



Australian Capital Territory

# Courts Legislation Amendment Act 2011

A2011-13

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J2010-242

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Australian Capital Territory

# Courts Legislation Amendment Act 2011

**A2011-13**

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An Act to amend legislation about courts

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

**1 Name of Act**

This Act is the *Courts Legislation Amendment Act 2011*.

**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).

**3 Legislation amended**

This Act amends the legislation mentioned in schedule 1.

## **Schedule 1      Legislation amended**

(see s 3)

### **Part 1.1              Bail Act 1992**

#### **[1.1]      Section 9D (6), definition of *serious offence***

*substitute*

*serious offence* means an offence punishable by imprisonment for 5 years or longer (other than an offence in relation to which an election for summary disposal has been made under the *Crimes Act 1900*, section 374 (Summary disposal of certain cases at prosecutor's election)).

### **Part 1.2              Court Procedures Act 2004**

#### **[1.2]      Section 72 (4), definition of *circle sentencing***

*substitute*

*circle sentencing*—see the *Magistrates Court Act 1930*, section 291L.

### **Part 1.3              Crimes (Sentencing) Act 2005**

#### **[1.3]      New section 43 (1) (b) (iva)**

*insert*

(iva) for a report for an offender to be sentenced for a domestic violence offence—an approved crisis support organisation under the *Domestic Violence Agencies Act 1986*;



- (6) If the prosecutor elects to have the case disposed of summarily, the court must hear and determine the charge summarily and sentence or otherwise deal with the defendant according to law.
- (7) If the court disposes of a case summarily under this section and convicts the defendant of the offence, the court must not impose a penalty that exceeds—
  - (a) a fine of \$5 000, imprisonment for 2 years or both; or
  - (b) if the maximum penalty provided for the offence by the law creating it is a fine of less than \$5 000—the maximum penalty.
- (8) In this section:  
*Magistrates Court* includes the Childrens Court.
- (9) The Minister must—
  - (a) review the operation of this section as soon as practicable after the end of its 2nd year of operation; and
  - (b) present a report of the review to the Legislative Assembly within 3 months after the review is started.
- (10) Subsection (9) and this subsection expire 3 years after the day this section commences.

**[1.6] New section 375 (2A)**

*insert*

- (2A) However, this section applies to a case to which section 374 applies only as mentioned in section 374 (5).

**[1.7]      Section 377**

*before*

section 375

*insert*

section 374 or

**[1.8]      Section 378**

*before*

section 375

*insert*

section 374 or

**[1.9]      New part 31**

*insert*

## **Part 31                      Transitional—Courts Legislation Amendment Act 2011**

### **610      Application of amendments**

- (1) The amendments of part 17 (Offences punishable summarily and summary procedure generally) made by the *Courts Legislation Amendment Act 2011* do not apply to a proceeding if, before the amendments commence, the defendant has consented to the case being disposed of summarily.
- (2) That part, as in force immediately before the amendments commence, continues to apply to the proceeding.



**611 Transitional regulations**

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Courts Legislation Amendment Act 2011*.
- (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.

**612 Expiry—pt 31**

This part expires 1 year after the day it commences.

## **Part 1.5 Magistrates Court Act 1930**

**[1.10] Section 90A**

*before*

section 375

*insert*

section 374 or

**[1.11] New section 92A (4)**

*insert*

- (4) This section does not apply to the summary conviction of a person charged with an indictable offence if the case was dealt with summarily under the Crimes Act, section 374 (Summary disposal of certain cases at prosecutor's election).

**[1.12]    Section 208**

*before*

section 375

*insert*

section 374 or

**[1.13]    Section 219B**

*before*

section 375

*insert*

section 374 or

**[1.14]    Section 257**

*omit*

\$50 000

*substitute*

\$250 000

**[1.15]    Section 261**

*omit*

\$50 000

*substitute*

\$250 000

**[1.16] Section 288 (2)**

*before*

section 375

*insert*

section 374 (Summary disposal of certain cases at prosecutor's election) and

**[1.17] New chapters 4B and 4C**

*insert*

## **Chapter 4B      The Family Violence Court**

### **Part 4B.1      Preliminary**

#### **291H      Meaning of *domestic violence offence***

In this Act:

*domestic violence offence* means an offence—

- (a) that is a domestic violence offence under the *Domestic Violence and Protection Orders Act 2008*; and
- (b) for which a victim of the offence is a relevant person, under that Act, in relation to the person who committed the offence.

*Note 1*    **Domestic violence offence**—see the *Domestic Violence and Protection Orders Act 2008*, s 13 (2).

*Note 2*    **Relevant person**—see the *Domestic Violence and Protection Orders Act 2008*, s 15.

