



Australian Capital Territory

Court Procedures Act 2004

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Not all amendments are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Court Procedures Act 2004* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 29 July 2008. It also includes any amendment, repeal or expiry affecting the republished law to 29 July 2008.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

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- authorised republications to which the *Legislation Act 2001* applies
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Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

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If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

Court Procedures Act 2004

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Australian Capital Territory

Court Procedures Act 2004

An Act to provide for certain matters relating to courts and tribunals, and for other purposes

Part 1 Preliminary

1 Name of Act

This Act is the *Court Procedures Act 2004*.

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*fee*, for part 3 (Court and tribunal fees)—see section 12.’ means that the term ‘fee’ is defined in that section for part 3.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

5 Objects of Act

- (1) The objects of this Act include—
 - (a) recognising the importance of court procedures in our system of justice; and
 - (b) facilitating cooperation between ACT courts in the common goals of—

- (i) improved access to justice through the development of procedures that are, as far as practicable, the same for all ACT courts; and
 - (ii) better court procedures.
- (2) In this section:
- court* includes a tribunal that is a prescribed tribunal under section 6.

Part 2 Court rules and forms

6 Definition for pt 2 and sch 1

In this part and schedule 1:

prescribed tribunal means a tribunal prescribed by regulation for this part.

7 Rule-making power

- (1) The rule-making committee may make rules in relation to the following:
 - (a) the practice and procedure of ACT courts, prescribed tribunals and their registries;
 - (b) anything else mentioned in schedule 1 (Subject matter for rules).

Note 1 The power to make rules for a court or tribunal includes power to make rules in relation to any matter necessary or convenient to be prescribed for carrying out or giving effect to the jurisdiction of the court or tribunal under any law of the Territory or Commonwealth that authorises or requires anything to be done in or in relation to the court or tribunal (see Legislation Act, s 45 (Power to make court rules)).

Note 2 A rule must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) A rule is taken to be made by the rule-making committee if it is signed by 3 or more committee members, 1 of whom must be the member mentioned in section 9 (2) (a) and another of whom must be the member mentioned in section 9 (2) (d) or (e).
- (3) This section does not limit any inherent or other power of a court, judge, magistrate or prescribed tribunal to control proceedings.

8 Approved forms

- (1) The rule-making committee may, in writing, approve forms—
 - (a) for this Act; or
 - (b) for use in or in relation to ACT courts, prescribed tribunals and their registries.
- (2) If the rule-making committee approves a form for a particular purpose, the approved form must be used for that purpose.

Note For other provisions about forms, see the Legislation Act, s 255.

- (3) A form is taken to be approved by the rule-making committee if it is approved by 3 or more committee members, 1 of whom must be the member mentioned in section 9 (2) (a) and another of whom must be the member mentioned in section 9 (2) (d) or (e).
- (4) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

9 Rule-making committee

- (1) A rule-making committee is established.
- (2) The rule-making committee consists of the following members:
 - (a) the Chief Justice;

Note The Chief Justice may delegate this function to a resident judge (see s 10).

- (b) the President of the Court of Appeal or, if the President and Chief Justice are the same person, a resident judge appointed by the Chief Justice;

Note 1 The President may delegate this function to a resident judge (see s 10).

Note 2 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

(c) another resident judge appointed by the Chief Justice or, if no appointment is made, the master;

(d) the Chief Magistrate;

Note The Chief Magistrate may delegate this function to a magistrate (see s 10).

(e) another magistrate appointed by the Chief Magistrate.

(3) The rule-making committee may conduct its proceedings in the way it decides, whether by holding meetings or in any other way.

(4) The Chief Justice is the chairperson of the rule-making committee.

(5) However, if the Chief Justice is not personally present at a meeting of the rule-making committee, the President is to chair the meeting if personally present at the meeting.

(6) Also, if the Chief Justice and the President are not personally present at a meeting of the rule-making committee, the member present chosen by the committee is to chair the meeting.

(7) The Chief Justice must approve a public servant as secretary of the rule-making committee.

10 Delegation by Chief Justice, President and Chief Magistrate

(1) The Chief Justice may delegate a function under this part to a resident judge.

(2) The President of the Court of Appeal may delegate a function under this part to a resident judge.

(3) The Chief Magistrate may delegate a function under this part to a magistrate.

- (4) However, the Chief Justice, the President or the Chief Magistrate may not delegate the function of being a member of the rule-making committee to a person who is already a member of the committee because of an appointment under section 9 (2).

Note For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4. In particular, the delegation may have effect only in stated circumstances, eg if the appointer is away from the ACT.

11 Advisory committee

- (1) An advisory committee is established.
- (2) The advisory committee consists of the following members:

- (a) a resident judge appointed by the Chief Justice;

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

- (b) the master;
- (c) 2 magistrates appointed by the Chief Magistrate;
- (d) the registrar of the Supreme Court;
- (e) the registrar of the Magistrates Court;
- (f) a person appointed by the Australian Capital Territory Bar Association to represent the association;
- (g) a person appointed by the Law Society of the Australian Capital Territory to represent the society;
- (h) the director of public prosecutions;
- (i) the parliamentary counsel;
- (j) a public servant appointed by the chief executive;
- (k) the secretary of the rule-making committee.

- (3) The functions of the advisory committee are to—
 - (a) initiate, consider, develop, and advise the rule-making committee on, proposals for making rules and approving forms under this Act; and
 - (b) make recommendations to the rule-making committee about the making of rules and approving of forms under this Act.
- (4) The advisory committee must consider, and advise the rule-making committee on, proposals for making rules and approving forms under this Act that are referred to it by the rule-making committee.
- (5) The advisory committee may conduct its proceedings in the way it decides, whether by holding meetings or in any other way.
- (6) The resident judge mentioned in subsection (2) (a) is the chairperson of the advisory committee.
- (7) However, if the resident judge is not present at a meeting of the advisory committee, the master is to chair the meeting if present at the meeting.
- (8) Also, if the resident judge and the master are not present at a meeting of the advisory committee, the member present chosen by the committee is to chair the meeting.

Part 3 Court and tribunal fees

12 Definitions—pt 3

In this part:

determined fee means a fee determined under this part.

energy and water consumer council means the Energy and Water Consumer Council established under the *Utilities Act 2000*, section 169.

fee includes a charge and a tax.

relevant legislation means any of the following:

- (a) the *Administrative Appeals Tribunal Act 1989*;
- (b) the *Consumer and Trader Tribunal Act 2003*;
- (c) the *Consumer Credit (Administration) Act 1996*;
- (d) the *Coroners Act 1997*;
- (e) this Act;
- (f) the *Discrimination Act 1991*;
- (g) the *Leases (Commercial and Retail) Act 2001*;
- (h) the *Magistrates Court Act 1930*;
- (i) the *Residential Tenancies Act 1997*;
- (j) the *Supreme Court Act 1933*;
- (k) the *Utilities Act 2000*, part 11;

- (l) any other legislation prescribed by regulation for this definition.

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

tribunal means any of the following:

- (a) the administrative appeals tribunal;
- (b) the consumer and trader tribunal;
- (c) the credit tribunal;
- (d) the discrimination tribunal;
- (e) the energy and water consumer council;
- (f) the residential tenancies tribunal.

13 Determination of fees

- (1) The Minister may, in writing, determine fees for any of the following purposes:
- (a) proceedings in a court or tribunal, and matters incidental to the proceedings, including—
 - (i) for the Supreme Court—the admission of lawyers; and
 - (ii) the service and execution of the process of a court or tribunal; and
 - (iii) the assessment of costs;
 - (b) facilities and services provided by the court or tribunal, including the service and execution of the process of a court of the Commonwealth, a State, another Territory or a foreign country;

(c) the general purposes of relevant legislation.

Note 1 The Legislation Act contains provisions about the making of determinations and regulations relating to fees and charges (see pt 6.3).

Note 2 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations and rules (see Legislation Act, s 104).

(2) A determination under subsection (1) may provide for any of the following matters:

(a) exempting people from liability to pay determined fees, completely or partly, in all or particular circumstances;

(b) remitting, refunding or waiving, by a registrar of a court or tribunal, determined fees, completely or partly, in particular circumstances;

(c) deferring, by a registrar of a court or tribunal, liability to pay determined fees, completely or partly, in particular circumstances.

(3) A determination under subsection (1) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

14 Payment of fees

(1) A determined fee is payable, in advance, in accordance with the determination that determined the fee, but subject to this section.

(2) A determined fee is payable on notice from the registrar of the court or tribunal if it is worked out by reference to expenses actually incurred in exercising the function, or in providing the facility or service, for which the fee is payable.

U 15 Remission, refund, deferral, waiver and exemption of fees

- (1) A determined fee may be remitted or refunded, or liability for its payment deferred, in accordance with the determination that determined the fee.
- (2) A determined fee is not payable—
 - (a) if the person otherwise liable to pay the fee or charge is—
 - (i) exempt from liability to pay the fee under the determination that determined the fee; or
 - (ii) exempt from paying the fee under the *Legal Aid Act 1977*, section 93 (1) (Exemption from fees and taxes); or
 - (iii) legally assisted under a scheme or service provided or approved by the Attorney-General; or
 - (b) if the registrar of the court or tribunal waives payment by a person of the fee completely or partly because the registrar considers that payment of the fee would impose hardship on the person—to the extent of the waiver; or
 - (c) for lodging a document, or for the service and execution of process, in relation to a proceeding in the Supreme Court—
 - (i) in a criminal matter, including an appeal; or
 - (ii) under the *Coroners Act 1997*; or
 - (iii) under the *Legal Profession Act 2006*, chapter 4 (Complaints and discipline); or
 - (iv) under any of the following Acts:
 - (A) the *Adoption Act 1993*;
 - (B) the *Children and Young People Act 1999*;
 - (C) the *Domestic Violence and Protection Orders Act 2001*;

- (D) the *Guardianship and Management of Property Act 1991*;
- (E) the *Mental Health (Treatment and Care) Act 1994*;
- (F) the *Testamentary Guardianship Act 1984*;
- (v) on appeals in relation to the following matters:
 - (A) a matter under the *Children and Young People Act 1999*;
 - (B) a matter under the *Mental Health (Treatment and Care) Act 1994*;
 - (C) a decision of the Guardianship and Management of Property Tribunal; or
- (vi) on a matter that has been remitted to the court by the High Court under the *Judiciary Act 1903* (Cwlth), section 44; or
- (vii) in relation to which a convention to which Australia is a party provides that a fee is not to be payable; or
- (viii) on an application to the court for an extension of the time within which a proceeding may be begun; or
- (ix) on an application mentioned in the *Juries Act 1967*, section 24 (10), section 26A (2) or section 51A (3); or
- (d) for the laying of an information in the Magistrates Court—
 - (i) by the director of public prosecutions acting in the exercise of an official function under a territory law; or
 - (ii) by a police officer acting in the exercise of an official function under a territory law; or

- (e) if it is not payable under another provision of this Act or another territory law.

Note The Territory Crown is not liable to pay a determined fee in a civil proceeding (see s 28 (Court fees and charges)).

- (3) If the administrative appeals tribunal is satisfied that a proceeding ends in a way that is favourable to an applicant for a review by the tribunal of a decision, it may order another party to the proceeding to pay the amount of the application fee to the applicant.
- (4) This section is subject to section 16 and section 17.

16 Recovery of fees in civil proceedings if fees not otherwise payable

- (1) This section applies in relation to a civil proceeding in the Supreme Court or the Magistrates Court, or a proceeding in a tribunal, between at least 2 parties (the *first party* and the *second party*), if—
 - (a) a filing fee, or a fee for the service and execution of process, otherwise payable by the first party is—
 - (i) not payable, completely or partly, because of the exemption of the first party under this part; or
 - (ii) remitted, refunded or waived, completely or partly, under this part; and
 - (b) judgment is given or entered, or an order is made, in favour of the first party; and
 - (c) the first party's costs are payable by the second party.
- (2) If this section applies, the second party must pay to the registrar of the court or tribunal the amount of the fee exempted, remitted, refunded or waived.

17 Recovery of fees in criminal proceedings if fees not otherwise payable

- (1) This section applies in relation to a criminal proceeding in the Magistrates Court if—
 - (a) the fee (the *information fee*) that would otherwise be payable by the informant for the laying of the information in the proceeding is not payable, completely or partly, under this part; and
 - (b) the defendant is convicted of the offence alleged in the information and ordered to pay a fine.
- (2) If this section applies, the defendant must pay to the registrar of the Magistrates Court, in addition to the fine—
 - (a) if payment of the fee is waived in part under this part—the amount of the fee waived; or
 - (b) in any other case—the information fee.

