



Australian Capital Territory

Justice and Community Safety Legislation Amendment Act 2023 (No 3)

A2023-57

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Australian Capital Territory

Justice and Community Safety Legislation Amendment Act 2023 (No 3)

A2023-57

An Act to amend legislation about justice and community safety, 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 and Community Safety Legislation Amendment Act 2023 (No 3)*.

2 Commencement

- (1) This Act (other than the following provisions) commences on the day after this Act's notification day:
- part 6
 - section 54
 - schedule 1, part 1.7.

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

- (2) Part 6 commences immediately after the commencement of the [Discrimination Amendment Act 2023](#), section 9.
- (3) Section 54 commences on a day fixed by the Minister by written notice.

Note 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)).

- (4) If section 54 has not commenced within 18 months beginning on this Act's notification day, it automatically commences on the first day after that period.
- (5) The [Legislation Act](#), section 79 (Automatic commencement of postponed law) does not apply to section 54.

- (6) Schedule 1, part 1.7 commences on the later of—
- (a) the commencement of the *Planning (Consequential Amendments) Act 2023*, schedule 1, part 1.40; and
 - (b) the commencement of this Act, section 3.

3 Legislation amended

This Act amends the legislation mentioned in parts 2 to 19.

Note This Act also amends other legislation (see sch 1).

4 Legislation repealed

All notifiable instruments made under the following provisions are repealed:

- the *ACT Civil and Administrative Tribunal Act 2008*, section 117
- the *Legal Profession Act 2006*, section 587.

Part 2

**ACT Civil and Administrative
Tribunal Act 2008**

**5 Approved forms
Section 117 (3) and note**

omit

Part 3 Administration and Probate Act 1929

6 Interpretation for pt 3A Section 44, definition of *personal chattels*

substitute

personal chattels, in relation to an intestate, means the tangible personal property of the intestate, other than the following:

- (a) property used exclusively for a business purpose;
- (b) banknotes or coins, unless they are part of a collection made in pursuit of a hobby or another non-commercial purpose;
- (c) property held as a security;
- (d) property in which the intestate invested as a hedge against inflation or adverse currency movements, such as gold bullion or uncut diamonds;
- (e) an interest in land.

7 New section 49DA

insert

49DA Effect of disclaimer or forfeiture

- (1) This section applies if a person would be entitled to take an interest in an intestate estate but either—
 - (a) disclaims the interest; or
 - (b) is precluded by the forfeiture rule from obtaining the interest.
- (2) The person is taken to have died before the deceased person.

- (3) In this section:

forfeiture rule—see the *Forfeiture Act 1991*, dictionary.

8 Section 64

substitute

64 Notice before distribution of assets

- (1) An executor or administrator of a deceased person's estate may give public notice before distributing the assets of the estate.

Note 1 Public notice may be given before making a distribution under the following provisions:

- (a) the *Family Provision Act 1969*, s 21 (Protection of administrator);
- (b) the *Trustee Act 1925*, s 60 (Distribution after notice).

Note 2 If a form is approved for a particular purpose under the *Court Procedures Act 2004*, s 8 the form must be used for that purpose.

- (2) The public notice must state that—
- (a) a creditor or anyone else may give the executor or administrator their claim against the estate within the period stated in the notice, being at least 1 month after the notice is given; and
 - (b) the executor or administrator intends to distribute the estate after the later of the following:
 - (i) the end of the period stated in the notice;
 - (ii) 6 months after the day probate or administration was granted; and
 - (c) the executor or administrator will only consider claims that are given to the executor or administrator when distributing the estate.
- (3) The executor or administrator must consider each claim given within the period stated in the notice.

- (4) The executor or administrator is not liable to any person for any distributed assets if the executor or administrator—
- (a) gave notice under subsection (1); and
 - (b) did not have notice of the person's claim when the distribution was made.

9 **People entitled to inspect will of deceased person**
Section 126 (3), definition of *interested person*, new paragraph (j)

insert

- (j) a person prescribed by regulation.

10 **New section 129**

insert

129 **Regulation-making power**

The Executive may make regulations for this Act.

(4) In this section:

compliance statement means a statement signed by 2 members of the committee of the association certifying whether the provisions of this Act that apply to the association in relation to the financial year have, to the best of the members' knowledge at the time of lodging the statement, been complied with for—

- (i) the preparation of the annual statement of the association's accounts; and
- (ii) the reviewing or auditing of the accounts and the presentation of the required statement at the annual general meeting.

