

2020

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Attorney-General)

# Justice and Community Safety Legislation Amendment Bill 2020

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# **Justice and Community Safety Legislation Amendment Bill 2020**

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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 **Part 1 Preliminary**

2 **1 Name of Act**

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

5 **2 Commencement**

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

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

10 (2) Section 34 commences on the commencement of the *Residential*  
11 *Tenancies Amendment Act 2020 (No 2)*, section 25.

12 **3 Legislation amended**

13 This Act amends the following legislation:

- 14 • [ACT Civil and Administrative Tribunal Act 2008](#)
- 15 • [ACT Civil and Administrative Tribunal Regulation 2009](#)
- 16 • [Administration and Probate Act 1929](#)
- 17 • [Associations Incorporation Act 1991](#)
- 18 • [Crimes \(Sentence Administration\) Act 2005](#)
- 19 • [Guardianship and Management of Property Act 1991](#)
- 20 • [Legal Profession Act 2006](#)
- 21 • [Legislation Act 2001](#)
- 22 • [Lotteries Act 1964](#)
- 23 • [Mental Health Act 2015](#)
- 24 • [Powers of Attorney Act 2006](#)
- 25 • [Public Sector Management Act 1994](#)
- 26 • [Public Trustee and Guardian Act 1985](#)

- 1           • *Residential Tenancies Act 1997*
- 2           • *Retirement Villages Regulation 2013*
- 3           • *Security Industry Regulation 2003*
- 4           • *Wills Act 1968.*

1 **Part 2** **ACT Civil and Administrative**  
2 **Tribunal Act 2008**

3 **4 Section 115C**

4 *substitute*

5 **115C Use of trust amounts**

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

- 7 (a) to meet the recurrent costs of remuneration and administration  
8 of the ACAT;
- 9 (b) to reimburse the Territory for the costs of administering this Act;
- 10 (c) for a purpose prescribed by regulation in relation to any  
11 authorising law;
- 12 (d) for any other purpose prescribed by regulation.



1 **Part 3** **ACT Civil and Administrative**  
2 **Tribunal Regulation 2009**

3 **5 Sections 9 and 10**

4 *substitute*

5 **9 Use of trust amounts—Act, s 115C**

- 6 (1) The following purposes in relation to the *Agents Act 2003* (the *Agents*  
7 *Act*) are prescribed:
- 8 (a) promoting education and understanding of the *Agents Act* for  
9 licensed agents, registered salespeople and the public;
  - 10 (b) providing dispute resolution services for disputes involving  
11 licensed agents or registered salespeople;
  - 12 (c) paying additional amounts to the compensation fund;
  - 13 (d) researching issues of concern to licensed agents and people  
14 using the services of licensed agents, whether or not the issues  
15 arise under the *Agents Act*;
  - 16 (e) paying or reimbursing costs, incurred by the commissioner for  
17 fair trading on behalf of the Territory, for applications to the  
18 ACAT in relation to a licensed agent or registered salesperson;
  - 19 (f) paying reasonable costs and expenses incurred by an  
20 administrator under the *Agents Act*, section 143 (Remuneration  
21 of administrators);
  - 22 (g) reimbursing the Territory for the cost of administering the  
23 *Agents Act*.
- 24 (2) The purposes mentioned in the *Residential Tenancies Act 1997*,  
25 section 28 (Interest on amounts in trust account) are prescribed.

- 1           (3) The following purposes in relation to the *Retirement Villages*  
2           *Act 2012* are prescribed:
- 3           (a) providing advisory and advocacy services to residents and  
4           prospective residents of retirement villages;
- 5           (b) reimbursing the Territory for the cost of administering that Act.
- 6           (4) In this section:
- 7           *compensation fund*—see the *Agents Act*, dictionary.
- 8           *licensed agent*—see the *Agents Act*, dictionary.
- 9           *registered salesperson*—see the *Agents Act*, dictionary.
- 10          *resident*, of a retirement village—see the *Retirement Villages*  
11          *Act 2012*, dictionary.
- 12          *retirement village*—see the *Retirement Villages Act 2012*, section 10.

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1 **Part 4** **Administration and Probate**  
2 **Act 1929**

3 **6 Section 38A**

4 *substitute*

5 **38A Estate to vest in public trustee and guardian until grant**

- 6 (1) This section applies if—  
7 (a) a person dies; and  
8 (b) no one is appointed as the executor or administrator of the  
9 person's estate.
- 10 (2) The person's real and personal property vests in the public trustee and  
11 guardian until the grant of representation.
- 12 (3) The public trustee and guardian may undertake the administration of  
13 the person's estate while the person's property is vested in the public  
14 trustee and guardian.
- 15 (4) However, subsection (3) does not require the public trustee and  
16 guardian—  
17 (a) to administer the estate; or  
18 (b) act as trustee of any trust created by the person's will; or  
19 (c) exercise any discretion, power or authority of a personal  
20 representative, trustee or devisee.

