2020

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Justice and Community Safety Legislation Amendment Bill 2020

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2020

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Justice and Community Safety Legislation Amendment Bill 2020

A Bill for

An Act to amend legislation about justice and community safety

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

Part 1 Preliminary

1 Name of Act

This Act is the *Justice and Community Safety Legislation Amendment Act 2020*.

2 Commencement

(1) This Act (other than section 34) commences on the 7th day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](http://www.legislation.act.gov.au/a/2001-14), s 75 (1)).

(2) Section 34 commences on the commencement of the [Residential Tenancies Amendment Act 2020 (No 2)](https://www.legislation.act.gov.au/a/2020-48/), section 25.

3 Legislation amended

This Act amends the following legislation:

 [ACT Civil and Administrative Tribunal Act 2008](http://www.legislation.act.gov.au/a/2008-35)

 [ACT Civil and Administrative Tribunal Regulation 2009](http://www.legislation.act.gov.au/sl/2009-1)

 [Administration and Probate Act 1929](http://www.legislation.act.gov.au/a/1929-18)

 [Associations Incorporation Act 1991](http://www.legislation.act.gov.au/a/1991-46)

 [Crimes (Sentence Administration) Act 2005](http://www.legislation.act.gov.au/a/2005-59)

 [Guardianship and Management of Property Act 1991](http://www.legislation.act.gov.au/a/1991-62)

 [Legal Profession Act 2006](http://www.legislation.act.gov.au/a/2006-25)

 [Legislation Act 2001](http://www.legislation.act.gov.au/a/2001-14)

 [Lotteries Act 1964](http://www.legislation.act.gov.au/a/1964-13)

 [Mental Health Act 2015](http://www.legislation.act.gov.au/a/2015-38)

 [Powers of Attorney Act 2006](http://www.legislation.act.gov.au/a/2006-50)

 [Public Sector Management Act 1994](http://www.legislation.act.gov.au/a/1994-37)

 [Public Trustee and Guardian Act 1985](http://www.legislation.act.gov.au/a/1985-8)

 [Residential Tenancies Act 1997](http://www.legislation.act.gov.au/a/1997-84)

 [Retirement Villages Regulation 2013](http://www.legislation.act.gov.au/sl/2013-5)

 [Security Industry Regulation 2003](http://www.legislation.act.gov.au/sl/2003-30)

 [Wills Act 1968](http://www.legislation.act.gov.au/a/1968-11).

Part 2 ACT Civil and Administrative Tribunal Act 2008

4 Section 115C

substitute

115C Use of trust amounts

A trust amount may be used for any of the following purposes:

(a) to meet the recurrent costs of remuneration and administration of the ACAT;

(b) to reimburse the Territory for the costs of administering this Act;

(c) for a purpose prescribed by regulation in relation to any authorising law;

(d) for any other purpose prescribed by regulation.

Part 3 ACT Civil and Administrative Tribunal Regulation 2009

5 Sections 9 and 10

substitute

9 Use of trust amounts—Act, s 115C

(1) The following purposes in relation to the [Agents Act 2003](https://www.legislation.act.gov.au/a/2003-20/) (the Agents Act) are prescribed:

(a) promoting education and understanding of the [Agents Act](https://www.legislation.act.gov.au/a/2003-20/) for licensed agents, registered salespeople and the public;

(b) providing dispute resolution services for disputes involving licensed agents or registered salespeople;

(c) paying additional amounts to the compensation fund;

(d) researching issues of concern to licensed agents and people using the services of licensed agents, whether or not the issues arise under the [Agents Act](https://www.legislation.act.gov.au/a/2003-20/);

(e) paying or reimbursing costs, incurred by the commissioner for fair trading on behalf of the Territory, for applications to the ACAT in relation to a licensed agent or registered salesperson;

(f) paying reasonable costs and expenses incurred by an administrator under the [Agents Act](https://www.legislation.act.gov.au/a/2003-20/), section 143 (Remuneration of administrators);

(g) reimbursing the Territory for the cost of administering the [Agents Act](https://www.legislation.act.gov.au/a/2003-20/).

(2) The purposes mentioned in the [Residential Tenancies Act 1997](http://www.legislation.act.gov.au/a/1997-84), section 28 (Interest on amounts in trust account) are prescribed.

