

2016

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

---

(As presented)

(Attorney-General)

## Supreme Court Amendment Bill 2016

### Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended	2
4 Appellate jurisdiction	
New section 37E (2) (d)	2
5 New part 8AA	2
6 Dictionary, note 2	18
7 Dictionary, new definitions	18
8 Dictionary, definition of <i>court</i>	18
9 Dictionary, new definitions	18
10 Crimes Act 1900	
New division 10.8	19



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## Supreme Court Amendment Bill 2016

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### A Bill for

An Act to amend the *Supreme Court Act 1933*, and for other purposes

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

- 1 **1 Name of Act**
- 2 This Act is the *Supreme Court Amendment Act 2016*.
- 3 **2 Commencement**
- 4 This Act commences on the day after its notification day.
- 5 *Note* The naming and commencement provisions automatically commence on
- 6 the notification day (see [Legislation Act](#), s 75 (1)).
- 7 **3 Legislation amended**
- 8 This Act amends the *Supreme Court Act 1933*.
- 9 *Note* This Act also amends the *Crimes Act 1900* (see s 10).
- 10 **4 Appellate jurisdiction**
- 11 **New section 37E (2) (d)**
- 12 *insert*
- 13 (d) applications under part 8AA (Acquittals).
- 14 **5 New part 8AA**
- 15 *before part 8A, insert*

16 **Part 8AA Acquittals**

17 **Division 8AA.1 Application—pt 8AA**

18 **68H Application—pt 8AA**

- 19 (1) This part applies if—
- 20 (a) a person has been acquitted of an offence (a *principal offence*);
- 21 and

- 1 (b) a double jeopardy law of the Territory would, but for this part,  
2 prevent the person from being retried for the principal offence,  
3 or from being tried for another offence, in a proceeding in the  
4 ACT.
- 5 (2) A reference to a person acquitted of a principal offence includes a  
6 person acquitted of a principal offence in a proceeding in another  
7 jurisdiction if a law of the jurisdiction provides for the retrial of the  
8 person for the offence, or the trial of the person for another offence.
- 9 (3) This part abrogates the doctrine of double jeopardy, however  
10 expressed in a double jeopardy law, to the extent necessary for the  
11 operation of this part and—
- 12 (a) confers on the Crown a right of appeal against an acquittal in a  
13 criminal proceeding; and
- 14 (b) permits the retrial of a person acquitted of an offence  
15 (the *acquittal offence*), and the trial of the person for another  
16 offence.
- 17 *Note* A reference to a territory law includes a reference to an Act and the  
18 common law (see [Legislation Act](#), dict, pt 1, def *territory law*).
- 19 (4) In this section:
- 20 *double jeopardy law* means a territory law that gives effect to a rule  
21 of double jeopardy in a criminal proceeding.
- 22 **Example—law that gives effect to a rule of double jeopardy**  
23 a law that does any of the following in relation to a criminal proceeding:
- 24 (a) makes available the plea of autrefois acquit or autrefois convict;  
25 (b) gives effect to the principle that a person should not be punished more than  
26 once for the same matter;  
27 (c) gives effect to the principle of finality of an acquittal;

- 1 (d) prevents an abuse of process brought about by repeated prosecution for an  
2 offence when the repeated prosecution is based on facts that are manifestly  
3 inconsistent with a previous acquittal or previous conviction

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

## 7 **Division 8AA.2 Important concepts**

### 8 **68I Definitions—pt 8AA**

9 In this part:

10 *acquittal*—see section 68J.

11 *administration of justice offence* means—

12 (a) if the offence is committed in the ACT—an offence under the  
13 [Criminal Code](#), chapter 7 (Administration of justice offences)  
14 other than part 7.3 (a *chapter 7 offence*); or

15 (b) if the offence is committed in a jurisdiction other than the  
16 ACT—a corresponding offence to a chapter 7 offence.

