



Australian Capital Territory

Justice and Community Safety Legislation Amendment Act 2010

A2010-13

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Australian Capital Territory

Justice and Community Safety Legislation Amendment Act 2010

A2010-13

An Act to amend legislation about justice and community safety

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

1 Name of Act

This Act is the *Justice and Community Safety Legislation Amendment Act 2010*.

2 Commencement

- (1) Schedule 1, part 1.3 (Fair Trading (Consumer Affairs) Act 1973), amendment 1.24 commences on the day after this Act's notification day.

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

- (2) Schedule 1, part 1.8 (Trustee Companies Act 1947) commences on the later of—
- (a) the commencement of the *Justice and Community Safety Legislation Amendment Act 2009 (No 4)*, part 1.5 (Trustee Companies Act 1947); and
 - (b) the day after this Act's notification day.
- (3) The following provisions commence on 1 July 2010:
- (a) section 4;
 - (b) schedule 1, part 1.3 (Fair Trading (Consumer Affairs) Act 1973), amendments 1.21 to 1.23;
 - (c) schedule 1, part 1.6 (Road Transport (Mass, Dimensions and Loading) Act 2009).
- (4) The remaining provisions commence on the 28th day after this Act's notification day.

3 Legislation amended

This Act amends the legislation mentioned in schedule 1.

4 Legislation repealed

- (1) The following legislation is repealed:
 - *Trade Measurement Act 1991* (A1991-56)
 - *Trade Measurement (Administration) Act 1991* (A1991-57)
 - *Trade Measurement (Measuring Instruments) Regulation 1991* (SL1991-27)
 - *Trade Measurement (Miscellaneous) Regulation 1991* (SL1991-28)
 - *Trade Measurement (Prepacked Articles) Regulation 1991* (SL1991-29)
 - *Trade Measurement (Weighbridges) Regulation 1991* (SL1991-30)
 - *Magistrates Court (Trade Measurement Infringement Notices) Regulation 2002* (SL2002-36).
- (2) All other legislative instruments under the Acts mentioned in subsection (1) are repealed.

Schedule 1 Legislation amended

(see s 3)

Part 1.1 ACT Civil and Administrative Tribunal Act 2008

[1.1] New section 25 (3)

insert

- (3) To remove any doubt, a rule of a kind mentioned in subsection (1) (e) cannot prescribe a time for doing a thing that is longer than the time prescribed by an authorising law if the authorising law provides that the thing cannot be done in the longer time.

Note Any procedure under an authorising law for dealing with an application prevails over the procedures set out in the rules for dealing with the application (see s 27). For example, the *Planning and Development Act 2007*, s 409 (3) provides that the period for making an application for review of a decision under that Act cannot be extended. That provision prevails over any rule to extend the time for making an application under that Act.

[1.2] New section 29 (6)

insert

- (6) The tribunal must not join a person as a new applicant to an application if the person is not entitled to apply to the tribunal under the authorising law under which the application is made.

Example

Under the *Planning and Development Act 2007*, s 408 (1) only an entity mentioned in relation to a decision in that Act may apply for review of a decision.

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

[1.3] Section 32 (2), new note

insert

Note If the application is for review of a decision under the *Heritage Act 2004*, the *Planning and Development Act 2007* or the *Tree Protection Act 2005*, the tribunal may also order the applicant to pay costs (see s 48 (2) (d)).

[1.4] New section 48 (2) (d)

insert

- (d) if the application is an application for review of a decision under the *Heritage Act 2004*, the *Planning and Development Act 2007* or the *Tree Protection Act 2005*, and the tribunal makes an order under section 32 (2) (Frivolous and vexatious applications)—the tribunal may order the applicant to pay the reasonable costs of the other party arising from the application; or

[1.5] New section 48 (3)

insert

- (3) For subsection (2) (d), ***reasonable costs of the other party arising from the application*** include reasonable legal costs but do not include holding costs.

Examples—holding costs

- interest and lender imposed charges associated with a loan
- costs of engaging workers and subcontractors and hiring equipment for a development

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

[1.6] Section 60 (4) and notes

substitute

- (4) This section does not apply to an order under section 53 (Interim orders) or an order of a procedural nature.

Examples—order of a procedural nature

adjournment, order for default judgement, order joining a party to a proceeding

Note 1 The rules may prescribe a longer period for asking for order details (see s 25 (1) (e) and (2)).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

[1.7] New section 77 (1A)

insert

- (1A) However, this section does not apply to an application for review of a decision under the *Heritage Act 2004*, the *Planning and Development Act 2007* or the *Tree Protection Act 2005*.

