



Australian Capital Territory

# Justice and Community Safety Legislation Amendment Act 2013 (No 2)

A2013-11

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Australian Capital Territory

# **Justice and Community Safety Legislation Amendment Act 2013 (No 2)**

**A2013-11**

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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 Name of Act**

This Act is the *Justice and Community Safety Legislation Amendment Act 2013 (No 2)*.

**2 Commencement**

This Act commences on the 7th day after its notification day.

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

**3 Legislation amended—sch 1**

This Act amends the legislation mentioned in schedule 1.

## Schedule 1      Legislation amended

(see s 3)

### Part 1.1      Agents Act 2003

#### [1.1]      Section 124 (2), note

*substitute*

*Note 1* A person claiming to be entitled to money paid to the public trustee under this section may apply to the public trustee for payment of the money (see *Unclaimed Money Act 1950*, s 27).

*Note 2* If a form is approved under s 177 for a statement, the form must be used.

#### [1.2]      Sections 125 and 126

*omit*

### Part 1.2      Confiscation of Criminal Assets Act 2003

#### [1.3]      Section 50 (2)

*substitute*

(2) The restraining order, or details of the restraining order, may be recorded in the register—

(a) for a restraining order over land registered under the *Land Titles Act 1925*—on a responsible authority giving a copy of the restraining order to the registrar-general; or

*Note* The registrar-general may, on receipt of the order, enter a caveat for the prevention of any fraud or improper dealing (see *Land Titles Act 1925*, s 14 (1) (g)).

(b) in any other case—on application by a responsible authority.

**[1.4]        Section 50 (4), (5) and (6)**

*substitute*

- (4) If the property stops being restrained property, the responsible authority must—
- (a) for a restraining order over land registered under the *Land Titles Act 1925*—tell the registrar-general of the cancellation of the restraining order; or
  - (b) in any other case—apply for the cancellation of the restraining order’s registration in the statutory property register.

**Part 1.3                          Crimes Act 1900**

**[1.5]        Section 430 (4)**

*after*

(b)

*insert*

, (c)

**Part 1.4                          Land Titles Act 1925**

**[1.6]        Section 124 (1)**

*substitute*

- (1) The registrar-general must not make an entry in the register of any notice of trust or declaration of trust in relation to an interest in land, whether express, implied or constructive if the trust creates or affects an interest in land.

## **Part 1.5                      Legal Aid Act 1977**

### **[1.7]            Section 37 (4)**

*omit*

private legal practitioner

*substitute*

Australian legal practitioner

### **[1.8]            Section 37 (4) (a) and (b)**

*omit*

private legal practitioners

*substitute*

Australian legal practitioners

### **[1.9]            Section 92 (1) (b)**

*substitute*

(b) a person who is or has been—

- (i) a prescribed person or an assistant; or
- (ii) the auditor-general, or a person acting under the direction or authority of the auditor-general, in relation to a performance audit or special financial audit of the commission under the *Auditor-General Act 1996*.

**[1.10]    Section 92 (2)**

*after*

except for this Act

*insert*

, the *Auditor-General Act 1996*

**[1.11]    Dictionary, note 2**

*insert*

- auditor-general

**[1.12]    Dictionary, new definition of *Australian legal practitioner***

*insert*

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

**[1.13]    Dictionary, definition of *private legal practitioner***

*substitute*

*private legal practitioner* means a person who is—

- a principal of a law practice under the *Legal Profession Act 2006*, section 9; or
- an Australian legal practitioner employed by a law practice under the *Legal Profession Act 2006*.



## **Part 1.6                      Legal Profession Act 2006**

### **[1.14]      Section 259 (2), new note**

*insert*

*Note*      A person who claims to be entitled to an unclaimed amount that has been paid to the public trustee under this section may apply to the public trustee for payment of the amount (see *Unclaimed Money Act 1950*, pt 5).

