



Australian Capital Territory

Justice Legislation Amendment Act 2020

A2020-42

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Australian Capital Territory

Justice Legislation Amendment Act 2020

A2020-42

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

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

Part 1 Preliminary

1 Name of Act

This Act is the *Justice Legislation Amendment Act 2020*.

2 Commencement

- (1) The following provisions commence on the 14th day after this Act's notification day:
- section 39
 - part 10 (Crimes (Sentencing) Act 2005)
 - part 22 (Magistrates Court Act 1930)
 - part 30 (Victims of Crime Act 1994).

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

- (2) The following parts commence on the 7th day after this Act's notification day:
- part 18 (Gaming Machine Act 2004)
 - part 20 (Liquor Act 2010)
 - part 21 (Liquor Regulation 2010).
- (3) The following parts commence on the commencement of the [Unit Titles Legislation Amendment Act 2020](#), part 3:
- part 4 (Civil Law (Sale of Residential Property) Act 2003)
 - part 5 (Civil Law (Sale of Residential Property) Regulation 2004).
- (4) Part 25 (Residential Tenancies Act 1997) commences on the commencement of the [Unit Titles Legislation Amendment Act 2020](#), part 10.
- (5) Part 29 (Unit Titles (Management) Act 2011) commences on the commencement of the [Unit Titles Legislation Amendment Act 2020](#), part 12.

(6) The following parts commence on a day fixed by the Minister by written notice:

- part 2 (ACT Civil and Administrative Tribunal Act 2008)
- part 3 (Agents Act 2003)
- part 6 (Classification (Publications, Films and Computer Games) (Enforcement) Act 1995)
- part 8 (Court Procedures Act 2004)
- part 15 (Fair Trading (Australian Consumer Law) Act 1992)
- part 28 (Spent Convictions Act 2000).

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

Note 2 If a provision of parts 3, 8 and 28 has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see [Legislation Act](#), s 79).

(7) If a provision of parts 2, 6 and 15 has not commenced within 12 months beginning on this Act's notification day, it automatically commences on the first day after that period.

(8) The [Legislation Act](#), section 79 (Automatic commencement of postponed law) does not apply to a provision mentioned in subsection (7).

(9) The remaining provisions commence on the day after this Act's notification day.

3 Legislation amended

This Act amends the following legislation:

- *ACT Civil and Administrative Tribunal Act 2008*
- *Agents Act 2003*
- *Civil Law (Sale of Residential Property) Act 2003*
- *Civil Law (Sale of Residential Property) Regulation 2004*

- *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995*
- *Confiscation of Criminal Assets Act 2003*
- *Court Procedures Act 2004*
- *Crimes (Sentence Administration) Act 2005*
- *Crimes (Sentencing) Act 2005*
- *Criminal Code 2002*
- *Discrimination Act 1991*
- *Domestic Animals Act 2000*
- *Employment and Workplace Safety Legislation Amendment Act 2020*
- *Fair Trading (Australian Consumer Law) Act 1992*
- *Fair Trading (Fuel Prices) Act 1993*
- *Fuels Rationing Act 2019*
- *Gaming Machine Act 2004*
- *Human Rights Commission Act 2005*
- *Liquor Act 2010*
- *Liquor Regulation 2010*
- *Magistrates Court Act 1930*
- *Magistrates Court (Domestic Animals Infringement Notices) Regulation 2005*
- *Motor Accident Injuries Act 2019*
- *Residential Tenancies Act 1997*
- *Road Transport (Alcohol and Drugs) Act 1977*
- *Road Transport (Offences) Regulation 2005*
- *Spent Convictions Act 2000*
- *Unit Titles (Management) Act 2011*
- *Victims of Crime Act 1994.*

Part 2

ACT Civil and Administrative Tribunal Act 2008

4 New section 55B

insert

55B Consumer complaints—orders giving effect to conciliation agreements

- (1) This section applies in relation to a conciliation agreement made under the *Fair Trading (Australian Consumer Law) Act 1992*, section 34I.
- (2) On application by a party to the conciliation agreement, the tribunal may make any order it considers appropriate to give effect to the agreement.
- (3) A decision of the tribunal to refuse to make an order under this section does not affect the validity of the conciliation agreement.

Part 3 Agents Act 2003

5 People disqualified from being licensed Section 27 (1) (a) and note

substitute

- (a) for a licence other than a real estate agent's licence—has been convicted of an ACT dishonesty offence or a non-ACT offence that is similar in nature to an ACT dishonesty offence; or

Note A conviction does not include a spent conviction (see [Spent Convictions Act 2000](#), s 16 (c) (i)).

- (aa) for a real estate agent's licence—is found unsuitable to be licensed under section 27A; or

6 New section 27A

in division 3.2, insert

27A Suitability—real estate agents

- (1) This section applies to a person if the person has been convicted of a relevant offence.
- (2) The commissioner for fair trading may decide the person is unsuitable to be licensed as a real estate agent.

Note A review of a decision to refuse to issue a licence to a person may include a review of the commissioner's decision on the person's suitability (see sch 1, item 2).

- (3) In deciding whether a person is unsuitable to be licensed, the commissioner for fair trading must have regard to the following matters:
- (a) when the offence was committed;
- (b) the nature, seriousness and circumstances of the offence;

- (c) whether the offence indicates the person may be a risk to members of the public;
- (d) the relevance of the offence to the person's duties as an agent;
- (e) whether the offence was committed by the person in the course of their duties as a real estate agent or salesperson;
- (f) whether the ACAT has made an occupational discipline order in relation to the person.

7 People disqualified from being registered Section 51 (1) (a) and note

substitute

- (a) for registration of a person other than as a real estate salesperson—has been convicted of an ACT dishonesty offence or a non-ACT offence that is similar in nature to an ACT dishonesty offence; or

Note A conviction does not include a spent conviction (see [Spent Convictions Act 2000](#), s 16 (c) (i)).