[1.8] New section 77A

insert

77A Requests for rulings in land, planning and environment applications

- (1) This section applies if, under section 77, a requesting tribunal requested a ruling tribunal to give a ruling on a question of law in an application for a review of a decision under the *Heritage Act 2004*, the *Planning and Development Act 2007* or the *Tree Protection Act 2005* before the commencement day,
- (2) Section 77, as in force immediately before the commencement day, continues to apply to the request.
- (3) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (4) This section expires 6 months after the commencement day.
- (5) In this section:

commencement day means the day this section commences.

requesting tribunal—see section 77 (1).

ruling tribunal—see section 77 (2).

[1.9] New section 78 (1A)

insert

- (1A) However, this section does not apply to an application for review of a decision under the *Heritage Act 2004*, the *Planning and Development Act 2007* or the *Tree Protection Act 2005*.

[1.10] New section 78A

insert

**78A Requests for corrections of decisions on land, planning
and environment applications**

- (1) This section applies if, under section 78, the general president requested a correction to an order, made on an application for a review of a decision under the *Heritage Act 2004*, the *Planning and Development Act 2007* or the *Tree Protection Act 2005*, to the tribunal before the commencement day.
- (2) Section 78, as in force immediately before the commencement day, continues to apply to the request
- (3) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (4) This section expires 6 months after the commencement day.
- (5) In this section:

commencement day means the day this section commences.

[1.11] New section 79 (1A)

insert

- (1A) However, this section does not apply to an application for review of a decision under the *Heritage Act 2004*, the *Planning and Development Act 2007* or the *Tree Protection Act 2005*.

[1.12] New section 79A

insert

79A Appeals for decisions on land, planning and environment applications

- (1) This section applies if—
 - (a) the tribunal has decided an application (the *original application*) for review of a decision under the *Heritage Act 2004*, the *Planning and Development Act 2007* or the *Tree Protection Act 2005*; and
 - (b) a party to the original application appeals the tribunal's decision under section 79 before the commencement day.
- (2) Section 79, as in force immediately before the commencement day, continues to apply to the application.
- (3) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (4) This section expires 6 months after the commencement day.
- (5) In this section:
commencement day means the day this section commences.

[1.13] Section 86 (1)

after

application

insert

, other than an application mentioned in subsection (1A),

[1.14] New section 86 (1A)

insert

- (1A) A party to an application in relation to a review of a decision under the *Heritage Act 2004*, the *Planning and Development Act 2007* or the *Tree Protection Act 2005* may appeal to the Supreme Court on a question of law from the original decision of the tribunal.

Part 1.2 Emergencies Act 2004

[1.15] Section 12

substitute

12 Delegation by commissioner

The commissioner may delegate the commissioner's functions under this Act or another territory law to a public servant, a member of an emergency service or an emergency services support volunteer.

Note For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

[1.16] New section 59CA

insert

59CA Appointment of emergency services support volunteers

- (1) The commissioner may appoint a person as a volunteer (an *emergency services support volunteer*)—
- (a) to assist the commissioner to perform the commissioner's functions under this Act; or

(b) to assist an emergency service to perform the functions given to the service under this Act.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

- (2) However, the commissioner may not appoint a person under subsection (1) if it would be more appropriate for the chief officer of the service to appoint the person as a volunteer member of the service.
- (3) The appointment of a person to assist an emergency service must be in accordance with the commissioner's guidelines for the service.

[1.17] Section 183 (1)

omit

member or casual volunteer (the *volunteer*)

[1.18] New section 183 (4)

insert

(4) In this section:

volunteer means—

- (a) a volunteer member; or
- (b) a casual volunteer; or
- (c) an emergency services support volunteer.

[1.19] New section 198 (4) (ba)

insert

(ba) an emergency services support volunteer; or

[1.20] Dictionary, new definitions

insert

commissioner's guidelines—see section 11 (1) (Commissioner may make guidelines).

emergency services support volunteer—see section 59CA (Appointment of emergency services support volunteers).

**Part 1.3 Fair Trading (Consumer Affairs)
 Act 1973**

**[1.21] Section 8 (2), definition of *consumer and trader
 legislation*, paragraph (f)**

omit

[1.22] Section 8 (2), definition of *trade measurement legislation*

omit

[1.23] New schedule 2

insert

**Schedule 2 Trade measurement
 transitional provisions**

2.1 Definitions—sch 2

In this schedule:

commencement day means 1 July 2010.