13 Cancellation of incorporation Section 93 (1) (e) and (f)

substitute

- (e) has not lodged an annual accounts document as required by the registrar-general; or
- (f) has lodged annual accounts documents in relation to the last 3 years and for each year a reviewer or auditor, in the course of the reviewer's or auditor's duties to examine the association's accounting records and other records, has stated that the reviewer or auditor is unable to determine if the association has been complying with this Act;

14 Section 93 (3) (e)

substitute

- (e) has lodged any required annual accounts documents; and
- (f) if subsection (1) (f) applies—has taken reasonable steps to ensure future compliance with this Act.

15 New section 93 (9)

insert

(9) In this section:

annual accounts document means a document mentioned in section 79 (1).

16 Dictionary, definition of *annual return*

omit

Part 5 Casino Control Act 2006

17 Dictionary, definition of *financial year*

substitute

financial year means—

- (a) the period prescribed by regulation; or
- (b) if no period is prescribed—12 months beginning on 1 July.

Part 7 Domestic Violence Agencies Act 1986

19 **New section 19**

insert

19 **Regulation-making power**

The Executive may make regulations for this Act.

Part 8 Family Provision Act 1969

20 Eligibility Section 7 (3) (b)

substitute

- (b) a parent of the grandchild was alive on the day the deceased person died but the grandchild, immediately before the deceased person died—
- (i) was not maintained by a parent; and
 - (ii) was maintained by the deceased person.

Part 9 Freedom of Information Act 2016

21 Section 68

substitute

68 Access to information for ombudsman review

The ombudsman, in undertaking an ombudsman review, is entitled to full and free access at reasonable times to all relevant government information of the agency or Minister concerned, including information subject to legal professional privilege.

Part 10 Human Rights Commission Act 2005

22 Commission's obligation to be prompt and efficient New section 45 (5)

insert

- (5) Also, for a commission-initiated consideration of a vulnerable person complaint, the commission—
- (a) for subsection (2) (b)—may tell the person who made the complaint orally; and
 - (b) for subsection (2) (c), if the commission decides that it is not appropriate, because of the risk to the vulnerable person, to tell either the complainant or the person complained about—need not tell that person.

23 Consideration without complaint or appropriate complainant Section 48 (2)

omit

or victims rights complaint

substitute

, victims rights complaint or vulnerable person complaint

24 Section 51A heading

substitute

51A Referral of advocacy matters—children and young people

25 New section 51B

insert

51B Referral of advocacy matters—vulnerable people

- (1) The disability and community services commissioner may, at any time, refer a vulnerable person complaint, or a matter that forms part of the complaint, to the public advocate for advocacy if satisfied it is appropriate.
- (2) The disability and community services commissioner may continue to consider a complaint that has been referred, or part of which has been referred, for advocacy.

**26 Referral to appropriate statutory office-holder
Section 52A (4)**

substitute

- (4) To remove any doubt, this section is in addition to, and does not limit, section 51A (Referral of advocacy matters—children and young people) or section 51B (Referral of advocacy matters—vulnerable people).

**27 Dealing with vulnerable person complaints
Section 52B (2) (b)**

substitute

- (b) if it is not appropriate to obtain consent because of the seriousness of the complaint or the risk of harm to the vulnerable person; or
- (c) if the person is not capable of giving free or voluntary consent; or
- (d) if the commission cannot access the person to seek their consent.

**28 Commission-initiated reports
Section 84 (1), new example**

insert

Example

The commission gives a report about a vulnerable person complaint to the ACAT because it involves matters relevant to the ACAT's power to, on its own initiative—

- (a) hold a hearing to consider the appointment of a guardian or manager (see *Guardianship and Management of Property Act 1991*, s 19); or
- (b) make an order about an enduring power of attorney (see that [Act](#), s 62).

Part 11 Justices of the Peace Act 1989

29 New section 9

insert

9 Regulation-making power

The Executive may make regulations for this Act.

Part 12 Land Titles Act 1925

30 Crown grants and certain Crown leases under Act Section 17 (1)

omit

in duplicate

substitute

given to the registrar-general

31 Section 17 (2) and note

substitute

- (2) On the registration of the grant, the registrar-general must tell the grantee, in writing, about the registration.

32 Section 17 (3)

omit

either part of

33 Sections 20 and 35

omit

duplicate or

Part 13 Legal Profession Act 2006

34 Approved forms—councils Section 587 (3) and note

omit

Part 14 Residential Tenancies Act 1997

35 Terms included in residential tenancies agreements Section 8 (1) (c)

omit

clause

substitute

clauses

36 Section 8 (4), definition of *temporary housing assistance termination clause*

substitute

temporary housing assistance termination clauses means the clauses in schedule 2, section 2.5.