- (aa) for registration of a person as a real estate salesperson—is found unsuitable to be licensed under section 51A; or

8 New section 51A

in division 4.2, insert

51A Suitability—real estate salespeople

- (1) This section applies to a person if the person has been convicted of a relevant offence.
- (2) The commissioner for fair trading may decide the person is unsuitable to be registered as a real estate salesperson.

Note A review of a decision to refuse to register an applicant may include a review of the commissioner's decision on the applicant's suitability (see sch 1, item 7).

- (3) In deciding whether a person is unsuitable to be registered, the commissioner for fair trading must have regard to the following matters:
- (a) when the offence was committed;
 - (b) the nature, seriousness and circumstances of the offence;
 - (c) whether the offence indicates the person may be a risk to members of the public;
 - (d) the relevance of the offence to the person's duties as a salesperson;
 - (e) whether the offence was committed by the person in the course of their duties as a real estate agent or salesperson;
 - (f) whether the ACAT has made an occupational discipline order in relation to the person.

9 Dictionary, note 2

insert

- in relation to
- territory law

10 Dictionary, new definitions

insert

ACT dishonesty offence means an offence against a territory law that involves dishonesty.

non-ACT offence means an offence against a law other than a territory law.

relevant offence—

- (a) means—
- (i) any of the following offences against a territory law:
 - (A) an offence involving dishonesty;
 - (B) an offence against the person;
 - (C) an offence involving violence;
 - (D) an offence against the [Criminal Code](#), chapter 6, punishable by a maximum term of imprisonment of 3 years or more (a ***serious drug offence***) or an offence against a territory law previously in force that is similar in nature to a serious drug offence; or
 - (ii) a sexual offence; and
- (b) includes a non-ACT offence that is similar in nature to an offence mentioned in paragraph (a) (i).

sexual offence—see the [Spent Convictions Act 2000](#), dictionary.

15 New section 23B (3)

insert

(3) In this section:

premises—see section 20.

16 Dictionary, definition of *adaptable housing dwelling*

substitute

adaptable housing dwelling means a dwelling prescribed by regulation.

**23 Renewal of licence
Section 54H (1), notes**

omit

**24 Change of activity under a licence
Section 54M**

omit

**25 Surrender of licence
Section 54P (1)**

omit

stops selling or copying X 18+ films

substitute

stops dealing in X 18+ films

**26 Approved forms—commissioner
Section 68**

omit

27 Dictionary, new definition of *deal in*

insert

deal in, X 18+ films, for part 6 (X 18+ films)—see section 54A.

Part 7 Confiscation of Criminal Assets Act 2003

28 Meaning of *exclusion order* Section 72, definition of *exclusion order*, paragraph (a)

after

forfeited

insert

or used to satisfy an unexplained wealth order

29 Effect of *exclusion order* Section 74 (b)

after

forfeited

insert

or used to satisfy an unexplained wealth order

30 Exclusion orders—application Section 75

after

forfeited

insert

or used to satisfy an unexplained wealth order

31 New section 77A*insert***77A Making of exclusion orders—unexplained wealth**

- (1) This section applies to an application for an exclusion order for property if—
 - (a) an unexplained wealth restraining order has been applied for in relation to the property; or
 - (b) the property has been restrained under an unexplained wealth restraining order.
- (2) If the application is made by the person in relation to whom the unexplained wealth restraining order has been made or is sought (the **relevant person**), the relevant court must not make an exclusion order for the property unless the court is satisfied that the property—
 - (a) was lawfully acquired by the relevant person; and
 - (b) is not tainted property in relation to any offence against a territory law, or a law of the Commonwealth, a State, another Territory or a foreign country; and

Note For the meaning of **in relation to**, see dict.

 - (c) is not required to be restrained to satisfy an unexplained wealth order; and
 - (d) does not have evidentiary value in any criminal proceeding.
- (3) If the application is made by someone other than the relevant person, the court must not make an exclusion order for the property unless it is satisfied that—
 - (a) the applicant has an interest in the property; and

Note For the meaning of **interest**, see the [Legislation Act](#), dict, pt 1.

 - (b) the applicant was not a party to the relevant serious criminal activity or any related serious criminal activity; and

- (c) the interest is not subject to the effective control of the relevant person; and

Note For the meaning of *effective control*, see s 14.

- (d) the interest is not tainted property in relation to a serious offence; and

- (e) if the interest was acquired completely or partly, or directly or indirectly, from the relevant person—the interest was acquired honestly and for sufficient consideration and the applicant took reasonable care to establish that the interest may be lawfully acquired by the applicant; and

- (f) the property does not have evidentiary value in any criminal proceeding.

- (4) An exclusion order must state the property to which it applies.

Part 9 Crimes (Sentence Administration) Act 2005

33 Application—pt 3.1 New section 10 (1) (b) (ia)

before subsection (1) (b) (i), insert

- (ia) section 72 (Suspension or cancellation of intensive correction order—recommittal to full-time detention);

34 Definitions—ch 4 Section 23 (1), definition of *recommitted*, new paragraph (aa)

before paragraph (a), insert

- (aa) section 72 (Suspension or cancellation of intensive correction order—recommittal to full-time detention);

35 Definitions—ch 5 Section 40, definition of *intensive correction order*

substitute

intensive correction order—

- (a) see the [Crimes \(Sentencing\) Act 2005](#), section 11; and
(b) if the term of the intensive correction order is extended under section 80—includes the order as extended.

36 New section 43A

in part 5.2, insert

43A Intensive correction order—end

An intensive correction order for an offender ends—

- (a) at the end of the term of the order; or

- (b) if the order is cancelled earlier under part 5.6 (Supervising intensive correction)—when the cancellation takes effect.

Note An **intensive correction order** includes the term of the order as extended under s 80 (see s 40).

37 Section 69 (4), new note

insert

Note For when an intensive correction order ends, see s 43A.

