



Australian Capital Territory

# Courts Legislation Amendment Act 2014

A2014-1

## Contents

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	Page
<b>Part 1</b>	<b>Preliminary</b>
1	Name of Act 2
2	Commencement 2
3	Legislation amended 2
<b>Part 2</b>	<b>ACT Civil and Administrative Tribunal Act 2008</b>
4	Section 32 heading 3
5	Section 32 (1) 3
6	Section 32 (2) (a) and (b) 3
7	Applications to be heard Section 36 (a) 4

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J2013-326

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		Page
8	Section 36, note 1	4
9	Costs of proceedings Section 48 (2) (a)	4
10	Section 48 (2) (d)	5
11	Section 48 (3), note	5
12	Interim orders Section 53 (3)	5
13	Section 53 (4) (c)	5
14	Statement of reasons Section 60 (2)	5
15	Making and effect of orders New section 61 (1) (c)	6
16	Reserving decisions Section 62 (4) and (5)	6
<b>Part 3</b>	<b>Births, Deaths and Marriages Registration Act 1997</b>	
17	Notification of deaths by doctors Section 35 (1), penalty and note	7
<b>Part 4</b>	<b>Coroners Act 1997</b>	
18	Coroner's jurisdiction in relation to deaths Section 13 (1) (e)	8
19	Section 13 (1) (g)	8
20	Warrant for exhumation of body or recovery of ashes Section 27 (2) (c)	8
21	Dictionary, new definition of <i>post-mortem examination</i>	9
<b>Part 5</b>	<b>Magistrates Court Act 1930</b>	
22	New division 3.5.1	10
23	New section 90B	10
24	Committal for sentence for indictable offence tried summarily Section 92A (2)	11
25	Discharge or committal for trial New section 94 (2) to (4)	11

## Contents

---

	Page	
26	Transfer of action from Supreme Court New section 268 (2A)	12
27	Assignment of other magistrates for Childrens Court matters Section 291C (3) and (4)	12
28	Childrens Court may send cases to Supreme Court for sentencing New section 291G (5)	12
29	Dictionary, new definitions	13
<b>Part 6</b>	<b>Supreme Court Act 1933</b>	
30	Part 8 heading	14
31	New section 68CA	14
32	Section 68D	15
33	Procedure Section 68E	16
34	Section 68F	16
35	Dictionary, new definitions	16
36	Dictionary, definition of <i>related summary offence</i>	17





Australian Capital Territory

# Courts Legislation Amendment Act 2014

**A2014-1**

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

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

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Courts Legislation Amendment Act 2014*.

### 2 Commencement

This Act commences on the 28th day after its notification day.

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

### 3 Legislation amended

This Act amends the following legislation:

- *ACT Civil and Administrative Tribunal Act 2008*
- *Births, Deaths and Marriages Registration Act 1997*
- *Coroners Act 1997*
- *Magistrates Court Act 1930*
- *Supreme Court Act 1933*.

## Part 2                      ACT Civil and Administrative Tribunal Act 2008

### **4                      Section 32 heading**

*substitute*

### **32                    Dismissing or striking out applications**

### **5                    Section 32 (1)**

*substitute*

- (1) This section applies if the tribunal considers that an application, or part of an application is—
- (a) frivolous or vexatious; or
  - (b) lacking in substance; or
  - (c) otherwise an abuse of process; or
  - (d) made by a person who has been dealt with by a court or tribunal in Australia as frivolous or vexatious.

### **6                    Section 32 (2) (a) and (b)**

*after*

application

*insert*

or part of the application

**7 Applications to be heard  
Section 36 (a)**

*after*

application

*insert*

, or part of the application,

**8 Section 36, note 1**

*after*

application

*insert*

, or part of an application,

**9 Costs of proceedings  
Section 48 (2) (a)**

*substitute*

- (a) if the tribunal decides an application in favour of the applicant, the tribunal may order the other party to pay the applicant—
- (i) the filing fee for the application; and
  - (ii) any other fee incurred by the applicant that the tribunal considers necessary for the application; or

**Examples—subpar (ii)**

- a fee for a business name or company search
- a filing fee for a subpoena
- hearing fees

*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).