(3) The following purposes in relation to the [Retirement Villages Act 2012](http://www.legislation.act.gov.au/a/2012-38) are prescribed:

(a) providing advisory and advocacy services to residents and prospective residents of retirement villages;

(b) reimbursing the Territory for the cost of administering that Act.

(4) In this section:

compensation fund—see the [Agents Act](https://www.legislation.act.gov.au/a/2003-20/), dictionary.

licensed agent—see the [Agents Act](https://www.legislation.act.gov.au/a/2003-20/), dictionary.

registered salesperson—see the [Agents Act](https://www.legislation.act.gov.au/a/2003-20/), dictionary.

resident, of a retirement village—see the [Retirement Villages Act 2012](http://www.legislation.act.gov.au/a/2012-38), dictionary.

retirement village—see the [Retirement Villages Act 2012](http://www.legislation.act.gov.au/a/2012-38), section 10.

Part 4 Administration and Probate Act 1929

6 Section 38A

substitute

38A Estate to vest in public trustee and guardian until grant

(1) This section applies if—

(a) a person dies; and

(b) no one is appointed as the executor or administrator of the person’s estate.

(2) The person’s real and personal property vests in the public trustee and guardian until the grant of representation.

(3) The public trustee and guardian may undertake the administration of the person’s estate while the person’s property is vested in the public trustee and guardian.

(4) However, subsection (3) does not require the public trustee and guardian—

(a) to administer the estate; or

(b) act as trustee of any trust created by the person’s will; or

(c) exercise any discretion, power or authority of a personal representative, trustee or devisee.

7 Section 46

substitute

46 Entitlement of children

(1) This section applies to a person entitled under this division to the whole of, or a share in, an intestate estate(the relevant interest) who, at the time of the death of the intestate, is a child.

(2) The child is entitled to take the relevant interest in the estate immediately.

Part 5 Associations Incorporation Act 1991

8 Definitions—pt 5  
Section 70B, definition of reviewer, paragraph (a)

omit

a member or

substitute

an

Part 6 Crimes (Sentence Administration) Act 2005

9 Victims register—young offenders  
Section 215A (6)

omit

10 Disclosures to registered victims—young offenders  
Section 216A (5), definition of director-general

omit

Part 7 Guardianship and Management of Property Act 1991

11 ACAT directions etc for enduring powers of attorney  
Section 62 (1)

omit

if the principal has impaired decision-making capacity

12 Section 62 (4) and (5)

substitute

(4) If the ACAT revokes an enduring power of attorney and the person who was the principal for the power has impaired decision‑making capacity, the ACAT may appoint a guardian or manager for the person.

(5) If the ACAT suspends an enduring power of attorney and the person who was the principal for the power has impaired decision‑making capacity, the ACAT may appoint a guardian or manager for the person for the period of the suspension.

13 Request for accounts—enduring powers of attorney  
Section 64 (1)

omit

14 Section 64 (2)

omit

the enduring

substitute

an enduring

Part 8 Legal Profession Act 2006

15 Suitability matters  
New section 11 (1) (ba)

insert

(ba) whether the person is, or was, a legal practitioner director of an incorporated legal practice while the practice is or was a Chapter 5 body corporate;

16 External administration proceedings under Corporations Act   
Section 125 (6)

omit

17 Register of disciplinary action  
New section 448 (2A)

insert

(2A) However, if a person named in the register dies, the relevant council must remove from the register all the information about the person mentioned in subsection (2).

18 Dictionary, new definition of Chapter 5 body corporate

insert

Chapter 5 body corporate—see the [Corporations Act](http://www.comlaw.gov.au/Series/C2004A00818), section 9.

19 Dictionary, definition of show-cause event, new paragraph (aa)

insert

(aa) if the person is a legal practitioner director of an incorporated legal practice—the incorporated legal practice becoming a Chapter 5 body corporate; or

Part 9 Legislation Act 2001

20 Making of certain statutory instruments by Executive  
Section 41 (2) (b)

substitute

(b) the signing Ministers include the Chief Minister and the responsible Minister.

21 Section 41 (4)

substitute

(4) If the Chief Minister or responsible Minister cannot sign because that Minister is absent from the ACT, ill or on leave, the signing Ministers need not include that Minister.