38 Section 80

substitute

80 Intensive correction orders—outstanding warrants—extension of sentence

- (1) This section applies if a warrant is issued for an offender's arrest under this chapter.
- (2) This section also applies if a warrant is issued for an offender's arrest under section 206 (2), because—
 - (a) the offender failed to appear before the board in accordance with a notice under section 63 (Notice of inquiry—breach of intensive correction order obligations); or
 - (b) a judicial member of the board considers that an offender will not appear before the board in accordance with a notice under section 63.
- (3) For each period during which a warrant is outstanding and the offender is not in custody (an **outstanding warrant period**)—
 - (a) the offender is taken not to perform their sentence by intensive correction; and
 - (b) the term of the offender's intensive correction order, and the term of the sentence, are automatically extended by the outstanding warrant period.

(4) In this section:

in custody means—

- (a) remanded in custody under a territory law or a law of the Commonwealth or a State; or
- (b) detained at a place under the *Mental Health Act 2015*.

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

**39 Registrar to send penalty notice
Section 116C (2), new note**

insert

Note More than 1 penalty notice may be given to an offender as a result of a conviction or order by the Supreme Court or Magistrates Court. For example, a penalty notice may be given in relation to a fine payable under a fine order under the *Crimes (Sentencing) Act 2005* in relation to the conviction or order and another penalty notice may be given in relation to a victims services levy imposed under the *Victims of Crime Act 1994* in relation to the same conviction or order.

**40 Notice to victims for parole inquiry
Section 124 (1) (a) (i)**

omit

a written submission

substitute

a submission, orally or in writing,

41 Section 124 (1) (a) (ii)

before

in writing

insert

orally or

42 Section 124 (1) (b)

omit

in writing

43 New section 124 (1) (ba)

insert

- (ba) a statement to the effect that a victim may ask the board not to give the submission or concern to the offender or another person;

Note For how the board is to handle information, see s 192.

44 Section 124 (2)

omit

make a written submission, or express concern, to the board in writing

substitute

make a submission, or express concern, to the board

**45 Parole applications—notice of hearing
Section 127 (3) (b)**

omit

documents

substitute

information

46 Section 192*substitute***192 Confidentiality of board information**

- (1) The board must ensure, as far as practicable, that board information given to an offender does not contain any of the following details about any victim of the offender:
 - (a) the victim's home or business address;
 - (b) any email address for the victim;
 - (c) any contact phone or fax number for the victim.
- (2) The board must ensure, as far as practicable, that board information is not given to a person if a judicial member of the board considers there is a substantial risk that giving it to the person would—
 - (a) adversely affect the security or good order and discipline of a correctional centre or a NSW correctional centre; or
 - (b) jeopardise the conduct of a lawful investigation; or
 - (c) endanger the person or anyone else; or
 - (d) otherwise prejudice the public interest.
- (3) In this section:
board information—
 - (a) means information disclosed to, or obtained by, the board in the exercise of its functions; and
 - (b) includes—
 - (i) information disclosed or obtained orally or in writing; and
 - (ii) a document, or part of a document, under the control of the board.

give, information to a person, includes make the contents of a document known to the person.

Examples

- read the document to the person
- show the document to the person

**47 Arrest of offender for board hearing
Section 206 (2), new note**

insert

Note An offender's intensive correction order and sentence are extended by the period during which a warrant is outstanding under this section and the offender is not in custody (see s 80).

**48 Custody of offender during board hearing adjournment
Section 210 (3) (a)**

substitute

- (a) for a period not longer than is reasonably necessary, and in any event not longer than 8 days for each adjournment, having regard to—
- (i) the purpose of the adjournment; and
 - (ii) the personal circumstances of the offender; and
 - (iii) the interests of justice; and

49 New section 210 (5) to (7)

after the note, insert

- (5) If the offender is not in custody, the board may also issue a warrant for the offender to be arrested and placed in the director-general's custody.

- (6) The warrant must—
- (a) be in writing signed by the judicial member or the secretary of the board; and
 - (b) be directed to all police officers or a named police officer; and
 - (c) order the arrest of the offender.
- (7) A police officer who arrests the offender under the warrant must notify the board of the arrest as soon as practicable (but within 12 hours) after the arrest.

**50 Record of board hearings
Section 211 (2)**

omit

documents

substitute

information

51 Section 212A

omit

**52 Release on licence—notice of board inquiry
Section 291 (3)**

omit

documents

substitute

information

Part 10 Crimes (Sentencing) Act 2005

53 Fines—orders to pay
Section 14 (5), note

omit

Part 11 Criminal Code 2002

54 **Serious vilification**
Section 750 (1) (c) (iv)

omit

55 **New section 750 (1) (c) (via)**

insert

(via) sex characteristics;

56 **Section 750 (2), definition of *intersex status***

omit

57 **Section 750 (2), new definition of *sex characteristics***

insert

sex characteristics—see the [Discrimination Act 1991](#), dictionary.

Part 12 Discrimination Act 1991

58 Protected attributes Section 7 (1) (k)

omit

59 New section 7 (1) (va)

insert

(va) sex characteristics;

60 Unlawful vilification Section 67A (1) (d)

omit

61 New section 67A (1) (fa)

insert

(fa) sex characteristics;

62 Dictionary, definition of *gender identity*, except note

substitute

gender identity means the gender expression or gender-related identity, appearance or mannerisms or other gender-related characteristics of a person, with or without regard to the person's designated sex at birth.

63 Dictionary, definition of *intersex status*

omit

64 Dictionary, new definition of *sex characteristics*

insert

sex characteristics—

- (a) means a person's physical features relating to sex; and
- (b) includes—
 - (i) genitalia and other sexual and reproductive parts of the person's anatomy; and
 - (ii) the person's chromosomes, hormones and secondary physical features emerging as a result of puberty.

65 Dictionary, definition of *sexuality*

substitute

sexuality includes heterosexuality, homosexuality and bisexuality.

Part 13 Domestic Animals Act 2000

66 Offences against Act—application of Criminal Code etc Section 4A, note 1, dot point

omit

- s 72K (Offence—selling and advertising requirements)

substitute

- s 72K (Offence—breeding, selling and advertising requirements)

67 Section 72K

substitute

72K Offence—breeding, selling and advertising requirements

- (1) A person commits an offence if the person—
- breeds a dog or cat; and
 - does not hold a breeding licence.
- Maximum penalty: 50 penalty units.
- (2) A person commits an offence if the person—
- sells or gives away a dog or cat; and
 - does not give the buyer or recipient of the dog or cat—
 - if the person holds a breeding licence—the person's breeding licence number; or
 - in any other case—the person's rehoming identifier and the unique identifier from the dog or cat's microchip.