Commonwealth law means the *National Measurement Act 1960* (Cwlth).

continuing matter means the following:

- (a) a disciplinary action mentioned in section 2.3;
- (b) a review mentioned in section 2.4;
- (c) a seized measuring instrument, record, article or package mentioned in section 2.5;
- (d) an unpaid fee mentioned in section 2.6;
- (e) a search warrant mentioned in section 2.7;
- (f) anything done or not done under the repealed Acts in relation to a matter mentioned in paragraphs (a) to (e).

National Measurement Institute means the National Measurement Institute established under the Commonwealth law, section 17.

repealed Acts means the repealed Administration Act and the repealed Principal Act.

repealed Administration Act means the *Trade Measurement (Administration) Act 1991*.

repealed Principal Act means the *Trade Measurement Act 1991*.

2.2 Transitional—application of repealed Acts to continuing matters

- (1) The repealed Acts continue to apply in relation to the continuing matters as if the repealed Acts had not been repealed.
- (2) Without limiting subsection (1), in relation to the continuing matters—
 - (a) the commissioner continues as the administering authority and licensing authority under the repealed Administration Act, section 6; and
 - (b) an inspector may be appointed under the repealed Administration Act, section 7; and

- (c) the appointment of a person as an inspector under the repealed Administration Act that is in force immediately before the commencement day, continues in force until the end of the term of appointment under the repealed Act, unless ended earlier; and
- (d) the commissioner may continue to exercise the powers and discharge the functions that, under the repealed Acts, may be exercised or discharged by an inspector, as mentioned in the repealed Administration Act, section 7 (3).

2.3 Transitional—disciplinary actions

- (1) This section applies if—
 - (a) the licensing authority had served a notice on a licensee under the repealed Principal Act, section 57 before the commencement day; and
 - (b) the licensing authority had not taken disciplinary action under the repealed Principal Act, section 58 against the licensee before the commencement day.
- (2) The licensing authority may take disciplinary action under the repealed Principal Act, section 58 against the licensee as if the repealed Acts had not been repealed.

2.4 Transitional—reviews

- (1) Subsection (2) applies if—
 - (a) immediately before the commencement day, a person was entitled to apply for review of a reviewable decision of the licensing authority under the repealed Principal Act; and
 - (b) the person had not applied before the commencement day.
- (2) The person may apply to the ACAT for review, and the ACAT may review the reviewable decision, as if the repealed Acts had not been repealed.

- (3) Subsection (4) applies if—
- (a) a person had applied to the ACAT for review of a reviewable decision of the licensing authority under the repealed Principal Act; and
 - (b) the review had not been finally decided before the commencement day.
- (4) The ACAT may review, or continue to review, the reviewable decision as if the repealed Acts had not been repealed.

2.5 Transitional—seized property

- (1) This section applies if, before the commencement day, an inspector seized—
- (a) a measuring instrument, or records produced by the instrument, under the repealed Principal Act, section 61; or
 - (b) an article, a sample of an article, a package containing an article or records concerning the article or package under the repealed Principal Act, section 62.
- (2) The inspector may retain, return or dispose of the instrument, records, article or package under the repealed Acts as if the repealed Acts had not been repealed.

2.6 Transitional—unpaid fees

- (1) This section applies if, immediately before the commencement day, a fee payable under the repealed Administration Act had not been paid within the period prescribed by the Act.
- (2) The fee may be recovered by the Territory as a debt.
- (3) In this section:
fee includes a charge or other amount.

2.7 Transitional—search warrants

- (1) This section applies if—
 - (a) an inspector believes on reasonable grounds that an offence under the repealed Acts had been committed before the commencement day; and
 - (b) the inspector believes there are reasonable grounds for suspecting that there may be on a premises a particular thing connected with the offence; and
 - (c) a search warrant had not been issued under the repealed Administration Act, section 15 before the commencement day.
- (2) An inspector may apply, and a court may issue, a search warrant under the repealed Administration Act, section 15, as if the repealed Acts had not been repealed.

2.8 Transitional—disclosure of information

- (1) The commissioner may disclose the following information to the National Measurement Institute for the administration or enforcement of the Commonwealth law:
 - (a) a copy of the register kept under the repealed Principal Act, section 47;
 - (b) information obtained by the licensing authority and administrative authority under the repealed Acts;
 - (c) information obtained by the commissioner or an inspector about a continuing matter.
- (2) If the information relates to seized property mentioned in section 2.5, the commissioner may allow the National Measurement Institute to inspect the property for the administration or enforcement of the Commonwealth law.
- (3) This section applies despite any other territory law.