18 Review of decisions

- (1) This section applies to any of the following decisions made under this part by the registrar of a court or tribunal in relation to a person (the *eligible person*):
 - (a) a decision refusing to remit, completely or partly, a determined fee payable by the person;
 - (b) a decision refusing to refund, completely or partly, a determined fee paid by the person;
 - (c) a decision refusing to defer, completely or partly, the person's liability to pay a determined fee;
 - (d) a decision refusing to waive, completely or partly, payment of a determined fee by the person;

- (e) a decision refusing to allow the person the benefit of an exemption to pay a determined fee.
- (2) If the registrar makes a decision to which this section applies, the registrar must give written notice of the decision to the eligible person.
- (3) The notice must tell the eligible person that the person may—
 - (a) apply to the registrar for a statement of reasons for the decision; and
 - (b) apply for review of the decision under this section.
- (4) The eligible person may apply to the registrar for a statement of reasons for the decision within 28 days after the day when the person is given notice of the decision by the registrar.
- (5) The eligible person may apply to the court or tribunal for review of the decision within—
 - (a) 28 days after the day the person is given notice of the decision by the registrar; or
 - (b) if the person applies within the 28 days for a statement of reasons for the decision—28 days after the day when the person is given the statement of reasons.
- (6) For the review, the court or tribunal—
 - (a) must be constituted by—
 - (i) for the Supreme Court—a judge or the master; or
 - (ii) for the Magistrates Court—a magistrate; or
 - (iii) for a tribunal—a member of the tribunal; and
 - (b) may make the orders the court or tribunal considers appropriate.
- (7) A fee is not payable for an application under this section.

Part 4 **Crown proceedings**

Division 4.1 **Preliminary**

20 **Definitions—pt 4**

In this part:

corresponding law means a law of a State or another Territory that is declared by regulation to be a law that corresponds to this part.

Crown includes a Minister, instrumentality or agency of the Crown and a person prescribed by regulation.

judgment means any judgment or order of a court.

proceeding means civil proceeding.

Territory Crown means the Crown in right of the Territory.

the Territory includes a Minister, instrumentality or agency of the Territory and a person prescribed by regulation.

Division 4.2 **Proceedings by and against Crown generally**

21 **Proceedings by and against the Crown generally**

- (1) Subject to this part and any relevant rules of court and subject to the *Judiciary Act 1903* (Cwlth)—
 - (a) a proceeding may be brought by or against the Crown in the same way as a proceeding between subjects; and
 - (b) the same procedural and substantive law applies to such a proceeding as in a proceeding between subjects.
- (2) Subject to the regulations, a proceeding may be brought by or against the Crown—

- (a) for the Territory Crown—under the name of the ‘Australian Capital Territory’; or
 - (b) in any other case—under the name in which the Crown could sue or be sued in the courts of its own jurisdiction.
- (3) In this section:
- proceeding*, against the Crown, includes a proceeding to attach earnings or other debts owing or accruing from the Territory Crown to someone else.

22 Immunities and limitations of liability

This division does not affect any immunity from, or limitation on, liability that the Crown enjoys by statute.

23 Corresponding laws of States and other Territories

The corresponding law of each State and other Territory binds the Crown in right of the Australian Capital Territory.

24 Injunctive relief

- (1) Injunctive relief may be granted against the Crown.
- (2) However, subject to the *Administrative Decisions (Judicial Review) Act 1989*, section 17 (1), a mandatory injunction cannot be made against the Crown.

25 Protection of confidentiality on grounds of public interest

This division does not affect any rule of law under which a person may refuse to discover or produce documents, or to answer an interrogatory or other question, on the ground that to do so would be prejudicial to the public interest.

26 Right of Attorneys-General of other jurisdictions to appear in proceedings

- (1) The Attorney-General of the Commonwealth may, on behalf of the Commonwealth, represent the Crown in right of the Commonwealth in any action, proceeding or matter (whether civil or criminal) in which the Crown in right of the Commonwealth is a party.
- (2) The Attorney-General of a State or another Territory may, on behalf of the State or other Territory, represent the Crown in right of the State or other Territory in any action, proceeding or matter (whether civil or criminal) in which the Crown in right of the State or other Territory is a party.

27 Right of Attorney-General to intervene in proceedings

- (1) This section applies if any of the following are in issue in a proceeding:
 - (a) the interpretation or validity of a law of the Territory or Commonwealth;
 - (b) legislative or executive powers of the Territory or Commonwealth, or an instrumentality or agency of the Territory or Commonwealth;
 - (c) judicial powers of a court or tribunal established under the law of the Territory or Commonwealth.
- (2) The Attorney-General may intervene in the proceeding, on behalf of the Crown, to submit argument on the issue.
- (3) If the Attorney-General intervenes in a proceeding under this section, the Attorney-General has the same right of appeal in the proceeding as a party to the proceeding.
- (4) If the Attorney-General intervenes in a proceeding under this section, and there are in the opinion of the court special reasons for making an order under this subsection, the court may make an order

for costs against the Crown to reimburse the parties to the proceeding for costs occasioned by the intervention.

(5) In this section:

Attorney-General includes the Attorney-General for the Commonwealth, the Attorney-General for each State and the Attorney-General for each other Territory.

Crown includes the Crown in right of the Commonwealth, the Crown in right of each State and the Crown in right of each other Territory.

28 Court fees and charges

(1) The Territory Crown is not required to pay any court fee or charge in any proceeding.

(2) Any costs to which the Territory Crown is entitled must be calculated as if the Territory Crown were liable to pay, and had in fact paid, fees and charges from which it is exempt under subsection (1).

(3) In this section:

carries on business does not include imposing or collecting—

- (a) taxes; or
- (b) levies; or
- (c) fees for licences, permits or any other form of authority.

territory authority means a corporation established under an Act, but does not include a body declared under the *Financial Management Act 1996*, section 3B not to be a territory authority.

Territory Crown does not include a territory authority so far as the authority carries on business.

29 Enforcement of judgments against Territory Crown

- (1) A writ or similar process must not be issued out of any court to enforce a judgment against the Territory Crown.
- (2) If—
 - (a) a final judgment is given against the Territory Crown; and
 - (b) the judgment has not been paid; and
 - (c) the judgment has not been appealed against or stayed (or, if it has, the appeal has been disallowed or discontinued or the stay has been removed); and
 - (d) at least 21 days have elapsed since the judgment was given;the party in whose favour the judgment was given may give a copy of the judgment to the Treasurer.
- (3) If the Treasurer receives a copy of a final judgment under subsection (2), the Treasurer must give directions about how the judgment is to be paid unless the Treasurer is satisfied that the judgment can be, or has been, paid in another way.
- (4) A direction under this section that requires payment of public money of the Territory operates to authorise payment of the money.
- (5) The *Financial Management Act 1996*, section 6 (Necessity for appropriation) does not apply to a payment made in accordance with a direction under this section.
- (6) A direction under this section that requires payment of an amount from the funds of a territory authority or instrumentality provides sufficient authority for the payment.
- (7) In this section:
Territory Crown—see section 28 (3).

30 Enforcement of judgments against Crown in right of a State or another Territory

- (1) A writ or similar process must not be issued out of any ACT court to enforce a judgment against the Crown in right of a State or another Territory.
- (2) If a final judgment is given by an ACT court against the Crown in right of a State or another Territory, the court must give a copy of the judgment to the Governor or Administrator of the State or Territory.

31 Enforcement of judgments by the Crown

Subject to this part and any relevant rules of court, a judgment recovered by the Crown may be enforced in the same way as a judgment in a proceeding between subjects, and not in any other way.

Division 4.3 Provisions applying only to the Territory

32 Endorsement etc of originating process

- (1) If a proceeding is brought against the Territory, a statement containing the information prescribed by regulation (if any) must be endorsed on, or annexed to, the process by which the proceeding is begun.
- (2) A failure to comply with subsection (1) does not render a proceeding void unless the court is of the opinion that the Territory has been prejudiced by that failure.

33 Service generally

- (1) Any process or document relating to a proceeding must be served on the Territory by serving the process or document on the chief solicitor.

- (2) However—
- (a) if this part makes special provision about service of the process or document—the process or document must be served in accordance with the special provision; and
 - (b) if the party serving the process or document has notice that a lawyer other than the government solicitor is acting for the Territory in relation to the proceeding—the process or document must be served on that lawyer.

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

34 Service of subpoenas etc on Ministers

- (1) A subpoena or other process issued by a court, tribunal or authority requiring a Minister to appear, in the Minister's official capacity, to give evidence, or to produce documents, must be given to the chief solicitor for service on the Minister.
- (2) The chief solicitor must, on receiving a subpoena or other process mentioned in subsection (1), make reasonable endeavours to serve it on the Minister and must provide proof of service to the court, tribunal or other authority.
- (3) The chief solicitor, if unable to serve a subpoena or other process within a reasonable time, must tell the court, tribunal or other authority of the reasons for not being able to effect service and, in that case, the court, tribunal or other authority may direct that service be effected in some other way.

35 Representation if right to legal representation restricted

- (1) This section applies to a proceeding if—
 - (a) the Territory or Attorney-General is a party to the proceeding; and

- (b) an Act removes or restricts the right of a party to the proceeding to be represented by a lawyer.
- (2) The Territory or Attorney-General may be represented by a public servant (other than a lawyer, articled clerk or person who holds legal qualifications under a territory law or the law of another place) who is authorised to conduct the proceeding on behalf of the Territory or Attorney-General.
- (3) In the proceeding, a document apparently signed by a relevant person that appears to be an authorisation under subsection (2) must be accepted as an authorisation in the absence of evidence to the contrary.
- (4) In this section:
- relevant person* means—
- (a) a Minister; or
- (b) a chief executive; or
- (c) the chief executive officer of a territory agency or instrumentality.

Division 4.4 Other provisions

36 Exclusion of certain proceedings

This part does not affect—

- (a) any proceeding for the recovery or enforcement of a fine, penalty or forfeiture (including the escheatment of a recognisance) imposed in a criminal proceeding; or
- (b) any law, custom or procedure under which the Attorney-General is entitled or liable to sue, or be sued, or intervene in a proceeding, on behalf of the Crown, on the relation, or on behalf of, any other person or people or in any other capacity or for any other purposes.

37 Regulations for pt 4

A regulation may make provision in relation to—

- (a) the details to be stated or to accompany process served on the Territory; and
- (b) the service of process or other documents under this part.

Part 5 Court security

U 40 Definitions—pt 5

In this part:

assistant sheriff means a person who is appointed under the *Supreme Court Act 1933*, section 53 (Sheriff's assistants).

court means—

- (a) the Supreme Court; or
- (b) the Magistrates Court; or
- (c) the Childrens Court; or
- (d) the Coroner's Court; or
- (e) the administrative appeals tribunal; or
- (f) the consumer and trader tribunal; or
- (g) the credit tribunal; or
- (h) the discrimination tribunal; or
- (i) the guardianship tribunal; or
- (j) the mental health tribunal; or
- (k) the residential tenancies tribunal; or
- (l) a board of inquiry established under the *Inquiries Act 1991*; or
- (m) a royal commission established under the *Royal Commissions Act 1991*; or
- (n) a judicial commission established under the *Judicial Commissions Act 1994*; or
- (o) a court prescribed by regulation; or

- (p) any other tribunal or entity that is authorised to hear, receive and examine evidence and is prescribed by regulation.

court premises means the premises or place where a court is held or that is used in relation to the operations of a court, and includes—

- (a) a forecourt, courtyard, yard or area used with court premises; and
- (b) a part of premises or a place used as an entrance to or exit from court premises.

deputy sheriff means a person who is appointed as a deputy sheriff of the Territory under the *Supreme Court Act 1933*, section 46 (Appointment).

explosive—see the *Dangerous Substances Act 2004*, section 73.

firearm—see the *Firearms Act 1996*, section 4.

judge means a judge, or the master, of the Supreme Court, and includes a person prescribed by regulation for this definition.

magistrate includes a person prescribed by regulation for this definition.

offensive weapon means—

- (a) anything made or adapted for use, or capable of being used, for causing injury to or incapacitating a person; or
- (b) anything intended for that use by the person who is carrying it or otherwise has it in the person's possession;

and includes an imitation or replica of an offensive weapon.

screening search means—

- (a) for a search of a person—a search by equipment designed to conduct the search without touching the person; and

- (b) for a search of a thing—a search by equipment designed to conduct the search without touching the thing or requiring it to be opened.

security officer means—

- (a) a police officer; or
- (b) a sheriff's officer; or
- (c) a person who is appointed as a security officer under section 51.

sheriff means the person appointed as the sheriff of the Territory under the *Supreme Court Act 1933*, section 46 (Appointment).

sheriff's officer means the sheriff, an assistant sheriff or a deputy sheriff.