Maximum penalty: 50 penalty units.

- (3) A person commits an offence if the person—
- (a) publishes a statement that either—
 - (i) constitutes an invitation to buy or otherwise acquire a dog or cat from the person; or
 - (ii) could reasonably be understood to constitute an invitation to buy or otherwise acquire a dog or cat from the person; and
 - (b) does not include in the publication—
 - (i) if the person holds a breeding licence—the person’s breeding licence number; or
 - (ii) in any other case—the person’s rehoming identifier and the unique identifier from the dog or cat’s microchip.

Maximum penalty: 10 penalty units.

- (4) An offence against this section is a strict liability offence.
- (5) In this section:

rehoming identifier, of a person, means—

- (a) if a person has an identifier for rehoming a dog or cat under the law of a State—the person’s identifier; or
- (b) in any other case—either of the following:
 - (i) if the person has an ABN—the person’s ABN;
 - (ii) if the person does not have an ABN—the person’s name.

68 Dictionary, new definition of *serious dog bite*

insert

serious dog bite means a wound from a single dog bite that has at least 1 puncture deeper than half the length of the dog’s canine tooth, with or without bruising or lacerations around the wound.

69 Dictionary, definition of *serious injury*

substitute

serious injury, to a person or animal, means either of the following:

- (a) any injury (including the cumulative effect of more than 1 injury) that—
 - (i) endangers, or is likely to endanger, the person or animal's life; or
 - (ii) is, or is likely to be, a significant or longstanding injury;
- (b) 1 or more serious dog bites.

Part 14

Employment and Workplace Safety Legislation Amendment Act 2020

70 Commencement Section 2 (2) and (3) and notes

substitute

- (2) Parts 2 and 3, sections 105 to 108 and schedule 1, parts 1.1 to 1.3 commence on a day fixed by the Minister by written notice.

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

Note 2 If a provision of pt 3, sections 105 to 108 or sch 1, parts 1.2 and 1.3, has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see [Legislation Act](#), s 79).

Part 15 Fair Trading (Australian Consumer Law) Act 1992

71 New division 5.1A

insert

Division 5.1A Conciliation of consumer complaints

Subdivision 5.1A.1 Preliminary

34A Application—div 5.1A

This division applies in relation to a consumer complaint made by a consumer to the commissioner if the value of the remedy sought in relation to the complaint is not more than \$5 000.

34B Definitions—div 5.1A

In this division:

acquire—see the *Australian Consumer Law (ACT)*, section 2 (1).

business means a person in trade or commerce, a supplier, a manufacturer or another person to whom the consumer legislation applies.

compulsory conciliation notice—see section 34G.

consumer—

- (a) in relation to the *Australian Consumer Law (ACT)*—see the *Australian Consumer Law (ACT)*, section 2 (1); or
- (b) in relation to any other consumer legislation—means a person who acquires goods or services from a business for personal, domestic or household use or consumption.

consumer complaint—

- (a) means a complaint by a consumer about a civil dispute with a business in relation to consumer or fair trading issues and practices; and
- (b) includes a complaint by a consumer about a contravention of the consumer legislation by the business.

consumer legislation means any of the following:

- (a) the *Agents Act 2003*;
- (b) the *Australian Consumer Law (ACT)*;
- (c) the *Fair Trading (Motor Vehicle Repair Industry) Act 2010*;
- (d) the *Pawnbrokers Act 1902*;
- (e) the *Sale of Motor Vehicles Act 1977*;
- (f) the *Second-hand Dealers Act 1906*.

party, to a conciliation of a consumer complaint, means a person mentioned in section 34E in relation to the complaint.

34C Meaning of *conciliation*—div 5.1A

- (1) In this division, ***conciliation*** of a consumer complaint involves the commissioner acting as an impartial third party to help the parties to the conciliation to endeavour to resolve the matters raised by the complaint by agreement.
- (2) The parties to the conciliation decide the outcome of the conciliation, usually with advice from the commissioner.

Subdivision 5.1A.2 Conciliation

34D Conciliation

The commissioner may conciliate a consumer complaint, or part of a consumer complaint, if—

- (a) the commissioner is satisfied that the matters raised by the complaint, or part of the complaint, are appropriate for conciliation; and

Example

A consumer complaint is not appropriate for conciliation if it is before the ACAT or if the conduct complained about may constitute a criminal offence.

- (b) the consumer who made the complaint agrees.

34E Parties to conciliation

The parties to a conciliation of a consumer complaint are the consumer who made the complaint and the business that is the subject of the complaint.

34F Attendance at conciliation

- (1) A consumer who makes a consumer complaint must attend a conciliation of the complaint unless—
 - (a) the consumer is a child or a person with disability, and another person attends on behalf of the consumer; or
 - (b) the commissioner consents to another person attending the conciliation on behalf of the consumer.
- (2) The commissioner may agree to a person accompanying the consumer at the conciliation.

- (3) If a business receives a compulsory conciliation notice, the business must attend the conciliation at the time and place mentioned in the notice.

Note A business that contravenes s (3) is liable to a civil penalty of not more than \$5 000 (see sdiv 5.1A.3).

- (4) Subsection (3) does not apply to a business if it has a reasonable excuse for not attending the conciliation at the time or place mentioned in the notice.

Note A business has an evidential burden in relation to the matters mentioned in s (4) (see s 34T).

- (5) A party to a conciliation must not be represented by a lawyer unless—
- (a) another party to the conciliation is a lawyer; or
 - (b) each party to the conciliation agrees; or
 - (c) the commissioner is satisfied that the party would be unfairly disadvantaged if not represented by a lawyer.
- (6) If the commissioner agrees, a person may attend a conciliation by telephone or other electronic means.