**291I Purpose—ch 4B**

The purpose of this chapter is to establish a specialised court to deal with domestic violence offences, recognising that—

- (a) the nature of domestic violence and the particular needs involved in protecting victims is complex; and
- (b) great social harm results from domestic violence; and
- (c) domestic violence offences take place in the context of a special relationship between people.

**Part 4B.2 The Family Violence Court**

**291J Family Violence Court**

- (1) The Magistrates Court is known as the Family Violence Court when it is exercising the jurisdiction of the Magistrates Court in relation to a proceeding mentioned in section 291K.
- (2) The Family Violence Court may use the Magistrates Court seal.
- (3) When a magistrate sits as the Family Violence Court, the magistrate may be referred to as the Family Violence Court Magistrate.
- (4) The Chief Magistrate is responsible for ensuring the orderly and prompt discharge of the business of the Family Violence Court.

**291K Jurisdiction of Family Violence Court**

- (1) The Family Violence Court may exercise the jurisdiction of the Magistrates Court in relation to the following:
  - (a) any criminal proceeding against a person in relation to a summary domestic violence offence if the person was 18 years old or over at the time of the alleged offence;

- (b) any criminal proceeding against a person in relation to an indictable domestic violence offence if the person was 18 years old or over at the time of the alleged offence;
  - (c) a proceeding in relation to bail for an adult charged with a domestic violence offence;
  - (d) a proceeding in relation to a breach of a sentence imposed by the Magistrates Court or the Family Violence Court on a person for a domestic violence offence.
- (2) Subsection (1) (b) is subject to the *Crimes Act 1900*, section 374 (Summary disposal of certain cases at prosecutor's election) and section 375 (Summary disposal of certain cases).
- (3) Subsection (1) (c) is subject to the *Bail Act 1992*.

## **Chapter 4C Galambany Court**

### **291L Definitions—ch 4C**

In this chapter:

***Aboriginal or Torres Strait Islander offender*** means an offender who—

- (a) is a descendant of an Aboriginal person or Torres Strait Islander; and
- (b) identifies as an Aboriginal person or Torres Strait Islander; and
- (c) is accepted as an Aboriginal person or Torres Strait Islander by an Aboriginal or Torres Strait Islander community.

***circle sentencing*** means the step in a sentencing proceeding for an Aboriginal or Torres Strait Islander offender that includes members of the Aboriginal or Torres Strait Islander community.

**291M      Galambany Court**

The Magistrates Court is known as the Galambany Court when it is sitting to provide circle sentencing.

**291N      Directions about procedure for Galambany Court**

- (1) The Magistrates Court may give a direction in relation to the procedure to be followed in relation to circle sentencing for certain Aboriginal or Torres Strait Islander offenders, and any other relevant matter in relation to circle sentencing.
- (2) To remove any doubt, a direction mentioned in subsection (1) is not taken to limit the Magistrates Court's discretion in sentencing an offender.
- (3) Nothing in this section limits the Magistrates Court's power to give a direction under section 309 (Directions about procedure).

**[1.18]      Section 309**

*substitute*

**309      Directions about procedure**

If the procedure for taking a step in a proceeding is not set out in this Act or the law under which the step is to be taken, the court may give a direction in relation to—

- (a) the procedure to be followed in relation to the step; and
- (b) any other relevant matter in relation to the step.

*Note*      The Magistrates Court may make procedures to be followed in relation to circle sentencing for certain Aboriginal or Torres Strait Islander offenders (see s 291N).

**[1.19] New section 320A**

*insert*

**320A Domestic violence offence information**

- (1) The Minister may determine what statistical information in relation to domestic violence offences (the *domestic violence offence information*) must be collected by the registrar.
- (2) The registrar must give the domestic violence offence information for a financial year to the domestic violence project coordinator by 31 July in the following financial year.
- (3) The registrar must also give the coordinator domestic violence offence information otherwise requested, in writing, by the coordinator.
- (4) A determination is a notifiable instrument.

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

- (5) In this section:

*domestic violence project coordinator* means the Domestic Violence Project Coordinator appointed under the *Domestic Violence Agencies Act 1986*, section 11.

**[1.20] Dictionary, new definitions**

*insert*

*Aboriginal or Torres Strait Islander offender*, for chapter 4C (Galambany Court)—see section 291L.

*circle sentencing*, for chapter 4C (Galambany Court)—see section 291L.

*domestic violence offence*—see section 291H.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 9 December 2010.

**2 Notification**

Notified under the Legislation Act on 11 May 2011.

**3 Republications of amended laws**

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

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I certify that the above is a true copy of the Courts Legislation Amendment Bill 2011, which originated in the Legislative Assembly as the Courts Legislation Amendment Bill 2010 and was passed by the Assembly on 3 May 2011.

Clerk of the Legislative Assembly

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