U 41 Right of entry etc to court premises

- (1) A person has a right to enter and remain in an area of court premises that is open to the public if—
 - (a) the person complies with all orders made by a judge or magistrate, whether under this Act or otherwise; and
 - (b) the person complies with all the requirements made under this part by a security officer; and
 - (c) if the person wishes to enter or remain in a courtroom where a court is sitting or about to sit—there is seating for the person in the courtroom.
- (2) This section is subject to—
 - (a) the *Children and Young People Act 1999*, section 61 (Proceedings not open to public); and
 - (b) the *Consumer Credit (Administration) Act 1996*, section 85 (2) (Hearings); and

- (c) the *Discrimination Act 1991*, section 92 (2) (Procedure); and
- (d) the following sections of the *Evidence (Miscellaneous Provisions) Act 1991*:
- section 9 (Consequential orders);
 - section 39 (Evidence given in closed court);
 - section 44 (Consequential orders under div 4.3);
 - section 52 (c) (Application for leave under s 51);
 - section 61 (5) (Preliminary examination of protected confidence evidence);
 - section 63 (2) (a) (Ancillary orders for protection of person who made protected confidence); and
- (e) the *Inquiries Act 1991*, section 21 (3) (Power to hold); and
- (f) the *Magistrates Court Act 1930*, section 310 (Hearings generally to be in public); and
- (g) the *Mental Health (Treatment and Care) Act 1994*, section 95 (Proceedings to be in private); and
- (h) the *Royal Commissions Act 1991*, section 28 (3) (Power to hold); and
- (i) the inherent jurisdiction of a court to regulate its proceedings; and
- (j) any other law in force in the ACT about the people who may be present in a court or on court premises.

42 Powers under part additional to other powers

The powers under this part are additional to any other powers that a court, judge, magistrate, police officer, sheriff's officer or anyone else has apart from this part.

43 Security officer to be identified before exercising powers

- (1) A security officer who is not a police officer or sheriff's officer may exercise a power under this part in relation to a person only if—
 - (a) the officer first identifies himself or herself as a security officer if it is practicable to do so; and
 - (b) the officer produces his or her identity card for inspection by the person if the person asks the officer to do so.
- (2) A security officer who is a police officer or sheriff's officer and is not in uniform may exercise a power under this part in relation to a person only if—
 - (a) the officer first identifies himself or herself as a police officer or sheriff's officer if it is practicable to do so; and
 - (b) the officer produces evidence that he or she is a police officer or sheriff's officer if the person asks the officer to do so.
- (3) If a security officer fails to comply with this section in relation to a person, the person is not obliged to comply with a requirement made by the officer.

44 Person may be required to state name etc

- (1) If a security officer believes, on reasonable grounds, that a person entering or on court premises is behaving unlawfully, is behaving in a disorderly or menacing way or is a threat to court security, the security officer may require the person to tell the officer—
 - (a) the person's name; and
 - (b) the person's reason for entering or being on the premises.

- (2) A person must not, without reasonable excuse, fail to tell a security officer the person's name, or the person's reason for entering or being on the court premises, when required to do so under subsection (1).

Maximum penalty: 5 penalty units.

- (3) A person must not give a name, or other information, that is false or misleading in a material particular in purported compliance with a requirement under subsection (1).

Maximum penalty: 20 penalty units.

45 Searches

- (1) A security officer may require a person entering or on court premises to do any of the following:
- (a) to undergo a screening search;
 - (b) to allow anything in the person's possession to be subjected to a screening search;
 - (c) to open and empty out the person's pockets;
 - (d) to open or empty a briefcase, bag or container (for example, a box or carton) the person is carrying or is otherwise in the person's possession or allow the security officer to search anything the person is carrying or is otherwise in the person's possession.
- (2) A security officer may make a requirement under this section only if the officer believes on reasonable grounds that it is necessary to make the requirement in the interests of court security for the purpose of detecting firearms, explosives or offensive weapons.

- (3) If a security officer makes a requirement of a person under this section, the person must immediately comply with the requirement or leave the court premises.

Maximum penalty: 50 penalty units.

- (4) A security officer who conducts a search under this section must not use more force, or subject a person to greater indignity, than is necessary to conduct the search.

46 Seizure and forfeiture of firearms etc

A security officer may seize a firearm, explosive or offensive weapon that a person entering or on court premises is carrying or otherwise has in the person's possession.

47 Security officer may require thing that may hide firearms etc to be left

- (1) A security officer may require a person entering or on court premises with anything to leave the thing with the officer if the officer believes on reasonable grounds that the thing may contain a firearm, explosive or offensive weapon or be used as an offensive weapon.

- (2) If a security officer makes a requirement of a person under this section, the person must immediately comply with the requirement or leave the court premises.

Maximum penalty: 50 penalty units, 6 months imprisonment or both.

- (3) If a person leaves something with a security officer under this section, the person is entitled, on request to a security officer, to the return of the thing when the person leaves the court premises.

48 Unlawful, disorderly conduct etc

- (1) If a security officer believes on reasonable grounds that a person entering or on court premises is behaving unlawfully or in a disorderly or menacing way, the officer may require the person not to enter, or to leave, the court premises.
- (2) However, if the person tells the security officer that the person is required to attend the court, the officer may only make the requirement with the court's leave or if the officer is satisfied on reasonable grounds that the person is not required to attend the court.
- (3) For this section, a person is required to attend a court if—
 - (a) the person is a lawyer who is to appear before the court; or
 - (b) the person is a party to a proceeding being heard, or about to be heard, by the court; or
 - (c) the person is required to attend the court by a summons, subpoena or other court process or order; or
 - (d) the person is accompanying a person mentioned in paragraph (a) to (c).
- (4) A person must not contravene a requirement under this section.

Maximum penalty: 50 penalty units, 6 months imprisonment or both.

49 Contravention of requirement of security officer

- (1) If a person contravenes a requirement of a security officer under section 44 (Person may be required to state name etc), section 45 (Searches) or section 47 (Security officer may require thing that may hide firearms etc to be left), a security officer may require the person—
 - (a) not to enter the court premises or a part of the court premises;
or

- (b) to immediately leave the court premises or a part of the court premises.
- (2) However, if the person tells the security officer that the person is required to attend the court, the officer may only make the requirement with the court's leave or if the officer is satisfied on reasonable grounds that the person is not required to attend the court.
- (3) For this section, a person is required to attend a court if—
 - (a) the person is a lawyer who is to appear before the court; or
 - (b) the person is a party to a proceeding being heard, or about to be heard, by the court; or
 - (c) the person is required to attend the court by a summons, subpoena or other court process or order; or
 - (d) the person is accompanying a person mentioned in paragraph (a) to (c).
- (4) A person must not contravene a requirement under this section.
Maximum penalty: 50 penalty units.
- (5) A security officer may prevent a person from entering court premises or a part of court premises in contravention of a requirement under this section or section 48.
- (6) If a person on court premises contravenes a requirement under this section or section 48, a security officer may require the person to leave the court premises and, if the person does not immediately leave the court premises, remove the person from the court premises using reasonable force.

50 Judge or magistrate may close court premises

- (1) If a judge or magistrate considers it necessary for securing order and safety in court premises or a part of court premises, the judge or magistrate may—

- (a) order members of the public generally, or stated members of the public, to leave the court premises or a part of the court premises; or
 - (b) order members of the public generally, or stated members of the public, not to be admitted to the court premises or a part of the court premises.
- (2) A person must not contravene an order of a judge or magistrate under this section.
- Maximum penalty: 50 penalty units, imprisonment for 6 months or both.
- (3) A security officer may prevent a person from entering court premises or a part of court premises in contravention of an order under this section.
- (4) If a person on court premises contravenes an order under this section, a security officer may require the person to leave the court premises and, if the person does not immediately leave the court premises, remove the person from the court premises using reasonable force.

51 Security officers

- (1) The chief executive may appoint a person (other than a police officer or sheriff's officer) to be a security officer.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

Note 3 Each police officer and sheriff's officer is a security officer (see s 40, def *security officer*).

- (2) The chief executive may appoint a person as a security officer only if the chief executive is satisfied the person—
- (a) holds a security licence; and
 - (b) has not committed an offence against this part or has not been convicted or found guilty of an offence involving fraud, dishonesty, violence, drugs or weapons; and
 - (c) is capable of competently exercising the functions of a security officer under this part.
- (3) The chief executive may end the appointment of a person as a security officer if—
- (a) the person ceases to hold a security licence; or
 - (b) the person is not employed by a person holding a master licence under the *Security Industry Act 2003*; or
 - (c) the person commits an offence against this part or has been convicted or found guilty of an offence involving fraud, dishonesty, violence, drugs or weapons; or
 - (d) the person is not capable of competently exercising the functions of a security officer under this part; or
 - (e) the chief executive and the person agree to the revocation.

Note A security officer's appointment also ends if the officer resigns (see Legislation Act, s 210).

- (4) In this section:

security licence means a licence under the *Security Industry Act 2003* that authorises the licensee to patrol, protect, watch or guard property (including cash in transit), whether or not it authorises the licensee to do anything else.

52 Identity cards for security officers

- (1) The chief executive must issue an identity card to each security officer who is not a police officer or sheriff's officer.
- (2) The identity card must—
 - (a) state that the person to whom the card is issued is a security officer for this part; and
 - (b) show—
 - (i) a recent photograph of the person; and
 - (ii) the name of the person; and
 - (iii) the date of issue of the card; and
 - (iv) a date of expiry of the card; and
 - (v) anything else prescribed by regulation.
- (3) A security officer who is not a police officer or sheriff's officer must—
 - (a) at all times while on duty at court premises wear the officer's identity card so it is clearly visible; and
 - (b) produce it for inspection by a person if the person asks the security officer to do so.

Maximum penalty: 1 penalty unit.

- (4) A person appointed as a security officer who ceases to be a security officer must return the officer's identity card to the chief executive as soon as practicable, but within 21 days after ceasing to be a security officer.

Maximum penalty: 1 penalty unit.

Part 6 Procedural provisions—all proceedings

53 Application—pt 6

This part applies to all proceedings in the Supreme Court or Magistrates Court.

54 No distinction between court and chambers

The business of a court, wherever it is conducted, is taken to be conducted in court.

Part 7 Procedural provisions—civil proceedings

60 Application—pt 7

This part (other than section 63) applies to a civil proceeding in the Supreme Court or Magistrates Court.

Note Section 63 (Receivers) applies only to a civil proceeding in the Supreme Court.

61 Counterclaims and third parties

- (1) In a proceeding in the court, the defendant is entitled to relief (whether at law or in equity)—
 - (a) against the plaintiff, if the relief claimed would have been granted to the defendant if the defendant had started a separate proceeding against the plaintiff; or
 - (b) against someone other than the plaintiff, if—
 - (i) the relief claimed relates to the subject matter of the proceeding; and
 - (ii) the person is served with written notice of the claim; and
 - (iii) the claim would have been granted to the defendant if the defendant had started a separate proceeding against the person.
- (2) If a person is served with a notice mentioned in subsection (1) (b) (ii), the person is taken to be a party to the relevant proceeding with the same rights as if the defendant had started a separate proceeding against the person.

62 Injunctions

- (1) At any stage of a proceeding, the court may grant an injunction (interlocutory or otherwise) on the conditions the court considers appropriate if the court considers it appropriate to do so.
- (2) Without limiting subsection (1), the court may grant an injunction to restrain any threatened or apprehended waste, trespass, breach of contract or other injury.
- (3) Subsection (2) applies in relation to a threatened waste or trespass to land whether or not—
 - (a) the person against whom the injunction is sought claims any title to the land; or
 - (b) that person is in possession of the land; or
 - (c) the estates claimed by both or either of the parties are legal or equitable.

63 Receivers

- (1) This section applies only to a civil proceeding in the Supreme Court.
- (2) At any stage of the proceeding, the court may appoint a receiver if the court considers it appropriate to do so.
- (3) The appointment may be made on the conditions the court considers appropriate.

64 Rules of practice and procedure—judicial discretion

In a proceeding, if no provision about a matter of practice or procedure of a court is made under this Act or another territory law, the court may give the directions about practice and procedure that it considers appropriate.

65 Appearance by lawyer

A party to a proceeding in a court may appear before the court either personally or by a lawyer.

66 Non-appearance or absence of some defendants

- (1) When there are several defendants in any cause pending in the court, if any defendant is not served with process and does not voluntarily appear, the court may nevertheless entertain the cause and proceed to hear and determine it between the parties who are properly before the court.
- (2) The judgment referred to in subsection (1) in a cause does not prejudice a defendant in the cause who is not served with process and does not voluntarily submit to the jurisdiction of the court.
- (3) If, in a suit of which the court has jurisdiction, a defendant is not a resident of, or in, Australia and does not voluntarily appear in the suit, the court may nevertheless exercise its jurisdiction after notice to the defendant, and on the conditions, prescribed under the rules.

67 Amendment of defects

- (1) The court may at any time amend a defect or error in a proceeding in the court.
- (2) The amendment may be made on the conditions the court considers just.
- (3) An amendment under this section is to be made for the purpose of deciding the real questions in issue in the proceeding.

68 Formal defects to be amended

- (1) No proceedings in the court shall be invalidated by any formal defect or by any irregularity, unless the court is of opinion that substantial injustice has been caused and that the injustice cannot be remedied by an order of the court.
- (2) The court may make an order declaring that any proceeding is valid notwithstanding any such defect or irregularity.

**U Part 7A Procedural provisions—
proceedings involving children or
young people**

Part 8 **Supreme Court—criminal proceedings**

Division 8.1 **Supreme Court criminal proceedings—preliminary**

75 **Application—pt 8**

This part applies to a criminal proceeding in the Supreme Court.