37 Lessor's obligations New section 12 (3) (ha)

insert

- (ha) if section 8 (1) (c) applies—a statement explaining that the lessor can terminate the agreement on 26 weeks notice if the tenant does not apply for ongoing housing assistance within 6 weeks after the start of the temporary housing assistance;

**38 Payment of bond money into trust account
Section 27 (2)**

omit

section 34 or section 35 (2).

substitute

the following sections:

- (a) 34A (3);
- (b) 34B (2);
- (c) 34C (2);
- (d) 34D (2) and (3);
- (e) 34E (2);
- (f) 35 (5).

**39 No breach of standard residential tenancy terms
Section 47 (6)**

substitute

- (6) In this section:

community housing provider termination clause means the clause in schedule 2, section 2.3.

public housing termination clause means a clause in schedule 2, section 2.4.

subsidised accommodation clause means a clause in schedule 2, section 2.6.

temporary housing assistance termination clause means a clause in schedule 2, section 2.5.

40 New section 163A*insert***163A Fixed term agreement entered into before commencement day**

- (1) This section applies to a fixed term agreement entered into before the commencement day.
- (2) Despite section 8 (1) (a) (i), the agreement does not include clause 94 and clause 95 of the standard residential tenancy terms as in force at any time before the commencement day.
- (3) In this section:
commencement day—see section 163 (4).

**41 Standard residential tenancy terms
Schedule 1, clause 98***substitute*

- 98
- (1) At the commencement of the tenancy, the lessor and the tenant must each give—
 - (a) an address for service of termination notices; and
 - (b) an address for service of other notices.
 - (2) If a person's address for service changes during the tenancy, the person must tell the other party about the new address within 2 weeks of the change.

42 Schedule 2, new clause 106A

after section 2.5 heading, insert

Termination if tenant does not apply for ongoing housing assistance

- 106A (1) This clause applies if—
- (a) the housing commissioner provides temporary housing assistance to the tenant under an approved housing assistance program because the tenant is a remaining occupant in the premises after a former tenant has stopped living in the premises because they—
 - (i) have died; or
 - (ii) are physically unable to live in the premises; or
 - (iii) are legally unable to live in the premises; or
 - (iv) no longer wish to live in the premises; and
 - (b) the tenant does not apply for ongoing housing assistance under an approved housing assistance program within 6 weeks after the start of the temporary housing assistance.
- (2) The housing commissioner may give the tenant at least 26 weeks notice to vacate the premises.
- (3) A notice to vacate given under subclause (2) must include the following information:
- (a) a statement that the tenant did not apply for ongoing housing assistance under an approved housing assistance program;
 - (b) the name and contact details of a legal or advocacy service that may be able to provide the tenant with advice about the tenant's legal rights;

- (c) a statement that the notice will be withdrawn if the tenant applies for ongoing housing assistance before the end of the period stated in the notice.
- (4) If the tenant applies for ongoing housing assistance under an approved housing assistance program before the end of the period in the notice given under subclause (2), the notice is taken to have been withdrawn.
- (5) Subclause (6) applies if—
 - (a) the tenant applies for ongoing housing assistance under an approved housing assistance program before the end of the period in the notice given under subclause (2); and
 - (b) the housing commissioner decides that the tenant is not eligible for ongoing housing assistance under an approved housing assistance program.
- (6) Despite clause 107, the housing commissioner may give the tenant notice to vacate the premises provided that the notice is for the later of—
 - (a) the end of the period in the notice given under subclause (2); and
 - (b) 12 weeks after notice is given under this clause.
- (7) If the housing commissioner gives a tenant a notice to vacate under this clause, the tenant may vacate the premises at any time before the date stated in the housing commissioner's notice to vacate provided the tenant gives the housing commissioner—
 - (a) at least 2 weeks notice of the tenant's intention to vacate; or
 - (b) in the last 2 weeks before the housing commissioner's notice to vacate date—at least 4 days notice of the tenant's intention to vacate.

- (8) The residential tenancy agreement terminates on the day the tenant vacates the premises.