2.9 Transitional—reference to a repealed Act

To the extent permitted or required by the context or subject matter, a reference in another territory law to either of the repealed Acts is a reference to the Commonwealth law.

2.10 Transitional—regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the repeal of the repealed Acts.
- (2) A regulation may modify this schedule (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this schedule.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act.

2.11 Expiry—sch 2

- (1) This schedule expires on 1 July 2013.
- (2) This schedule is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

[1.24] Dictionary, definition of *fair trading legislation*, new paragraph (aa)

insert

(aa) the *Eggs (Labelling and Sale) Act 2001*; or

Part 1.4 Magistrates Court Act 1930

[1.25] New division 2.2.3A

insert

Division 2.2.3A Judicial officers exchange

9C Definitions—div 2.2.3A

In this division:

ACT court means a court of this jurisdiction mentioned in an item in schedule 2, column 2.

corresponding court, in relation to an ACT court mentioned in an item in schedule 2, column 2, means a court of another jurisdiction mentioned in the item, column 3.

court includes tribunal.

judicial exchange arrangement means an arrangement under section 9D.

judicial officer means a magistrate or other person who, whether alone or together with others, constitutes a court, but does not include a lay member of a court.

participating jurisdiction means the Commonwealth, a State or another country if under the law of that jurisdiction a judicial exchange arrangement may be entered into with the Attorney-General of this jurisdiction.

Note *State* includes the Northern Territory (see Legislation Act, dict, pt 1).

this jurisdiction means the ACT.

9D Establishment of judicial exchange arrangements

- (1) The Attorney-General of this jurisdiction may enter into an arrangement with the Attorney-General of a participating jurisdiction for the temporary transfer of judicial officers between ACT courts and corresponding courts.
- (2) An arrangement under this section cannot provide for the transfer of judicial officers to a federal court of the Commonwealth.
- (3) Without limiting subsection (1), an arrangement under this section—
 - (a) may require transfers to a court to be subject to the prior approval of either or both of the following:
 - (i) the Attorney-General of this jurisdiction;
 - (ii) the Attorney-General of the participating jurisdiction; and
 - (b) may establish the manner and form in which a transfer to a court is to be made; and
 - (c) may determine the rank, title, status and precedence of a transferred judicial officer.

9E Transfer of judicial officer of another jurisdiction to ACT court

- (1) This section applies if a judicial exchange arrangement provides for the transfer to an ACT court of a judicial officer of a corresponding court.
- (2) The chief magistrate may, in accordance with the judicial exchange arrangement and with the agreement of the senior judicial officer of the corresponding court, appoint a judicial officer of the corresponding court to act as a judicial officer of the ACT court.
- (3) The judicial officer of the corresponding court is qualified for appointment despite any law of this jurisdiction to the contrary.

- (4) The maximum term for which an appointment under this section may be made on any one occasion is 6 months.
- (5) However, an appointment under this section may not extend beyond the retirement age for judicial officers of the ACT court.
- (6) A judicial officer of a corresponding court may be appointed under this section to more than one ACT court.
- (7) A judicial officer whose appointment under this section has ceased may complete or otherwise continue to deal with any matters relating to proceedings in the ACT court that have been heard, or partly heard, by the judicial officer before the appointment under this section ceased.

9F Service in ACT court of judicial officer of another jurisdiction

- (1) This section applies to a judicial officer of a corresponding court who is appointed to act as a judicial officer of an ACT court in accordance with a judicial exchange arrangement.
- (2) While acting as a judicial officer of the ACT court, the judicial officer of the corresponding court has all the powers, authorities, privileges and immunities of, and is taken to be for all purposes, a judicial officer of the ACT court.
- (3) Despite subsection (2), territory laws concerning the following matters do not apply to the judicial officer of the corresponding court while acting as a judicial officer of the ACT court:
 - (a) the remuneration, allowances and other conditions of service of judicial officers;
 - (b) the pension or other superannuation entitlements of judicial officers and related provisions;
 - (c) the removal or suspension of judicial officers from office.

9G Service of ACT judicial officer in corresponding court

- (1) This section applies to a judicial officer of an ACT court who is appointed to act as a judicial officer of a corresponding court in accordance with a judicial exchange arrangement.
- (2) The judicial officer's service as a judicial officer of the corresponding court is taken to be service as a judicial officer of the ACT court for the purposes of territory laws about—
 - (a) the remuneration, allowances and other conditions of service of judicial officers; and
 - (b) the pension or other superannuation entitlements of judicial officers and related provisions; and
 - (c) the removal or suspension of judicial officers from office.

