

2010

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Attorney-General)

# Courts Legislation Amendment Bill 2010

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(Attorney-General)

## **Courts Legislation Amendment Bill 2010**

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### **A Bill for**

An Act to amend legislation about courts

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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 *Courts Legislation Amendment Act 2010*.

4 **2 Commencement**

5 (1) This Act (other than schedule 1, part 1.21 and amendment 1.50)  
6 commences on a day fixed by the Minister by written 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).

15 (2) Schedule 1, part 1.21 and amendment 1.50 commence on the later  
16 of—

17 (a) the commencement of the *Victims of Crime Amendment*  
18 *Act 2010*; and

19 (b) the commencement of this Act, section 3.

20 **3 Legislation amended**

21 This Act amends the legislation mentioned in schedule 1.

1 **Schedule 1**            **Legislation amended**

2 (see s 3)

3 **Part 1.1**                    **Aboriginal and Torres Strait**  
4 **Islander Elected Body Act 2008**

5 **[1.1]        Schedule 1, part 1.2, modification 1.5, section 103 (1) (b),**  
6 **and note**

7 *substitute*

8 (b) is not under a sentence of imprisonment for 1 year or longer for  
9 a conviction for an offence.

10 **[1.2]        Schedule 1, part 1.2, modification 1.7, section 105 (2A)**  
11 **(b), and note**

12 *substitute*

13 (b) is not under a sentence of imprisonment for 1 year or longer for  
14 a conviction for an offence.

15 **[1.3]        Schedule 1, part 1.2, modification 1.8, section 105 (4) (d)**  
16 **(ii)**

17 *substitute*

18 (ii) is not under a sentence of imprisonment for 1 year or  
19 longer for a conviction for an offence; and

20 **[1.4]        Schedule 1, part 1.2, modification 1.8, section 105 (4) (da)**  
21 **(ii)**

22 *substitute*

23 (ii) is not under a sentence of imprisonment for 1 year or  
24 longer for a conviction for an offence; and



1 **[1.9] Dictionary, note 2**

2 *omit*

- 3 • indictable offence (see s 190 (1))

4 **Part 1.4 Children and Young People Act**  
5 **2008**

6 **[1.10] Section 32 (b) and (c)**

7 *substitute*

8 (b) if the member is convicted, or found guilty, in Australia of an  
9 offence punishable by imprisonment for longer than 2 years; or

10 (c) if the member is convicted, or found guilty, outside Australia  
11 of an offence that, if it had been committed in the ACT, would  
12 be an offence punishable by imprisonment for longer than  
13 2 years; or

14 **[1.11] Dictionary, note 2**

15 *omit*

- 16 • indictable offence (s 190)

17 **Part 1.5 Civil Law (Wrongs) Act 2002**

18 **[1.12] Section 94 (1) (a)**

19 *omit*

20 indictable offence

21 *substitute*

22 offence punishable by imprisonment for longer than 2 years

1 **Part 1.6** **Confiscation of Criminal Assets**  
2 **Act 2003**

3 **[1.13] Section 13 (2), definition of *relevant offence*,**  
4 **paragraph (b), note**

5 *substitute*

6 *Note* An offence against an ACT law is an indictable offence if it is  
7 punishable by imprisonment for longer than 5 years, or is  
8 declared by law to be an indictable offence (see Legislation Act,  
9 s 190 (1)).

10 **Part 1.7** **Coroners Act 1997**

11 **[1.14] Division 5.5 heading**

12 *substitute*

13 **Division 5.5** **Offences punishable by imprisonment**  
14 **for longer than 2 years**

15 **[1.15] Section 58 heading**

16 *substitute*

17 **58** **Procedure if evidence of offence punishable by**  
18 **imprisonment for longer than 2 years**

19 **[1.16] Section 58 (1)**

20 *omit*

21 indictable offence

22 *substitute*

23 offence punishable by imprisonment for longer than 2 years



1 **[1.17] Section 58 (3) (a)**

2 *omit*

3 indictable offence

4 *substitute*

5 offence punishable by imprisonment for longer than 2 years

6 **[1.18] Dictionary, note 2**

7 *omit*

- 8
  - indictable offence

9 **Part 1.8 Court Procedures Act 2004**

10 **[1.19] Section 72 (4), definition of *circle sentencing***

11 *substitute*

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

14 **Part 1.9 Crimes (Sentencing) Act 2005**

15 **[1.20] New section 43 (1) (b) (iva)**

16 *insert*

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

- 1    **[1.21]    Section 43 (7), new definition of *domestic violence***  
2            ***offence***  
3            *insert*  
4            *domestic violence offence*—see the *Magistrates Court Act 1930*,  
5            section 291H.

6            **Part 1.10                            Criminal Code 2002**

- 7    **[1.22]    Division 3.2.3 heading**  
8            *relocate before section 315*

- 9    **[1.23]    Section 650**  
10           *omit*  
11           indictable offence  
12           *substitute*  
13           offence punishable by imprisonment for longer than 2 years

- 14   **[1.24]    Section 651 (1), definition of *criminal group*, paragraph (a)**  
15           *omit*  
16           indictable offence  
17           *substitute*  
18           offence punishable by imprisonment for longer than 2 years

- 19   **[1.25]    Part 7.2 heading**  
20           *substitute*

21           **Part 7.2                            Offences—ch 7**

1 **[1.26] Part 7.3 heading**

2 *substitute*

3 **Division 7.2.5 Other offences**

4 **Part 1.11 Electoral Act 1992**

5 **[1.27] Section 103 (4), and note**

6 *substitute*

7 (4) A person is not eligible to be an MLA if the person is under a  
8 sentence of imprisonment for 1 year or longer for a conviction for  
9 an offence.