43 Schedule 2, clause 107 (1) to (3)

substitute

- 107 (1) This clause applies if—
- (a) the housing commissioner provides temporary housing assistance to the tenant under an approved housing assistance program because the tenant is a remaining occupant in the premises after a former tenant has stopped living in the premises because they—
 - (i) have died; or
 - (ii) are physically unable to live in the premises; or
 - (iii) are legally unable to live in the premises; or
 - (iv) no longer wish to live in the premises; and
 - (b) the housing commissioner decides that the tenant is not eligible for ongoing housing assistance under an approved housing assistance program.
- (2) The housing commissioner may give the tenant—
- (a) if the housing commissioner makes the decision before the tenant's temporary housing assistance ends—at least 26 weeks notice to vacate the premises; or
 - (b) if the housing commissioner makes the decision after the tenant's temporary housing assistance ends—at least 12 weeks notice to vacate the premises.

- (3) If the housing commissioner gives the tenant a notice to vacate under this clause, the tenant may vacate the premises at any time before the date stated in the housing commissioner's notice to vacate provided the tenant gives the housing commissioner—
- (a) at least 2 weeks notice of the tenant's intention to vacate; or
 - (b) in the last 2 weeks before the housing commissioner's notice to vacate date—at least 4 days notice of the tenant's intention to vacate.

44 Dictionary, definition of *defective termination notice*, paragraph (c), new note

insert

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

Part 15 Residential Tenancies Regulation 1998

45 Section 5A

substitute

5A Rental increase threshold—Act, s 64B and s 68

- (1) The prescribed amount is worked out as follows:

$$1.1 \times \text{current rent} \times \frac{\text{current index number} - \text{initial index number}}{\text{initial index number}}$$

- (2) In this section:

current index number means the most recently published index number when the lessor gives the tenant notice of the proposed rental rate increase.

index number means the rents subgroup of the housing group of the Consumer Price Index for Canberra published from time to time by the Australian statistician.

initial index number means the most recently published index number on—

- (a) the day the residential tenancy agreement began; or
- (b) if the rental rate has been increased previously—the day the lessor gave the notice for that increase.

Part 16 Supreme Court Act 1933

46 Vexatious litigants Section 67A (3) and (4)

omit

47 Section 67A (10) and note

substitute

- (10) Subject to any order of the court, a declaration, or a variation or revocation of a declaration, is a notifiable instrument.

Note Power to make a notifiable instrument includes power to make different provision in relation to different matters or different classes of matters, and to make an instrument that applies differently by reference to stated exceptions or factors (see [Legislation Act](#), s 48).

Part 17 Trustee Act 1925

48 Distribution after notice Section 60 (2)

omit

would, in a special case, be necessary, in order to comply with

substitute

may be given under

Part 18 Unit Titles (Management) Act 2011

49 Notice of reduced quorum decisions and adjournments Schedule 3, section 3.10 (1)

omit

7 days

substitute

14 days

50 New section 3.10 (1A)

after the note, insert

- (1A) A reduced quorum decision notice is taken to be given—
- (a) if sent by prepaid post or email—when it is sent; and
 - (b) if placed in the letterbox for mail for an occupier who is a member of the corporation—when it is placed in the letterbox.

Part 19 Wills Act 1968

51 Court may authorise will to be made, altered or revoked for person without testamentary capacity Section 16A (6)

omit

under section 32

52 Retention of will Section 16G (1)

omit

Despite section 32 (4), a will

substitute

A will

53 Section 16G (2)

substitute

- (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) keep records of the particulars of the order; and
 - (b) with the permission of a judge, destroy the will.

54 Sections 32 to 34

substitute

32 Wills deposited with registrar

- (1) This section applies to a will deposited in the office of the registrar.
- (2) The registrar may do any of the following:
 - (a) deposit the will with the public trustee and guardian;
 - (b) give the public trustee and guardian identifying information about the will;
 - (c) if satisfied that the whole of the estate has been distributed, and with the permission of a judge—destroy the will.
- (3) The registrar must keep records of the following:
 - (a) any will deposited with the public trustee and guardian, including the date it was deposited;
 - (b) any will given to a person, including the date and person to whom it was given;
 - (c) any will destroyed, including the date of destruction.
- (4) In this section:

identifying information, about a will, means information about the testator or will that the public trustee and guardian uses to maintain its register of legal records.

register of legal records, of the public trustee and guardian, means a register kept under the *Public Trustee and Guardian Act 1985*, section 23A.

55 New section 36

insert

36 Transfer of wills deposited with registrar

- (1) This section applies to a will deposited in the office of the registrar.
- (2) The registrar may deposit the will with the public trustee and guardian.
- (3) The registrar may give the public trustee and guardian identifying information about the will.
- (4) This section expires when the *Justice and Community Safety Legislation Amendment Act 2023 (No 3)*, section 54 commences.