34G Compulsory conciliation notice

- (1) The commissioner may, by written notice (a ***compulsory conciliation notice***), require a business to attend a conciliation in relation to a consumer complaint if—
- (a) the business is the subject of the complaint; and
 - (b) the consumer who made the complaint agrees.
- (2) The compulsory conciliation notice must state the time and place that the business is required to attend the conciliation.

34H Conduct of conciliation

Conciliation is to be conducted in the way the commissioner decides.

Examples

- 1 the commissioner may decide that a consumer complaint is to be split and the parts are to be conciliated separately
- 2 the commissioner may decide to conciliate a consumer complaint by holding a conference with the parties

34I Conciliated agreements

- (1) If a consumer complaint is resolved by agreement at conciliation, the commissioner must help the parties to make a written record of the agreement they have reached (the *conciliation agreement*).
- (2) A conciliation agreement must be signed by each party to the conciliation.
- (3) The commissioner must give each party a copy of the conciliation agreement.

Note The ACAT may make an order in accordance with a conciliation agreement for a consumer complaint (see *ACT Civil and Administrative Tribunal Act 2008*, s 55B).

34J End of conciliation

- (1) Conciliation of a consumer complaint ends when—
 - (a) agreement is reached on the matters raised by the complaint and the parties end the conciliation; or
 - (b) the parties agree to end the conciliation; or
 - (c) the consumer withdraws from the conciliation; or
 - (d) the commissioner is satisfied that the conciliation is unlikely to be successful.

- (2) When the conciliation ends, the commissioner must, as soon as practicable, tell each party to the conciliation that it has ended and why it has ended.

34K Admissibility of evidence

- (1) This section applies to—
 - (a) a communication made between people attending a conciliation (including the commissioner); and
 - (b) a document (whether delivered or not) that has been prepared in relation to the conciliation.
- (2) The *Evidence Act 2011*, section 131 (Exclusion of evidence of settlement negotiations) applies to a communication or document to which this section applies as if the communication or document were a communication or document mentioned in that [Act](#), section 131 (1).

Subdivision 5.1A.3 Civil penalties—business failing to attend conciliation

34L Definitions—sdiv 5.1A.3

In this subdivision:

civil penalty order means an order made by the Magistrates Court under section 34M (3).

civil penalty provision means section 34F (3).

34M Civil penalty orders

- (1) The commissioner may apply to the Magistrates Court for an order that a business alleged to have contravened the civil penalty provision pay the Territory a pecuniary penalty of not more than \$5 000.
- (2) The commissioner must make the application within 6 years after the alleged contravention.

- (3) If the Magistrates Court is satisfied that the business has contravened the civil penalty provision, the court may order the business to pay to the Territory a pecuniary penalty of an amount the court determines to be appropriate for the contravention.
- (4) In determining an amount under subsection (3), the court must take into account the following:
- (a) the nature and circumstances that led to the contravention;
 - (b) the nature and extent of any loss suffered by the commissioner because of the contravention;
 - (c) the size of the business;
 - (d) whether the business has previously contravened the civil penalty provision and the circumstances of the previous contravention;

Examples—circumstances of previous contravention

- 1 the number of previous contraventions by the business in relation to the dispute being conciliated
 - 2 the number of previous contraventions by the business in relation to conciliations for other disputes
 - 3 whether the circumstances of a previous contravention is similar to the circumstances of the current contravention
- (e) any other matter the court considers relevant.

34N Civil enforcement of penalty

A pecuniary penalty under a civil penalty order is a debt owing to the Territory by the business in relation to whom the order is made.

Note An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).

34O Multiple contraventions of civil penalty provision

- (1) The Magistrates Court may make a single civil penalty order against a business for multiple contraventions of a civil penalty provision if proceedings for the contraventions are founded on the same facts, or if the contraventions form, or are part of, a series of contraventions of the same or a similar character.
- (2) However, the penalty must not exceed the sum of the maximum penalties that could be ordered if a separate penalty were ordered for each contravention.

34P Proceedings may be heard together

The Magistrates Court may direct that 2 or more proceedings for civil penalty orders are to be heard together.

34Q Civil evidence and procedure rules for civil penalty orders

The Magistrates Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order.

34R Civil penalty provisions—no fault element

In proceedings for a civil penalty order against a business for a contravention of a civil penalty provision, it is not necessary to prove any fault element in relation to the contravention.

Examples—fault element

- 1 intention
- 2 knowledge
- 3 negligence
- 4 recklessness

34S Civil penalty provisions—contravention by corporation representative

- (1) If a civil penalty provision is contravened by a representative of a corporation acting within the actual or apparent scope of the representative's employment, or within the representative's actual or apparent authority, the contravention must also be attributed to the corporation.

- (2) In this section:

representative, of a corporation, means an employee, agent or officer of the corporation.

34T Reasonable excuse—burden of proof

If a business wishes to rely on section 34F (4) in a proceeding for a civil penalty order, the business has an evidential burden in relation to the matter.

72 Dictionary, note 2

insert

- lawyer

73 Dictionary, new definition of *acquire*

insert

acquire, for division 5.1A (Conciliation of consumer complaints)—see section 34B.

74 Dictionary, definition of *business*

substitute

business—

- (a) for this Act, other than division 5.1A—see the [Australian Consumer Law \(ACT\)](#), section 2 (1); and
- (b) for division 5.1A (Conciliation of consumer complaints)—see section 34B.

75 Dictionary, new definitions

insert

civil penalty order, for subdivision 5.1A.3 (Civil penalties—business failing to attend conciliation)—see section 34L.

civil penalty provision, for division 5.1A.3 (Civil penalties—business failing to attend conciliation)—see section 34L.

compulsory conciliation notice, for division 5.1A (Conciliation of consumer complaints)—see section 34G.

conciliation, for division 5.1A (Conciliation of consumer complaints)—see section 34C.

76 Dictionary, definition of *consumer*

substitute

consumer—

- (a) for this Act, other than division 5.1A—see the [Australian Consumer Law \(ACT\)](#), section 2 (1); and
- (b) for division 5.1A (Conciliation of consumer complaints)—see section 34B.