22 Exercise of functions of Executive  
Section 253 (3)

substitute

(3) Despite subsection (1), a statutory instrument (other than a subordinate law or disallowable instrument) to be made by the Executive must be signed by the Chief Minister and 1 or more other Ministers who are members of the Executive.

Part 10 Lotteries Act 1964

23 Determination of fees  
Section 18A (1)

omit

commission

substitute

Minister

Part 11 Mental Health Act 2015

24 Removing person from affected person register  
Section 133 (3)

substitute

(3) However, before the director‑general removes a person’s information from the register under subsection (2), the director‑general must give the person written notice of their intention to remove the information.

Note The director-general may delegate the function under this section, for example, to the Victims of Crime Commissioner (see [Public Sector Management Act 1994](http://www.legislation.act.gov.au/a/1994-37), s 20).

25 Section 133 (4)

omit

or the victims of crime commissioner

Part 12 Powers of Attorney Act 2006

26 Keeping records—enduring powers of attorney  
Section 47 (1)

omit

, while the principal has impaired decision-making capacity,

27 Section 47 (2) to (4)

omit

28 Keeping property separate—enduring powers of attorney  
Section 48 (1)

omit

, while the principal has impaired decision-making capacity,

29 Section 48 (1A), (3) and (4)

omit

Part 13 Public Sector Management Act 1994

30 Ministerial responsibility and functions of administrative units  
Section 14 (4)

substitute

(4) Subsection (3) is subject to the [Legislation Act](http://www.legislation.act.gov.au/a/2001-14), section 41 (Making of certain statutory instruments by Executive) and section 253 (Exercise of functions of Executive).

Part 14 Public Trustee and Guardian Act 1985

31 Wills  
Section 22 (2) and (3)

substitute

(2) The public trustee and guardian may accept a will for deposit with the public trustee and guardian, whether or not the public trustee and guardian is appointed as an executor of the will.

32 Public trustee and guardian may require information or documents  
Section 66 (1)

omit

(other than an individual)

33 Section 66 (1A), (3) and (4)

omit

Part 15 Residential Tenancies Act 1997

34 Certain types of agreements not occupancy agreements  
New section 71CA (da)

insert

(da) entered into by a person who is also a party to a related agreement entered into honestly for the sale or purchase of the premises;

35 Standard residential tenancy terms  
Schedule 1, clause 13 (1)

omit

commissioner for fair trading

substitute

director‑general

Part 16 Retirement Villages Regulation 2013

36 Sections 35, 36 and 37 headings

substitute

35 Matters to be dealt with in proposed annual budget—Act, s 159 (5) (a)

36 Matters not to be financed by way of recurrent charges—Act, s 159 (5) (b)

37 Notice accompanying proposed annual budget—Act, s 159 (6) (d)

Part 17 Security Industry Regulation 2003

37 Exempt people—Act, s 9  
Section 6 (1) (k)

omit

[Casino Control Act 1988](https://www.legislation.act.gov.au/a/1988-72/)

substitute

[Casino Control Act 2006](http://www.legislation.act.gov.au/a/2006-2)

Part 18 Wills Act 1968

38 Section 31C

substitute

31C Beneficiary not surviving deceased person

(1) This section applies if—

(a) either—

(i) a deceased person, by will, devises or bequeaths property to, appoints property in favour of, or gives the power to appoint property to, a person; or

(ii) a person is entitled to take an interest in the estate of a deceased person on intestacy; and

(b) the person does not survive the deceased person by 30 days.

(2) The person is taken to have predeceased the deceased person and the devise, bequest, appointment, power or entitlement lapses, unless the contrary intention appears from the will, or from evidence admitted under section 12B.

(3) However, subsection (2) does not apply if the effect of the subsection is that the deceased person’s estate would pass to the Territory under the [Administration and Probate Act 1929](http://www.legislation.act.gov.au/a/1929-18), section 49CA (How distribution to the Territory is made).

(4) A general requirement or condition in a will that a beneficiary survive the testator must not be taken to be an expression of a contrary intention for this section.

(5) For subsection (1) (a) (ii), person includes a person conceived before, but born after, the deceased person’s death.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 3 December 2020.

2 Notification

Notified under the [Legislation Act](http://www.legislation.act.gov.au/a/2001-14) on 2020.

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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