

2008

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Court Legislation Amendment Bill 2008

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(Attorney-General)

Court Legislation Amendment Bill 2008

A Bill for

An Act to amend legislation about courts

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

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

4 **2 Commencement**

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

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

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

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

1 **Part 2** **Crimes (Restorative Justice) Act**
2 **2004**

3 **3** **Legislation amended—pt 2**

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

5 **4** **Referring entities**
6 **Section 22 (2), definition of *prosecution referral*,**
7 **paragraph (b)**

8 *substitute*

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

1 **Part 3** **Director of Public Prosecutions**
2 **Act 1990**

3 **5 Legislation amended—pt 3**

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

5 **6 Representation of Territory and Territory authorities**
6 **Section 11 (3)**

7 *omit*

8 section 16

9 *substitute*

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

11 **7 Appearances by director**
12 **New section 16 (d)**

13 *insert*

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

17 **8 Dictionary, note 2, new dot point**

18 *insert*

- 19
 - Magistrates Court

1 **Part 4** **Magistrates Court Act 1930**

2 **9** **Legislation amended—pt 4**

3 This part amends the *Magistrates Court Act 1930*.

4 **10** **New division 3.3.3A**

5 *insert*

6 **Division 3.3.3A** **Court attendance notices**

7 **41A** **Definitions—div 3.3.3A**

8 In this division:

9 *authorised person* means—

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

12 *court attendance notice*—see section 41B.

13 **41B** **Commencing criminal proceeding by court attendance**
14 **notice**

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

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

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

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

24 **41C Court attendance notice—service**

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

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

9 **41D Court attendance notice—filing**

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

20 **41E Court attendance notice—relationship to information and
21 summons**

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

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

9 **11 Written statements may be admitted in evidence**
10 **Section 90AA (3) (a)**

11 *substitute*

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

21 **12 Section 219AB heading**

22 *substitute*

23 **219AB Reference appeal in relation to proceeding**

24 **13 Section 219AB (1)**

25 *substitute*

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

1 **14 Sections 219AB (2)**

2 *omit*

3 trial

4 *substitute*

5 proceeding

6 **15 Sections 219AC (1) (a)**

7 *omit*

8 at the trial

9 *substitute*

10 in the proceeding

11 **16 Section 219AD**

12 *substitute*

13 **219AD Reference appeal decision does not affect verdict**

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

16 **17 Dictionary, note 2, new dot point**

17 *insert*

- 18
 - proceeding

1 **18 Dictionary, definition of *authorised person***

2 *substitute*

3 *authorised person*—

4 (a) for division 3.3.3A (Court attendance notices)—see
5 section 41A; and

6 (b) for part 3.8 (Infringement notices for certain offences)—see
7 section 134A (3).

8 **19 Dictionary, new definition of *court attendance notice***

9 *insert*

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

1 **Part 5** **Supreme Court Act 1933**

2 **20** **Legislation amended—pt 5**

3 This part amends the *Supreme Court Act 1933*.

4 **21** **Appellate jurisdiction**
5 **Section 37E (2) (b)**

6 *omit*

7 Reference appeal following acquittal on indictment

8 *substitute*

9 Reference appeal in relation to proceeding

10 **22** **Orders on appeal**
11 **New section 37O (1A) and (1B)**

12 *insert*

13 (1A) The Court of Appeal on an appeal against conviction must—

14 (a) allow the appeal if it considers that—

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

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

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

22 (b) dismiss the appeal.

23 (1B) However, the Court of Appeal may also dismiss an appeal against
24 conviction if it considers that—

Section 23

1 (a) the point raised by the appeal might be decided in favour of the
2 appellant; but

3 (b) no substantial miscarriage of justice has actually occurred.

4 **23 Section 37S heading**

5 *substitute*

6 **37S Reference appeal in relation to proceeding**

7 **24 Section 37S (1)**

8 *substitute*

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

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

13 **25 Section 37S (2) and (3)**

14 *omit*

15 trial

16 *substitute*

17 proceeding

18 **26 Section 37S (4) (a)**

19 *omit*

20 at the trial

21 *substitute*

22 in the proceeding

27 Section 37S (4) (b)

2 *omit*

3 trial

4 *substitute*

5 proceeding

28 Section 37S (6)

7 *omit*

8 at the trial

9 *substitute*

10 in the proceeding

29 Dictionary, note 2, new dot points

12 *insert*

- 13 • indictment
- 14 • proceeding

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2008.

2 Notification

Notified under the Legislation Act on 2008.

3 Republications of amended laws

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

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