77 Dictionary, new definitions

insert

consumer complaint, for division 5.1A (Conciliation of consumer complaints)—see section 34B.

consumer legislation, for division 5.1A (Conciliation of consumer complaints)—see section 34B.

party, for division 5.1A (Conciliation of consumer complaints)—see section 34B.

Part 16 Fair Trading (Fuel Prices) Act 1993

78 New part 1 heading

insert

Part 1 Preliminary

79 New part 2 heading

after section 2A, insert

Part 2 Determination of fuel prices

80 Commissioner may make recommendation to Minister Section 3 (2) (d)

omit

Prices Surveillance Authority

substitute

Australian Competition and Consumer Commission

81 New section 3 (3)

insert

(3) In this section:

Australian Competition and Consumer Commission means the Australian Competition and Consumer Commission established under the *Competition and Consumer Act 2010* (Cwlth), section 6AA.

82 Price display requirements
Section 5A (2), new definition of *discounted fuel price*

insert

discounted fuel price, of a specified fuel, means the price per unit of measurement of the fuel payable on the sale of the fuel by retail after any discount is applied.

Examples—units of measurement of fuel

- 1 for leaded petrol and unleaded petrol, the unit of measurement is a litre
- 2 for hydrogen, the unit of measurement is a kilogram
- 3 for electricity, the unit of measurement is a kilowatt hour

83 New part 3 heading etc

after section 7, insert

Part 3 Regulated transfer of certain fuels**7A Definitions—pt 3**

- (1) In this part:

fuel means leaded petrol, unleaded petrol or distillate.

regulated transfer means a single consignment of a fuel that is—

- (a) at least 2 000L; and
- (b) delivered to or withdrawn from a place in the ACT under, or because of, an agreement for the sale, purchase or exchange of fuel.

- (2) In this section:

leaded petrol means petrol other than unleaded petrol.

unleaded petrol means petrol that—

- (a) contains not more than 0.013g of lead per litre; and
- (b) contains not more than 0.0013g of phosphorous per litre; and
- (c) contains not more than 0.10% of sulphur by weight; and
- (d) has a research octane number not less than 91.0; and
- (e) has a motor octane number of not less than 82.0.

84 New part 4 heading

after section 11, insert

Part 4 Miscellaneous

85 Dictionary, definition of *base wholesale price*

omit

per litre

substitute

per unit of measurement of the fuel

86 Dictionary, definition of *discounted fuel price*

omit

87 Dictionary, definition of *fuel*

substitute

fuel—

- (a) for this Act generally—
 - (i) means a fuel mentioned in the *Fuels Rationing Act 2019*, section 6; and

- (ii) includes electricity; and
- (b) for part 3 (Regulated transfer of certain fuels)—see section 7A (1).

88 Dictionary, definitions of *Prices Surveillance Authority* and *regulated transfer*

omit

89 Dictionary, definitions of *retail margin*, *retail price* and *wholesale price*

omit

per litre

substitute

per unit of measurement of the fuel

Part 17 Fuels Rationing Act 2019

90 **Meaning of *fuel*** **Section 6 (1), definition of *fuel*, paragraph (d)**

substitute

- (d) any other fuel manufactured for use in an internal combustion engine; or
- (da) hydrogen; or

91 **Section 6 (1), definition of *fuel*, examples**

substitute

Examples—par (a)

- compressed natural gas
- liquefied natural gas

Examples—par (b)

- E10 petrol
- leaded petrol
- liquefied petroleum gas
- unleaded petrol

Example—par (c)

diesel

Examples—par (d)

- biodiesel
- ethanol fuel

Part 18 Gaming Machine Act 2004

92 Cancellation of authorisation certificate because of cancellation etc of general and on licences Section 64 (2)

substitute

- (2) If the general licence or on licence ceases to be in force under the [Liquor Act 2010](#), the authorisation certificate is cancelled.

93 Rendering gaming machines inoperable on authorisation certificate ceasing to be in force Section 131 (a), note

substitute

Note Section 64 (2) provides that a person's authorisation certificate for premises is cancelled if the person's general or on licence for the premises ceases to be in force.

Part 19 Human Rights Commission Act 2005

94 Commission's obligation to be prompt and efficient Section 45 (2) (d)

after

discrimination complaint

insert

(other than a matter under commission-initiated consideration)

95 Complainant's obligations in relation to complaint Section 46, note 1

omit

or (d)

96 Referring complaints for conciliation Section 51 (1), except note

substitute

- (1) The commission may, at any time, conciliate a complaint, or matter that forms part of a complaint, if satisfied that the complaint or matter is appropriate for conciliation.

97 Section 53

substitute

53 Definitions—div 4.2A

In this division:

commission-initiated discrimination matter means a matter or complaint under commission-initiated consideration that involves an unlawful act.

complaint—

- (a) means a discrimination complaint; and
- (b) includes a commission-initiated discrimination matter.

unlawful act means an unlawful act under the *Discrimination Act 1991*.

98 Section 53A heading

substitute

53A Referral of discrimination complaints other than commission-initiated discrimination matters

99 New section 53A (3)

after the note, insert

- (3) In this section:

complaint does not include a commission-initiated discrimination matter.

**100 Late application in exceptional circumstances
New section 53B (5)**

insert

- (5) In this section:

complaint does not include a commission-initiated discrimination matter.

101 New section 53BA

insert

53BA Referral of commission-initiated discrimination matters

- (1) This section applies if a commission-initiated report is prepared under section 84 for a commission-initiated discrimination matter.
- (2) The commission may refer a commission-initiated discrimination matter to the ACAT within 60 days after the report has been prepared.
- (3) If the commission refers a commission-initiated discrimination matter to the ACAT, the commission must give written notice of the referral to the person complained about.

**102 Parties to ACAT proceeding on discrimination complaint
Section 53C, new note**

insert

Note The commission is the complainant in relation to a commission-initiated consideration (see dict, def *complainant*).

