

2015

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Attorney-General)

## Courts Legislation Amendment Bill 2015 (No 2)

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(As presented)

(Attorney-General)

## **Courts Legislation Amendment Bill 2015 (No 2)**

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### **A Bill for**

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

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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 *Courts Legislation Amendment Act 2015 (No 2)*.

4 **2 Commencement**

5 (1) Sections 5 to 7 and section 20 commence on 7 April 2016.

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

8 (2) The remaining provisions commence on the 14th day after this Act's  
9 notification day.

10 **3 Legislation amended**

11 This Act amends the following legislation:

- 12 • *ACT Civil and Administrative Tribunal Act 2008*
- 13 • *Civil Law (Wrongs) Act 2002*
- 14 • *Coroners Act 1997*
- 15 • *Court Procedures Act 2004*
- 16 • *Domestic Violence and Protection Orders Act 2008*
- 17 • *Freedom of Information Act 1989*
- 18 • *Freedom of Information Regulation 1991*
- 19 • *Judicial Commissions Amendment Act 2015*
- 20 • *Juries Act 1967*
- 21 • *Legal Aid Act 1977*
- 22 • *Magistrates Court Act 1930*.

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## Part 2 ACT Civil and Administrative Tribunal Act 2008

### 4 Time and place of proceedings Section 28 (2)

*omit*

### 5 Definitions—div 5.3 Section 30A

*omit*

### 6 Mediation for applications Section 35 (3), new note

*insert*

*Note 2* The *Court Procedures Act 2004*, pt 5A (Mediation) applies to a mediation ordered under this section.

### 7 Sections 35A to 35C

*omit*

1 **Part 3 Civil Law (Wrongs) Act 2002**

2 **8 Referral by tribunal for mediation or neutral evaluation**  
3 **Section 195 (2), new note**

4 *insert*

5 *Note* The *Court Procedures Act 2004*, pt 5A (Mediation) applies to a  
6 mediation in relation to an application to the ACAT.

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## Part 4 Coroners Act 1997

### 9 Objects of Act Section 3BA (1) (b)

*substitute*

(b) provide—

- (i) that a person who is a magistrate (other than a special magistrate) is also a coroner; and
- (ii) that the Chief Coroner may appoint a special magistrate as a coroner; and
- (iii) for the appointment of deputy coroners; and

### 10 Section 5

*substitute*

### 5 Coroners

- (1) A magistrate, other than a special magistrate, is a coroner for the Territory.
- (2) The Chief Coroner may appoint a special magistrate as a coroner for the Territory.

*Note* For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

- 1 **11** **Coroner's jurisdiction in relation to deaths**  
2 **Section 13 (1) (c)**
- 3 *substitute*
- 4 (c) dies and the death appears to be completely or partly  
5 attributable to an operation or procedure (other than an  
6 operation or procedure prescribed by regulation for this  
7 paragraph); or
- 8 (ca) dies after having undergone an operation or procedure and in  
9 circumstances that, in the opinion of the Chief Coroner, should  
10 be better ascertained; or
- 11 **12** **New section 13 (4)**
- 12 *before the note, insert*
- 13 (4) In this section:
- 14 *operation or procedure* means—
- 15 (a) an operation of a medical, surgical, dental or similar nature; or  
16 (b) an invasive medical or diagnostic procedure.
- 17 **13** **New section 99B**
- 18 *insert*
- 19 **99B** **Protection if information given to coroner**
- 20 (1) An entity may give information to a coroner if—
- 21 (a) a coroner asks the entity for the information in connection with  
22 the exercise of the coroner's functions under this Act; or

- 1 (b) the entity believes on reasonable grounds that the information  
2 is relevant to the exercise of the coroner's functions under this  
3 Act.

4 **Example**

5 information from a theatre nurse who was present during an operation where the  
6 patient died unexpectedly

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

10 (2) If an entity gives information to a coroner under this section—

11 (a) giving the information is not—

12 (i) a breach of confidence; or

13 (ii) a breach of professional etiquette or ethics; or

14 (iii) a breach of a rule of professional conduct; and

15 (b) the entity does not incur civil or criminal liability only because  
16 of giving the information; and

17 (c) for an entity who is a public servant—the entity is not liable to  
18 administrative action (including disciplinary action or  
19 dismissal) only because of giving the information.

