



Australian Capital Territory

# Supreme Court Amendment Act 2023

A2023-48

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Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)





Australian Capital Territory

# Supreme Court Amendment Act 2023

**A2023-48**

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An Act to amend the *Supreme Court Act 1933*

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

**1 Name of Act**

This Act is the *Supreme Court Amendment Act 2023*.

**2 Commencement**

This Act commences 6 months 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 *Supreme Court Act 1933*.

**4 Appellate jurisdiction  
New section 37E (2) (e)**

*insert*

(e) applications and appeals under part 8AB (Appeals against conviction for fresh and compelling evidence).

**5 New part 8AB**

*insert*

**Part 8AB Appeals against conviction for  
fresh and compelling evidence**

**Division 8AB.1 Application—pt 8AB**

**68ZC Application—pt 8AB**

- (1) This part applies in relation to a person who is convicted or found guilty of an offence in the Supreme Court or the Magistrates Court (the *convicted person*).

(2) In this section:

*convicted or found guilty*, of an offence, includes a conviction or finding of guilt entered before the commencement of this part.

## **Division 8AB.2      Important concepts**

### **68ZD      Definitions—pt 8AB**

In this part:

*compelling*, evidence—see section 68ZE (3).

*convicted person*—see section 68ZC (1).

*court* means the Court of Appeal.

*fresh*, evidence—see section 68ZE (1).

### **68ZE      Meaning of *fresh* and *compelling* evidence—pt 8AB**

- (1) For this part, evidence in relation to an offence is *fresh* if the evidence—
  - (a) has not been tendered in the proceeding in which the convicted person was convicted or found guilty of the offence, or any appeal against the conviction or finding of guilt; and
  - (b) could not, in the course of an exercise of reasonable diligence, have been tendered in a proceeding mentioned in paragraph (a).
- (2) To avoid any doubt, subsection (1) does not prevent evidence from being fresh only because the evidence was, or would have been considered to be, inadmissible in the proceeding in which the convicted person was convicted or found guilty of the offence.

- (3) For this part, evidence in relation to an offence is *compelling* if the evidence is—
- (a) reliable; and
  - (b) substantial; and
  - (c) highly probative in the context of the issues in dispute in the proceeding in which the person was convicted or found guilty.

### **Division 8AB.3      Application of pt 2A**

#### **68ZF      Certain provisions of pt 2A taken to apply**

The following provisions of part 2A (Court of Appeal) are taken to apply to this part:

- section 37E (Appellate jurisdiction)
- section 37H (Appeal bench)
- section 37I (Presiding judge)
- section 37J (Appeal court constituted by a single judge)
- section 37K (Decision-making)
- section 37L (Appeal judge unable to continue sitting)
- section 37M (Reserved judgments)
- section 37N (Evidence on appeal)
- section 37P (New trials)
- section 37Q (Bail time on appeal does not count towards sentence).

## **Division 8AB.4 Appeal against conviction**

### **68ZG Court may grant leave to appeal conviction**

- (1) The court may, on application by a convicted person, grant leave for the convicted person to bring an appeal against their conviction or finding of guilt if satisfied that—
  - (a) there is fresh and compelling evidence in relation to the offence that should be considered on an appeal; and
  - (b) it is in the interests of justice for the order to be made.
- (2) To remove any doubt, the court may grant leave under this section if a convicted person has previously made an application or been granted leave under this section.

### **68ZH Orders on appeal against conviction**

- (1) This section applies if the court grants leave under section 68ZG.
- (2) The court, on an appeal against a conviction or finding of guilt, may—
  - (a) allow the appeal if it considers that—
    - (i) there is fresh and compelling evidence; and
    - (ii) after taking into account the fresh and compelling evidence, there has been a substantial miscarriage of justice; or
  - (b) dismiss the appeal.
- (3) If the court allows the appeal, the court must—
  - (a) set aside the conviction or finding of guilt; and
  - (b) either order—
    - (i) a verdict of not guilty to be entered; or
    - (ii) a new trial or hearing.

## 6 Dictionary, notes 1 and 2

### *substitute*

*Note* The [Legislation Act](#) contains definitions relevant to this Act. For example:

- ACAT
- Criminal Code
- director of public prosecutions
- exercise
- function
- legal practitioner
- may (see s 146)
- month
- must (see s 146)
- indictable offence (see s 190)
- indictment
- police officer
- proceeding
- public servant
- the Territory.

## 7 Dictionary, definition of *compelling*

### *substitute*

***compelling***, evidence—

- (a) for part 8AA (Acquittals)—see section 68K; and
- (b) for part 8AB (Appeals against conviction for fresh and compelling evidence)—see section 68ZE (3).



**8 Dictionary, new definition of *convicted person***

*insert*

***convicted person***, for part 8AB (Appeals against conviction for fresh and compelling evidence)—see section 68ZC (1).

**9 Dictionary, definition of *court*, new paragraph (c)**

*insert*

(c) for part 8AB (Appeals against conviction for fresh and compelling evidence)—see section 68ZD.

**10 Dictionary, definition of *fresh***

*substitute*

***fresh***, evidence—

- (a) for part 8AA (Acquittals)—see section 68K; and
- (b) for part 8AB (Appeals against conviction for fresh and compelling evidence)—see section 68ZE (1).

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 10 May 2023.

**2 Notification**

Notified under the [Legislation Act](#) on 15 November 2023.

**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 Supreme Court Amendment Bill 2023, which was passed by the Legislative Assembly on 2 November 2023.

Acting Clerk of the Legislative Assembly

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