9H Judicial office not affected by appointment to another judicial office

- (1) In this section:

court includes a tribunal (however described) that exercises functions of a judicial nature or functions of a similar nature (such as conciliation functions, arbitration functions, disciplinary functions or administrative review functions).

judicial office extends to the office of any member of a court, but only if the holder of the office is required to be a judicial officer or have legal qualifications.
- (2) The doctrine of incompatibility of office—
 - (a) does not operate to prevent the holder of a judicial office (the *original office*) from being appointed to another judicial office (the *additional office*); and

- (b) does not operate to effect or require the surrender or vacation of the original office as a result of the appointment to the additional office.
- (3) This section applies—
 - (a) even if the original office or the additional office is held on an acting or temporary basis; and
 - (b) even if the original office or the additional office is a judicial office of another jurisdiction (including, but not limited to, judicial offices to which appointments are made under section 9E); and
 - (c) even if an appeal lies from a decision of the court of one of the judicial offices to the court of the other judicial office; and
 - (d) even if the courts of the judicial offices are not of the same status.

9I Other arrangements not affected

This division does not limit or affect any other arrangements under which—

- (a) a judicial officer of another jurisdiction may be appointed or act as a judicial officer of this jurisdiction; or
- (b) a judicial officer of this jurisdiction may be appointed or act as a judicial officer of another jurisdiction.

9J Amendment of sch 2

A regulation may amend schedule 2.

[1.26] New schedule 2

insert

Schedule 2 ACT and corresponding courts

(see s 9C, defs *ACT court* and *corresponding court*)

column 1 item	column 2 ACT court	column 3 corresponding court
1	Childrens Court Coroner's Court Magistrates Court	Alcohol Court of the Northern Territory Children's Court of Western Australia Coroners Court of South Australia Court of Summary Jurisdiction of the Northern Territory Local Court of New South Wales Local Court of the Northern Territory Magistrates Courts of South Australia, Tasmania, Victoria and Western Australia Warden's Courts of South Australia and the Northern Territory Work Health Court of the Northern Territory Youth Court of South Australia (constituted by a Magistrate) Youth Justice Court of the Northern Territory

Part 1.5 Prohibited Weapons Act 1996

[1.27] Section 4 (1) (b)

after

prohibited weapon

insert

or prohibited article

Part 1.6 Road Transport (Mass, Dimensions and Loading) Act 2009

[1.28] Section 414 (1)

substitute

- (1) This section applies to a statement in a certificate issued under the *National Measurement Act 1960* (Cwlth).

[1.29] Section 414 (3)

substitute

- (3) In this section:

measuring instrument means a measuring instrument under the *National Measurement Act 1960* (Cwlth), section 3.

Part 1.7 **Supreme Court Act 1933**

[1.30] Section 25

omit

sections 26 to 32

substitute

sections 26 to 34B

[1.31] New section 34

insert

34 Equitable damages

If the court has power to grant an injunction or an order for specific performance, the court may give damages in addition to, or in substitution for, the injunction or specific performance.

[1.32] New part 8A

insert

Part 8A **Judicial officers exchange**

69A Definitions—pt 8A

In this division:

ACT court means a court of this jurisdiction mentioned in an item in schedule 2, column 2.

corresponding court, in relation to an ACT court mentioned in an item in schedule 2, column 2, means a court of another jurisdiction mentioned in the item, column 3.

court includes tribunal.

judicial exchange arrangement means an arrangement under section 69B.

judicial officer means a judge or other person who, whether alone or together with others, constitutes a court, but does not include a lay member of a court.

participating jurisdiction means the Commonwealth, a State or another country if under the law of that jurisdiction a judicial exchange arrangement may be entered into with the Attorney-General of this jurisdiction.

Note *State* includes the Northern Territory (see Legislation Act, dict, pt 1).

this jurisdiction means the ACT.

69B Establishment of judicial exchange arrangements

- (1) The Attorney-General of this jurisdiction may enter into an arrangement with the Attorney-General of a participating jurisdiction for the temporary transfer of judicial officers between ACT courts and corresponding courts.
- (2) An arrangement under this section cannot provide for the transfer of judicial officers to a federal court of the Commonwealth.
- (3) Without limiting subsection (1), an arrangement under this section—
 - (a) may require transfers to a court to be subject to the prior approval of either or both of the following:
 - (i) the Attorney-General of this jurisdiction;
 - (ii) the Attorney-General of the participating jurisdiction; and
 - (b) may establish the manner and form in which a transfer to a court is to be made; and
 - (c) may determine the rank, title, status and precedence of a transferred judicial officer.

