



Australian Capital Territory

Court Legislation Amendment Act 2008

A2008-42

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J2008-27

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Australian Capital Territory

Court Legislation Amendment Act 2008

A2008-42

An Act to amend legislation about courts

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

Part 1 Preliminary

1 Name of Act

This Act is the *Court Legislation Amendment Act 2008*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

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

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

Part 2 Crimes (Restorative Justice) Act 2004

3 Legislation amended—pt 2

This part amends the *Crimes (Restorative Justice) Act 2004*.

4 Referring entities Section 22 (2), definition of *prosecution referral*, paragraph (b)

substitute

(b) a court attendance notice under the *Magistrates Court 1930*.

Part 3 Director of Public Prosecutions Act 1990

5 Legislation amended—pt 3

This part amends the *Director of Public Prosecutions Act 1990*.

6 Representation of Territory and Territory authorities Section 11 (3)

omit

section 16

substitute

section 16 (1) (a), (b) or (c)

7 Appearances by director New section 16 (d)

insert

(d) for an appearance in a Magistrates Court callover list—a member of the staff of the office, other than a legal practitioner, whose functions include the appearance.

8 Dictionary, note 2, new dot point

insert

- Magistrates Court

Part 4 Magistrates Court Act 1930

9 Legislation amended—pt 4

This part amends the *Magistrates Court Act 1930*.

10 New division 3.3.3A

insert

Division 3.3.3A Court attendance notices

41A Definitions—div 3.3.3A

In this division:

authorised person means—

- (a) a police officer; or
- (b) a person prescribed by regulation.

court attendance notice—see section 41B.

41B Commencing criminal proceeding by court attendance notice

- (1) A proceeding for an alleged offence may be commenced by serving and filing a notice (a *court attendance notice*) under this division.
- (2) A court attendance notice served on a person must—
 - (a) state the name of the person; and
 - (b) describe the offence to which it relates; and
 - (c) briefly state the particulars of the offence; and
 - (d) state the name of the authorised person serving the notice; and

- (e) unless a warrant is issued for the arrest of the person or the person is refused bail—
 - (i) require the person to appear before a magistrate at a stated date, time and place; and
 - (ii) state that failure to appear may result in the person's arrest or in the proceeding being dealt with in the person's absence; and
- (f) if the person consents to appear before a magistrate at the stated date and time—include a statement, signed by the person, that the person consents to appear at the stated date and time.

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

- (3) It is sufficient to describe an offence in the notice in the way the offence is described in the law that creates the offence.
- (4) The date stated for the person to appear before a magistrate must be—
 - (a) at least 14 days after the day the notice is served; or
 - (b) if the notice contains a consent signed by the person to appear before a magistrate at an earlier date available to a Magistrate—the date as stated in the notice.
- (5) The rules may prescribe additional matters that must be included in a court attendance notice.

41C Court attendance notice—service

- (1) If an authorised person suspects, on reasonable grounds, that a person has committed an offence, the authorised person may serve a court attendance notice on the person.
- (2) The notice must be served personally by the authorised person.

- (3) The *Court Procedures Rules 2006*, part 6.8 (Service) apply to the service of a court attendance notice as if—
 - (a) the notice were a document in the proceeding for the offence to which it relates; and
 - (b) the copy of the notice served were a stamped copy.
- (4) However, the *Court Procedures Rules 2006*, division 6.8.3 (Service—Magistrates Court) does not apply to service of a court attendance notice.

41D Court attendance notice—filing

- (1) A copy of a court attendance notice served on a person must be filed—
 - (a) not less than 14 days before the day stated in the notice for the person to appear before a magistrate; or
 - (b) if the notice contains a consent signed by the person to appear before a magistrate at a date earlier than 14 days after service of the notice—as soon as practicable.
- (2) If a warrant is intended to be issued in the first instance against the person, the notice must be filed with a sworn statement about the particulars of the offence stated in the notice.