### **[1.15]      Section 259 (3) and (4)**

*omit*

## **Part 1.7                      Magistrates Court (Working with Vulnerable People Infringement Notices) Regulation 2012**

### **[1.16]      Sections 9 and 11**

*omit*

; and

*substitute*

; or

## Part 1.8                      Unclaimed Money Act 1950

### [1.17]      Section 4

*omit*

Territory

*substitute*

public trustee

### [1.18]      Section 5

*omit*

### [1.19]      Sections 10 and 11

*omit*

Territory

*substitute*

public trustee

### [1.20]      Section 13

*omit*

**[1.21] Part 5**

*substitute*

## **Part 5 Payment of unclaimed amounts to claimants**

### **26 Meaning of *unclaimed money*—pt 5**

In this part:

*unclaimed money* means money paid to the public trustee under any of the following provisions:

- (a) section 4 (Unclaimed assets in hands of liquidator);
- (b) section 10 (Payment of unclaimed amounts to public trustee);
- (c) the *Agents Act 2003*, section 124 (Payment of unclaimed money to public trustee);
- (d) the *Legal Profession Act 2006*, section 259 (Unclaimed trust money).

### **27 Who may apply for unclaimed money**

- (1) A person who claims to be entitled to an amount of unclaimed money may apply to the public trustee for payment of the amount.

*Note* If a form is approved under s 35 for this provision, the form must be used.

- (2) The public trustee may, in writing, require the applicant to give the public trustee more information or documents that the public trustee reasonably needs to decide the application.

#### **Examples—information or documents**

- 1 birth certificate, citizenship certificate, driver licence or other proof of identification
- 2 rates notice, electricity bill or other proof of place of residence

3    evidence of entitlement to amount claimed

*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).

- (3) If the applicant does not comply with a requirement under subsection (2), the public trustee may refuse to consider the application.

## **28            Representatives of people claiming unclaimed money**

- (1) The following people may apply under section 27 on behalf of a person claiming to be entitled to an amount of unclaimed money:

- (a) an agent of the person;
- (b) if the person has died—a legal representative of the person.

- (2) In this section:

*legal representative*, of a person who has died, means a person—

- (a) holding office as executor of the will of the deceased person where probate of the will has been granted or resealed in Australia; or
- (b) holding office in Australia as administrator of the estate of the deceased person.

## **29            Decision about application for payment of unclaimed money**

On application by a person under section 27, the public trustee must—

- (a) decide to pay the unclaimed money to the person claimed to be entitled to the money; or
- (b) refuse to pay the unclaimed money.

### **30 Reviewable decision notice**

If the public trustee makes a decision under section 29, the public trustee must give a reviewable decision notice to the applicant in relation to the decision.

*Note 1* The public trustee must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

*Note 2* The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

### **31 Review by ACAT**

- (1) The following people may apply to the ACAT for review of a decision under section 29:
  - (a) the applicant in relation to the decision;
  - (b) any other person whose interests are affected by the decision.

*Note* If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

- (2) The public trustee must give notice of a decision to each person whose interests are affected by the decision.
- (3) The notice must be in accordance with a reviewable decision notice.

### **[1.22] Dictionary, note 2**

*insert*

- reviewable decision notice

**[1.23] Dictionary**

*omit the definitions of*

*Commonwealth Act*

*holder*

*RSA*

*RSA provider*

**[1.24] Dictionary, new definition of *unclaimed money***

*insert*

*unclaimed money*, for part 5—see section 26.

**[1.25] Dictionary, definition of *unclaimed RSA money***

*omit*

**Part 1.9 Unit Titles (Management) Act  
2011**

**[1.26] Section 72, definition of *total sinking fund amount***

*omit*

**[1.27] Section 72, new definition of *total sinking fund contribution***

*insert*

*total sinking fund contribution*—see section 82 (3) (b).

**[1.28] Section 82 (2) and example and notes**

*substitute*

- (2) The owners corporation must approve, by ordinary resolution, a plan for the sinking fund (a ***sinking fund plan***) for the 10-year period beginning on the first day of the financial year following the approval.

*Note* A sinking fund plan of an existing owners corporation that was current immediately before the commencement of this division is taken to be a sinking fund plan under this Act (see s 157 (2)). The day the existing sinking fund plan is approved for this Act is the day the existing sinking fund plan was approved by the owners corporation for the [Unit Titles Act 2001](#) (see s 157 (3) and (4)).

