

2021

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

---

(As presented)

(Attorney-General)

# Courts and Other Justice Legislation Amendment Bill 2021

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(As presented)

(Attorney-General)

# **Courts and Other Justice Legislation Amendment Bill 2021**

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## **A Bill for**

An Act to amend legislation about courts, and for other purposes

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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 *Courts and Other Justice Legislation Amendment Act*  
4 *2021*.

5 **2 Commencement**

6 (1) Parts 5 and 8 commence 3 months after this Act's notification day.

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

9 (2) Part 9 commences on a day fixed by the Minister by written notice.

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

13 *Note 2* If a provision has not commenced within 6 months beginning on the  
14 notification day, it automatically commences on the first day after that  
15 period (see [Legislation Act](#), s 79).

16 (3) The remaining provisions commence on the 7th day after this Act's  
17 notification day.

18 **3 Legislation amended**

19 This Act amends the following legislation:

- 20 • [ACT Civil and Administrative Tribunal Act 2008](#)
- 21 • [Common Boundaries Act 1981](#)
- 22 • [Coroners Act 1997](#)
- 23 • [Guardianship and Management of Property Act 1991](#)
- 24 • [Judicial Commissions Act 1994](#)
- 25 • [Magistrates Court Act 1930](#)

- 1           • *Powers of Attorney Act 2006*
- 2           • *Public Trustee and Guardian Act 1985*
- 3           • *Supreme Court Act 1933.*

**Part 2****ACT Civil and Administrative  
Tribunal Act 2008****4 Section 7***substitute***7 Tribunal principles**

In exercising its functions under this Act, the tribunal must—

- (a) seek to ensure the procedures of the tribunal—
  - (i) are as simple, quick, inexpensive and informal as is consistent with achieving justice; and
  - (ii) are implemented in a way that facilitates the resolution of the issues between the parties so that the cost to the parties and the tribunal is proportionate to the importance and complexity of the subject matter of the proceeding; and
- (b) observe natural justice and procedural fairness.

**7A Duties of parties, authorised representatives and others**

Each party to a proceeding, their authorised representative and anyone else accompanying the party or allowed to participate in the proceeding has a duty—

- (a) to cooperate with the tribunal to give effect to the tribunal principles mentioned in section 7; and
- (b) to comply with the Act and any directions.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation or rules (see [Legislation Act](#), s 104).



1	<b>5</b>	<b>Section 23</b>
2		<i>substitute</i>
3	<b>23</b>	<b>Tribunal decides own procedure</b>
4	(1)	The tribunal may decide its own procedure at any stage in dealing
5		with an application if no procedure is prescribed for the application
6		under this Act or an authorising law.
7	<i>Note 1</i>	The procedures of the tribunal must be as simple, quick, inexpensive and
8		informal as is consistent with achieving justice (see s 7 (a)).
9	<i>Note 2</i>	A reference to an Act includes a reference to any statutory instrument
10		made or in force under the Act (see <a href="#">Legislation Act</a> , s 104).
11	(2)	The tribunal may, by order, dispense with the application of a
12		provision of the rules to a particular proceeding on any conditions it
13		considers appropriate.
14	(3)	The tribunal may make an order under subsection (2) on application
15		by a party, another person or on its own initiative.
16	<b>6</b>	<b>Mediation for applications</b>
17		<b>Section 35 (1)</b>
18		<i>omit everything before paragraph (a), substitute</i>
19	(1)	This section applies if the tribunal considers that a matter to which an
20		application relates—
21	<b>7</b>	<b>Section 35 (2) (a)</b>
22		<i>omit</i>
23		subject
24	<b>8</b>	<b>Procedure in absence of party</b>
25		<b>Section 44</b>
26		<i>omit</i>