17 *another jurisdiction* means a jurisdiction other than the ACT and  
18 includes a jurisdiction outside Australia.

19 *category A offence* means an offence punishable by imprisonment  
20 for life.

21 *category B offence* means an offence punishable by imprisonment  
22 for life or imprisonment for 15 years or longer.

23 *compelling*, evidence—see section 68K.

24 *court* means the Court of Appeal.

25 *fresh*, evidence—see section 68K.

26 *tainted*, acquittal—see section 68L.

1     **68J        Meaning of *acquittal*—pt 8AA**

- 2           (1) For this part an *acquittal* in a criminal proceeding includes—
- 3               (a) an order of an appellate court that quashes a conviction or
- 4               finding of guilt for an offence; and
- 5               (b) a verdict, returned or entered, of not guilty of an offence.
- 6           (2) However, for this part, an *acquittal* in a criminal proceeding does
- 7           not include a special verdict of not guilty of an offence because of
- 8           mental impairment, returned or entered, under the *Crimes Act 1900*,
- 9           division 13.3 or the *Criminal Code*, section 28 (7).
- 10          (3) In this section:
- 11               *finding of guilt*, for an offence, means—
- 12               (a) an order made for the offence under the *Crimes (Sentencing)*
- 13               *Act 2005*, section 17 (Non-conviction orders—general); and
- 14               (b) a decision by a court to take the offence into account under the
- 15               *Crimes (Sentencing) Act 2005*, section 57 (Outstanding
- 16               additional offences taken into account in sentencing).

17     **68K        Meaning of *fresh* and *compelling* evidence—pt 8AA**

- 18           (1) For this part, evidence against a person acquitted of an offence is
- 19           *fresh* if the evidence—
- 20               (a) was not tendered in the proceeding in which the person was
- 21               acquitted of the offence; and
- 22               (b) could not, in the course of an exercise of reasonable diligence,
- 23               have been tendered in the proceeding.
- 24           (2) However, for this part, evidence against a person acquitted of an
- 25           offence is not *fresh* if the evidence—
- 26               (a) was, or was considered to be, inadmissible in the proceeding in
- 27               which the person was acquitted of the offence; and

- 1 (b) would, as a result of a change in the law on or after the person  
2 was acquitted of the offence, be admissible in a proceeding in  
3 which the person is retried for the offence.
- 4 (3) For this part, evidence against a person acquitted of an offence is  
5 ***compelling*** if the evidence is—
- 6 (a) reliable; and  
7 (b) substantial; and  
8 (c) highly probative of the guilt of the acquitted person in the  
9 context of the issues in dispute in the proceeding in which the  
10 person was acquitted.

11 **68L Meaning of *tainted* acquittal—pt 8AA**

- 12 (1) For this part, an acquittal is ***tainted*** if—
- 13 (a) the person acquitted of an offence (the ***acquittal offence***), or  
14 someone else, has been convicted of an administration of  
15 justice offence that is relevant to the proceeding in which the  
16 acquittal happened; and
- 17 (b) it is more likely than not that, but for the commission of the  
18 administration of justice offence, the acquitted person would  
19 have been convicted of the acquittal offence.
- 20 (2) However, an acquittal is not ***tainted*** if the conviction for the  
21 administration of justice offence is subject to an appeal for which  
22 leave is not required.

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## 1    **Division 8AA.3      Retrial etc of acquitted person**

### 2    **68M      Court may order retrial—category A offence**

3            (1) The court may, on application by the director of public prosecutions,  
4            order a person acquitted of an offence (an *acquitted person*) to be  
5            retried for a category A offence if satisfied that—

6                    (a) there is fresh and compelling evidence against the acquitted  
7                    person in relation to the offence; and

8                    (b) it is in the interests of justice for the order to be made.

9            (2) If the court orders the acquitted person to be retried, the court must  
10            quash the person’s acquittal and remove the acquittal as a bar to the  
11            person being retried for a category A offence.