- (3) The sinking fund plan must state—
- (a) the expected sinking fund expenditure for at least the 10-year period of the plan; and
  - (b) for each financial year of the plan—the total contributions (the ***total sinking fund contribution***) required from members of the owners corporation necessary to—
    - (i) meet the expected sinking fund expenditure for the financial year; and

- (ii) reserve an appropriate amount necessary to be accumulated to meet expected sinking fund expenditure over at least the remaining years of the plan.

**Examples**

- 1 An owners corporation for a units plan estimates that the expected sinking fund expenditure for the 10-year period of its sinking fund plan is \$220 000. The expenditure includes expenditure of \$10 000 for each year and a 'one-off' amount of \$120 000 in the 8th year of the plan. The owners corporation approves a total sinking fund contribution of \$25 000 for each financial year of the plan to meet the expected sinking fund expenditure and to provide for a balance of \$30 000 in the fund.
- 2 In preparing its first sinking fund plan, the owners corporation for a units plan of recently constructed townhouses estimates that the expected sinking fund expenditure for the units plan is \$70 000 for the 10-year period of the plan, made up of \$7 000 expected sinking fund expenditure for each financial year. Additionally, the owners corporation estimates that internal roads in the units plan will need resurfacing in 15 years time at an estimated cost of \$120 000. The owners corporation decides it is necessary, in the first 10-year plan, to accumulate \$80 000 to meet the expected sinking fund expenditure for the resurfacing. The owners corporation approves a total sinking fund contribution of \$15 000 each year of the plan, made up of \$7 000 to meet the expected sinking fund expenditure for each financial year and \$8 000 to meet the expected sinking fund expenditure for the resurfacing.

*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).

**[1.29] Section 86**

*substitute*

**86 Sinking fund plan—amendment**

An owners corporation for a units plan may at any time, by ordinary resolution, amend its sinking fund plan to ensure that—

- (a) the plan reflects expected sinking fund expenditure; and



- (b) the total sinking fund contributions are sufficient to meet the expected sinking fund expenditure stated in the plan.

**Example**

An owners corporation for a units plan approves a sinking fund plan that sets a total sinking fund contribution of \$15 000 for each year of the plan. Three years after approving the plan, the owners corporation finds out that major work is required to water and sewerage pipes in the common property at an estimated cost of \$60 000. The owners corporation, by ordinary resolution, amends the sinking fund plan to include the additional expected sinking fund expenditure and require additional contributions of \$10 000 a year for the remaining years in the plan. The total sinking fund contribution for each financial year after the amendment is \$25 000.

*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).

**[1.30] Section 88, note 1**

*substitute*

*Note 1* An owners corporation may at any time, by ordinary resolution, amend its sinking fund plan to ensure that the plan reflects expected sinking fund expenditure and the total sinking fund contributions are sufficient to meet the expected sinking fund expenditure stated in the plan.

**[1.31] Section 89 (2)**

*omit*

total sinking fund amount

*substitute*

total sinking fund contribution

**[1.32] Section 89 (2), note**

*substitute*

*Note* **Total sinking fund contribution**, for a financial year—see s 82 (3) (b). **Expected sinking fund expenditure**—see s 83.

**[1.33]    Section 90 (2) (c) and (d)**

*omit*

total sinking fund amount

*substitute*

total sinking fund contribution

**[1.34]    Dictionary, definition of *total sinking fund amount***

*omit*

**[1.35]    Dictionary, new definition of *total sinking fund contribution***

*insert*

*total sinking fund contribution*, for division 5.2 (Administrative, special purpose and sinking funds)—see section 82 (3) (b).

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 28 February 2013.

**2 Notification**

Notified under the [Legislation Act](#) on 28 March 2013.

**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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I certify that the above is a true copy of the Justice and Community Safety Legislation Amendment Bill 2013 (No 2), which was passed by the Legislative Assembly on 21 March 2013.

Clerk of the Legislative Assembly

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