**9** **New section 47A**

2 *insert*

**47A** **Procedure in absence of party**

- 4 (1) This section applies if—
- 5 (a) the tribunal requires a party to appear either personally or by a  
6 representative before the tribunal in relation to an application;  
7 and
- 8 (b) the party fails to appear.
- 9 (2) The tribunal may—
- 10 (a) if the party is the applicant—dismiss the application; or  
11 (b) if the party is the respondent—decide the application; or  
12 (c) if the party is not the applicant or respondent—remove the party  
13 from the application; or
- 14 (d) do any of the following:
- 15 (i) continue with the hearing in the absence of the party either  
16 generally or in relation to any relief claimed in the  
17 application;
- 18 (ii) order that the application be set down for hearing at  
19 another time;
- 20 (iii) order that stated steps be taken before the hearing takes  
21 place as the tribunal directs;

1 (iv) make any other orders that the tribunal considers  
2 appropriate.

3 *Note 1* The procedures of the tribunal must be as simple, quick, inexpensive and  
4 informal as is consistent with achieving justice and the tribunal must  
5 observe natural justice and procedural fairness (see s 7).

6 *Note 2* If the tribunal makes an order after hearing an application in the absence  
7 of a party, the tribunal may, on application by a party, amend or set aside  
8 the order (see s 56 (c) (i)).

9 **10 Interim orders**  
10 **Section 53 (1)**

11 *substitute*

12 (1) This section applies if, at any stage before an application is finalised  
13 in the tribunal—

14 (a) a party to an application applies to the tribunal for an order under  
15 this section; and

16 (b) the tribunal is satisfied that, if an order under this section were  
17 not made, the party applying for the order would be  
18 disadvantaged or suffer harm.

19 **11 Section 53 (3)**

20 *substitute*

21 (3) An interim order remains in force until—

22 (a) the tribunal orders otherwise; or

23 (c) the application is finalised in the tribunal.

Section 12

---

1 **12 Decisions without hearing**  
2 **New section 54 (1A)**

3 *before subsection (1), insert*

4 (1A) The tribunal may, on application by a party or on its own initiative,  
5 decide an application on the basis of documents, without the parties,  
6 their representatives or witnesses appearing at a hearing.

7 *Note* The procedures of the tribunal must be as simple, quick, inexpensive and  
8 informal as is consistent with achieving justice and the tribunal must  
9 observe natural justice and procedural fairness (see s 7).

10 **13 Section 54 (1)**

11 *omit*

12 written

13 **14 Section 54 (1) (a)**

14 *substitute*

15 (a) the tribunal proposes to decide the application on the basis of  
16 documents, without the parties, their representatives or  
17 witnesses appearing at a hearing; and

18 **15 Powers of tribunal if parties reach agreement**  
19 **Section 55 (1) (b)**

20 *substitute*

21 (b) the terms (the *agreed terms*) of the agreement are recorded by,  
22 or lodged with, the tribunal; and

1 **16 Other actions by tribunal**  
2 **Section 56 (c) (i), note**

3 *omit*

4 s 44

5 *substitute*

6 s 47A

7 **17 Section 56 (d), new example**

8 *insert*

9 3 an order staying an order, pending an appeal

10 **18 Section 82**

11 *substitute*

12 **82 Appeal tribunal—general powers**

13 (1) An appeal tribunal may, as the tribunal considers appropriate, deal  
14 with an appeal—

15 (a) as a new application; or

16 (b) as a review of all or part of the original decision on the  
17 application by the tribunal.

18 (2) An appeal tribunal—

19 (a) has all the powers and duties of the tribunal that made the order  
20 appealed from; and

21 (b) may draw inferences of fact; and

22 (c) may, if leave is granted, receive further evidence about  
23 questions of fact, either orally in a hearing, by written statement  
24 or in another way; and

- 1           (d) may make an order confirming, amending, setting aside or  
2           replacing the order of the tribunal appealed from; and  
3           (e) may make any other order it considers appropriate.