20 **14 Annual report of court**  
21 **Section 102 (9)**

22 *omit*

23 Chief Magistrate

24 *substitute*

25 Chief Coroner

1 **15 New part 12**

2 *insert*

3 **Part 12 Transitional—Courts Legislation**  
4 **Amendment Act 2015 (No 2)**

5 **120 Special magistrates**

6 (1) A special magistrate under the *Magistrates Court Act 1930* who is a  
7 coroner immediately before this part commences continues to be a  
8 coroner as if the *Courts Legislation Amendment Act 2015 (No 2)* had  
9 not been enacted.

10 (2) This part expires 1 year after the day it commences.

11 *Note* Transitional provisions are kept in the Act for a limited time.  
12 A transitional provision is repealed on its expiry but continues to have  
13 effect after its repeal (see [Legislation Act](#), s 88).

---

## 1 Part 5 Court Procedures Act 2004

### 2 **16 New section 5A**

3 *in part 1, insert*

#### 4 **5A Main purpose of civil procedure provisions**

- 5 (1) The main purpose of the civil procedure provisions is to facilitate  
6 the just resolution of disputes—
- 7 (a) according to law; and
- 8 (b) as quickly, inexpensively and efficiently as possible.
- 9 (2) Without limiting subsection (1), the main purpose includes the  
10 following objectives:
- 11 (a) the just resolution of the real issues in civil proceedings;
- 12 (b) the efficient use of court resources, including administrative  
13 resources;
- 14 (c) the efficient disposal of a court's overall caseload;
- 15 (d) the timely disposal of civil proceedings;
- 16 (e) the resolution of disputes at a cost that is proportionate to the  
17 importance and complexity of the matters in dispute.
- 18 (3) The civil procedure provisions must be interpreted and applied, and  
19 any power or duty imposed by them (including the power to make  
20 rules) must be exercised or carried out, in the way that best  
21 promotes the main purpose.
- 22 (4) The parties to a civil proceeding must help the court to achieve the  
23 objectives.

- 1 (5) In this section:  
2 *civil procedure provisions* means—  
3 (a) the rules made under section 7, in their application to civil  
4 proceedings; and  
5 (b) any provision of this Act in relation to the practice and  
6 procedure of a court in civil proceedings.  
7 *court* includes a tribunal that is a prescribed tribunal under  
8 section 6.

9 **17 Advisory committee**  
10 **New section 11 (2) (ca)**

- 11 *insert*  
12 (ca) the principal registrar;

13 **18 New part 2A**

14 *insert*

15 **Part 2A Principal registrar of courts**

16 **11A Appointment of principal registrar**

- 17 (1) The Executive must appoint a person as the Principal Registrar and  
18 Chief Executive Officer of ACT Courts and Tribunals (the *principal*  
19 *registrar*).

20 *Note 1* For the making of appointments (including acting appointments), see  
21 the [Legislation Act](#), pt 19.3.

22 *Note 2* In particular, an appointment may be made by naming a person or  
23 nominating the occupant of a position (see [Legislation Act](#), s 207).

1 (2) However, the Executive must not appoint a person as the principal  
2 registrar—

3 (a) without first considering any recommendation about the  
4 appointment made by the Chief Justice, the Chief Magistrate  
5 and the general president of the ACAT; and

6 (b) unless satisfied that the person has the experience or expertise  
7 to qualify the person to exercise the functions of the principal  
8 registrar.

9 (3) The principal registrar must be appointed for a term of not longer  
10 than 5 years.

11 *Note* A person may be reappointed to a position if the person is eligible to be  
12 appointed to the position (see [Legislation Act](#), s 208 and dict, pt 1,  
13 def *appoint*).

14 (4) The appointment of a principal registrar is a notifiable instrument.

15 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

## 16 **11B Administrative functions of principal registrar**

17 (1) The function of the principal registrar is to support—

18 (a) the Chief Justice in the exercise of an administrative function  
19 of the Supreme Court; and

20 (b) the Chief Magistrate in the exercise of an administrative  
21 function of the Magistrates Court; and

22 (c) the general president of the ACAT in the exercise of an  
23 administrative function of the ACAT.