12            (3) The court may, under this section, order the acquitted person to be  
13            retried for a category A offence even if the person was acquitted of a  
14            lesser offence.

15            (4) This section applies only if the acquittal that is the subject of the  
16            application happened on or after the commencement of the *Supreme  
17            Court Amendment Act 2016*, section 3.

### 18    **68N      Court may order retrial—category B offence**

19            (1) The court may, on application by the director of public prosecutions,  
20            order a person acquitted of an offence (an *acquitted person*) to be  
21            retried for a category B offence if satisfied that—

22                    (a) the person’s acquittal is tainted; and

23                    (b) it is in the interests of justice for the order to be made.

24            (2) If the court orders the acquitted person to be retried, the court must  
25            quash the person’s acquittal and remove the acquittal as a bar to the  
26            person being retried for a category B offence.

- 1           (3) The court may, under this section, order the acquitted person to be  
2           retried for a category B offence even if the person was acquitted of a  
3           lesser offence.
- 4           (4) If the court makes an order under this section for an acquitted  
5           person to be retried, based on the person's conviction for an  
6           administration of justice offence (the *justice offence*), and the  
7           conviction for the justice offence is quashed after the order is made,  
8           the acquitted person may apply to the court to set aside the order  
9           and—
- 10           (a) restore the acquittal that was quashed; or
- 11           (b) restore the acquittal as a bar to the acquitted person being  
12           retried for an offence.
- 13           (5) This section applies whether the acquittal that is the subject of the  
14           application happened before or after the commencement of the  
15           *Supreme Court Amendment Act 2016*, section 3.

16   **68O        Court may order trial—administration of justice offence**

- 17           (1) The court may, on application by the director of public prosecutions,  
18           order a person who has been acquitted of an indictable offence (an  
19           *acquitted person*) to be tried for an administration of justice offence  
20           that is related to the proceeding for the indictable offence, if  
21           satisfied that—
- 22           (a) there is fresh evidence against the acquitted person; and
- 23           (b) the evidence is relevant to the administration of justice offence;  
24           and
- 25           (c) it is in the interests of justice for the order to be made.
- 26           (2) If the court orders the acquitted person to be tried for the  
27           administration of justice offence, the court must quash the person's  
28           acquittal for the indictable offence and remove the acquittal for the  
29           indictable offence as a bar to the person being tried for the  
30           administration of justice offence.

- 1 (3) This section applies whether the acquittal that is the subject of the  
2 application happened before or after the commencement of the  
3 *Supreme Court Amendment Act 2016*, section 3.

4 **68P Interests of justice**

5 When determining whether an order under section 68M (Court may  
6 order retrial—category A offence), section 68N (Court may order  
7 retrial—category B offence) or section 68O (an *order*) is in the  
8 interests of justice, the court must take into account the following:

- 9 (a) whether an acquitted person to whom the order would relate is,  
10 in the circumstances, likely to receive a fair trial;
- 11 (b) the period since the offence, for which an acquitted person  
12 would be tried or retried as a result of an order, was  
13 committed;
- 14 (c) whether a police officer or prosecutor has failed to act with  
15 reasonable diligence or expedition in relation to the application  
16 for an order.

17 **Division 8AA.4 Procedure**

18 **Subdivision 8AA.4.1 Applications under pt 8AA**

19 **68Q Conditions for retrial application**

- 20 (1) An application under section 68M (Court may order retrial—  
21 category A offence) or section 68N (Court may order retrial—  
22 category B offence) for the retrial of an acquitted person must not be  
23 made unless—
- 24 (a) the acquitted person has been charged with the offence for  
25 which the retrial is sought (the *retrial offence*); or
- 26 (b) a warrant has been issued for the person's arrest in relation to  
27 the retrial offence.

- 1           (2) The application must be made not later than 28 days after the person  
2           is charged with the retrial offence or the warrant is issued for the  
3           person's arrest in relation to the retrial offence.
- 4           (3) The court may extend the period mentioned in subsection (2).