1 **7 Section 46**

2 *substitute*

3 **46 Entitlement of children**

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

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

1 **Part 5** **Associations Incorporation**  
2 **Act 1991**

3 **8** **Definitions—pt 5**  
4 **Section 70B, definition of *reviewer*, paragraph (a)**

5 *omit*

6 a member or

7 *substitute*

8 an



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1 **Part 7** **Guardianship and Management**  
2 **of Property Act 1991**

3 **11 ACAT directions etc for enduring powers of attorney**  
4 **Section 62 (1)**

5 *omit*

6 if the principal has impaired decision-making capacity

7 **12 Section 62 (4) and (5)**

8 *substitute*

- 9 (4) If the ACAT revokes an enduring power of attorney and the person  
10 who was the principal for the power has impaired decision-making  
11 capacity, the ACAT may appoint a guardian or manager for the  
12 person.
- 13 (5) If the ACAT suspends an enduring power of attorney and the person  
14 who was the principal for the power has impaired decision-making  
15 capacity, the ACAT may appoint a guardian or manager for the  
16 person for the period of the suspension.

17 **13 Request for accounts—enduring powers of attorney**  
18 **Section 64 (1)**

19 *omit*

20 **14 Section 64 (2)**

21 *omit*

22 the enduring

23 *substitute*

24 an enduring

1 **Part 8** **Legal Profession Act 2006**

2 **15** **Suitability matters**  
3 **New section 11 (1) (ba)**

4 *insert*

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

8 **16** **External administration proceedings under Corporations**  
9 **Act**  
10 **Section 125 (6)**

11 *omit*

12 **17** **Register of disciplinary action**  
13 **New section 448 (2A)**

14 *insert*

15 (2A) However, if a person named in the register dies, the relevant council  
16 must remove from the register all the information about the person  
17 mentioned in subsection (2).

18 **18** **Dictionary, new definition of *Chapter 5 body corporate***

19 *insert*

20 ***Chapter 5 body corporate***—see the [Corporations Act](#), section 9.



1 **19 Dictionary, definition of *show-cause event*, new**  
2 **paragraph (aa)**

3 *insert*

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

1 **Part 9** **Legislation Act 2001**

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

4 *substitute*

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

7 **21** **Section 41 (4)**

8 *substitute*

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

12 **22** **Exercise of functions of Executive**  
13 **Section 253 (3)**

14 *substitute*

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

1 **Part 10** **Lotteries Act 1964**

2 **23** **Determination of fees**  
 3 **Section 18A (1)**

4 *omit*

5 commission

6 *substitute*

7 Minister

1 **Part 11** **Mental Health Act 2015**

2 **24** **Removing person from affected person register**  
3 **Section 133 (3)**

4 *substitute*

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

8 *Note* The director-general may delegate the function under this section, for  
9 example, to the Victims of Crime Commissioner (see *Public Sector*  
10 *Management Act 1994*, s 20).

11 **25** **Section 133 (4)**

12 *omit*

13 or the victims of crime commissioner

1 **Part 12 Powers of Attorney Act 2006**

2 **26 Keeping records—enduring powers of attorney**  
3 **Section 47 (1)**

4 *omit*

5 , while the principal has impaired decision-making capacity,

6 **27 Section 47 (2) to (4)**

7 *omit*

8 **28 Keeping property separate—enduring powers of attorney**  
9 **Section 48 (1)**

10 *omit*

11 , while the principal has impaired decision-making capacity,

12 **29 Section 48 (1A), (3) and (4)**

13 *omit*

1 **Part 13** **Public Sector Management**  
2 **Act 1994**

3 **30 Ministerial responsibility and functions of administrative**  
4 **units**  
5 **Section 14 (4)**

6 *substitute*

7 (4) Subsection (3) is subject to the [Legislation Act](#), section 41 (Making  
8 of certain statutory instruments by Executive) and section 253  
9 (Exercise of functions of Executive).

1 **Part 14** **Public Trustee and Guardian**  
2 **Act 1985**

3 **31** **Wills**  
4 **Section 22 (2) and (3)**

5 *substitute*

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

9 **32** **Public trustee and guardian may require information or**  
10 **documents**  
11 **Section 66 (1)**

12 *omit*

13 (other than an individual)

14 **33** **Section 66 (1A), (3) and (4)**

15 *omit*

1 **Part 15** **Residential Tenancies Act 1997**

2 **34** **Certain types of agreements not occupancy agreements**  
3 **New section 71CA (da)**

4 *insert*

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

8 **35** **Standard residential tenancy terms**  
9 **Schedule 1, clause 13 (1)**

10 *omit*

11 commissioner for fair trading

12 *substitute*

13 director-general



1 **Part 16** **Retirement Villages**  
2 **Regulation 2013**

3 **36** **Sections 35, 36 and 37 headings**

4 *substitute*

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

7 **36** **Matters not to be financed by way of recurrent charges—**  
8 **Act, s 159 (5) (b)**

9 **37** **Notice accompanying proposed annual budget—Act,**  
10 **s 159 (6) (d)**

1 **Part 17** **Security Industry**  
2 **Regulation 2003**

3 **37 Exempt people—Act, s 9**  
4 **Section 6 (1) (k)**

5 *omit*

6 *Casino Control Act 1988*

7 *substitute*

8 *Casino Control Act 2006*

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## 1 Part 18 Wills Act 1968

### 2 38 Section 31C

3 *substitute*

#### 4 31C Beneficiary not surviving deceased person

5 (1) This section applies if—

6 (a) either—

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

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

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

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

17 (3) However, subsection (2) does not apply if the effect of the subsection  
18 is that the deceased person's estate would pass to the Territory under  
19 the *Administration and Probate Act 1929*, section 49CA (How  
20 distribution to the Territory is made).

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

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

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## Endnotes

**1 Presentation speech**

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

**2 Notification**

Notified under the [Legislation Act](#) 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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