---

1 **Part 3** **Common Boundaries Act 1981**

2 **19 Section 4 (3) (b) and section 5 (3) (b)**

3 *omit*

4 1 month has

5 *substitute*

6 30 days have

7 **20 Application to ACAT—repair cost determination**  
8 **Section 6 (4) (b)**

9 *omit*

10 14 days has

11 *substitute*

12 14 days have

13 **21 Parties to applications**  
14 **New section 8 (e)**

15 *insert*

16 (e) for an application to which section 9 applies—

17 (i) the applicant; and

18 (ii) either—

19 (A) the person to whom a document mentioned in  
20 section 9 (2) (a), (b) or (c) is given; or

21 (B) the person declared under an order under  
22 section 9 (2) (d) to be the respondent to the  
23 application.

**22 Section 9**

*substitute*

**9 Non-compliant notices**

- (1) An applicant who fails to comply with a notice requirement under section 4 (3), section 5 (3) or section 6 (4) (the *relevant provision*) may apply to the ACAT for an order under this section.
- (2) The ACAT may, by order—
- (a) accept a document given to the respondent as notice under the relevant provision; or
  - (b) correct a defect in a notice given to the respondent; or
  - (c) deal with the application as if the notice given to the respondent complied with the relevant provision; or
  - (d) if no notice has been given under the relevant provision—declare who the respondent to the application is.
- (3) If the parties consent, the ACAT may, by order, waive a requirement to—
- (a) give written notice; or
  - (b) wait a certain period before making an application.

**23 ACAT powers—repair determination  
New section 11 (3) (ba)**

*insert*

- (ba) the line where the fence should be erected; and

**24 Dealing with variations  
Section 15**

*omit*



1 **Part 4** **Coroners Act 1997**

2 **25** **Removal of body to place of post-mortem examination**  
3 **Section 26**

4 *omit*

1 **Part 5** **Guardianship and Management**  
2 **of Property Act 1991**

3 **26** **New subdivision 2.2.1 heading**

4 *before section 16, insert*

5 **Subdivision 2.2.1** **General**

6 **27** **New subdivision 2.2.2**

7 *after section 19, insert*

8 **Subdivision 2.2.2** **If guardians or managers do not comply**  
9 **with Act**

10 **19A** **ACAT may order compensation etc**

- 11 (1) The ACAT may order the guardian or manager for a person (the  
12 *protected person*) to pay an amount to the protected person or, if the  
13 protected person has died, the protected person's estate—
- 14 (a) to compensate for a loss caused by the failure of the guardian or  
15 manager to comply with this Act in the exercise, or purported  
16 exercise, of a power; or
- 17 (b) to account for any profits the guardian or manager has accrued  
18 as a result of their failure to comply with this Act in the exercise,  
19 or purported exercise, of a power.
- 20 (2) However, the ACAT must not order the guardian or manager to make  
21 a payment under both subsection (1) (a) and (b) in relation to the same  
22 exercise, or purported exercise, of power.
- 23 (3) Subsection (1) applies whether or not the guardian or manager is  
24 convicted of an offence in relation to the failure.

- 1 (4) The ACAT may make an order under subsection (1)—
- 2 (a) on its own initiative; or
- 3 (b) on application by an interested person in relation to the protected
- 4 person.
- 5 (5) If the protected person or the guardian or manager has died, any
- 6 application under subsection (4) (b) must be made—
- 7 (a) within 6 months after the day of the death; and
- 8 (b) if both the protected person and the guardian or manager have
- 9 died—within 6 months after the day of the first death.

10 **19B Compensation under s 19A and later civil proceeding**

- 11 (1) This section applies if—
- 12 (a) compensation for the failure of a guardian or manager to comply
- 13 with this Act is paid in accordance with an order under
- 14 section 19A; and
- 15 (b) a later civil proceeding is brought in relation to the same failure.
- 16 (2) The payment of compensation must be taken into account in assessing
- 17 damages in the civil proceeding.

18 **19C Relief from personal liability by court**

- 19 (1) This section applies if a court considers that—
- 20 (a) a guardian or manager is, or may be, personally liable for a
- 21 contravention of this Act; and
- 22 (b) the guardian or manager has acted honestly and reasonably and
- 23 ought fairly to be excused for the contravention.
- 24 (2) The court may relieve the guardian or manager from all or part of the
- 25 guardian's or manager's personal liability for the contravention.

