

2014

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Justice and Community Safety Legislation Amendment Bill 2014 (No 2)

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Justice and Community Safety Legislation Amendment Bill 2014 (No 2)

A Bill for

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:

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Justice and Community Safety Legislation*
4 *Amendment Act 2014 (No 2)*.

5 **2 Commencement**

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

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

9 **3 Legislation amended**

10 This Act amends the following legislation:

- 11 • [Administration and Probate Act 1929](#)
- 12 • [Agents Act 2003](#)
- 13 • [Family Provision Act 1969](#)
- 14 • [Human Rights Commission Act 2005](#)
- 15 • [Powers of Attorney Act 2006](#)
- 16 • [Public Trustee Act 1985](#).

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

Part 2 Administration and Probate Act 1929

4 Distribution of assets Section 64 (1), new note

insert

Note If a form is approved under the [Court Procedures Act 2004](#), s 8 for this provision, the form must be used.

5 New section 126

in part 9, insert

126 People entitled to inspect will of deceased person

(1) A person who has possession or control of a deceased person's will must, on request in writing by an interested person, allow the interested person to inspect, or be given copies of, the will or any copies of the will in the person's possession or control.

(2) The interested person must bear any cost of a request under subsection (1).

(3) In this section:

interested person, in relation to a deceased person's will, means any of the following:

(a) a person named or referred to in the will, including a person who is a beneficiary under the will;

(b) a person named in an earlier will as a beneficiary under the will;

(c) a domestic partner or child of the deceased person;

Note **Domestic partner**—see the [Legislation Act](#), s 169.

(d) a parent or guardian of the deceased person;

- 1 (e) a parent or guardian of a person younger than 18 years old who
2 is a beneficiary under the will;
- 3 (f) a parent or guardian of a person younger than 18 years old who
4 would be entitled to a share of the estate if the deceased person
5 had died intestate;
- 6 (g) a person who would be entitled to a share of the estate if the
7 deceased person had died intestate;
- 8 (h) a person who, immediately before the death of the deceased
9 person, was a guardian or manager for the person under the
10 [Guardianship and Management of Property Act 1991](#);
- 11 (i) an attorney under an enduring power of attorney made by the
12 deceased person.
- 13 *will* includes a revoked will, an informal will or a codicil.

14 **6 Dictionary, note 2**

15 *insert*

- 16
 - domestic partner (see s 169 (1))

- 1 **11 Business salespeople must be registered**
2 **Section 47 (1) (b)**
- 3 *omit*
- 4 pretends to be employed
- 5 *substitute*
- 6 is, or pretends to be, employed
- 7 **12 New section 47 (3)**
- 8 *insert*
- 9 (3) This section does not apply to the provision of a service by a person
10 who is licensed to provide the service.
- 11 **13 If no trust money held during audit period**
12 **Section 116**
- 13 *omit*

1

Part 4

Family Provision Act 1969

2

14

Property available for provision

3

Section 20 (2) (b) (i)

- 4
- omit*
- 5
- 12 months
- 6
- substitute*
- 7
- 6 months

Part 5 Human Rights Commission Act 2005

15 Third-party reports Section 83 (1) and example and note

substitute

- (1) The commission may give a third party a report (a *third-party report*) other than a final report if, in considering a complaint, the commission is satisfied—

(a) that—

- (i) the third party has acted inconsistently with an applicable standard that applies to the third party, or is otherwise failing to adequately do something the third party is required to do; or

Note *Applicable standard*—see the dictionary.

- (ii) the report is about matters of public policy; or

- (iii) the report is about matters that the third party has an appropriate interest in; and

(b) that it is in the public interest to give the report.

Examples—people to whom third-party report may be given

- 1 a Minister
- 2 a non-government provider
- 3 the employer of the person complained about
- 4 a health profession board
- 5 a hospital or other institution where services are provided by the person complained about
- 6 a funding body

Examples—what third-party report may be about

- 1 systemic issues

1 2 issues of public interest

2 3 issues relating to safety

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

6 **16 Section 83 (2) and (3)**

7 *omit*

8 recommendation

9 *substitute*

10 third-party report

11 **17 Information about complaints**
12 **Section 95 (2)**

13 *after*

14 must provide information

15 *insert*

16 in a prominent position

1 **Part 6 Powers of Attorney Act 2006**

2 **18 Appointment of attorneys**
3 **Section 13 (3)**

4 *substitute*

5 (3) However, an adult must not, by a power of attorney, appoint a
6 person younger than 18 years old as an attorney.