Division 8.2 **Trial on indictment**

76 **Trial proceedings after presentation of indictment and before empanelment of jury**

- (1) The Supreme Court has jurisdiction in relation to the conduct of a proceeding on indictment as soon as the indictment is presented and the accused person is arraigned.
- (2) Any orders that may be made by the Supreme Court for the purposes of the trial in the absence of the jury may be made before—
 - (a) a jury is empanelled; or
 - (b) if the accused person elects to be tried by a judge alone—the trial starts.
- (3) If a proceeding is held for the purpose of making an order to which subsection (2) applies after the indictment is presented and before a jury is empanelled or a trial by judge alone starts—
 - (a) the proceeding is part of the trial of the accused person; and
 - (b) if the accused person is to be tried by a jury—the accused person must be arraigned again on the indictment when the jury is empanelled for the continuation of the trial.

- (4) This section does not require a jury to be empanelled for the trial of the accused person for an offence if the accused person pleads guilty to the offence before the jury is empanelled.
- (5) This section applies only in relation to an indictment presented after the commencement of this section.
- (6) Subsection (5) and this subsection are declared to be laws to which the Legislation Act, section 88 (Repeal does not end effect of transitional law etc) applies.
- (7) Subsections (5) and (6) and this subsection expire 2 years after the day this section commences.

Part 9 Miscellaneous

80 **Assignment of earnings not enforceable**

- (1) An assignment of earnings is not enforceable.
- (2) Subsection (1) has effect regardless of—
 - (a) the nature of the instrument effecting the assignment; or
 - (b) the nature of the transaction that gave rise to the assignment.
- (3) In this section:

earnings means a sum payable to a person—

- (a) by way of wages or salary, including any fee, bonus, commission, overtime pay or other emolument payable in addition to wages or salary; or
- (b) by way of pension, including—
 - (i) an annuity in relation to past services, whether or not the services were rendered to the person paying the annuity; and
 - (ii) periodical payments in relation to compensation for the loss, abolition or relinquishment, or any diminution in the emoluments, of any office or employment; and
 - (iii) periodical payments in relation to compensation for the loss of wages or salary because of illness or injury.

81 **Court may inquire into truth of return of writ**

Upon the return of a writ of habeas corpus, the court before which the writ is returnable may inquire into the truth of the matters set forth in the return of the writ.

82 Delegation by secretary of rule-making committee

The secretary of the rule-making committee may delegate a function under the Legislation Act, section 61 (Notification of legislative instruments) to a public servant.

Note For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

83 Regulation-making power

The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

U Part 13

Transitional—Children and Young People Act 2008

Schedule 1 Subject matter for rules

(see s 7)

Part 1.1 General

1 Jurisdiction

- (1) the jurisdiction of ACT courts, including civil, criminal and any appellate jurisdiction
- (2) the jurisdiction of prescribed tribunals
- (3) the jurisdiction of the master, registrars and deputy registrars, including review of their decisions

2 Service of documents

service of documents, including, for example, the following:

- (a) the kinds of service, including personal service and electronic service;
- (b) service outside the ACT or Australia;
- (c) service of foreign legal process in the ACT

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

3 Evidence

taking evidence generally, including, for example, the following:

- (a) the way evidence may be given;
- (b) dispensing with the rules of evidence;
- (c) taking evidence out of court;
- (d) taking of evidence for future claims;

- (e) subpoenas;
- (f) affidavits and exchange of correspondence instead of affidavit evidence;
- (g) obtaining evidence, including calling witnesses;
- (h) taking evidence outside the ACT or Australia;
- (i) taking evidence in the ACT for foreign courts and tribunals

4 Certain proceedings

- (1) review of Magistrates Court decisions by order nisi
- (2) cases stated and questions reserved to the Supreme Court
- (3) cases stated and questions reserved from the Supreme Court to the Court of Appeal

5 Admission of lawyers

the admission of lawyers

6 Miscellaneous

the following matters:

- (a) case management;
- (b) documents filed in registries, including electronic filing;
- (c) the receipt, issue or transmission electronically of forms and other documents and material for use in, or in relation to, proceedings;
- (d) functions of registries generally;
- (e) exhibits and other things held by an ACT court or prescribed tribunal for a proceeding, including, for example, disposal or destruction of unclaimed things;
- (f) rules relating to lawyers acting for parties in proceedings;

- (g) rules about the reckoning of time and anything else about time;
- (h) confidentiality for mediators, neutral evaluators and expert witnesses;
- (i) protection from liability for mediators, neutral evaluators and expert witnesses;
- (j) transitional arrangements

Part 1.2 Civil proceedings

7 Beginning proceedings

beginning proceedings, including, for example, the following:

- (a) originating process, including duration, renewal and setting aside;
- (b) where to begin proceedings;
- (c) preliminary discovery, including discovery to identify defendants

8 Transfer between courts

transfer of proceedings between courts, including, for the Supreme Court, cross-vesting of jurisdiction

9 Parties and proceedings

parties and proceedings, including, for example, the following:

- (a) several causes of action and parties in civil proceedings, including reconstitution of proceedings and representative parties;
- (b) multiple civil proceedings;
- (c) interpleader proceedings;
- (d) proceedings by or against businesses or people with a legal disability;
- (e) set-off and contribution, including, for example, rights to set-off and contribution;
- (f) third-party procedure

10 Steps in proceedings

steps in proceedings, including, for example, the first step for a defendant in a proceeding

11 Pleadings

pleadings, including, for example, the following:

- (a) matters in pleadings and particulars;
- (b) progress of pleadings;
- (c) particular pleadings, including statements of claim, defences and counterclaims;
- (d) striking out pleadings and particulars

12 Disclosure

disclosure, including, for example, the following:

- (a) disclosure by parties, including discovery and inspection of documents and interrogatories;
- (b) non-party disclosure;
- (c) admissions;
- (d) disclosure of experts reports;
- (e) disclosure of other material to which legal professional privilege may attach, including by direction or order of the court or tribunal

13 Preservation of rights and property

preservation of rights and property, including, for example, the following:

- (a) inspection, detention and preservation of property;
- (b) injunctions;

- (c) for the Supreme Court—receivers and sales of land by court order

14 Ending proceedings early

ending proceedings early, including, for example, the following:

- (a) ending proceedings because of default;
- (b) summary decisions;
- (c) discontinuance and withdrawal;
- (d) offers to settle and payments by defendants;
- (e) the referral of cases to arbitration;
- (f) alternative dispute resolution processes

15 Court supervision

court supervision, including, for example, the following:

- (a) directions about conducting proceedings;
- (b) consequences of failing to comply with rules, directions or court orders;
- (c) amendments, with and without leave;
- (d) continuation of proceedings after delay;
- (e) pre-trial matters, including pre-trial directions and rulings

16 Expert evidence

expert evidence generally, including, for example, the following:

- (a) giving immunity from action to experts in relation to reports tendered in evidence;
- (b) matters relating to court experts, including—
 - (i) how the court is to choose an expert; and

- (ii) how experts may give evidence and be questioned;
- (c) defining the duty of expert witnesses in relation to the court and the parties;
- (d) prescribing the basis of, and conditions for, admissibility of expert evidence

17 Trials and other hearings

trials and other hearings, including, for example, the following:

- (a) practice lists;
- (b) list applications for hearing and setting trial dates;
- (c) conduct of trials;
- (d) decisions without pleadings or without hearings;
- (e) separate decisions on questions;
- (f) assessors and special referees;
- (g) making findings of liability independently of awarding damages;
- (h) assessment and awarding of damages, including, for example—
 - (i) structured settlements, that is, payment of awards of damages otherwise than in lump sum form; and
 - (ii) awarding damages independently of making findings of liability;
- (i) simplifies procedures for certain claims

18 Judgments

judgments, including, for example, the following:

- (a) effect of judgments;

- (b) setting aside judgments

19 Particular proceedings

particular proceedings, including, for example, the following:

- (a) taking of accounts;
- (b) proceedings for damages for personal injury or death;
- (c) the payment of amounts into court;
- (d) for the Supreme Court—judicial review proceedings;
- (e) for the Supreme Court—prerogative orders, including prerogative injunctions and declarations, and the form in which prerogative relief or remedy may be granted;
- (f) for the Supreme Court—habeas corpus orders, including the form in which relief by way of habeas corpus may be granted

20 Interest

interest, including, for example, the following:

- (a) interest up to judgment;
- (b) interest on judgments

21 Administration and probate

for the Supreme Court, administration and probate, including, for example, the following:

- (a) applications for grants of probate or letters of administration and the documents required;
- (b) resealing grants;
- (c) caveats objecting to grants, orders to administer or resealing grants;
- (d) contested proceedings

- 22 Adoption**
for the Supreme Court, adoption, including, for example, applications for adoptions
- 23 Arbitration**
for the Supreme Court, arbitration, including, for example, the use of court-appointed referees
- 24 Contempt of court**
contempt of court, including, for example, the following:
- (a) contempt of the court as constituted other than by a judge or magistrate;
 - (b) proceedings for failure to comply with orders, other than orders to pay an amount
- 25 Trusts**
for the Supreme Court, trusts
- 26 Costs**
costs, including, for example, the following:
- (a) security for costs;
 - (b) entitlement to recover costs;
 - (c) costs of parties in proceedings;
 - (d) assessment of costs
- 27 Appeals**
appeals, including, for example, the following:
- (a) for the Magistrates Court and prescribed tribunals—appeals to the Supreme Court;

- (b) for the Supreme Court—
 - (i) appeals to the Supreme Court other than to the Court of Appeal; and
 - (ii) appeals to the Court of Appeal

28 Enforcement of judgments

enforcement of judgments, including, for example, the following:

- (a) enforcement hearings, including examination procedures;
- (b) enforcement orders, including the following:
 - (i) enforcement orders for entry onto, and delivery of possession of, land;
 - (ii) enforcement orders for seizure and sale of property;
 - (iii) enforcement orders for seizure and delivery of particular goods;
 - (iv) enforcement orders for seizure and detention of property;
 - (v) enforcement orders for the attachment or redirection of debts, income and other money;
 - (vi) for the Supreme Court—enforcement orders for charging orders and stop orders;
- (c) instalment orders;
- (d) powers of enforcement officers

29 Reciprocal enforcement of foreign judgments

reciprocal enforcement of foreign judgments

Part 1.3 Criminal proceedings

30 Practice and procedure in criminal jurisdiction

practice and procedure in the criminal jurisdiction of the Magistrates Court and Supreme Court (including any appellate jurisdiction) generally, including, for example, the following:

- (a) forms for proceedings;
- (b) beginning criminal proceedings, including indictments and informations;
- (c) appearance;
- (d) arraignments;
- (e) applications;
- (f) pleadings;
- (g) duties of lawyers and the court;
- (h) pre-trial matters, including pre-trial directions and rulings;
- (i) regulating hearings and trial proceedings;
- (j) expert evidence;
- (k) custody and inspection of exhibits;
- (l) recording of proceedings and access to records;
- (m) costs payable to defendants in particular circumstances;
- (n) inspecting registry files;
- (o) appeals, including appeals to the Supreme Court and Court of Appeal;

Schedule 1
Part 1.3

Subject matter for rules
Criminal proceedings

Item 30

- (p) listing trials, sentences, applications and appeals for hearing, and setting hearing dates;
- (q) enforcement of decisions

U Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1 defines the following terms:

- administrative appeals tribunal
- chief executive (see s 163)
- consumer and trader tribunal
- credit tribunal
- discrimination tribunal
- government solicitor
- Magistrates Court
- property
- public servant
- residential tenancies tribunal
- Supreme Court
- territory authority.

advisory committee means the advisory committee established under section 11.

assistant sheriff, for part 5 (Court security)—see section 40.

corresponding law, for part 4 (Crown proceedings)—see section 20.

court, for part 5 (Court security)—see section 40.

court premises , for part 5 (Court security)—see section 40.

Crown, for part 4 (Crown proceedings)—see section 20.

deputy sheriff, for part 5 (Court security)—see section 40.

determined fee, for part 3 (Court and tribunal fees)—see section 12.

explosive, for part 5 (Court security)—see the *Dangerous Substances Act 2004*, section 73.

fee, for part 3 (Court and tribunal fees)—see section 12.

firearm, for part 5 (Court security)—see the *Firearms Act 1996*, section 4.

judge, for part 5 (Court security)—see section 40.

judgment, for part 4 (Crown proceedings)—see section 20.

magistrate, for part 5 (Court security)—see section 40.

master means the Master of the Supreme Court.

offensive weapon, for part 5 (Court security)—see section 40.

prescribed tribunal, for part 2 (Court rules and forms) and schedule 1 (Subject matter for rules)—see section 6.

proceeding, for part 4 (Crown proceedings)—see section 20.

relevant legislation, for part 3 (Court and tribunal fees)—see section 12.

rule-making committee means the rule-making committee established under section 9.

screening search, for part 5 (Court security)—see section 40.

security officer, for part 5 (Court security)—see section 40.

sheriff, for part 5 (Court security)—see section 40.

sheriff's officer, for part 5 (Court security)—see section 40.