24 (2) For subsection (1), the principal registrar may do the following:

25 (a) exercise the powers of the head of service relating to the  
26 appointment, engagement and employment of a person  
27 employed to assist a registrar;

28 *Note* **Registrar**—see the [Legislation Act](#), dictionary, pt 1.

- 1 (b) direct a public employee in relation to the exercise of an  
2 administrative function of a court or the ACAT;
- 3 (c) make arrangements with the director-general to use the  
4 services of a public servant or Territory facilities;
- 5 (d) make arrangements about the use and allocation of resources  
6 and facilities;
- 7 (e) exercise any other function given to the principal registrar  
8 under this Act or another Territory law.

9 **11C Ending principal registrar's appointment**

10 The Executive may end the principal registrar's appointment if the  
11 principal registrar—

- 12 (a) becomes bankrupt or personally insolvent; or
- 13 (b) is convicted, or found guilty, in the ACT of an offence  
14 punishable by imprisonment for at least 1 year; or
- 15 *Note Found guilty*—see the [Legislation Act](#), dictionary, pt 1.
- 16 (c) is convicted, or found guilty, outside the ACT of an offence  
17 that, if it had been committed in the ACT, would be punishable  
18 by imprisonment for at least 1 year; or
- 19 (d) for physical or mental incapacity, if the incapacity affects the  
20 principal registrar's ability to exercise a function.

21 **11D Principal registrar not to direct registrars in relation to**  
22 **court functions**

- 23 (1) A registrar or deputy registrar of a court is not subject to direction  
24 by the principal registrar in the exercise of a function of the court.
- 25 (2) A registrar or deputy registrar of the ACAT is not subject to  
26 direction by the principal registrar in the exercise of a function of  
27 the ACAT.

1 **19 Recovery of fees in civil proceedings if fees not**  
2 **otherwise payable**  
3 **Section 16 (2)**

4 *substitute*

- 5 (2) The court or ACAT may order the second party to pay to the  
6 registrar of the court or ACAT the amount of the fee exempted,  
7 remitted, refunded or waived.

8 **20 New part 5A**

9 *insert*

10 **Part 5A Mediation**

11 **52A Definitions—pt 5A**

12 In this part:

13 *accredited mediator* means a person who is entered as a mediator in  
14 the register of nationally accredited mediators maintained by the  
15 Mediator Standards Board.

16 *mediation* means a meeting between parties to a proceeding in a  
17 court or an application to the ACAT and an accredited mediator for  
18 resolving a matter to which the proceeding or application relates,  
19 and includes a thing done—

- 20 (a) to arrange the meeting (whether or not successfully); or  
21 (b) to follow up anything raised in the meeting.

22 *mediation material* means—

- 23 (a) a communication made at mediation; or  
24 (b) a document, whether delivered or not, prepared—  
25 (i) for or during mediation; or

- 1 (ii) following a decision made or undertaking given in  
2 mediation.

3 ***Mediator Standards Board*** means the Mediator Standards Board  
4 Limited (ACN 145 829 812).

5 **52B Admissibility of information given at mediation**

- 6 (1) Evidence of mediation material is not admissible in a proceeding  
7 before any of the following, except in accordance with the *Evidence*  
8 *Act 2011*, section 131 (Exclusion of evidence of settlement  
9 negotiations):  
10 (a) a court;  
11 (b) an entity authorised to hear and receive evidence;  
12 (c) an entity authorised by the consent of the parties to hear  
13 evidence.  
14 (2) Evidence of mediation material is not admissible in a proceeding  
15 under the *ACT Civil and Administrative Tribunal Act 2008* unless all  
16 parties agree to the giving of the evidence.