69C Transfer of judicial officer of another jurisdiction to ACT court

- (1) This section applies if a judicial exchange arrangement provides for the transfer to an ACT court of a judicial officer of a corresponding court.
- (2) The Chief Justice may, in accordance with the judicial exchange arrangement and with the agreement of the senior judicial officer of the corresponding court, appoint a judicial officer of the corresponding court to act as a judicial officer of the ACT court.
- (3) The judicial officer of the corresponding court is qualified for appointment despite any law of this jurisdiction to the contrary.
- (4) The maximum term for which an appointment under this section may be made on any one occasion is 6 months.
- (5) However, an appointment under this section may not extend beyond the retirement age for judicial officers of the ACT court.
- (6) A judicial officer of a corresponding court may be appointed under this section to more than one ACT court.
- (7) A judicial officer whose appointment under this section has ceased may complete or otherwise continue to deal with any matters relating to proceedings in the ACT court that have been heard, or partly heard, by the judicial officer before the appointment under this section ceased.

69D Service in ACT court of judicial officer of another jurisdiction

- (1) This section applies to a judicial officer of a corresponding court who is appointed to act as a judicial officer of an ACT court in accordance with a judicial exchange arrangement.

- (2) While acting as a judicial officer of the ACT court, the judicial officer of the corresponding court has all the powers, authorities, privileges and immunities of, and is taken to be for all purposes, a judicial officer of the ACT court.
- (3) Despite subsection (2), territory laws concerning the following matters do not apply to the judicial officer of the corresponding court while acting as a judicial officer of the ACT court:
 - (a) the remuneration, allowances and other conditions of service of judicial officers;
 - (b) the pension or other superannuation entitlements of judicial officers and related provisions;
 - (c) the removal or suspension of judicial officers from office.

69E Service of ACT judicial officer in corresponding court

- (1) This section applies to a judicial officer of an ACT court who is appointed to act as a judicial officer of a corresponding court in accordance with a judicial exchange arrangement.
- (2) The judicial officer's service as a judicial officer of the corresponding court is taken to be service as a judicial officer of the ACT court for the purposes of territory laws about—
 - (a) the remuneration, allowances and other conditions of service of judicial officers; and
 - (b) the pension or other superannuation entitlements of judicial officers and related provisions; and
 - (c) the removal or suspension of judicial officers from office.

69F Judicial office not affected by appointment to another judicial office

- (1) In this section:

court includes a tribunal (however described) that exercises functions of a judicial nature or functions of a similar nature (such as conciliation functions, arbitration functions, disciplinary functions or administrative review functions).

judicial office extends to the office of any member of a court, but only if the holder of the office is required to be a judicial officer or have legal qualifications.

- (2) The doctrine of incompatibility of office—

- (a) does not operate to prevent the holder of a judicial office (the *original office*) from being appointed to another judicial office (the *additional office*); and
- (b) does not operate to effect or require the surrender or vacation of the original office as a result of the appointment to the additional office.

- (3) This section applies—

- (a) even if the original office or the additional office is held on an acting or temporary basis; and
- (b) even if the original office or the additional office is a judicial office of another jurisdiction (including, but not limited to, judicial offices to which appointments are made under section 69C); and
- (c) even if an appeal lies from a decision of the court of one of the judicial offices to the court of the other judicial office; and
- (d) even if the courts of the judicial offices are not of the same status.

69G Other arrangements not affected

This division does not limit or affect any other arrangements under which—

- (a) a judicial officer of another jurisdiction may be appointed or act as a judicial officer of this jurisdiction; or
- (b) a judicial officer of this jurisdiction may be appointed or act as a judicial officer of another jurisdiction.

69H Amendment of sch 2

A regulation may amend schedule 2.

[1.33] New schedule 2

insert

Schedule 2 ACT and corresponding courts

(see s 69A, defs *ACT court* and *corresponding court*)

column 1 item	column 2 ACT court	column 3 corresponding court
1	Supreme Court	Federal Court of Australia Supreme Court of any State (other than Queensland)

Note *State* includes the Northern Territory (see Legislation Act, dict, pt 1).