Territory Crown, for part 4 (Crown proceedings)—see section 20.

the Territory, for part 4 (Crown proceedings)—see section 20.

tribunal, for part 3 (Court and tribunal fees)—see section 12.

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

Endnotes

3 Legislation history

3 Legislation history

Court Procedures Act 2004 A2004-59

notified LR 2 September 2004

s 1, s 2 commenced 2 September 2004 (LA s 75 (1))

remainder commenced 10 January 2005 (s 2 and CN2004-29)

as amended by

Court Procedures (Consequential Amendments) Act 2004 A2004-60 sch 1 pt 1.4, pt 1.16, pt 1.19, pt 1.24, pt 1.31, pt 1.32, pt 1.68, pt 1.69

notified LR 2 September 2004

s 1, s 2 commenced 2 September 2004 (LA s 75 (1))

sch 1 pt 1.4, pt 1.16, pt 1.19, pt 1.24, pt 1.31, pt 1.32, pt 1.68, pt 1.69
commenced 10 January 2005 (s 2 and see Court Procedures Act 2004
A2004-59, s 2 and CN2004-29)

Domestic Violence and Protection Orders Amendment Act 2005 A2005-13 sch 1 pt 1.3

notified LR 24 March 2005

s 1, s 2 commenced 24 March 2005 (LA s 75 (1))

sch 1 pt 1.3 commenced 25 March 2005 (s 2)

Statute Law Amendment Act 2005 A2005-20 sch 3 pt 3.11

notified LR 12 May 2005

s 1, s 2 taken to have commenced 8 March 2005 (LA s 75 (2))

sch 3 pt 3.11 commenced 2 June 2005 (s 2 (1))

Justice and Community Safety Legislation Amendment Act 2005 (No 4) A2005-60 amdt 1.9, sch 1 pt 1.10, amdt 1.61, amdt 1.72, amdt 1.80, amdt 1.137, amdt 1.141

notified LR 1 December 2005

s 1, s 2 taken to have commenced 23 November 2005 (LA s 75 (2))

amdt 1.9 commenced 11 January 2006 (s 2 (1) (a) and see Statute
Law Amendment Act 2005 (No 2) A2005-62, s 2 (1))

sch 1 pt 1.10, amdt 1.61, amdt 1.72, amdt 1.80, amdt 1.137,
amdt 1.141 commenced 22 December 2005 (s 2 (4))

Legal Profession Act 2006 A2006-25 sch 2 pt 2.3

notified LR 21 June 2006

s 1, s 2 commenced 21 June 2006 (LA s 75 (1))

sch 2 pt 2.3 commenced 1 July 2006 (s 2)

Civil Law (Property) Act 2006 A2006-38 sch 1 pt 1.4, amdt 1.7

notified LR 28 September 2006

s 1, s 2 commenced 28 September 2006

sch 1 pt 1.4, amdt 1.7 commenced 28 March 2007 (s 2 and LA s 79)

Justice and Community Safety Legislation Amendment Act 2006 A2006-40 sch 1 pt 1.4, sch 2 pt 2.13, amdt 2.203, amdt 2.204

notified LR 28 September 2006

s 1, s 2 commenced 28 September 2006 (LA s 75 (1))

sch 1 pt 1.4 commenced 19 October 2006 (s 2 (3))

sch 2 pt 2.13, amdt 2.203, amdt 2.204 commenced 29 September 2006 (s 2 (1))

Statute Law Amendment Act 2006 A2006-42 sch 3 pt 3.7

notified LR 26 October 2006

s 1, s 2 taken to have commenced 12 November 2005 (LA s 75 (2))

sch 3 pt 3.7 commenced 16 November 2006 (s 2 (1))

Court Legislation Amendment Act 2006 A2006-55 pt 3

notified LR 18 December 2006

s 1, s 2 commenced 18 December 2006 (LA s 75 (1))

pt 3 commenced 19 December 2006 (s 2)

Children and Young People Act 2008 A2008-19 sch 1 pt 1.2

notified LR 17 July 2008

s 1, s 2 commenced 17 July 2008 (LA s 75 (1))

sch 1 pt 1.2 awaiting commencement (s 2)

Note default commencement under s 2 (3): 17 July 2009 (default commencement under LA s 79 does not apply to this Act)

Children and Young People (Consequential Amendments) Act 2008 A2008-20 sch 1 pt 1.2, sch 2 pt 2.5, sch 4 pt 4.5

notified LR 17 July 2008

s 1, s 2 commenced 17 July 2008 (LA s 75 (1))

s 3, s 4 commenced 18 July 2008 (s 2 (1))

sch 1 pt 1.2, sch 4 pt 4.5 commence on the commencement of Children and Young People Act 2008 A2008-19, ch 20 (s 2 (5))

sch 2 pt 2.5 commences on the commencement of Children and Young People Act 2008 A2008-19, ch 4 (s 2 (3))

Endnotes

4 Amendment history

Justice and Community Safety Legislation Amendment Act 2008 (No 2) A2008-22 sch 1 pt 1.2

notified LR 8 July 2008
s 1, s 2 commenced 8 July 2008 (LA s 75 (1))
sch 1 pt 1.2 commenced 29 July 2008 (s 2)

Firearms Amendment Act 2008 A2008-25 sch 2 pt 2.1

notified LR 15 July 2008
s 1, s 2 commenced 15 July 2008 (LA s 75 (1))
sch 2 pt 2.1 awaiting commencement (s 2 (1))

Note default commencement under LA s 79 does not apply to this Act

4 Amendment history

Commencement

s 2 om LA s 89 (4)

Rule-making power

s 7 am A2005-20 amdt 3.96

Definitions—pt 3

s 12 def **energy and water consumer council** ins A2008-22 amdt 1.15
def **essential services consumer council** om A2008-22 amdt 1.15
def **tribunal** am A2008-22 amdt 1.16

Determination of fees

s 13 am A2006-40 amdt 2.88, amdt 2.89

Remission, refund, deferral, waiver and exemption of fees

s 15 am A2005-13 amdt 1.21; A2006-25 amdt 2.4; A2006-55 s 7; A2008-20 amdt 2.15, amdt 2.16, amdt 4.12, amdt 4.13

Proceedings by and against the Crown generally

s 21 reloc from Crown Proceedings Act 1992 s 5 by A2004-60 amdt 1.118
am A2005-20 amdt 3.97, amdt 3.98

Immunities and limitations of liability

s 22 reloc from Crown Proceedings Act 1992 s 6 by A2004-60 amdt 1.118

Corresponding laws of States and other Territories

s 23 reloc from Crown Proceedings Act 1992 s 7 by A2004-60 amdt 1.118

Endnotes

4 Amendment history

Exclusion of certain proceedings

s 36 reloc from Crown Proceedings Act 1992 s 20 by A2004-60
amdt 1.136

Regulations for pt 4

s 37 reloc from Crown Proceedings Act 1992 s 21 by A2004-60
amdt 1.136

Definitions—pt 5

s 40 def **assistant sheriff** reloc from Court Security Act 2001 dict
by A2004-60 amdt 1.102
def **court** reloc from Court Security Act 2001 dict by A2004-60
amdt 1.102
am A2005-20 amdt 3.102, amdt 3.103
def **court premises** reloc from Court Security Act 2001 dict by
A2004-60 amdt 1.102
def **deputy sheriff** reloc from Court Security Act 2001 dict by
A2004-60 amdt 1.102
def **explosive** reloc from Court Security Act 2001 dict by
A2004-60 amdt 1.102
def **firearm** reloc from Court Security Act 2001 dict by
A2004-60 amdt 1.102
sub A2008-25 amdt 2.1
def **judge** reloc from Court Security Act 2001 dict by
A2004-60 amdt 1.102
def **magistrate** reloc from Court Security Act 2001 dict by
A2004-60 amdt 1.102
def **offensive weapon** reloc from Court Security Act 2001 dict
by A2004-60 amdt 1.102
def **screening search** reloc from Court Security Act 2001 dict
by A2004-60 amdt 1.102
def **security officer** reloc from Court Security Act 2001 dict by
A2004-60 amdt 1.102
def **sheriff** reloc from Court Security Act 2001 dict by
A2004-60 amdt 1.102
def **sheriff's officer** reloc from Court Security Act 2001 dict by
A2004-60 amdt 1.102

Right of entry etc to court premises

s 41 reloc from Court Security Act 2001 s 5 by A2004-60 amdt 1.99
am A2008-20 amdt 4.14

Powers under Act additional to other powers

s 42 reloc from Court Security Act 2001 s 6 by A2004-60 amdt 1.99

Security officer to be identified before exercising powers

s 43 reloc from Court Security Act 2001 s 7 by A2004-60 amdt 1.99

Person may be required to state name etc

s 44 reloc from Court Security Act 2001 s 8 by A2004-60 amdt 1.99

Searches

s 45 reloc from Court Security Act 2001 s 9 by A2004-60 amdt 1.99

Seizure and forfeiture of firearms etc

s 46 reloc from Court Security Act 2001 s 10 by A2004-60
amdt 1.99

Security officer may require thing that may hide firearms etc to be left

s 47 reloc from Court Security Act 2001 s 11 by A2004-60
amdt 1.99

Unlawful, disorderly conduct etc

s 48 reloc from Court Security Act 2001 s 12 by A2004-60
amdt 1.99

Contravention of requirement of security officer

s 49 reloc from Court Security Act 2001 s 13 by A2004-60
amdt 1.99

Judge or magistrate may close court premises

s 50 reloc from Court Security Act 2001 s 15 by A2004-60
amdt 1.99

Security officers

s 51 reloc from Court Security Act 2001 s 16 by A2004-60
amdt 1.99

Identity cards for security officers

s 52 reloc from Court Security Act 2001 s 17 by A2004-60
amdt 1.99

Procedural provisions—all proceedings

pt 6 hdg **orig pt 6 hdg**
renum as pt 9 hdg
prev pt 6 hdg
ins A2005-60 amdt 1.35
reloc to Evidence (Miscellaneous Provisions) Act 1991 pt 6 by
A2006-40 amdt 2.90
pres pt 6 hdg
ins A2006-40 amdt 2.91

Application—pt 6

s 53 **orig s 53**
renum as s 80
prev s 53
reloc from Evidence Act 1971 s 82 by A2005-60 amdt 1.61
reloc to Evidence (Miscellaneous Provisions) Act 1991 s 90 by
A2006-40 amdt 2.90
pres s 53
ins A2006-40 amdt 2.91

Endnotes

4 Amendment history

Delegation by secretary of rule-making committee

s 53A renum as s 81

Prohibition of publication of evidence etc

s 54 **orig s 54**
renum as s 82
prev s 54
reloc from Evidence Act 1971 s 83 by A2005-60 amdt 1.61
reloc to Evidence (Miscellaneous Provisions) Act 1991 s 91 by
A2006-40 amdt 2.90
pres s 54
ins A2006-40 amdt 2.91

Noncompliance with s 54 order

s 55 reloc from Evidence Act 1971 s 84 by A2005-60 amdt 1.61
reloc to Evidence (Miscellaneous Provisions) Act 1991 s 92 by
A2006-40 amdt 2.90

Procedural provisions—civil proceedings

pt 7 hdg orig pt 7 hdg renum as pt 10 hdg
ins A2005-60 amdt 1.35
sub A2006-40 amdt 2.91

General

div 7.1 hdg renum as div 10.1 hdg

Application—pt 7

s 56 reloc from Evidence Act 1971 s 85A by A2005-60 amdt 1.72
om A2006-40 amdt 2.91

Definitions—pt 7

s 57 reloc from Evidence Act 1971 s 85B by A2005-60 amdt 1.72
om A2006-40 amdt 2.91
def **examination** reloc from Evidence Act 1971 s 85B by
A2005-60 amdt 1.72
om A2006-40 amdt 2.91
def **inferior court** reloc from Evidence Act 1971 s 85B by
A2005-60 amdt 1.72
om A2006-40 amdt 2.91
def **judicial authority** reloc from Evidence Act 1971 s 85B by
A2005-60 amdt 1.72
om A2006-40 amdt 2.91

Supreme Court proceedings

s 58 reloc from Evidence Act 1971 s 85C by A2005-60 amdt 1.72
om A2006-40 amdt 2.91

Inferior court proceedings

s 59 reloc from Evidence Act 1971 s 85D by A2005-60 amdt 1.72
om A2006-40 amdt 2.91

Application—pt 7

s 60 orig s 60 renum as s 100
reloc from Evidence Act 1971 s 85E by A2005-60 amdt 1.72
sub A2006-40 amdt 2.91

Counterclaims and third parties

s 61 orig s 61 renum as s 101
reloc from Evidence Act 1971 s 85F by A2005-60 amdt 1.72
sub A2006-40 amdt 2.91