5           **68R           Limitations on retrial application**

- 6           (1) Not more than 1 application in relation to the same acquittal may be  
7           made under this part for the retrial of an acquitted person.
- 8           (2) For an acquittal that happens in a retrial ordered under this part—
- 9                   (a) no further application may be made under section 68M (Court  
10                  may order retrial—category A offence) in relation to the  
11                  acquittal; but
- 12                   (b) a further application may be made under section 68N (Court  
13                  may order retrial—category B offence) in relation to the  
14                  acquittal.

15           **68S           Conditions for justice offence trial application**

- 16           (1) An application under section 68O (Court may order trial—  
17           administration of justice offence) for the trial of an acquitted person  
18           must not be made unless—
- 19                   (a) the person has been charged with the administration of justice  
20                  offence for which the trial is sought (the *justice offence*); or
- 21                   (b) a warrant has been issued for the person's arrest for the justice  
22                  offence.
- 23           (2) The application must be made not later than 28 days after the person  
24           is charged with the justice offence or the warrant is issued for the  
25           person's arrest in relation to the justice offence.
- 26           (3) The Court may extend the period mentioned in subsection (2).

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## 1 Subdivision 8AA.4.2 Presentation of indictment

### 2 68T Limitations on indictment

- 3 (1) If an acquitted person is, by an order under division 8AA.3, liable to  
4 be retried for a category A offence or a category B offence, the  
5 director of public prosecutions must not, in a proceeding allowed by  
6 the order, present an indictment against the person for an offence  
7 that was not enacted at the time the person is alleged to have  
8 engaged in conduct constituting the offence for which the person  
9 was acquitted and that was the subject of the application for the  
10 order.
- 11 (2) Subsection (3) applies if an acquitted person is, by an order under  
12 division 8AA.3, liable to be—
- 13 (a) retried for a category A offence or a category B offence  
14 (a *retrial offence*); and
- 15 (b) tried for an administration of justice offence (a *justice*  
16 *offence*), in relation to the proceeding for which the person  
17 was acquitted (the *original proceeding*) and that was the  
18 subject of the application for the order that the person be  
19 retried for the category A or category B offence.
- 20 (3) The director of public prosecutions may, in a proceeding allowed by  
21 the order, present an indictment against the person for—
- 22 (a) if the justice offence does not directly controvert the person's  
23 acquittal in the original proceeding—both the retrial offence  
24 and the justice offence; or
- 25 (b) if the justice offence directly controverts the person's acquittal  
26 in the original proceeding—either the retrial offence or the  
27 justice offence, but not both.

- 1     **68U     Indictment for retrial of category A or category B offences**
- 2           (1) An indictment against a person liable under this part to be retried of
- 3           a category A or category B offence must be presented against the
- 4           person within 2 months after the day the order for the retrial was
- 5           made (the *indictment period*) under section 68M (Court may order
- 6           retrial—category A offence) or section 68N (Court may order
- 7           retrial—category B offence) (a *retrial order*).
- 8           (2) However, the court may give leave to present the indictment after
- 9           the end of the indictment period if it is satisfied that in the
- 10          circumstances—
- 11           (a) the prosecutor has acted reasonably expeditiously to present
- 12           the indictment; and
- 13           (b) that presenting the indictment will not cause an injustice to the
- 14           person.
- 15          (3) An indictment presented in accordance with this section may be
- 16          amended or replaced at any time if the court is satisfied that
- 17          amending or replacing the indictment will not cause an injustice to
- 18          the person.
- 19          (4) If, after the end of the indictment period, an indictment for the
- 20          retrial has not been presented or has been withdrawn or quashed, the
- 21          person may apply to the court for any of the following:
- 22           (a) an order setting aside the retrial order;
- 23           (b) an order restoring the acquittal quashed by the retrial order;
- 24           (c) an order restoring the bar to the person being tried for the
- 25           offence.
- 26          (5) If the retrial order is set aside, a further application may not be made
- 27          under this part for the retrial of the person in relation to the offence
- 28          mentioned in the retrial order.

