the annex to the convention.

14 **16K** **Application of convention**

15 The annex to the convention has the force of law in the ACT.

16 *Note* The annex to the convention is set out in sch 1.

17 **16L** **Persons authorised to act in connection with**  
18 **international wills**

19 (1) For this part, the following people are authorised to act in  
20 connection with an international will:

- 21 (a) an Australian legal practitioner;  
22 (b) a public notary of any Australian jurisdiction.

1            (2) For this part, a reference in the annex to the convention to a person  
2            authorised to act in connection with international wills is a reference  
3            to:

4            (a) a person mentioned in subsection (1) who is acting in  
5            Australia; or

6            (b) any other person who is acting as an authorised person under  
7            the law of a state (other than Australia) that is a party to the  
8            convention.

9            *Note*        This section gives effect to articles 2 and 3 of the convention.

10          (3) In this section:

11          *Australian legal practitioner*—see the *Legal Profession Act 2006*,  
12          section 8.

13          **16M        Application of Act to international wills**

14          To remove any doubt, the provisions of this Act that apply to wills  
15          extend to international wills.

1 **[1.45] New schedules 1 and 2**

2 *insert*

3 **Schedule 1 Annex to Convention providing**  
4 **a Uniform Law on the Form of**  
5 **an International Will 1973**

6 (see s 16K)

7 **Article 1**

- 8 1. A will shall be valid as regards form, irrespective particularly of the  
9 place where it is made, of the location of the assets and of the  
10 nationality, domicile or residence of the testator, if it is made in the form  
11 of an international will complying with the provisions set out in Articles  
12 2 to 5 hereinafter.
- 13 2. The invalidity of the will as an international will shall not affect its  
14 formal validity as a will of another kind.

15 **Article 2**

16 This law shall not apply to the form of testamentary dispositions made  
17 by two or more persons in one instrument.

18 **Article 3**

- 19 1. The will shall be made in writing.
- 20 2. It need not be written by the testator himself.
- 21 3. It may be written in any language, by hand or by any other means.

22 **Article 4**

- 23 1. The testator shall declare in the presence of two witnesses and of a  
24 person authorized to act in connection with international wills that the  
25 document is his will and that he knows the contents thereof.

- 1     2.     The testator need not inform the witnesses, or the authorized person, of  
2           the contents of the will.

3     **Article 5**

- 4     1.     In the presence of the witnesses and of the authorized person, the  
5           testator shall sign the will or, if he has previously signed it, shall  
6           acknowledge his signature.
- 7     2.     When the testator is unable to sign, he shall indicate the reason therefor  
8           to the authorized person who shall make note of this on the will.  
9           Moreover, the testator may be authorized by the law under which the  
10          authorized person was designated to direct another person to sign on his  
11          behalf.
- 12    3.     The witnesses and the authorized person shall there and then attest the  
13          will by signing in the presence of the testator.

14    **Article 6**

- 15    1.     The signatures shall be placed at the end of the will.
- 16    2.     If the will consists of several sheets, each sheet shall be signed by the  
17          testator or, if he is unable to sign, by the person signing on his behalf or,  
18          if there is no such person, by the authorized person. In addition, each  
19          sheet shall be numbered.

20    **Article 7**

- 21    1.     The date of the will shall be the date of its signature by the authorized  
22          person.
- 23    2.     This date shall be noted at the end of the will by the authorized person.

1 **Article 8**

2 In the absence of any mandatory rule pertaining to the safekeeping of  
3 the will, the authorized person shall ask the testator whether he wishes  
4 to make a declaration concerning the safekeeping of his will. If so and at  
5 the express request of the testator the place where he intends to have his  
6 will kept shall be mentioned in the certificate provided for in Article 9.

7 **Article 9**

8 The authorized person shall attach to the will a certificate in the form  
9 prescribed in Article 10 establishing that the obligations of this law have  
10 been complied with.

11 **Article 10**

12 The certificate drawn up by the authorized person shall be in the  
13 following form or in a substantially similar form:

14 **CERTIFICATE**

15 (Convention of October 26, 1973)

- 16 1. I, ..... (name, address and capacity), a person  
17 authorized to act in connection with international wills
- 18 2. Certify that on ..... (date) at ..... (place)
- 19 3. (testator)..... (name, address, date and place  
20 of birth) in my presence and that of the witnesses
- 21 4. (a)..... (name, address, date and place of birth)  
22 (b)..... (name, address, date and place of birth)
- 23 has declared that the attached document is his will and that he knows the  
24 contents thereof.
- 25 5. I furthermore certify that:
- 26 6. (a) in my presence and in that of the witnesses

- 1            (1) the testator has signed the will or has acknowledged his signature  
2            previously affixed.
- 3            \*(2) following a declaration of the testator stating that he was unable to  
4            sign his will for the following reason.....
- 5            —I have mentioned this declaration on the will
- 6            \*—the signature has been affixed by..... (name, address)
- 7    7.    (b) the witnesses and I have signed the will;
- 8    8.    \*(c) each page of the will has been signed by ..... and  
9            numbered;
- 10   9.    (d) I have satisfied myself as to the identity of the testator and of the  
11            witnesses as designated above;
- 12   10.   (e) the witnesses met the conditions requisite to act as such according to  
13            the law under which I am acting;
- 14   11.   \*(f) the testator has requested me to include the following statement  
15            concerning the safekeeping of his will:.....
- 16   12.   PLACE
- 17   13.   DATE
- 18   14.   SIGNATURE and, if necessary, SEAL

19    **Article 11**

20            The authorized person shall keep a copy of the certificate and deliver  
21            another to the testator.

22    **Article 12**

23            In the absence of evidence to the contrary, the certificate of the  
24            authorized person shall be conclusive of the formal validity of the  
25            instrument as a will under this Law.



1 **Article 13**

2           The absence or irregularity of a certificate shall not affect the formal  
3           validity of a will under this Law.

4 **Article 14**

5           The international will shall be subject to the ordinary rules of revocation  
6           of wills.

7 **Article 15**

8           In interpreting and applying the provisions of this law, regard shall be  
9           had to its international origin and to the need for uniformity in its  
10          interpretation.

11          \_\_\_\_\_

12          \*To be completed if appropriate

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 23 February 2012.

**2 Notification**

Notified under the Legislation Act on 2012.

**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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