Arrest on mesne process

div 7.2 hdg renum as div 10.2 hdg

Injunctions

s 62 orig s 62 renum as s 102
reloc from Evidence Act 1971 s 85G by A2005-60 amdt 1.72
sub A2006-40 amdt 2.91

Receivers

s 63 orig s 63 renum as s 103
reloc from Evidence Act 1971 s 85H by A2005-60 amdt 1.72
sub A2006-40 amdt 2.91

Attachment of earnings

div 7.3 hdg renum as div 10.3 hdg

Stay of proceedings

div 7.4 hdg renum as div 10.4 hdg

Set-off of debts

div 7.5 hdg renum as div 10.5 hdg

Judgment creditors remedies

div 7.6 hdg renum as div 10.6 hdg

Rules of practice and procedure—judicial discretion

s 64 orig s 64 renum as s 104
reloc from Evidence Act 1971 s 85J by A2005-60 amdt 1.80
sub A2006-40 amdt 2.91
def **request** reloc from Evidence Act 1971 s 85J by A2005-60
amdt 1.80
om A2006-40 amdt 2.91
def **requesting court** reloc from Evidence Act 1971 s 85J by
A2005-60 amdt 1.80
om A2006-40 amdt 2.91

Appearance by lawyer

s 65 orig s 65 renum as s 105
reloc from Evidence Act 1971 s 85K by A2005-60 amdt 1.80
sub A2006-40 amdt 2.91

Endnotes

4 Amendment history

Non-appearance or absence of some defendants

s 66 orig s 66 renum as s 106
reloc from Evidence Act 1971 s 85L by A2005-60 amdt 1.80
om A2006-40 amdt 2.91
reloc from Supreme Court Act 1933 s 58 by A2006-40
amdt 2.203

Amendment of defects

s 67 orig s 67 renum as s 107
reloc from Evidence Act 1971 s 85M by A2005-60 amdt 1.80
om A2006-40 amdt 2.91
reloc from Supreme Court Act 1933 s 59 by A2006-40
amdt 2.204

Formal defects to be amended

s 68 orig s 68 renum as s 108
reloc from Evidence Act 1971 s 85N by A2005-60 amdt 1.80
om A2006-40 amdt 2.91
reloc from Supreme Court Act 1933 s 60 by A2006-40
amdt 2.204

Procedural provisions—proceedings involving children or young people

pt 7A hdg [ins A2008-19 amdt 1.15](#)

General

div 7A.1 hdg [ins A2008-19 amdt 1.15](#)

Childrens Court procedure

s 69 orig s 69 renum as s 109
[ins A2008-19 amdt 1.15](#)

Application for order nisi for discharge

s 70 renum as s 110

When parents must attend court proceedings

s 71 orig s 71 renum as s 111
[ins A2008-19 amdt 1.15](#)

Court proceedings involving children or young people not open to public

s 72 orig s 72 renum as s 112
[ins A2008-19 amdt 1.15](#)

Court may excuse parties from attending proceedings

s 73 orig s 73 renum as s 113
[ins A2008-19 amdt 1.15](#)

Certain related applications may be heard together

s 74 orig s 74 renum as s 114
[ins A2008-19 amdt 1.15](#)

Participation of children and young people in proceedings

s 74A [ins A2008-19 amdt 1.15](#)

Court must ensure children and young people etc understand proceedings

s 74B ins A2008-19 amdt 1.15

Chief executive and public advocate etc may appear at proceedings

s 74C ins A2008-19 amdt 1.15

Court may order report about young person

s 74D ins A2008-19 amdt 1.15

Children and young people may have legal and other representative

s 74E ins A2008-19 amdt 1.15

Leave needed for litigation guardian

s 74F ins A2008-19 amdt 1.15

Legal representation of children and young people

s 74G ins A2008-19 amdt 1.15

Orders about legal representation of children and young people—all proceedings

s 74H ins A2008-19 amdt 1.15

Rule-making committee and court to have regard to youth justice principles

s 74I ins A2008-19 amdt 1.15

Care and protection considerations in proceedings

div 7A.2 hdg ins A2008-19 amdt 1.15

Definitions—div 7A.2

s 74J ins A2008-19 amdt 1.15
 def *care and protection chapters* ins A2008-19 amdt 1.15
 def *chief executive* ins A2008-19 amdt 1.15
 def *in need of care and protection* ins A2008-19 amdt 1.15

Proceedings dismissed or adjourned for care and protection reasons

s 74K ins A2008-19 amdt 1.15

Chief executive must report to court and public advocate

s 74L ins A2008-19 amdt 1.15

Court action after adjournment

s 74M ins A2008-19 amdt 1.15

Supreme Court—criminal proceedings

pt 8 hdg orig pt 8 hdg renum as pt 11 hdg
 ins A2005-60 amdt 1.35
 om A2006-40 amdt 2.91
 ins A2006-40 amdt 1.10

Supreme Court criminal proceedings—preliminary

div 8.1 hdg ins A2006-40 amdt 1.10

Application—pt 8

s 75 ins A2006-40 amdt 1.10

Endnotes

4 Amendment history

Trial on indictment

div 8.2 hdg ins A2006-40 amdt 1.10

Trial proceedings after presentation of indictment and before empanelment of jury

s 76 orig s 76 renum as s 115
ins A2006-40 amdt 1.10
(5)-(7) exp 19 October 2008 (s 76 (7) (LA s 88 declaration applies))

Limitation on attachment of wages

s 77 renum as s 116

Expiry of div 7.3

s 78 renum as s 117

Miscellaneous

pt 9 hdg (prev pt 6 hdg) renum A2005-60 amdt 1.36

Assignment of earnings not enforceable

s 80 orig s 80 renum as s 118
(prev s 53) def **earnings** reloc from Earnings (Assignment and Attachment) Act 1966 s 4 by A2004-60 amdt 1.146
renum A2005-60 amdt 1.37

Court may inquire into truth of return of writ

s 80A renum as s 81

Court may inquire into truth of return of writ

s 81 **orig s 81**
renum as s 119
prev s 81
(prev s 53A) ins A2005-20 amdt 3.104
renum as s 81 A2005-60 amdt 1.37
am A2006-42 amdt 3.26
renum as s 82
pres s 81
(prev s 80A) reloc from Law Reform (Miscellaneous Provisions) Act 1955 s 62 by A2006-38 amdt 1.7
renum as s 81 A2006-38 amdt 1.4

Delegation by secretary of rule-making committee

s 82 **orig s 82**
renum as s 120
prev s 82
(prev s 54) renum as s 82 A2005-60 amdt 1.37
renum as s 83
pres s 82
(prev s 81) renum as s 82 A2006-38 amdt 1.4

Regulation-making power

s 83 **orig s 83**
 renum as s 121
 pres s 83
 (prev s 82) renum as s 83 A2006-38 amdt 1.4

Mutual debts to be set one against the other

s 84 renum as s 122

Exception

s 85 renum as s 123

Expiry of div 10.5

s 86 renum as s 124

Limitation of arrest under *ca. sa.*

s 87 renum as s 125

Fraudulent concealment or intended departure

s 88 renum as s 126

Exception for certain actions

s 89 renum as s 127

***Ca. sa.* to fix bail**

s 90 renum as s 128

Liability for escape

s 91 renum as s 129

Discharge of judgment debtor on authority of lawyer

s 92 renum as s 130

***Ca. sa.* may be executed on Sunday**

s 93 renum as s 131

Expiry of div 10.6

s 94 renum as s 132

Temporary provisions

pt 10 hdg (prev pt 7 hdg) renum A2005-60 amdt 1.38
 om R8 LA

General

div 10.1 hdg (prev div 7.1 hdg) renum A2005-60 amdt 1.39
 om R8 LA

Expiry of existing rules

s 100 orig s 100 exp 10 January 2005 (s 100 (5))
 (prev s 60) renum A2005-60 amdt 1.40
 exp 1 July 2006 (s 100 (3))

Endnotes

4 Amendment history

References to Magistrates Court (Civil Jurisdiction) Act etc

s 101 orig s 101 exp 10 January 2005 (s 101 (5))
(prev s 61) renum A2005-60 amdt 1.40
exp 1 July 2006 (s 101 (8))

Arrest on mesne process

div 10.2 hdg (prev div 7.2 hdg) renum A2005-60 amdt 1.39
exp 1 July 2006 (s 114)

Meaning of *capias* for div 10.2

s 102 orig s 102 exp 10 January 2005 (s 102 (3))
(prev s 62) renum A2005-60 amdt 1.40
exp 1 July 2006 (s 114)

No arrest on mesne process except under div 10.2

s 103 orig s 103 exp 10 January 2005 (s 103 (4))
(prev s 63) reloc from Arrest on Mesne Process Act 1902 s 4
by A2004-60 amdt 1.12
renum A2005-60 amdt 1.40
exp 1 July 2006 (s 114)

Order to hold to bail

s 104 orig s 104 renum as s 150
(prev s 64) reloc from Arrest on Mesne Process Act 1902 s 5
by A2004-60 amdt 1.12
renum A2005-60 amdt 1.40
exp 1 July 2006 (s 114)

Issue of writ of *capias*

s 105 orig s 105 renum as s 151
(prev s 65) reloc from Arrest on Mesne Process Act 1902 s 6
by A2004-60 amdt 1.15
renum A2005-60 amdt 1.40
exp 1 July 2006 (s 114)

Execution of writ

s 106 (prev s 66) reloc from Arrest on Mesne Process Act 1902 s 7
by A2004-60 amdt 1.15
renum A2005-60 amdt 1.40
exp 1 July 2006 (s 114)

Order and arrest to be during pendency of action

s 107 (prev s 67) reloc from Arrest on Mesne Process Act 1902 s 8
by A2004-60 amdt 1.15
renum A2005-60 amdt 1.40
exp 1 July 2006 (s 114)

-
- Defendant to remain in custody until bail bond given or deposit made**
s 108 (prev s 68) reloc from Arrest on Mesne Process Act 1902 s 9
by A2004-60 amdt 1.15
renum A2005-60 amdt 1.40
exp 1 July 2006 (s 114)
- Subsequent proceedings subject to rules of court**
s 109 (prev s 69) reloc from Arrest on Mesne Process Act 1902 s 10
by A2004-60 amdt 1.15
renum A2005-60 amdt 1.40
exp 1 July 2006 (s 114)
- Application for order nisi for discharge**
s 110 (prev s 70) reloc from Arrest on Mesne Process Act 1902 s 11
by A2004-60 amdt 1.15
renum A2005-60 amdt 1.40
exp 1 July 2006 (s 114)
- Proceedings on order nisi**
s 111 (prev s 71) reloc from Arrest on Mesne Process Act 1902 s 12
by A2004-60 amdt 1.15
renum A2005-60 amdt 1.40
exp 1 July 2006 (s 114)
- Appeal**
s 112 (prev s 72) reloc from Arrest on Mesne Process Act 1902 s 13
by A2004-60 amdt 1.15
renum A2005-60 amdt 1.40
exp 1 July 2006 (s 114)
- Discharge on bankruptcy**
s 113 (prev s 73) reloc from Arrest on Mesne Process Act 1902 s 14
by A2004-60 amdt 1.15
renum A2005-60 amdt 1.40
exp 1 July 2006 (s 114)
- Expiry—div 10.2**
s 114 (prev s 74) renum A2005-60 amdt 1.40
exp 1 July 2006 (s 114)
- Attachment of earnings**
div 10.3 hdg (prev div 7.3 hdg) renum A2005-60 amdt 1.39
exp 1 July 2006 (s 117)

Endnotes

4 Amendment history

Definitions—div 10.3

- s 115 (prev s 76) renum A2005-60 amdt 1.40
exp 1 July 2006 (s 117)
def **court** reloc from Earnings (Assignment and Attachment)
Act 1966 s 4 by A2004-60 amdt 1.147
def **dependant** reloc from Earnings (Assignment and
Attachment) Act 1966 s 4 by A2004-60 amdt 1.147
def **judgment debtor** reloc from Earnings (Assignment and
Attachment) Act 1966 s 4 by A2004-60 amdt 1.147
def **Metal Trades Award** reloc from Earnings (Assignment
and Attachment) Act 1966 s 4 by A2004-60 amdt 1.147

Limitation on attachment of wages

- s 116 (prev s 77) reloc from Earnings (Assignment and Attachment)
Act 1966 s 5 by A2004-60 amdt 1.148
renum A2005-60 amdt 1.40
exp 1 July 2006 (s 117)

Expiry of div 10.3

- s 117 (prev s 78) renum A2005-60 amdt 1.40
exp 1 July 2006 (s 117)

Stay of proceedings

- div 10.4 hdg (prev div 7.4 hdg) renum A2005-60 amdt 1.39
exp 1 July 2006 (s 121)

Stay of proceedings

- s 118 (prev s 80) reloc from Judiciary (Stay of Proceedings) Act
1933 s 3 by A2004-60 amdt 1.161
renum A2005-60 amdt 1.40
exp 1 July 2006 (s 121)