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1    **68V       Indictment for trial of justice offence**

- 2           (1) An indictment against a person liable under this part to be tried for  
3           an administration of justice offence must be presented against the  
4           person within 2 months after the day the order for the trial was made  
5           (the *indictment period*) under section 68O (Court may order trial—  
6           administration of justice offence) (a *trial order*).
- 7           (2) However, the court may give leave to present the indictment after  
8           the end of the indictment period if it is satisfied that in the  
9           circumstances—
- 10           (a) the prosecutor has acted reasonably expeditiously to present  
11           the indictment; and
- 12           (b) that presenting the indictment will not cause an injustice to the  
13           person.
- 14           (3) An indictment presented in accordance with this section may be  
15           amended or replaced at any time if the court is satisfied that  
16           amending or replacing the indictment will not cause an injustice to  
17           the person.
- 18           (4) If, after the end of the indictment period, an indictment for the trial  
19           has not been presented or has been withdrawn or quashed, the  
20           person may apply to the court for any of the following:
- 21           (a) an order setting aside the trial order;
- 22           (b) an order restoring the acquittal quashed by the trial order;
- 23           (c) an order restoring the bar to the person being tried for the  
24           offence.
- 25           (5) If the trial order is set aside, a further application may not be made  
26           under section 68O for the trial of the person in relation to the  
27           offence mentioned in the trial order.

1     **Division 8AA.5        Conduct of proceeding for retrial etc**

2     **68W        Prosecution must not refer to certain matters before jury**

3       (1) At the retrial of a person in accordance with an order under  
4       section 68M (Court may order retrial—category A offence) or  
5       section 68N (Court may order retrial—category B offence) the  
6       prosecution must not mention before the jury that the court has  
7       found that it appears that—

- 8           (a) there is fresh and compelling evidence against the person; or  
9           (b) more likely than not, but for the commission of an  
10          administration of justice offence, the person would have been  
11          convicted of an offence.

12       (2) At the trial of a person in accordance with an order under  
13       section 68O (Court may order trial—administration of justice  
14       offence) the prosecution must not mention before the jury that the  
15       court has found that it appears that there is fresh evidence against  
16       the person.

17     **Division 8AA.6        Miscellaneous**

18     **68X        Entitlement to bail**

19       The *Bail Act 1992*, section 9A (Entitlement to bail—offences other  
20       than minor offences), applies to a person charged with an offence  
21       for which a retrial, or a trial, is sought under this part.

22     **68Y        Single course of action for each proceeding**

23       A person acquitted of an offence must not in a single proceeding—  
24       (a) be retried for the offence (the *principal offence*) under this  
25       part; and  
26       (b) be tried for an administration of justice offence related to the  
27       principal offence.

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1     **68Z       Restrictions on publication**

2             (1) A person must not publish any matter that identifies or is capable of  
3             identifying an acquitted person—

4                     (a) who is being retried for an offence as a result of an order under  
5                     section 68M (Court may order retrial—category A offence) or  
6                     section 68N (Court may order retrial—category B offence); or

7                     (b) who is being tried for an administration of justice offence as a  
8                     result of an order under section 68O (Court may order trial—  
9                     administration of justice offence); or

10                    (c) who is the subject of—

11                             (i) a police investigation, or an application for a police  
12                             investigation, under the *Crimes Act 1900*, section 252L  
13                             (Authorisation of police investigations—acquitted  
14                             person); or

15                                     *Note*     Procedure for a police investigation of an offence  
16                                     suspected to have been committed by a person acquitted of  
17                                     the offence are set out under the *Crimes Act 1900*, s 252L.

18                             (ii) an application for a retrial, or trial for an administration  
19                             of justice offence, or an order for retrial, or trial for an  
20                             administration of justice offence, under this part.