Part 1.8 Trustee Companies Act 1947

[1.34] New section 34B

insert

34B Compulsory transfer determinations

- (1) This section applies if—
- (a) the Australian Securities and Investments Commission (*ASIC*) cancels the licence of a trustee company (the *transferring company*) and makes a determination under the Corporations Act, section 601WBA that there is to be a transfer of estate assets and liabilities from the transferring company to another licensed trustee company (the *receiving company*); and
 - (b) ASIC issues a certificate of transfer under that Act, section 601WBG for the transfer; and
 - (c) either the transferring company or the receiving company (or both) is registered in the ACT.

Note A reference to a law (including a Cwlth Act) includes a reference to the Act as originally made and as amended (see Legislation Act, s 102).

- (2) When the certificate of transfer comes into force, the receiving company is taken to be the successor in law in relation to estate assets and liabilities of the transferring company, to the extent of the transfer.

Note The Corporations Act, s 601WBG requires the certificate of transfer to state when it is to come into force.

- (3) Without limiting subsection (2)—
- (a) if the transfer is a total transfer—all of the assets and liabilities of the transferring company become assets and liabilities of the receiving company (without the need for any further conveyance, transfer, assignment or assurance); and

- (b) if the transfer is a partial transfer—the assets and liabilities listed as referred to in the Corporations Act, section 601WBG (2) (c) of the transferring company become assets and liabilities of the receiving company (without the need for any further conveyance, transfer, assignment or assurance); and
 - (c) to the extent of the transfer—the duties, obligations, immunities, rights and privileges applying to the transferring company apply to the receiving company; and
 - (d) if the certificate includes provisions of the kind referred to in the Corporations Act, section 601WBG (3) specifying—
 - (i) that particular things are to happen or are taken to be the case—those things are taken to happen, or to be the case, in accordance with those provisions; and
 - (ii) a mechanism for determining things that are to happen or are taken to be the case—things determined in accordance with the mechanism are taken to happen, or to be the case, as determined in accordance with that mechanism.
- (4) The operation of this section is not to be regarded as—
- (a) a breach of contract or confidence or otherwise as a civil wrong; or
 - (b) a breach of any instrument (including, without limitation, any provision prohibiting, restricting or regulating the assignment or transfer of assets or liabilities); or
 - (c) an event of default under any contract or other instrument; or
 - (d) giving rise to any remedy by a party to a contract or other instrument, or as causing or permitting the termination of, or exercise of rights under, any contract or other instrument.

[1.35] Dictionary, definition of *trustee company*

substitute

trustee company means a licensed trustee company within the meaning of the Corporations Act, chapter 5D.

Note A reference to a law (including a Cwlth Act) includes a reference to the Act as originally made and as amended (see Legislation Act, s 102).

Part 1.9 Wills Act 1968

[1.36] New part 3A

insert

Part 3A Court authorised wills for people without testamentary capacity

16A Court may authorise will to be made, altered or revoked for person without testamentary capacity

- (1) The Supreme Court may, on application, make an order authorising—
 - (a) a will to be made or altered, in the terms approved by the court, for a person who does not have testamentary capacity; or
 - (b) a will, or part of a will, to be revoked for a person who does not have testamentary capacity.

Note A person may only make an application for an order if the person has obtained the leave of the Court—see s 16B.

- (2) An order under this section may authorise—
 - (a) the making or alteration of a will that deals with the whole or part of the property of a person who does not have testamentary capacity; or

- (b) the alteration of part of the will of the person.
- (3) The Supreme Court must not make an order under this section unless the person for whom the order is sought is alive when the order is made.
- (4) The Supreme Court may make an order under this section for a child who does not have testamentary capacity.
- (5) In making an order under this section, the Supreme Court may give any necessary related orders or directions.
- (6) A will that is authorised to be made or altered by an order under this section must be deposited with the registrar under section 32.
- (7) A failure to comply with subsection (6) does not affect the validity of the will.

16B Information required in support of application for leave

- (1) A person may apply for an order under section 16A only with the Supreme Court's leave.
- (2) On an application for leave a person must, unless the Supreme Court otherwise directs, give the court the following information:
 - (a) a written statement of the general nature of the application and the reasons for making it;
 - (b) satisfactory evidence that the person for whom the order is sought does not have testamentary capacity;
 - (c) a reasonable estimate, formed from the evidence available to the applicant, of the size and character of the estate of the person for whom the order is sought;
 - (d) a draft of the proposed will, alteration or revocation for which the applicant is seeking the court's approval;
 - (e) any evidence available to the applicant of the wishes of the person for whom the order is sought;