Part 7 Public Trustee Act 1985

19 New section 66

in part 7, insert

66 Public trustee may require information or documents

- (1) The public trustee may, by written notice given to any entity (other than an individual), require the entity to give the public trustee stated information or documents relevant to the exercise of the public trustee's functions under this Act or another territory law.
- (2) The notice must state a reasonable period (not less than 14 days) within which the information or documents must be given.

Schedule 1 Information Privacy Act 2014— Consequential amendments

(see s 3)

Part 1.1 ACT Teacher Quality Institute Act 2010

[1.1] Section 42 (3), note

substitute

Note The Territory privacy principles (the *TPPs*) apply to the institute (see [Information Privacy Act 2014](#), sch 1). The TPPs deal with the collection, storage and exchange of personal information.

Part 1.2 Adoption Regulation 1993

[1.2] Section 21

substitute

21 Private adoption agencies not to breach Territory privacy principles

- (1) A private adoption agency commits an offence if it does something that would, if it were a public sector agency for the [Information Privacy Act 2014](#), breach a Territory privacy principle within the meaning of that Act.

Maximum penalty: 5 penalty units.

Note The Territory privacy principles (the *TPPs*) are contained in the [Information Privacy Act 2014](#), sch 1. The TPPs deal with the following issues:

- (a) open and transparent management of personal information;
- (b) anonymity and pseudonymity;
- (c) collection of solicited personal information;

- 1 (d) dealing with unsolicited personal information;
- 2 (e) notification of the collection of personal information;
- 3 (f) use or disclosure of personal information;
- 4 (g) cross-border disclosure of personal information;
- 5 (h) quality of personal information;
- 6 (i) security of personal information;
- 7 (j) access to personal information;
- 8 (k) correction of personal information.

9 (2) An offence against this section is a strict liability offence.

10 **Part 1.3** **Children and Young People** 11 **Act 2008**

12 **[1.3] Section 280 (5), definition of *protected mail*, paragraph (e)**

13 *substitute*

14 (e) the information privacy commissioner;

15 **[1.4] Section 875 (2), examples**

16 *insert*

- 17 • *Information Privacy Act 2014*

18 **[1.5] Dictionary, note 2**

19 *insert*

- 20 • information privacy commissioner

21 **[1.6] Dictionary, note 2**

22 *omit*

- 23 • privacy commissioner

**Part 1.4 Construction Occupations
(Licensing) Act 2004**

[1.7] Section 102 (1), note 1

substitute

Note 1 The Territory privacy principles apply to the registrar (see [Information Privacy Act 2014](#), sch 1).

**Part 1.5 Crimes (Forensic Procedures)
Act 2000**

[1.8] Section 96 (2) (g)

substitute

(g) the purpose of investigation of a complaint by the information privacy commissioner (or someone who has corresponding functions under the law of another participating jurisdiction).

[1.9] Section 96 (3) (d)

substitute

(d) the information privacy commissioner;

[1.10] Section 111 (2) (h)

substitute

(h) the purpose of investigation of a complaint by the information privacy commissioner (or someone who has corresponding functions under the law of another participating jurisdiction).

1 **[1.11] Dictionary, note 2**

2 *insert*

- 3 • information privacy commissioner

4 **[1.12] Dictionary, note 2**

5 *omit*

- 6 • privacy commissioner

7 **Part 1.6 Crimes (Surveillance Devices)**
8 **Act 2010**

9 **[1.13] Section 34 (7) (h)**

10 *substitute*

- 11 (h) an investigation under the *Information Privacy Act 2014* or
12 another law of the Territory, a participating jurisdiction or the
13 Commonwealth concerning the privacy of personal
14 information.

15 **Part 1.7 Government Procurement**
16 **Act 2001**

17 **[1.14] Section 35 (1), note 1**

18 *substitute*

19 *Note 1* The Territory privacy principles apply to a Territory entity.

20 **[1.15] Section 35 (4), definition of *personal information***

21 *substitute*

22 *personal information*—see the *Information Privacy Act 2014*,
23 section 8.

[1.16] Section 41, note 2

substitute

Note 2 The Territory privacy principles under the [Information Privacy Act 2014](#) provide for the disclosure of personal information in certain circumstances.