21             (2) However, subsection (1) does not apply if the publication is  
22             authorised by order of—

23                     (a) the court; or

24                     (b) a court before which the acquitted person is being retried, or  
25                     tried for the administration of justice offence.

26             (3) The relevant court may at any time vary or revoke an order under  
27             this section.

- 1           (4) The prohibition on publication under this section ceases to have  
2 effect, subject to any order under this section, when whichever of  
3 the following happens first:
- 4           (a) there is no longer any step that could be taken which would  
5 lead to the acquitted person being retried, or tried for the  
6 administration of justice offence, under this part;
- 7           (b) if the acquitted person is retried, or tried for an administration  
8 of justice offence, under this part—the trial ends.
- 9           (5) Nothing in this section affects any prohibition of the publication of  
10 any matter under any other law in force in the Territory.
- 11           (6) A contravention of this section is punishable as contempt of the  
12 Supreme Court.

13 **68ZA       Maximum penalty for retrial offence**

- 14           (1) This section applies if an acquitted person is—
- 15           (a) retried for a category A offence or a category B offence as a  
16 result of an order under division 8AA.3; and
- 17           (b) found guilty of the offence.
- 18           (2) When imposing a sentence on the person for the offence, the court  
19 must not exceed the maximum penalty for the offence that applied at  
20 the time the person is alleged to have engaged in conduct that  
21 constituted the offence for which the person was acquitted and that  
22 was the subject of the application for the order.

23 **68ZB       Indemnification for costs**

- 24           (1) This section applies if—
- 25           (a) an application is made to the court by the director of public  
26 prosecutions for an order under division 8AA.3 in relation to—
- 27                   (i) the retrial of an acquitted person under section 68M  
28                   (Court may order retrial—category A offence); or

- 
- 1 (ii) the retrial of an acquitted person under section 68N  
2 (Court may order retrial—category B offence); or
- 3 (iii) the trial of an acquitted person for an administration of  
4 justice offence under section 68O (Court may order  
5 trial—administration of justice offence); and
- 6 (b) the acquitted person (the *applicant*) applies to the court for  
7 indemnification of the applicant's costs incurred as a result  
8 of—
- 9 (i) an application for an order mentioned in paragraph (a); or
- 10 (ii) if the order is granted—a proceeding resulting from the  
11 order.
- 12 (2) The court may make an order, subject to any conditions the court  
13 thinks appropriate, that the applicant is entitled to be indemnified for  
14 the costs mentioned in subsection (1) (b) (an *indemnification order*)  
15 if the court is satisfied that the order is in the interests of justice.
- 16 (3) When deciding whether it is in the interests of justice to make an  
17 indemnification order the court may take into account the following:
- 18 (a) whether the court makes an order mentioned in  
19 subsection (1) (a);
- 20 (b) whether the applicant's acquittal, that is the subject of the  
21 application for an order mentioned in subsection (1) (a), was  
22 attributable to the act, neglect or fault of the applicant;
- 23 (c) any other matter that the court considers relevant.
- 24 (4) If the court makes an indemnification order in the applicant's favour  
25 the applicant must be indemnified by the Territory, in relation to the  
26 costs mentioned in the order, for an amount assessed as reasonably  
27 incurred.
- 28 *Note* If a form is approved under the *Court Procedures Act 2004*, s 8 for an  
29 application, the form must be used.

1 **6 Dictionary, note 2**

2 *insert*

- 3 • Criminal Code
- 4 • indictable offence (see s 190)

5 **7 Dictionary, new definitions**

6 *insert*

7 *acquittal*, for part 8AA (Acquittals)—see section 68J.

8 *administration of justice offence*, for part 8AA (Acquittals)—see  
9 section 68I.

10 *another jurisdiction*, for part 8AA (Acquittals)—see section 68I.

11 *category A offence*, for part 8AA (Acquittals)—see section 68I.