- 1 (3) In deciding whether the guardian or manager should be relieved of  
2 liability, the court must consider the extent to which the guardian or  
3 manager has acted consistently with the decision-making principles.

4 **19D ACAT may refer matter to Supreme Court**

5 The ACAT may refer an application under section 19A (4) (b) to the  
6 Supreme Court.

7 *Note* See the *ACT Civil and Administrative Tribunal Act 2008*, s 83 and s 84  
8 for when an application to the ACAT may be referred to the Supreme  
9 Court.

10 **28 Sections 32JB (2) and 37 (2)**

11 *omit*

12 **29 Dictionary, note 2**

13 *insert*

- 14 • Supreme Court

15 **30 Dictionary, definition of *interested person***

16 *substitute*

17 *interested person*—see the *Powers of Attorney Act 2006*, section 74.

1 **Part 6** **Judicial Commissions Act 1994**

2 **31** **Offence—disclosure of information by members etc**  
3 **Section 28 (2)**

4 *after*

5 for this Act

6 *insert*

7 or the *Integrity Commission Act 2018*, section 59 (Other entities may  
8 refer corruption complaints)

1 **Part 7** **Magistrates Court Act 1930**

2 **32** **Acting Chief Magistrate**  
3 **New section 7E (3)**

4 *insert*

5 (3) Despite the [Legislation Act](#), section 209 (2), the determination  
6 mentioned in section 7AA does not apply to the appointment of an  
7 acting Chief Magistrate.

---

## 1      **Part 8**                                      **Powers of Attorney Act 2006**

### 2      **33**              **Section 50 heading**

3                      *substitute*

### 4      **50**              **Compensation for failure to comply with Act—Supreme** 5                      **Court order**

### 6      **34**              **Section 50 (1)**

7                      *omit*

8                      exercise of a power

9                      *substitute*

10                     exercise, or purported exercise, of a power

### 11     **35**              **New section 50A**

12                     *insert*

### 13     **50A**             **ACAT may order compensation etc**

- 14                     (1) The ACAT may order an attorney for a principal to pay an amount to  
15                     the principal or, if the principal has died, the principal's estate—
- 16                     (a) to compensate for a loss caused by the attorney's failure to  
17                     comply with this Act in the exercise, or purported exercise, of a  
18                     power; or
- 19                     (b) to account for any profits the attorney has accrued as a result of  
20                     the attorney's failure to comply with this Act in the exercise, or  
21                     purported exercise, of a power.
- 22                     (2) However, the ACAT must not order the attorney to make a payment  
23                     under both subsection (1) (a) and (b) in relation to the same exercise,  
24                     or purported exercise, of power.

- 1           (3) Subsection (1) applies whether or not the attorney is convicted of an  
2           offence in relation to the attorney's failure.
- 3           (4) The ACAT may make an order under subsection (1)—  
4           (a) on its own initiative; or  
5           (b) on application by an interested person in relation to the power  
6           of attorney.
- 7           (5) If the principal or the attorney has died, any application under  
8           subsection (4) (b) must be made—  
9           (a) within 6 months after the day of the death; and  
10           (b) if both principal and attorney have died—within 6 months after  
11           the day of the first death.
- 12           (6) In this section:  
13           *interested person*—see section 74.

14   **36           Section 52 heading**

15           *substitute*

16   **52           Relief from personal liability**

17   **37           New section 52 (4)**

18           *insert*

- 19           (4) In this section:  
20           *court* includes the ACAT.



1 **38** **New part 7.2**

2 *insert*

3 **Part 7.2** **ACAT referral**

4 **75** **ACAT may refer matter to Supreme Court**

5 The ACAT may refer an application under section 50A (4) (b) to the  
6 Supreme Court.

7 *Note* See the *ACT Civil and Administrative Tribunal Act 2008*, s 83 and s 84  
8 for when an application to the ACAT may be referred to the Supreme  
9 Court.