**10 Section 48 (2) (d)**

*omit*

Frivolous and vexatious applications

*substitute*

Dismissing or striking out applications

**11 Section 48 (3), note**

*omit*

**12 Interim orders  
Section 53 (3)**

*substitute*

- (3) An interim order remains in force until the tribunal—
- (a) orders otherwise; or
  - (b) makes an order at the end of the hearing to which the interim order relates.

**13 Section 53 (4) (c)**

*omit*

**14 Statement of reasons  
Section 60 (2)**

*after*

reasons

*insert*

or a transcript of an oral statement of reasons

**15 Making and effect of orders**  
**New section 61 (1) (c)**

*insert*

- (c) made available to the parties to the application at a time and place decided by the tribunal.

**16 Reserving decisions**  
**Section 62 (4) and (5)**

*substitute*

- (4) The tribunal or tribunal member may deliver the statement by making it available to the parties at a time and place decided by the tribunal or member.

## Part 3 Births, Deaths and Marriages Registration Act 1997

### 17 Notification of deaths by doctors Section 35 (1), penalty and note

*substitute*

- (c) has considered information about the deceased person's medical history and the circumstances of the deceased person's death and is able to form an opinion as to the probable cause of death.

Maximum penalty: 5 penalty units.

**Examples—par (c)**

- examining medical records or speaking to the deceased person's treating doctor
- account of someone who was with the deceased person when the person died or who discovered the deceased person's body

*Note 1* If a form is approved under s 69 for a notice, the form must be used.

*Note 2* 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).

## Part 4 Coroners Act 1997

### 18 Coroner's jurisdiction in relation to deaths Section 13 (1) (e)

*omit*

72

*substitute*

24

### 19 Section 13 (1) (g)

*omit*

3

*substitute*

6

### 20 Warrant for exhumation of body or recovery of ashes Section 27 (2) (c)

*after*

a post-mortem

*insert*

examination

**21 Dictionary, new definition of *post-mortem examination***

*insert*

***post-mortem examination*** means the inspection of a body to determine the cause of death and may, but need not, include dissection of the body.

**Examples**

- external post-mortem examination, including taking skin or other samples
- post-mortem examination using computed tomography (CT)
- post-mortem examination using magnetic resonance imaging (MRI)

*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).

## Part 5 Magistrates Court Act 1930

### 22 New division 3.5.1

*insert*

#### Division 3.5.1 Dispensing with application of part

##### 88A Dispensing with application of part in interests of justice

The court may dispense with the application of 1 or more provisions of this part to a proceeding if it considers it necessary or expedient to do so in the interests of justice.

### 23 New section 90B

*insert*

##### 90B Back-up and related offences—transfer to Supreme Court

- (1) This section applies if a person (the *accused person*)—
  - (a) is committed for trial under section 90A (7); and
  - (b) has been charged with a back-up or related offence.

*Note* **Back-up offence** and **related offence**—see the dictionary.
- (2) The prosecutor must tell the court about the back-up or related offence.
- (3) The court must transfer the proceeding for the back-up or related offence to the Supreme Court, to be dealt with under the [Supreme Court Act 1933](#), part 8 (Back-up and related offences).
- (4) Subsection (3) does not prevent the accused person being charged with an offence after committal under section 90A (7).

- (5) However, if the accused person is charged with a back-up or related offence after committal under section 90A (7), the court must transfer the proceeding for the offence to the Supreme Court, to be dealt with under the *Supreme Court Act 1933*, part 8.

**24 Committal for sentence for indictable offence tried summarily  
Section 92A (2)**

*substitute*

- (2) If the court commits a person for sentence under subsection (1), the court must—
- (a) deal with the person in the same way as a person who is committed for trial under section 94 (1) (b) (Discharge or committal for trial); and
  - (b) if the person has been charged with a back-up or related offence—deal with the back-up or related offence in accordance with section 94 (2).

**25 Discharge or committal for trial  
New section 94 (2) to (4)**

*before the notes, insert*

- (2) If the accused person is committed for trial under subsection (1) and has been charged with a back-up or related offence—
- (a) the prosecutor must tell the court about the back-up or related offence; and
  - (b) the court must transfer the proceeding for the back-up or related offence to the Supreme Court, to be dealt with under the *Supreme Court Act 1933*, part 8 (Back-up and related offences).
- (3) Subsection (2) does not prevent the accused person being charged with an offence after committal under subsection (1) (b).