Stay of execution

- s 119 (prev s 81) reloc from Judiciary (Stay of Proceedings) Act
1933 s 4 by A2004-60 amdt 1.161
renum A2005-60 amdt 1.40
exp 1 July 2006 (s 121)

Rescission or variation of previous direction or order

- s 120 (prev s 82) reloc from Judiciary (Stay of Proceedings) Act
1933 s 5 by A2004-60 amdt 1.161
renum A2005-60 amdt 1.40
exp 1 July 2006 (s 121)

Expiry of div 10.4

- s 121 (prev s 83) renum A2005-60 amdt 1.40
exp 1 July 2006 (s 121)

Set-off of debts

- div 10.5 hdg (prev div 7.5 hdg) renum A2005-60 amdt 1.39
exp 1 July 2006 (s 124)

Mutual debts to be set one against the other

s 122 (prev s 84) reloc from Set-off of Debts Act 1735 s 13 by
A2004-60 amdt 1.631
renum A2005-60 amdt 1.40
exp 1 July 2006 (s 124)

Exception

s 123 (prev s 85) reloc from Set-off of Debts Act 1735 s 5 by
A2004-60 amdt 1.633
renum A2005-60 amdt 1.40
exp 1 July 2006 (s 124)

Expiry of div 10.5

s 124 (prev s 86) renum A2005-60 amdt 1.40
exp 1 July 2006 (s 124)

Judgment creditors remedies

div 10.6 hdg (prev div 7.6 hdg) renum A2005-60 amdt 1.39
exp 1 July 2006 (s 132)

Limitation of arrest under ca. sa.

s 125 (prev s 87) reloc from Judgment Creditors Remedies Act 1901
s 19 by A2004-60 amdt 1.159
renum A2005-60 amdt 1.40
exp 1 July 2006 (s 132)

Fraudulent concealment or intended departure

s 126 (prev s 88) reloc from Judgment Creditors Remedies Act 1901
s 20 by A2004-60 amdt 1.159
renum A2005-60 amdt 1.40
exp 1 July 2006 (s 132)

Exception for certain actions

s 127 (prev s 89) reloc from Judgment Creditors Remedies Act 1901
s 21 by A2004-60 amdt 1.159
renum A2005-60 amdt 1.40
exp 1 July 2006 (s 132)

Ca. sa. to fix bail

s 128 (prev s 90) reloc from Judgment Creditors Remedies Act 1901
s 22 by A2004-60 amdt 1.159
renum A2005-60 amdt 1.40
exp 1 July 2006 (s 132)

Liability for escape

s 129 (prev s 91) reloc from Judgment Creditors Remedies Act 1901
s 23 by A2004-60 amdt 1.159
renum A2005-60 amdt 1.40
exp 1 July 2006 (s 132)

Endnotes

4 Amendment history

Discharge of judgment debtor on authority of lawyer

s 130 (prev s 92) reloc from Judgment Creditors Remedies Act 1901
s 24 by A2004-60 amdt 1.159
renum A2005-60 amdt 1.40
exp 1 July 2006 (s 132)

Ca. sa. may be executed on Sunday

s 131 (prev s 93) reloc from Judgment Creditors Remedies Act 1901
s 26 by A2004-60 amdt 1.159
renum A2005-60 amdt 1.40
exp 1 July 2006 (s 132)

Expiry of div 10.6

s 132 (prev s 94) renum A2005-60 amdt 1.40
exp 1 July 2006 (s 132)

Supreme Court

div 10.7 hdg ins A2005-60 amdt 1.41
exp 1 July 2006 (s 139)

Exercise of jurisdiction by registrar

s 133 ins A2005-60 amdt 1.42
exp 1 July 2006 (s 139)

Costs

s 134 reloc from Supreme Court Act 1933 s 23 by A2005-60
amdt 1.137
exp 1 July 2006 (s 139)

Date of process

s 135 reloc from Supreme Court Act 1933 s 66 by A2005-60
amdt 1.141
exp 1 July 2006 (s 139)

Expiry of div 10.7

s 139 ins A2005-60 amdt 1.43
exp 1 July 2006 (s 139)

Business names—starting legal proceedings

div 10.8 hdg ins A2005-60 amdt 1.44
exp 1 July 2006 (s 141)

Effect of certain contraventions of Business Names Act on legal proceedings

s 140 reloc from Business Names Act 1963 s 27 by A2005-60
amdt 1.9
exp 1 July 2006 (s 141)

Expiry of div 10.8

s 141 ins A2005-60 amdt 1.45
exp 1 July 2006 (s 141)

Transitional

pt 11 hdg (prev pt 8 hdg) renum A2005-60 amdt 1.46
exp 10 January 2007 (s 151)

Modification of pt 11's operation

s 150 (prev s 104) renum A2005-60 amdt 1.47
exp 10 January 2007 (s 151)

Expiry of pt 11

s 151 (prev s 105) renum A2005-60 amdt 1.48
exp 10 January 2007 (s 151)

Transitional—rules of court

pt 12 hdg ins A2006-40 amdt 2.92
exp 1 July 2008 (s 506)

Transitional regulations

s 500 ins A2006-40 amdt 2.92
exp 1 July 2008 (s 506)

Construction of outdated references

s 501 ins A2006-40 amdt 2.92
exp 1 July 2008 (s 506 (LA s 88 declaration applies))

Abolition of old enforcement processes

s 502 ins A2006-40 amdt 2.92
exp 1 July 2008 (s 506 (LA s 88 declaration applies))

Right to claim set-off

s 503 ins A2006-40 amdt 2.92
exp 1 July 2008 (s 506 (LA s 88 declaration applies))

Abolition of distinction between court and chambers

s 504 ins A2006-40 amdt 2.92
exp 1 July 2008 (s 506 (LA s 88 declaration applies))

Application of sch 1 amendments

s 505 ins A2006-40 amdt 2.92
exp 29 November 2006 (s 505 (3) (LA s 88 declaration
applies))

Expiry—pt 12

s 506 ins A2006-40 amdt 2.92
exp 1 July 2008 (s 506)

Transitional—Children and Young People Act 2008

pt 13 hdg ins A2008-20 amdt 1.2
exp 2 years after the day it commences (s 514 (LA s 88
declaration applies))

Endnotes

4 Amendment history

Meaning of commencement day—pt 13

s 510 ins A2008-20 amdt 1.2
exp 2 years after the day it commences (s 514 (LA s 88
declaration applies))

Notices to attend court proceeding

s 511 ins A2008-20 amdt 1.2
exp 2 years after the day it commences (s 514) (LA s 88
declaration applies)

Existing proceedings

s 512 ins A2008-20 amdt 1.2
exp 2 years after the day it commences (s 514 (LA s 88
declaration applies))

Transitional regulations

s 513 ins A2008-20 amdt 1.2
exp 2 years after the day it commences (s 514 (LA s 88
declaration applies))

Expiry—pt 13

s 514 ins A2008-20 amdt 1.2
exp 2 years after the day it commences (s 514 (LA s 88
declaration applies))

Miscellaneous

sch 1 item 6 am A2006-40 amdt 2.93

Parties and proceedings

sch 1 item 9 am A2006-40 amdt 2.94

Steps in proceedings

sch 1 item 10 sub A2006-40 amdt 2.95

Disclosure

sch 1 item 12 am A2006-40 amdt 2.96

Preservation of rights and property

sch 1 item 13 sub A2006-40 amdt 2.97

Trials and other hearings

sch 1 item 17 am A2006-40 amdt 2.98

Particular proceedings

sch 1 item 19 am A2006-40 amdt 2.99

Contempt of court

sch 1 item 24 am A2006-40 amdts 2.100-2.102
sub A2006-55 s 8

Costs

sch 1 item 26 am A2006-40 amdt 2.103

New Magistrates Court (Civil Jurisdiction) Rules 2004

sch 2 om LA s 89 (3)

Dictionary

dict

am A2005-60 amdt 1.49

def **child** ins A2008-19 amdt 1.16def **examination** ins A2005-60 amdt 1.50

om R10 LA

def **firearm** sub A2008-25 amdt 2.2def **inferior court** ins A2005-60 amdt 1.50

om R10 LA

def **judicial authority** ins A2005-60 amdt 1.50

om R10 LA

def **request** ins A2005-60 amdt 1.50

om R10 LA

def **requesting court** ins A2005-60 amdt 1.50

om R10 LA

def **young person** ins A2008-19 amdt 1.16**5 Earlier republications**

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 10 Jan 2005	10 Jan 2005– 10 Jan 2005	A2004-60	new Act and amendments by A2004-60
R2* 11 Jan 2005	11 Jan 2005– 24 Mar 2005	A2004-60	commenced expiry
R3 25 Mar 2005	25 Mar 2005– 1 June 2005	A2005-13	amendments by A2005-13
R4 2 June 2005	2 June 2005– 21 Dec 2005	A2005-20	amendments by A2005-20

Endnotes

5 Earlier republications

Republication No and date	Effective	Last amendment made by	Republication for
R5 22 Dec 2005	22 Dec 2005– 10 Jan 2006	A2005-60	amendments by A2005-60
R6 11 Jan 2006	11 Jan 2006– 30 June 2006	A2005-60	amendments by A2005-60
R7 1 July 2006	1 July 2006– 1 July 2006	A2006-25	amendments by A2006-25
R8 2 July 2006	2 July 2006– 28 Sept 2006	A2006-25	commenced expiry
R9 29 Sept 2006	29 Sept 2006– 18 Oct 2006	<u>A2006-40</u>	amendments by A2006-40
R10 19 Oct 2006	19 Oct 2006– 15 Nov 2006	A2006-40	amendments by A2006-40
R11 16 Nov 2006	16 Nov 2006– 29 Nov 2006	A2006-42	amendments by A2006-42
R12 30 Nov 2006	30 Nov 2006– 18 Dec 2006	A2006-42	amendments by A2006-42
R13 19 Dec 2006	19 Dec 2006– 10 Jan 2007	A2006-55	amendments by A2006-55
R14 11 Jan 2007	11 Jan 2007– 27 Mar 2007	A2006-55	commenced expiry
R15* 28 Mar 2007	28 Mar 2007– 1 July 2008	A2006-55	amendments by A2006-38
R16 2 July 2008	2 July 2008– 28 July 2008	A2006-55	commenced expiry

6 Uncommenced amendments

The following amendments have not been included in this republication because they were uncommenced at the republication date:

Children and Young People Act 2008 A2008-19 sch 1 pt 1.2

Part 1.2 Court Procedures Act 2004

[1.15] New part 7A

insert

Part 7A Procedural provisions— proceedings involving children or young people

Division 7A.1 General

69 Childrens Court procedure

- (1) The *Magistrates Court Act 1930*, chapter 3 (Criminal proceedings), and the rules applying to criminal proceedings in the Magistrates Court, apply to the Childrens Court in relation to a criminal proceeding.
- (2) The rules applying to civil proceedings in the Magistrates Court apply to the Childrens Court in relation to any other proceeding.

71 When parents must attend court proceedings

- (1) A parent of a child or young person who is the subject of a proceeding in a court must attend the court throughout the proceeding if—

Endnotes

- (a) notice of the proceeding has been given to the parent; or
 - (b) the parent otherwise knows of the proceeding.
- (2) Notice of a proceeding given to a parent must state—
- (a) when and where the hearing of the proceeding will begin; and
 - (b) that a warrant may be issued to bring the parent before the court if the parent does not attend throughout the proceeding.
- (3) The court may issue a warrant to bring a parent of a child or young person before the court if—
- (a) notice of the proceeding has been given to a parent of the child or young person; but
 - (b) neither parent attends the court at the beginning of, or at any time during, the proceeding.
- (4) This section applies to a parent who lives in or outside the ACT.
- (5) However, this section does not apply to a parent if—
- (a) daily care responsibility or long-term care responsibility for the child or young person has been transferred to someone else; or
 - (b) for a criminal proceeding—the parent was a victim of the offence to which the proceeding relates and the court excludes the parent under section 72 (2); or
 - (c) exceptional circumstances prevent the parent from attending.

Examples—par (c)

- 1 the parent is overseas and unable to return
- 2 the parent is serving a sentence of imprisonment by full-time detention

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

- (6) Also, this section does not apply to a proceeding under the care and protection chapters of the *Children and Young People Act 2008*.

(7) In this section:

daily care responsibility—see the *Children and Young People Act 2008*, section 19.

long-term care responsibility—see the *Children and Young People Act 2008*, section 20.

72 Court proceedings involving children or young people not open to public

- (1) If a child or young person is the subject of a proceeding in a court, the following people are the only people who may be present at the hearing of the proceeding:
- (a) an officer of the court;
 - (b) a party to the proceeding, a lawyer representing the party, and an employee of the lawyer;
 - (c) a parent of the child or young person;
 - (d) someone else who has daily care responsibility, or long-term care responsibility, for the child or young person;
 - (e) anyone else the court admits as the child's or young person's representative;
 - (f) the chief executive responsible for the *Children and Young People Act 2008* or an authorised person under that Act;
 - (g) the public advocate or a person authorised by the public advocate for this section;
 - (h) a person who has, or a representative of an entity that has, provided a report under the care and protection chapters of the *Children and Young People Act 2008*;
 - (i) for a criminal proceeding—a person who attends the proceeding to prepare a news report of the proceeding and is authorised to attend for that purpose by the person's employer;

Endnotes

6 Uncommenced amendments

Note Publishing certain information about proceedings involving children is an offence (see Criminal Code, s 712A (Publishing identifying information about children's proceedings)).