Part 1.8 Health (National Health Funding Pool and Administration) Act 2013

[1.17] New section 31 (ba)

insert

(ba) the [Information Privacy Act 2014](#);

Part 1.9 Heavy Vehicle National Law (ACT) Act 2013

[1.18] New section 9 (1) (ca)

insert

(ca) the [Information Privacy Act 2014](#);

[1.19] Section 9 (1), note

substitute

Note The [Freedom of Information Act 1989](#) does not apply to the Regulator and the Board (see [Freedom of Information Regulation 1991](#), s 2B).

1 **Part 1.10** **Information Privacy Act 2014**

2 **[1.20] Section 9 (f)**

3 *substitute*

4 (f) ACTTAB Limited; or

5 **[1.21] New section 24 (ca)**

6 *insert*

7 (ca) ACTEW Corporation Limited, ACTEW Distribution Ltd or
8 ACTEW Retail Ltd;

9 **[1.22] Section 25 (1) (c)**

10 *omit*

11 other than an act done, or a practice engaged in, by the Office

12 **[1.23] Schedule 1, part 1.5, principle 12.4 (a)**

13 *omit*

14 or

15 *substitute*

16 and

17 **[1.24] Schedule 1, part 1.5, principle 13.5 (a)**

18 *omit*

19 or

20 *substitute*

21 and

- 1 **[1.25] Dictionary, note 2**
- 2 *omit*
- 3 • territory-owned corporation

4 **Part 1.11 Legislation Act 2001**

- 5 **[1.26] Dictionary, part 1, new definition of *information privacy***
- 6 ***commissioner***
- 7 *insert*
- 8 *information privacy commissioner* means the Information Privacy
- 9 Commissioner appointed under the [Information Privacy Act 2014](#),
- 10 section 26.

- 11 **[1.27] Dictionary, part 1, definition of *privacy commissioner***
- 12 *omit*

13 **Part 1.12 Planning and Development**

14 **Act 2007**

- 15 **[1.28] Section 395B (1), note 1**
- 16 *substitute*
- 17 *Note 1* The Territory privacy principles apply to the planning and land
- 18 authority (see [Information Privacy Act 2014](#), sch 1).

Part 1.13 Racing Act 1999

[1.29] Section 61W (1)

substitute

(1) This section applies to a relevant controlling body if neither of the following applies to the body:

- (a) the *Information Privacy Act 2014*, schedule 1 (Territory privacy principles) (the *TPPs*);
- (b) the *Privacy Act 1988* (Cwlth), schedule 1 (Australian Privacy Principles) (the *APPs*).

[1.30] Section 61W (2) and (3)

omit

NPPs

substitute

APPs

Part 1.14 Residential Tenancies Act 1997

[1.31] Section 97 (1) (b)

omit

national privacy principles

substitute

Territory privacy principles or Australian Privacy Principles

1 **[1.32] Section 97 (4)**

2 *substitute*

3 (4) In this section:

4 *Australian Privacy Principles* means the principles stated in the
5 *Privacy Act 1988* (Cwlth), schedule 1.

6 *Territory privacy principles* means the principles stated in the
7 *Information Privacy Act 2014*, schedule 1.

8 **Part 1.15 Retirement Villages**
9 **Regulation 2013**

10 **[1.33] Sections 22 (3) and 33 (d)**

11 *omit*

12 National Privacy Principles

13 *substitute*

14 Australian Privacy Principles

15 **Part 1.16 Road Transport (Driver**
16 **Licensing) Act 1999**

17 **[1.34] Section 9, note 1**

18 *substitute*

19 *Note 1* The Territory privacy principles apply to the road transport authority
20 (see *Information Privacy Act 2014*, sch 1).

[1.35] Section 36 (1), note

substitute

Note The Territory privacy principles apply to the road transport authority
(see [Information Privacy Act 2014](#), sch 1).

[1.36] Section 37 (1), note 1

substitute

Note 1 The Territory privacy principles apply to the road transport authority
(see [Information Privacy Act 2014](#), sch 1).

[1.37] Section 38 (1), note

substitute

Note The Territory privacy principles apply to the road transport authority
(see [Information Privacy Act 2014](#), sch 1).

**Part 1.17 Road Transport (Driver
Licensing) Regulation 2000**

[1.38] Section 73ZZD (1), note

substitute

Note The Territory privacy principles apply to the road transport authority
(see [Information Privacy Act 2014](#), sch 1).