12 *category B offence*, for part 8AA (Acquittals)—see section 68I.

13 *compelling*, evidence, for part 8AA (Acquittals)—see section 68K.

14 **8 Dictionary, definition of court**

15 *substitute*

16 *court*—

17 (a) for this Act generally—means the Supreme Court; and

18 (b) for part 8AA (Acquittals)—see section 68I.

19 **9 Dictionary, new definitions**

20 *insert*

21 *fresh*, evidence, for part 8AA (Acquittals)—see section 68K.

22 *tainted*, acquittal, for part 8AA (Acquittals)—see section 68L.

1 **10 Crimes Act 1900**  
2 **New division 10.8**

3 *insert*

4 **Division 10.8 Investigations relating to acquittals**

5 **252L Authorisation of police investigations—acquitted person**

- 6 (1) This section applies to a proposed police investigation of an offence  
7 for which, under the *Supreme Court Act 1933*, part 8AA, an  
8 acquitted person may be retried or tried.

9 *Note* The *Supreme Court Act 1933*, pt 8AA, allows the Supreme Court to  
10 order the retrial of a person acquitted of an offence, or the trial of the  
11 person for another offence, despite the rule against double jeopardy.

- 12 (2) The chief police officer, or a deputy chief police officer, may apply  
13 to the director of public prosecutions for the director's agreement to  
14 the police investigation only if satisfied that relevant evidence for an  
15 application for a retrial or trial under the *Supreme Court Act 1933*,  
16 part 8AA—

17 (a) has been obtained; or

18 (b) is reasonably likely to be obtained if the investigation is carried  
19 out.

- 20 (3) A police officer may carry out, or authorise another police officer to  
21 carry out, an investigation of the offence only if the director of  
22 public prosecutions—

23 (a) has advised that, in the director's opinion, the acquitted  
24 person's acquittal would not be a bar to the retrial of the  
25 acquitted person in the ACT for the offence or the trial of the  
26 acquitted person for another offence; and

27 (b) agrees, by written notice, to the conduct of the investigation.

- 1           (4) The director of public prosecutions may agree to the investigation  
2           only if satisfied that—
- 3           (a) there is, or there is likely as a result of the investigation to be,  
4           sufficient new evidence to warrant the conduct of the  
5           investigation; and
- 6           (b) it is in the public interest for the investigation to be carried out.
- 7           (5) However, a police officer may carry out, or authorise the carrying  
8           out of, a police investigation to which this section applies, without  
9           the advice and written agreement of the director of public  
10          prosecutions if the police officer reasonably believes that—
- 11          (a) urgent investigative action is needed to prevent substantial and  
12          irrevocable prejudice to the investigation; and
- 13          (b) it is not reasonably practicable in the circumstances to obtain  
14          the advice and agreement of the director of public prosecutions  
15          before taking the action.
- 16          (6) The chief police officer, or a deputy chief police officer, must tell  
17          the director of public prosecutions, in writing, as soon as  
18          practicable, about action taken under subsection (5) and the  
19          investigation must not proceed further without the advice and  
20          written agreement of the director of public prosecutions.
- 21          (7) Despite any other territory law, the functions of the chief police  
22          officer or a deputy chief police officer under this section must not be  
23          delegated to any other police officer or an AFP employee.
- 24          (8) In this section:
- 25                **AFP employee**—see the *Australian Federal Police Act 1979*  
26                (Cwlth), section 4.
- 27                **police investigation** means an investigation that involves, whether  
28                with or without the consent of the acquitted person—
- 29                (a) any arrest, questioning or search of the acquitted person; or

- 1 (b) the issue of a warrant for the arrest of the person; or  
2 (c) any forensic procedure carried out on the person; or  
3 (d) any search or seizure of premises or property of or occupied by  
4 the person.
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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 5 May 2016.

**2 Notification**

Notified under the [Legislation Act](#) on 2016.

**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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