**103 Relationship between conciliation and consideration
Section 61**

omit

**104 Conciliated agreements
Section 62 (1)**

omit

must

substitute

may

105 Section 62 (2)

substitute

- (2) If a conciliation agreement is made, each party must sign the agreement.

**106 Power to ask for information, documents and other things
Section 73 (4), note 2**

omit

s 78 (1) (d)

substitute

s 78 (1) (c)

**107 When complaints can be closed
Section 78 (1) (d)**

omit

in writing

**108 Expiry—vulnerable person complaint provisions
Section 105B (1) (f)**

omit

109 Dictionary, new definition of *commission-initiated discrimination matter*

insert

commission-initiated discrimination matter, for division 4.2A (Discrimination complaints to ACAT)—see section 53.

110 Dictionary, definition of *complaint*, new paragraph (c)

insert

- (c) for division 4.2A (Discrimination complaints to ACAT)—see section 53.

Part 20 Liquor Act 2010

111 Licence—conditions Section 31 (2) (b)

omit

, renewed

112 Section 32

substitute

32 Licence—period in force

- (1) A licence comes into force on the day it is issued.
- (2) A licence continues in force until it is cancelled or surrendered.

32A Licence—annual fee

A licensee must pay to the commissioner the annual fee determined for the licence.

Note A fee may be determined under s 227 for this provision.

113 Division 2.5 heading

substitute

Division 2.5 Licences—amendment, transfer, etc

114 Sections 42 and 43

omit

**115 Offence—fail to return licence
Section 46 (1) (a)**

substitute

- (a) ceases to be a licensee before the licence ends under section 32 (Licence—period in force); and

**116 What is *suitability information* about premises?
Section 78, note 2**

substitute

Note 2 The commissioner must consider the suitability information for premises when deciding to issue or amend a licence, or issue, amend or renew a permit. The commissioner does not consider the suitability information for premises when deciding an application to transfer a licence to someone else (see s 41).

**117 Determination of fees
Section 227 (2)**

omit

118 Section 227 (4)

omit

**119 Regulation-making power
Section 229 (2) (b) (iii)**

substitute

- (iii) the term of a permit;

120 New part 24*insert***Part 24 Validations and transitional****270 Validation of fees**

- (1) This section applies to a fee, charge or other amount—
 - (a) determined by the Minister, under section 227, for section 42 (Licence—application for renewal); and
 - (b) payable during the relevant period; and
 - (c) collected by the Territory in relation to continuing licences.
- (2) The fee, charge or other amount is taken to have been validly collected by the Territory in accordance with a determination properly—
 - (a) made by the Minister under section 227, in relation to continuing licences; and
 - (b) notified under the [Legislation Act](#), section 61; and
 - (c) presented to the Legislative Assembly under the [Legislation Act](#), section 64 (1).

- (3) In this section:

continuing licence means a licence issued on or after 1 July 2017.

relevant period means the period beginning on 1 July 2017 and ending on the commencement of this part.

271 Transitional—Liquor (Fees) Determination 2019

The [Liquor \(Fees\) Determination 2019](#) (DI2019-159), schedule, item 501 is revoked.

272 Expiry—pt 24

This part expires on the day it commences.

Note If a law validates something, the validating effect of the law does not end only because of the repeal of the law (see [Legislation Act](#), s 88 (1)).

**121 Reviewable decisions
Schedule 1, item 5**

omit

Part 21 Liquor Regulation 2010

**122 Licence form—Act, s 30 (1) (b) (vii)
Section 6 (1) (d)**

omit

**123 Licence term—Act, s 32 (2)
Section 8**

omit

**124 Licence maximum renewal period—Act, s 42 (1)
Section 12**

omit

**125 Suitability of premises—cumulative impact
Section 15 (2) (c) and (d) and note**

substitute

(c) the number of incidents—

- (i) reported on or after 1 July 2017 by existing licensed premises and existing permitted premises near the proposed premises; and

Note A licensee or permit holder must give the commissioner a report about any incident that happens at premises—see the [Act](#), s 131.

- (ii) recorded before 1 July 2017 by existing licensed premises and existing permitted premises near the proposed premises in the incident registers of the premises;

126 Section 15 (3)

substitute

(3) In this section:

incident register means the incident register required under the [Act](#), section 131, as in force immediately before 1 July 2017.

Part 22 Magistrates Court Act 1930

127 Minute of decision and notice to defendant Section 141 (2)

omit

must

substitute

may

128 Section 141 (2), note

omit

Part 23 Magistrates Court (Domestic Animals Infringement Notices) Regulation 2005

**129 Domestic animals legislation infringement notice
offences and penalties
Schedule 1, part 1.1, items 40 and 41**

substitute

40	72K (1)	breeding dog or cat without licence	50	1 500
41	72K (2)	selling or giving away dog or cat without providing required information	50	1 500
41A	72K (3)	failing to include required information when publishing statement in relation to dog or cat	10	250

Part 24 Motor Accident Injuries Act 2019

130 Meaning of *driving offence* Section 41, definition of *driving offence*, paragraph (c) (iii)

omit

(Driver etc intoxicated)

substitute

(Use vehicle or animal on road under influence of alcohol or drug)

131 No entitlement—serious offences Section 48 (7), definition of *serious offence*, paragraph (b) (ix)

omit

(Driver etc intoxicated)

substitute

(Use vehicle or animal on road under influence of alcohol or drug)

132 Section 48 (7), definition of *serious offence*, new paragraph (b) (x)

insert

- (x) section 24A, if the offence relates to driving under the influence of a drug;

Part 25 Residential Tenancies Act 1997

133 Adaptable housing—advertising Section 11AAA (1) (a)

omit

a unit

substitute

premises

134 Section 11AAA (1) (b) and (c)

omit

unit is

substitute

premises are

135 New section 11AAA (3)

insert

(3) In this section:

adaptable housing dwelling—see the [Civil Law \(Sale of Residential Property\) Act 2003](#), dictionary.