**Part 1.18 Road Transport (General)
Act 1999**

[1.39] Section 83E, note 1

substitute

Note 1 The Territory privacy principles apply to the road transport authority
(see [Information Privacy Act 2014](#), sch 1).

1 **Part 1.19 Road Transport (Public**
2 **Passenger Services) Act 2001**

3 **[1.40] Section 7, note 1**

4 *substitute*

5 *Note 1* The Territory privacy principles apply to the road transport authority
6 (see [Information Privacy Act 2014](#), sch 1).

7 **Part 1.20 Road Transport (Public**
8 **Passenger Services)**
9 **Regulation 2002**

10 **[1.41] Section 31, note 2**

11 *substitute*

12 *Note 2* In collecting personal information, the accredited operator may also
13 have to comply with the Australian Privacy Principles under the
14 [Privacy Act 1988](#) (Cwlth) or the Territory privacy principles under the
15 [Information Privacy Act 2014](#).

16 **[1.42] Section 32 (5), note**

17 *substitute*

18 *Note* The accredited operator may also have to comply with the
19 Australian Privacy Principles under the [Privacy Act 1988](#) (Cwlth) or the
20 Territory privacy principles under the [Information Privacy Act 2014](#)
21 about the collection, storage, use and disclosure of the recordings.

[1.43] Section 68 (2), note 1

substitute

Note 1 The [Privacy Act 1988](#) (Cwlth) imposes obligations on some private sector organisations and the [Information Privacy Act 2014](#) imposes obligations on public sector agencies in relation to the collection, storage, use and disclosure of personal information collected about an individual.

[1.44] Section 79 (5), note etc

omit

National Privacy Principles

substitute

Australian Privacy Principles

in

- section 79 (5), note
- section 103, note
- section 189 (1), note
- section 194 (6), note
- section 259 (1), note 2
- section 264 (5), note

**Part 1.21 Road Transport (Vehicle
Registration) Act 1999**

[1.45] Section 11, note 1

substitute

Note 1 The Territory privacy principles apply to the road transport authority (see [Information Privacy Act 2014](#), sch 1).

**Part 1.22 Security Industry Regulation
2003**

[1.46] Section 16 (1)

substitute

(1) This section applies to a master licensee if neither of the following applies to the licensee:

(a) the *Information Privacy Act 2014*, schedule 1 (Territory privacy principles) (the *TPPs*), TPP 6 (use or disclosure of personal information);

(b) the *Privacy Act 1988* (Cwlth), schedule 1, Australian Privacy Principle 6 (use or disclosure of personal information).

[1.47] Section 16 (2)

omit

schedule 3, national privacy principle 2,

substitute

schedule 1, Australian Privacy Principle 6,

[1.48] Section 16 (3)

omit

national privacy principle 2

substitute

Australian Privacy Principle 6

1 **Part 1.23** **Unit Titles (Management)**
2 **Act 2011**

3 **[1.49] Section 113 (2), note etc**

4 *omit*

5 national privacy principles

6 *substitute*

7 Australian Privacy Principles

8 *in*

- 9 • section 113 (2), note
10 • section 116 (4), note 1
11 • schedule 2, part 2.1, section 2.1 (1) (f), note

12 **Part 1.24** **Utilities Act 2000**

13 **[1.50] Section 51**

14 *substitute*

15 **51** **Protection of personal information**

- 16 (1) This section applies to personal information gained by a utility in
17 relation to the provision of a utility service.

- 1 (2) A utility must deal with personal information in accordance with the
2 Australian Privacy Principles as if it were a prescribed authority,
3 within the meaning of the *Freedom of Information Act 1989*, to
4 which the *Privacy Act 1988* (Cwlth) applies.

5 *Note* An Act of the Territory generally cannot apply the *Privacy*
6 *Act 1988* (Cwlth) to utilities. However, this section would oblige
7 utilities to observe the Australian Privacy Principles under the *Privacy*
8 *Act 1988* (Cwlth) as if the Act applied to them. The arrangement does
9 not allow complaints about utilities to be made to the privacy
10 commissioner under that Act, nor for the application of remedies under
11 the *Privacy Act 1988* (Cwlth).

- 12 (3) In this section:

13 *Australian Privacy Principles* means the Australian Privacy
14 Principles under the *Privacy Act 1988* (Cwlth), schedule 1.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 18 September 2014.

2 Notification

Notified under the [Legislation Act](#) on 2014.

3 Republications of amended laws

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

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