- (j) for a criminal proceeding—a person who was a victim of an offence to which the proceeding relates, unless the person is excluded by the court under subsection (2);
 - (k) for a criminal proceeding in which circle sentencing is being considered—a person involved in the circle sentencing;
 - (l) anyone else required or permitted to be present by the court or under the *Children and Young People Act 2008* or any other Act.
- (2) A court may exclude a person who was a victim of an offence to which a criminal proceeding relates from being present at the hearing of the proceeding if it considers it is appropriate to do so having regard to—
- (a) the person's behaviour or expected behaviour; or
 - (b) the nature of the person's relationship with the child or young person.

Example—par (b)

a violent or abusive relationship

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

- (3) The public advocate and the chief executive responsible for the *Children and Young People Act 2008* may make submissions to the court about whether the court should require or permit a person to be present under subsection (1) (l), or exclude a person under subsection (2).
- (4) In this section:
- circle sentencing**—see the *Magistrates Court Act 1930*, section 309 (4).

daily care responsibility—see the *Children and Young People Act 2008*, section 19.

long-term care responsibility—see the *Children and Young People Act 2008*, section 20.

73 Court may excuse parties from attending proceedings

- (1) This section applies if a child or young person is the subject of a proceeding in a court.
- (2) On the application of a party to the proceeding, the court may excuse the party from attending all or part of the proceeding.
- (3) The court may, at any time and by notice given to the party, require the party to attend the proceeding.

74 Certain related applications may be heard together

- (1) If 2 or more applications have been filed in a court in relation to a child or young person, the court may hear and decide the applications together if it considers that it would be in the best interests of the child or young person.
- (2) If 2 or more applications are before a court in relation to children or young people who are related, or that raise related matters about children or young people, the court may hear and decide the applications together if it considers that it would be in the best interests of each child or young person.

74A Participation of children and young people in proceedings

- (1) A child or young person has a right to take part in a proceeding in a court in relation to the child or young person.
- (2) The court may ask the chief executive responsible for the *Children and Young People Act 2008* to assist the court by giving the child or young person sufficient information about the proceeding, in language and a way that the child or young person can understand,

to allow the child or young person to take part fully in the proceeding.

74B Court must ensure children and young people etc understand proceedings

In a proceeding under the *Children and Young People Act 2008* or another territory law to which a child or young person is a party, the court must endeavour to ensure that the child or young person and any other party present at the hearing of the proceeding—

- (a) understands the nature and purpose of the proceeding and of any order that the court proposes to make or has made; and
- (b) if any relevant right of appeal exists—knows of the existence of a right of appeal against the relevant finding or order of the court.

74C Chief executive and public advocate etc may appear at proceedings

- (1) This section applies if there is a hearing in a court of—
 - (a) a proceeding against a child or young person; or
 - (b) an application, proceeding or matter under the *Children and Young People Act 2008* or in relation to which that Act applies.
- (2) Each of the following is entitled to appear and be heard and may call witnesses:
 - (a) the chief executive responsible for the *Children and Young People Act 2008*;
 - (b) an authorised person under the *Children and Young People Act 2008*;
 - (c) the public advocate;
 - (d) a person authorised by the public advocate for this section.

74D Court may order report about young person

- (1) A court hearing a criminal proceeding in relation to or against a child or young person may order the chief executive responsible for the *Children and Young People Act 2008* to give the court a report about the child or young person.
- (2) A chief executive given an order must, despite any other ACT law other than the *Human Rights Act 2004*, give a report.
- (3) In giving effect to the order, the chief executive may do, or arrange for someone else to do, 1 or more of the following:
 - (a) visit and interview the child or young person;
 - (b) interview a parent of the child or young person;
 - (c) interview a schoolteacher or other person involved with the education or welfare of the child or young person;
 - (d) require the child or young person to submit to being interviewed by a doctor or other named person.
- (4) Unless a court otherwise orders, a copy of the report must be made available to the parties to the proceeding.
- (5) The person providing the report may be called as a witness by a party to the proceeding.

74E Children and young people may have legal and other representative

- (1) In a proceeding in a court in relation to a child or young person, the child or young person may be represented by a lawyer or litigation guardian, or both.
- (2) A representative of the child or young person must ensure that views and wishes stated by the child or young person are put to the court.
- (3) A representative of the child or young person must tell the court whether the representative is acting on the child's or young person's

instructions or in the best interests of the child or young person, or both.

74F Leave needed for litigation guardian

- (1) In a proceeding in a court in relation to a child or young person, a person may be a litigation guardian for the child or young person only if the court gives leave.
- (2) The court may give leave for a person to be a litigation guardian for a child or young person only if both the person and the child or young person have been given an opportunity to be heard about the appointment.

74G Legal representation of children and young people

A court may hear a proceeding in relation to a child or young person only if—

- (a) the child or young person has a lawyer; or
- (b) the court is satisfied that—
 - (i) the child or young person has had a reasonable opportunity to get legal representation; and
 - (ii) the best interests of the child or young person will be adequately represented in the proceeding.

74H Orders about legal representation of children and young people—all proceedings

- (1) This section applies if, in a proceeding in a court in relation to a child or young person—
 - (a) the child or young person does not have a lawyer; and
 - (b) either—
 - (i) the court is not satisfied that the child or young person has made, or can make, an informed and independent

decision not to be represented by a lawyer, and it considers that the child or young person should be represented by a lawyer; or

- (ii) the court is not satisfied that the interests of the child or young person will be adequately represented in the proceeding.
- (2) The court may, on application or on its own initiative, make any order, or give any direction, it considers necessary or desirable to allow the child or young person a reasonable opportunity to get a lawyer.

74I Rule-making committee and court to have regard to youth justice principles

- (1) The rule-making committee must have regard to the youth justice principles in making rules that relate, or may relate, to criminal proceedings involving children or young people.
- (2) A court must have regard to the youth justice principles in deciding any matter relating to the conduct of a criminal proceeding before the court that involves a child or young person.
- (3) A court may also have regard to the youth justice principles when deciding any matter relating to the conduct of a criminal proceeding before the court that involves—
 - (a) a person who is at least 18 years old but under 21 years old; and
 - (b) an offence committed, or allegedly committed, by the person when he or she was under 18 years old.
- (4) In this section:
youth justice principles—see the *Children and Young People Act 2008*, section 94.

Division 7A.2 Care and protection considerations in proceedings

74J Definitions—div 7A.2

In this division:

care and protection chapters means the care and protection chapters under the *Children and Young People Act 2008*.

chief executive means the chief executive responsible for the *Children and Young People Act 2008*.

in need of care and protection, for a child or young person—see the *Children and Young People Act 2008*, section 345.

74K Proceedings dismissed or adjourned for care and protection reasons

- (1) If, when hearing an indictment against a child or young person, the court is satisfied that the child or young person is in need of care and protection, the court may—

- (a) dismiss the indictment; or
- (b) adjourn the proceeding for up to 15 days.

Note **Indictment** includes information (see Legislation Act, dict, pt 1).

- (2) If a court acts under subsection (1), the court must, as soon as practicable but not later than 2 working days after the day it acts, give a statement of the reasons for the action to—

- (a) the chief executive; and
- (b) the public advocate.

- (3) The statement of reasons must contain the following information about the proceeding:

- (a) if the proceeding has been adjourned—the reason the proceeding was adjourned;

- (b) the circumstances the court is aware of that led to the child or young person coming before the court;
 - (c) the factors that satisfied the court that the child or young person is in need of care and protection.
- (4) The chief executive must treat a statement of reasons given to the chief executive under subsection (2) as if it were a report made under the *Children and Young People Act 2008*, section 356 (Offence—mandatory reporting of abuse).

74L Chief executive must report to court and public advocate

- (1) This section applies if—
- (a) a proceeding has been adjourned under section 74K (1); and
 - (b) the court has given the chief executive a statement of reasons under section 74K (2).
- (2) Not later than 15 days after the day the court adjourns the proceeding under section 74K (1), the chief executive must tell the public advocate and the court, in writing—
- (a) what action the chief executive has taken, is taking or proposes to take under the care and protection chapters in relation to the child or young person; or
 - (b) if the chief executive proposes to take no action under any care and protection chapter in relation to the child or young person—that the chief executive proposes to take no action.
- (3) Without limiting when the chief executive is taken to have complied with subsection (2), the chief executive is taken to have complied with that subsection if the chief executive—
- (a) makes an application under the care and protection chapters in relation to the child or young person; and
 - (b) gives a copy of the application to the public advocate.

74M Court action after adjournment

- (1) This section applies when a proceeding adjourned under section 74K (1) comes before the court again.
- (2) The court may dismiss the proceeding—
 - (a) if—
 - (i) the chief executive has, under section 74L (2) (a), told the court what action the chief executive has taken, is taking or proposes to take under the care and protection chapters in relation to the child or young person; and
 - (ii) the court is satisfied that taking the action is in the best interests of the child or young person; or
 - (b) if—
 - (i) the chief executive has, under section 74L (2) (b), told the court that the chief executive proposes to take no action under any care and protection chapter in relation to the child or young person; and
 - (ii) the court is satisfied that it is in the best interests of the child or young person that the chief executive takes no action; or
 - (c) the chief executive has made an application under the care and protection chapters in relation to the child or young person.
- (3) The court may also make any other order or take any other action in relation to the indictment against the child or young person that the court considers appropriate.

[1.16] Dictionary, new definitions

insert

child, for part 7A (Procedural provisions—proceedings involving children or young people)—see the *Children and Young People Act 2008*, section 11.

young person, for part 7A (Procedural provisions—proceedings involving children or young people)—see the *Children and Young People Act 2008*, section 12.

Children and Young People (Consequential Amendments) Act 2008 A2008-20 sch 1 pt 1.2, sch 2 pt 2.5, sch 4 pt 4.5

Part 1.2 Court Procedures Act 2004**[1.2] New part 13**

insert

Part 13 Transitional—Children and Young People Act 2008**510 Meaning of *commencement day*—pt 13**

In this part:

commencement day means the day the *Children and Young People Act 2008*, schedule 1, part 1.2 commences.

511 Notices to attend court proceeding

- (1) A notice served on a parent under the *Children and Young People Act 1999*, section 60 (Attendance of parents at court), and that has not lapsed or been complied with before the commencement day, is

Endnotes

6 Uncommenced amendments

taken to be a notice given to the parent under this Act, section 71 (When parents must attend court proceedings).

- (2) A warrant issued by the Childrens Court under the *Children and Young People Act 1999*, section 60, and that has not lapsed or been executed before the commencement day, is taken to be a warrant issued by the court under this Act, section 71 (When parents must attend court proceedings).

512 Existing proceedings

- (1) The amendments of this Act made by the *Children and Young People Act 2008*, schedule 1, part 1.2 apply to an existing proceeding.
- (2) If a difficulty arises in the application of subsection (1) to a particular proceeding, the court may make any order it considers appropriate to resolve the difficulty.
- (3) In this section:

existing proceeding means a proceeding started in a court, but not completed, before the commencement of the *Children and Young People Act 2008*, schedule 1, part 1.2.

513 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Children and Young People Act 2008*, schedule 1, part 1.2 or the *Children and Young People (Consequential Amendments) Act 2008*.
- (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything else in this Act or another territory law.

514 Expiry—pt 13

- (1) This part expires 2 years after the day it commences.
- (2) This part, other than section 513, is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

Part 2.5 Court Procedures Act 2004**[2.15] Section 15 (2) (c) (iv) (B)**

after

Children and Young People Act 1999

insert

or the *Children and Young People Act 2008*

[2.16] Section 15 (2) (c) (v) (A)

after

Children and Young People Act 1999

insert

or the *Children and Young People Act 2008*

Part 4.5 Court Procedures Act 2004**[4.12] Section 15 (2) (c) (iv) (B)**

omit

the *Children and Young People Act 1999* or

Endnotes

6 Uncommenced amendments

[4.13] Section 15 (2) (c) (v) (A)

omit

the *Children and Young People Act 1999* or

[4.14] Section 41 (2) (a)

omit

Children and Young People Act 1999, section 61 (Proceedings not open to public)

substitute

Court Procedures Act 2004, section 72 (Court proceedings involving children or young people not open to public)

Firearms Amendment Act 2008 A2008-25 sch 2 pt 2.1
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Part 2.1 Court Procedures Act 2004

[2.1] Section 40, definition of *firearm*

substitute

firearm—see the *Firearms Act 1996*, section 4A.

[2.2] Dictionary, definition of *firearm*

substitute

firearm, for part 5 (Court security)—see the *Firearms Act 1996*, section 4A.

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