136 Lessor's obligations Section 12 (4), definitions of *adaptable housing dwelling* and *unit*

omit

Part 26 **Road Transport (Alcohol and Drugs) Act 1977**

137 **Section 24A heading**

substitute

24A **Use vehicle or animal on road under influence of alcohol or drug**

138 **Section 24A (1)**

after

alcohol

insert

or a drug

Part 27 Road Transport (Offences) Regulation 2005

139 Short descriptions, penalties and demerit points Schedule 1, part 1.3, item 18, column 3

after

alcohol

insert

/drug

Part 28 Spent Convictions Act 2000

140 New division 2.1 heading

insert

Division 2.1 Spent convictions—general

141 Which convictions can become spent? Section 11 (2) (b)

substitute

- (b) a conviction for a sexual offence, other than a youth sexual offence conviction;

142 When is a conviction spent? Section 12 (1)

substitute

- (1) A conviction (other than a youth sexual offence conviction) is spent on completion of the relevant crime-free period, unless it is earlier spent under this section.
- (1A) A youth sexual offence conviction is spent on the making of an order under section 14F.

143 New division 2.2 etc

after section 14, insert

Division 2.2 Spent convictions—youth sexual offences**14A Meaning of *youth sexual offence conviction*—pt 2**

In this part:

youth sexual offence conviction means a conviction for a sexual offence—

- (a) where the person convicted was not dealt with as an adult in relation to the conviction; and
- (b) for which—
 - (i) a sentence of imprisonment of not longer than 6 months has been imposed; or
 - (ii) no sentence of imprisonment has been imposed.

14B Meaning of *victim*—div 2.2

- (1) For this division, each of the following is a *victim* of an offender:
 - (a) a person (a *primary victim*) who suffers harm because of an offence by the offender;
 - (b) if a primary victim dies because of an offence by the offender— a person who was financially or psychologically dependent on the primary victim immediately before the primary victim's death.
- (2) In this section:

because of—see the [Crimes \(Sentencing\) Act 2005](#), section 47.

harm—see the [Crimes \(Sentencing\) Act 2005](#), section 47.

14C Application for youth sexual offence conviction to be spent

- (1) A person with a youth sexual offence conviction may, on or after completion of the relevant crime-free period, apply to the court for an order that the conviction is spent.
- (2) An application must—
 - (a) be in writing; and
 - (b) state the following:
 - (i) the applicant's name, address and date of birth;
 - (ii) the applicant's name and address at the time of the conviction;
 - (iii) to the extent known to the applicant, the date when and the court where the applicant was convicted.
- (3) In this section:
court means—
 - (a) if the applicant was convicted in the Supreme Court—the Supreme Court; or
 - (b) if the applicant was convicted in the Magistrates Court, or does not know which court they were convicted in—the Magistrates Court.

14D Chief police officer and DPP to be notified of application

- (1) The applicant must give written notice of the application to the chief police officer and director of public prosecutions.
- (2) The chief police officer and director of public prosecutions may make submissions, orally or in writing, in relation to the application.

- (3) Before deciding whether to make submissions, the director of public prosecutions must—
- (a) take reasonable steps to give notice of the application to the victim of the offender; and

Example

notify Victim Support ACT of the application

- (b) take into account any views expressed by the victim.

14E Transfer of application to other courts

- (1) If an application made to the Magistrates Court relates to a conviction by the Supreme Court, the Magistrates Court may transfer the application to the Supreme Court.
- (2) If an application made to the Supreme Court relates to a conviction by the Magistrates Court, the Supreme Court may transfer the application to the Magistrates Court.
- (3) If the applicant is under 18 years old when an application is made, the court to which the application is made may transfer the application to the Children's Court.

14F Order for spent youth sexual offence conviction

- (1) The court hearing an application may order that a youth sexual offence conviction is spent if satisfied it is in the public interest to make the order.
- (2) In considering whether it is in the public interest to make an order, the court must have regard to the following:
- (a) the nature, circumstances and seriousness of the offence for which the applicant was convicted;
- (b) the length of the sentence imposed;

- (c) the length of time since the offence was committed;
- (d) any views of a victim of the offence;
- (e) the circumstances of the applicant;

Example

whether the conviction restricts the applicant from engaging in a particular trade

- (f) any risk posed by the applicant to public safety if the order was made.
- (3) The hearing of the application may be conducted in open court or in the absence of the public as the court directs, having regard to—
- (a) the victim’s right to privacy; and
 - (b) whether the identity of the applicant was protected in relation to the offence to which the application relates; and
 - (c) anything else the court considers relevant.

Division 2.3 Spent convictions—revival

144 Dictionary, new definitions

insert

victim, for division 2.2 (Spent convictions—youth sexual offences)—see section 14B.

youth sexual offence conviction, for part 2 (Spent convictions)—see section 14A.

Part 29 Unit Titles (Management) Act 2011

145 Owners corporation must have bank account Section 68 (1), new note

insert

Note 2 An owners corporation may open and maintain more than 1 account. Words in the singular number include the plural (see [Legislation Act](#), s 145 (b)).

146 Requirements for notice of general meetings Schedule 3, section 3.7 (2) (a)

substitute

(a) a proxy form; and

Note If a form is approved under s 146 for this provision, the form must be used.

147 Proxy votes Schedule 3, section 3.26 (1), new notes

insert

Note 1 If a form is approved under s 146 for this provision, the form must be used.

Note 2 Also, a proxy form must accompany the notice of general meeting (see s 3.7 (2) (a)).

148 Schedule 3, section 3.26 (2) and note

omit

Part 30 Victims of Crime Act 1994

149 Notice of levy Section 25

omit

Endnotes

- 1 **Presentation speech**
Presentation speech made in the Legislative Assembly on 18 June 2020.
 - 2 **Notification**
Notified under the [Legislation Act](#) on 27 August 2020.
 - 3 **Republications of amended laws**
For the latest republication of amended laws, see www.legislation.act.gov.au.
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I certify that the above is a true copy of the Justice Legislation Amendment Bill 2020, which was passed by the Legislative Assembly on 20 August 2020.

Clerk of the Legislative Assembly