- (4) However, if the accused person is charged with a back-up or related offence after committal under subsection (1) (b), the court must transfer the proceeding for the offence to the Supreme Court, to be dealt with under the *Supreme Court Act 1933*, part 8.

**26**      **Transfer of action from Supreme Court**  
**New section 268 (2A)**

*insert*

- (2A) The Supreme Court may make an order under subsection (2) if, when the application for transfer is made, the cause of action could have been properly begun in the Magistrates Court.

**27**      **Assignment of other magistrates for Childrens Court matters**  
**Section 291C (3) and (4)**

*omit*

**28**      **Childrens Court may send cases to Supreme Court for sentencing**  
**New section 291G (5)**

*insert*

- (5) Also, if the Childrens Court makes an order under subsection (2), the Childrens Court must, if the person has been charged with a back-up or related offence, deal with the back-up or related offence in accordance with section 94 (2) (Discharge or committal for trial) in the same way as a person who is committed for trial under that section.



**29 Dictionary, new definitions**

*insert*

*back-up offence*, in relation to an indictable offence—see the [Supreme Court Act 1933](#), section 68CA.

*related offence*, in relation to an indictable offence—see the [Supreme Court Act 1933](#), section 68CA.

## Part 6 Supreme Court Act 1933

### 30 Part 8 heading

*substitute*

## Part 8 Back-up and related offences

### 31 New section 68CA

*in part 8, insert*

#### 68CA Definitions—pt 8

In this part:

*back-up offence*, in relation to an indictable offence (the *first indictable offence*), means an offence—

- (a) that is—
  - (i) a summary offence; or
  - (ii) an indictable offence that is capable of being dealt with summarily by the Magistrates Court under the *Magistrates Court Act 1930*, part 3.6 (Proceedings for offences punishable summarily); and
- (b) at least some of the elements of which are similar to the elements that constitute the first indictable offence; and
- (c) that is to be prosecuted on the same facts as the first indictable offence.

**related offence**, in relation to an indictable offence (the **first indictable offence**), means an offence, other than a back-up offence—

- (a) that is—
  - (i) a summary offence; or
  - (ii) an indictable offence that is capable of being dealt with summarily by the Magistrates Court under the *Magistrates Court Act 1930*, part 3.6 (Proceedings for offences punishable summarily); and
- (b) that arises from substantially the same circumstances as those from which the first indictable offence has arisen.

## 32 Section 68D

*substitute*

### 68D Back-up and related offences

- (1) This section applies in the following circumstances:
  - (a) if the Magistrates Court commits an accused person for trial or sentencing to the Supreme Court under any of the following provisions of the *Magistrates Court Act 1930*:
    - (i) section 90B (Back-up and related offences—transfer to Supreme Court);
    - (ii) section 92A (1) (Committal for sentence for indictable offence tried summarily);
    - (iii) section 94 (1) (b) (Discharge or committal for trial);
    - (iv) section 291G (2) (Childrens Court may send cases to Supreme Court for sentencing);
  - (b) at the conclusion of the trial of an accused person for an indictable offence, or in the course of a sentencing proceeding.

- (2) The court must deal with any back-up or related offence with which the accused person has been charged if the court considers that it is in the interests of justice.
- (3) The court may deal with a back-up or related offence with which an accused person has been charged even though it is not doing so in relation to a back-up or related offence with which another accused person in the same proceedings is charged.

**33 Procedure  
Section 68E**

*omit*

related summary offence

*substitute*

back-up or related offence

**34 Section 68F**

*substitute*

**68F Remission of back-up and related offences to Magistrates Court**

The court may, at any time, remit a back-up or related offence being dealt with under this part to the Magistrates Court.

**35 Dictionary, new definitions**

*insert*

***back-up offence***, in relation to an indictable offence—for part 8 (Back-up and related offences)—see section 68CA.

***related offence***, in relation to an indictable offence—for part 8 (Back-up and related offences)—see section 68CA.

**36 Dictionary, definition of *related summary offence***

*omit*

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**Endnotes****1 Presentation speech**

Presentation speech made in the Legislative Assembly on 28 November 2013.

**2 Notification**

Notified under the [Legislation Act](#) on 5 March 2014.

**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 2014, which originated in the Legislative Assembly as the Courts Legislation Amendment Bill 2013 and was passed by the Assembly on 25 February 2014.

Clerk of the Legislative Assembly

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