17 **52C Secrecy**

- 18 (1) A person who is or has been an accredited mediator must not  
19 disclose mediation material.  
20 (2) However, this section does not apply if—  
21 (a) the disclosure is required under a territory law or  
22 Commonwealth law; or  
23 (b) the disclosure is made with the consent of the parties to  
24 mediation; or  
25 (c) the disclosure is made with the consent of the person who gave  
26 the material to the accredited mediator; or

- 1 (d) the person mentioned in subsection (1) believes on reasonable  
2 grounds that—
- 3 (i) a person’s life, health or property is under serious and  
4 imminent threat and the disclosure is necessary to avert,  
5 or mitigate the consequences of, its realisation; or
- 6 (ii) the disclosure is necessary to report to the appropriate  
7 authority the commission of an offence or prevent the  
8 likely commission of an offence.
- 9 (3) In this section:
- 10 *offence* means an offence involving—
- 11 (a) violence, or the threat of violence, to a person; or
- 12 (b) intentional damage, or the threat of intentional damage, to  
13 property.

14 **52D Protection of accredited mediator from liability**

- 15 (1) An accredited mediator is not civilly liable for anything done or  
16 omitted to be done honestly for the purpose of a mediation.
- 17 (2) The same privilege in relation to defamation that applies to judicial  
18 proceedings applies to—
- 19 (a) mediation; or
- 20 (b) mediation material—
- 21 (i) produced at mediation; or
- 22 (ii) given to an accredited mediator for arranging, conducting  
23 or following up mediation.

24 **21 Dictionary, new definition of *principal registrar***

25 *insert*

26 *principal registrar*—see section 11A.

1 **Part 6 Court Procedures Rules 2006**

2 **22 Purpose of ch 2 etc**  
3 **Rule 21**

4 *omit*

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**Part 7**

**Domestic Violence and  
Protection Orders Act 2008**

**23 Referrals to mediation  
Section 25 (2), new note**

*insert*

*Note* The *Court Procedures Act 2004*, pt 5A (Mediation) applies to a mediation in relation to a proceeding in a court.

1 **Part 8 Freedom of Information Act 1989**

2 **24 New section 5A**

3 *insert*

4 **5A Act to apply to courts in relation to administrative matters**

5 (1) This Act does not apply to any request for access to a document of a  
6 court unless the document relates to matters of an administrative  
7 nature.

8 (2) In this section:

9 *court* includes a registry or other office of a court, and the staff of  
10 the registry or other office.

11 **25 Dictionary, definition of *prescribed authority*, new  
12 paragraph (aa)**

13 *before paragraph (a) insert*

14 (aa) a court; or

15 **26 Dictionary, definition of *principal officer*, new  
16 paragraph (b) (ia)**

17 *insert*

18 (ia) in the case of a court—the principal registrar appointed  
19 under the *Court Procedures Act 2004*, section 11A; or

1 **Part 9** **Freedom of Information**  
2 **Regulation 1991**

3 **27** **Agencies exempt in respect of particular documents**  
4 **Schedule 2, new item 6**

5 *insert*

6 6 The Justice and Community Safety Directorate in relation to  
7 documents relating to a court unless the documents relate to matters  
8 of an administrative nature.

1 **Part 10** **Judicial Commissions**  
2 **Amendment Act 2015**

3 **28 Commencement**  
4 **Section 2 (2)**

5 *substitute*

6 (2) If this Act has not commenced before 1 February 2017, it  
7 automatically commences on that day.

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1 **Part 11** **Juries Act 1967**

2 **29** **Section 27 heading**

3 *substitute*

4 **27** **Preparation of panel of jurors, list of jurors excused and**  
5 **jury cards and allocation of identifying numbers**

6 **30** **Section 27 (3)**

7 *substitute*

8 (3) The sheriff must—

9 (a) allocate a unique number (an *identifying number*) to each  
10 person named in the panel of jurors; and

11 (b) prepare a card for each person named in the panel that states  
12 the identifying number for the person.

13 **31** **New section 27A**

14 *insert*

15 **27A** **Record of identifying numbers**

16 (1) The sheriff must keep a record of identifying numbers for each  
17 panel of jurors.

18 (2) The record of identifying numbers for a panel of jurors must not be  
19 kept in the panel.

20 **32** **Sheriff's return to precept**  
21 **Section 28 (1) (c)**

22 *substitute*

23 (c) the jury cards for the people named in the panel.