41E Court attendance notice—relationship to information and summons

- (1) This division is additional to, and does not limit, any other provision of a Territory law about an information or summons in relation to a criminal proceeding.
- (2) A court attendance notice served under this division is taken, for all purposes, to be a summons served under division 3.3.3.
- (3) A court attendance notice filed under this division is taken, for all purposes, to be an information laid under division 3.3.2.

- (4) For subsections (2) and (3), a provision mentioned in subsection (1) applies, with any necessary changes and any changes prescribed by regulation—
- (a) in relation to a court attendance notice served under this division—as if it were a summons issued under division 3.3.3; and
 - (b) in relation to a court attendance notice filed under this division—as if it were an information laid under division 3.3.2.

11 **Written statements may be admitted in evidence**
Section 90AA (3) (a)

substitute

- (a) it contains the following endorsement by the person who made it:
- ‘This statement made by me accurately sets out the evidence that I would be prepared, if necessary, to give in court as a witness. The statement is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I will be liable to prosecution if I have wilfully stated in it anything that I know to be false or do not believe to be true.’;
- and

12 **Section 219AB heading**

substitute

219AB **Reference appeal in relation to proceeding**

13 **Section 219AB (1)**

substitute

- (1) This section applies if a person has been charged on indictment in the Magistrates Court and the proceeding in relation to all or part of the indictment has concluded.

14 Sections 219AB (2)

omit

trial

substitute

proceeding

15 Sections 219AC (1) (a)

omit

at the trial

substitute

in the proceeding

16 Section 219AD

substitute

219AD Reference appeal decision does not affect verdict

The decision on a reference appeal does not invalidate or affect any verdict or decision given in the proceeding.

17 Dictionary, note 2, new dot point

insert

- proceeding

18 Dictionary, definition of *authorised person*

substitute

authorised person—

- (a) for division 3.3.3A (Court attendance notices)—see section 41A; and
- (b) for part 3.8 (Infringement notices for certain offences)—see section 134A (3).

19 Dictionary, new definition of *court attendance notice*

insert

court attendance notice, for division 3.3.3A (Court attendance notices)—see section 41B.

Part 5 Supreme Court Act 1933

20 Legislation amended—pt 5

This part amends the *Supreme Court Act 1933*.

21 Appellate jurisdiction Section 37E (2) (b)

omit

Reference appeal following acquittal on indictment

substitute

Reference appeal in relation to proceeding

22 Orders on appeal New section 37O (1A) and (1B)

insert

(1A) The Court of Appeal on an appeal against conviction must—

(a) allow the appeal if it considers that—

(i) the verdict of the jury should be set aside on the ground that it is unreasonable, or cannot be supported, having regard to the evidence; or

(ii) the judgment of the court before which the appellant was convicted should be set aside on the ground of a wrong decision of any question of law; or

(iii) on any other ground there was a miscarriage of justice; or

(b) dismiss the appeal.

(1B) However, the Court of Appeal may also dismiss an appeal against conviction if it considers that—

- (a) the point raised by the appeal might be decided in favour of the appellant; but
- (b) no substantial miscarriage of justice has actually occurred.

23 Section 37S heading

substitute

37S Reference appeal in relation to proceeding**24 Section 37S (1)**

substitute

- (1) This section applies if a person has been charged on indictment in the court and the proceeding in relation to all or any part of the indictment has concluded.

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

25 Section 37S (2) and (3)

omit

trial

substitute

proceeding

26 Section 37S (4) (a)

omit

at the trial

substitute

in the proceeding

27 Section 37S (4) (b)

omit

trial

substitute

proceeding

28 Section 37S (6)

omit

at the trial

substitute

in the proceeding

29 Dictionary, note 2, new dot points

insert

- indictment
- proceeding

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 26 June 2008.

2 Notification

Notified under the Legislation Act on 8 September 2008.

3 Republications of amended laws

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

I certify that the above is a true copy of the Court Legislation Amendment Bill 2008, which was passed by the Legislative Assembly on 21 August 2008.

Clerk of the Legislative Assembly

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