Note The expiry takes effect at the beginning of the day (see [Legislation Act](#), s 85 (2)).

- (5) In this section:

identifying information, about a will, means information about the testator or will that the public trustee and guardian uses to maintain its register of legal records.

register of legal records, of the public trustee and guardian, means a register kept under the [Public Trustee and Guardian Act 1985](#), section 23A.

56 Dictionary, note 2

insert

- judge

Schedule 1 Technical amendments

(see s 3)

Part 1.1 ACT Civil and Administrative Tribunal Act 2008

[1.1] Section 16 (2), note 2

omit

Federal Circuit Court

substitute

Federal Circuit and Family Court of Australia (Division 2)

Explanatory note

This amendment updates a reference. The *Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021* (Cwlth), schedule 2 item 372 amended the *Fair Work Act 2009* (Cwlth), section 539 to update the name of the court.

[1.2] Section 55A (3)

omit

agreement

substitute

agreement.

Explanatory note

This amendment inserts a missing full stop at the end of subsection (3).

[1.3] Section 82A (4), note 2

omit

Federal Circuit Court

substitute

Federal Circuit and Family Court of Australia (Division 2)

Explanatory note

This amendment updates a reference. The *Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021* (Cwlth), schedule 2 item 372 amended the *Fair Work Act 2009* (Cwlth), section 539 to update the name of the court.

Part 1.2 Electoral Act 1992

[1.4] Section 103 (5) (a) (ii)

substitute

- (ii) the *Criminal Code* (Cwlth), section 83.4 (Interference with political rights and duties); or

Explanatory note

This amendment updates a reference. The *Crimes Act 1914* (Cwlth), section 28 (Interfering with political liberty) was repealed by the *National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018* (Cwlth), schedule 1 item 43 and was replaced by that Act, schedule 1 item 8 inserting section 83.4 into the *Criminal Code* (Cwlth).

[1.7] Section 40 (b) (vi)

omit

section 11 (Disability service standards)

substitute

section 5A (Approval of standards)

Explanatory note

This amendment updates the reference in this paragraph to the Minister's power to approve standards for the *Disability Services Act 1991*. That power was moved from section 11 of that Act to section 5A by the *Disability Services (Disability Service Providers) Amendment Act 2014*, sections 5 and 13.

[1.8] Dictionary, definition of *related Act*, paragraph (h)

substitute

(h) *Victims of Crime (Financial Assistance) Act 2016*.

Explanatory note

This amendment updates the reference from the *Victims of Crime (Financial Assistance) Act 1983* (repealed) to the current *Victims of Crime (Financial Assistance) Act 2016*.

Part 1.4 Information Privacy Regulation 2014

[1.9] Section 6 (1) (a)

substitute

(a) the administrative unit responsible for administering the asbestos response taskforce;

Explanatory note

This amendment updates the reference to the directorate whose name has been changed. The new reference to the administrative unit means the reference remains accurate into the future.

Part 1.5 Land Titles Act 1925

[1.10] Section 51 (2)

omit

Stamp Duties and Taxes Act 1987, section 17 (1) (a), (b), (c), (ca) or (d)

substitute

Stamp Duties and Taxes Act 1987 (repealed), section 17 (1) (a), (b), (ca), (c) or (d)

Explanatory note

This amendment corrects the order of paragraphs referred to, as paragraph (ca) precedes paragraph (c) in the *Stamp Duties and Taxes Act 1987* (repealed). It also updates the citation of that Act to reflect that it is repealed.

Part 1.6 Legal Profession Act 2006

[1.11] Section 390 (8), definition of *judicial officer*

omit

section 3

substitute

dictionary

Explanatory note

This amendment corrects a cross-reference.

Part 1.7 **Unit Titles (Management)** **Act 2011**

[1.12] Section 33B (1)

omit

Planning and land authority

substitute

Territory planning authority

Explanatory note

This amendment updates the reference to the heading of the [Land Titles Act 1925](#), section 123I as proposed to be amended when the [Planning Act 2023](#) commences (see [Planning \(Consequential Amendments\) Act 2023](#)).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 21 September 2023.

2 Notification

Notified under the [Legislation Act](#) on 11 December 2023.

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 2023 (No 3), which originated in the Legislative Assembly as the Justice and Community Safety Legislation Amendment Bill 2023 (No 2) and was passed by the Assembly on 30 November 2023.

Clerk of the Legislative Assembly

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