10 **39** **Dictionary, note 2**

11 *insert*

- 12
  - Supreme Court

1 **Part 9** **Public Trustee and Guardian**  
2 **Act 1985**

3 **40** **Capacities in which public trustee and guardian may act**  
4 **New section 13 (1) (i)**

5 *insert*

- 6 (i) the person responsible for the disposal of the body of an  
7 unclaimed deceased person.

8 **41** **New section 13A**

9 *insert*

10 **13A** **Appointment as person responsible for disposal of**  
11 **unclaimed deceased person**

- 12 (1) This section applies if the public trustee and guardian accepts an  
13 appointment as the person responsible for the disposal of the body of  
14 an unclaimed deceased person.
- 15 (2) The public trustee and guardian—
- 16 (a) may do any of the following:
- 17 (i) make arrangements for the disposal of the body of the  
18 unclaimed deceased person;
- 19 (ii) investigate whether the unclaimed deceased person has a  
20 solvent estate;
- 21 (iii) administer the unclaimed deceased person's estate; but

1 (b) is not responsible for arranging the removal of the unclaimed  
2 deceased person's body from the place where the person died.

3 *Note* If a person dies, the person's estate vests in the public trustee and  
4 guardian from the time the person dies until someone is appointed as  
5 administrator of the estate or a grant of representation is made (see the  
6 [Administration Act](#), s 38A).

7 (3) The public trustee and guardian must comply with any guideline  
8 made by the Minister for this section.

9 (4) A guideline is a disallowable instrument.

10 (5) In this section:

11 ***unclaimed deceased person*** means a person—

12 (a) whose death is registered under the [Births, Deaths and](#)  
13 [Marriages Registration Act 1997](#); and

14 (b) the executor of whose estate, or whose next of kin—

15 (i) has not been found, despite reasonable inquiries by the  
16 police; or

17 (ii) is unwilling or unable to make funeral arrangements for  
18 the person; and

19 (c) whose body—

20 (i) is held at a place in the ACT; and

21 (ii) has not been claimed by anyone who has a right to claim  
22 the body under the law of another State.

1                   **Part 10**                                   **Supreme Court Act 1933**

2                   **42**                   **Section 37V**

3                   *substitute*

4                   **37V**                   **Acting judge—conditions of appointment**

5                   An acting judge is appointed on the conditions decided by the  
6                   Executive, subject to this Act and any determination under the  
7                   *Remuneration Tribunal Act 1995*.

8                   **43**                   **Section 41B**

9                   *substitute*

10                  **41B**                  **Master—conditions of appointment**

11                  The master is appointed on the conditions decided by the Executive,  
12                  subject to this Act and any determination under the *Remuneration*  
13                  *Tribunal Act 1995*.

14                  **44**                  **Section 60A**

15                  *substitute*

16                  **60A**                  **Power to complete part-heard proceedings**

- 17                  (1) This section applies if a proceeding (including a proceeding in the  
18                  Full Court or the Court of Appeal) is not finally determined when a  
19                  judge or associate judge (the *former judge or associate judge*)  
20                  hearing the proceeding ceases to hold office.
- 21                  (2) The former judge or associate judge—
- 22                          (a) is taken to continue to hold office for the purpose of determining  
23                          the proceeding; and

- 1           (b) may continue to exercise the court’s jurisdiction for the purpose  
2           of hearing and determining the proceeding, including giving  
3           judgment, making an order or completing or otherwise  
4           continuing to deal with any matter relating to the proceeding.
- 5           (3) However, the former judge or associate judge is not entitled to any  
6           remuneration, allowances or entitlements under this Act for holding  
7           office under this section.
- 8           (4) This section does not apply if a judge or associate judge is removed  
9           from office.
- 10          (5) Nothing in this section prevents a person being appointed as an acting  
11          judge.

---

## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 20 April 2021.

**2 Notification**

Notified under the [Legislation Act](#) on 2021.

**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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