1 **33 Informalities etc not to invalidate verdict**  
2 **Section 30**

3 *omit*  
4 or occupation  
5 *substitute*  
6 , occupation or identifying number

7 **34 Part 6 heading and section 31**

8 *substitute*

9 **Part 6 Empanelling jury for criminal trial**

10 **31 Empanelling a jury**

- 11 (1) At the beginning of a criminal trial, the proper officer must draw  
12 1 jury card at a time from the ballot box and call aloud the  
13 identifying number stated on each card until 12 people have entered  
14 the jury box.
- 15 (2) A person called must enter the jury box unless prevented by  
16 challenge or otherwise.
- 17 (3) If all the jury cards are drawn and fewer than 12 people have entered  
18 the jury box, the judge may order the sheriff to appoint people who  
19 are in or near the Supreme Court and are liable to serve as jurors to  
20 attend to serve as jurors.
- 21 (4) If a person is appointed under subsection (3), the following  
22 provisions apply:
- 23 (a) the name of a person is taken to have been returned on the jury  
24 precept and to have been included in the jury panel;

- 1 (b) the sheriff must—
- 2 (i) allocate a unique number (an *identifying number*) to the
- 3 person; and
- 4 (ii) give the proper officer a card for the person that states the
- 5 identifying number for the person;
- 6 (c) the person may be challenged in the same way as the people
- 7 whose names were included in the jury panel.
- 8 (5) The 12 people who have entered the jury box are, when sworn, the
- 9 jury for the criminal trial.
- 10 (6) The jury card for a person who has been called but not sworn must
- 11 be returned to the ballot box when the jury is sworn.
- 12 (7) When the verdict of the jury has been given and recorded or the jury
- 13 has been discharged, whichever happens first, the jury cards must,
- 14 unless the Supreme Court otherwise orders, be returned to the ballot
- 15 box.

16 **35 Standing persons by**

17 **Section 33 (1)**

18 *omit*

19 cards

20 *substitute*

21 jury cards

**36 Section 33 (2)**

2 *substitute*

3 (2) If all of the jury cards have been drawn from the ballot box and  
4 fewer than 12 people have entered the jury box, the jury cards for  
5 the people who have been ordered to stand by must be returned to  
6 the ballot box and again drawn from the ballot box in accordance  
7 with section 31.

**37 Dictionary, definition of *jury card***

9 *omit*

10 or 31 (3)

11 *substitute*

12 or section 31 (4) (b)

**38 Dictionary, new definition of *identifying number***

14 *insert*

15 *identifying number*—see section 27 (3) (a) and section 31 (4).

**39 Dictionary, definition of *person called***

17 *substitute*

18 *person called* means a person whose identifying number stated on a  
19 jury card drawn from a ballot box is called out by the proper officer.

1 **Part 12** **Legal Aid Act 1977**

2 **40** **Constitution of board**  
3 **Section 16 (1) (c) (iv)**

4 *omit*

5 Council of Social Service of the Australian Capital Territory

6 *substitute*

7 Australian Capital Territory Council of Social Service Inc

8 **41** **New section 16 (5)**

9 *insert*

10 (5) The Minister may reappoint a member mentioned in  
11 subsection (1) (c) (ii) to (iv) without needing to choose from a panel  
12 of not less than 3 people if—

13 (a) the entity that nominated the member recommended the  
14 reappointment; and

15 (b) the Minister consulted the president of the commission about  
16 the recommendation.

1 **Part 13** **Magistrates Court Act 1930**

2 **42** **New division 3.5.1A**

3 *insert*

4 **Division 3.5.1A** **Waiver of committal proceedings**

5 **88B** **Court may waive committal proceedings**

6 (1) The court may commit an accused person for trial—

7 (a) on application by the person; and

8 (b) with the prosecutor's consent.

9 *Note* If a form is approved under the *Court Procedures Act 2004*, s 8 for this  
10 provision, the form must be used.

11 (2) In this section:

12 *accused person* means a person charged with an indictable offence.

13 **43** **ACT and corresponding courts**  
14 **Schedule 2, item 1, column 3**

15 *omit*

16 Alcohol Court of the Northern Territory

17 **44** **Schedule 2, item 1, column 3**

18 *omit*

19 Court of Summary Jurisdiction of the Northern Territory

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 29 October 2015.

**2 Notification**

Notified under the [Legislation Act](#) on 2015.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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