- (f) any evidence available to the applicant of the likelihood of the person for whom the order is sought acquiring or regaining testamentary capacity;
- (g) any evidence available to the applicant of the terms of any will previously made by the person for whom the order is sought;
- (h) any evidence available to the applicant, or that can be discovered with reasonable diligence, of any people who might be entitled to claim on the intestacy of the person for whom the order is sought;
- (i) any evidence available to the applicant of the likelihood of an application being made under the *Family Provision Act 1969* in relation to the property of the person for whom the order is sought;
- (j) any evidence available to the applicant, or that can be discovered with reasonable diligence, of the circumstances of any person for whom provision might reasonably be expected to be made by will by the person for whom the order is sought;
- (k) any evidence available to the applicant of a gift for a charitable or other purpose that the person for whom the order is sought might reasonably be expected to make by will;
- (l) any other facts of which the applicant is aware that are relevant to the application.

16C Hearing of application for leave

- (1) On hearing an application for leave the Supreme Court may—
 - (a) give leave and allow the application for leave to proceed as an application for an order under section 16A (Court may authorise a will to be made, altered or revoked for a person without testamentary capacity); and

- (b) if satisfied of the matters set out in section 16E (Court must be satisfied about certain matters), make the order.
- (2) Without limiting the action the Supreme Court may take in hearing an application for leave, the court may revise the terms of any draft of the proposed will, alteration or revocation for which the court's approval is sought.

16D Hearing of application for order

In considering an application for an order under section 16A (Court may authorise a will to be made, altered or revoked for a person without testamentary capacity), the Supreme Court—

- (a) may have regard to any information given to the court under section 16B (Information required in support of application for leave); and
- (b) may inform itself of any other matter in any manner it sees fit; and
- (c) is not bound by the rules of evidence.

16E Court must be satisfied about certain matters

The Supreme Court must refuse leave to make an application for an order under section 16A (Court may authorise a will to be made, altered or revoked for a person without testamentary capacity) unless the court is satisfied that—

- (a) there is reason to believe that the person for whom the order is sought is, or is reasonably likely to be, incapable of making a will; and
- (b) the proposed will, alteration or revocation is, or is reasonably likely to be, one that would have been made by the person if he or she had testamentary capacity; and
- (c) it is or may be appropriate for the order to be made; and

- (d) the applicant for leave is an appropriate person to make the application; and
- (e) adequate steps have been taken to allow representation of all people with a legitimate interest in the application, including any person who has reason to expect a gift or benefit from the estate of the person for whom the order is sought.

16F Execution of will made under order

- (1) A will that is made or altered by an order under section 16A (Court may authorise a will to be made, altered or revoked for a person without testamentary capacity) is properly executed if—
 - (a) it is in writing; and
 - (b) it is signed by the registrar and sealed with the seal of the Supreme Court.
- (2) A will may only be signed by the registrar if the person in relation to whom the order is made is alive.

16G Retention of will

- (1) Despite section 32 (4), a will deposited with the registrar in accordance with this part must not be delivered to the person for whom it was made unless—
 - (a) the Supreme Court has made an order under section 16A (Court may authorise a will to be made, altered or revoked for a person without testamentary capacity) authorising the revocation of the whole of the will; or
 - (b) the person has acquired or regained testamentary capacity.
- (2) If the registrar is given a copy of an order made under section 16A authorising the revocation of the whole of a will, the registrar must—
 - (a) enter the particulars of the order in the index; and

(b) with the permission of a judge of the Supreme Court, cause the will to be destroyed; and

(c) enter the date when the will was destroyed in the index.

16H Separate representation of person without testamentary capacity

If it appears to the Supreme Court that the person who does not have testamentary capacity should be separately represented in proceedings under this part, the court may—

(a) order that the person be separately represented; and

(b) make any orders it considers necessary to secure that representation.

16I Recognition of statutory wills

(1) A statutory will made in accordance with the law of the place where the deceased person was resident at the time of the execution of the will is to be regarded as a valid will of the deceased person.

(2) In this section:

statutory will means a will executed in accordance with a law of the Territory, or another place for a person who, at the time of execution, did not have testamentary capacity.

[1.37] Section 21

omit

sections 8B, 20 and 20A

substitute

sections 8B, 16A, 20 and 20A

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 11 February 2010.

2 Notification

Notified under the Legislation Act on 31 March 2010.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Justice and Community Safety Legislation Amendment Bill 2010, which was passed by the Legislative Assembly on 18 March 2010.

Acting Clerk of the Legislative Assembly

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