10 **Part 1.12 Firearms Act 1996**

11 **[1.28] Section 207 (2) (d)**

12 *substitute*

13 (d) seize a thing if satisfied on reasonable grounds that the thing is  
14 connected with an offence punishable by imprisonment for  
15 longer than 1 year.

16 **[1.29] Section 209 (4)**

17 *omit*

18 indictable offence

19 *substitute*

20 offence punishable by imprisonment for longer than 1 year

21 **[1.30] Dictionary, note 2**

22 *omit*

23 • indictable offence (see s 190)



- 1 (b) an offence against a law of another jurisdiction that would be  
2 an offence punishable by imprisonment for longer than 2 years  
3 against a territory law if committed in the ACT; or
- 4 (c) an offence against a law of a foreign country that would be an  
5 offence punishable by imprisonment for longer than 2 years  
6 against a territory law or a law of the Commonwealth if  
7 committed in the ACT.

## 8 **Part 1.16** **Legislation Act 2001**

### 9 **[1.35] Section 190 (1)**

10 *substitute*

- 11 (1) An offence is an *indictable offence* if—
- 12 (a) it is punishable by imprisonment for longer than 5 years; or
- 13 (b) it is declared by an ACT law to be an indictable offence.

### 14 **[1.36] Dictionary, new definition of *Family Violence Court***

15 *insert*

16 *Family Violence Court* means the Family Violence Court under the  
17 *Magistrates Court Act 1930*, section 291J.

## 18 **Part 1.17** **Magistrates Court Act 1930**

### 19 **[1.37] Section 257**

20 *omit*

21 \$50 000

22 *substitute*

23 \$250 000

1    **[1.38]    Section 261**

2            *omit*

3            \$50 000

4            *substitute*

5            \$250 000

6    **[1.39]    New chapters 4B and 4C**

7            *insert*

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

9    **Part 4B.1            Preliminary**

10 **291H            Meaning of *domestic violence offence***

11            In this Act:

12            *domestic violence offence* means an offence—

13            (a) that is a domestic violence offence under the *Domestic*  
14            *Violence and Protection Orders Act 2008*; and

15            (b) for which a victim of the offence is a relevant person, under  
16            that Act, in relation to the person who committed the offence.

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

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

1 **291I Purpose—ch 4B**

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

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

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

10 **291J Family Violence Court**

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

19 **291K Jurisdiction of Family Violence Court**

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

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

## 12                    **Chapter 4C            Galambany Court**

### 13                    **291L            Definitions—ch 4C**

14                    In this chapter:

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

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

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



1 **291M Galambany Court**

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

4 **291N Directions about procedure for Galambany Court**

5 (1) The Magistrates Court may give a direction in relation to the  
6 procedure to be followed in relation to circle sentencing for certain  
7 Aboriginal or Torres Strait Islander offenders, and any other  
8 relevant matter in relation to circle sentencing.

9 (2) To remove any doubt, a direction mentioned in subsection (1) is not  
10 taken to limit the Magistrates Court's discretion in sentencing an  
11 offender.

12 (3) Nothing in this section limits the Magistrates Court's power to give  
13 a direction under section 309 (Directions about procedure).

14 **[1.40] Section 309**

15 *substitute*

16 **309 Directions about procedure**

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

20 (a) the procedure to be followed in relation to the step; and

21 (b) any other relevant matter in relation to the step.

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

- 1    **[1.41]    New section 320A**
- 2            *insert*
- 3    **320A    Domestic violence offence information**
- 4            (1) The Minister may determine what statistical information in relation
- 5            to domestic violence offences (the *domestic violence offence*
- 6            *information*) must be collected by the registrar.
- 7            (2) The registrar must give the domestic violence offence information
- 8            for a financial year to the domestic violence project coordinator by
- 9            31 July in the following financial year.
- 10          (3) The registrar must also give the coordinator domestic violence
- 11          offence information otherwise requested, in writing, by the
- 12          coordinator.
- 13          (4) A determination is a notifiable instrument.
- 14          *Note*    A notifiable instrument must be notified under the Legislation Act.
- 15          (5) In this section:
- 16                *domestic violence project coordinator* means the Domestic
- 17                Violence Project Coordinator appointed under the *Domestic*
- 18                *Violence Agencies Act 1986*, section 11.

1 **[1.42] New chapter 13**

2 *insert*

3 **Chapter 13 Transitional—Courts**  
4 **Legislation Amendment Act**  
5 **2010**

6 **470 Application of indictable offences amendments**

7 (1) In this section:

8 *commencement day* means the day the *Courts Legislation*  
9 *Amendment Act 2010*, schedule 1, amendment 1.35 commences.

10 (2) This section applies if, before the commencement day—

11 (a) a person has been committed to the Supreme Court under this  
12 Act in relation to an offence punishable by imprisonment for  
13 longer than 2 years but not longer than 5 years; and

14 (b) the matter has not been finally decided.

15 (3) The Supreme Court may deal with the matter as if the offence were  
16 still an indictable offence.

17 **471 Transitional regulations**

18 (1) A regulation may prescribe transitional matters necessary or  
19 convenient to be prescribed because of the enactment of the *Courts*  
20 *Legislation Amendment Act 2010*.

21 (2) A regulation may modify this chapter (including in relation to  
22 another territory law) to make provision in relation to anything that,  
23 in the Executive's opinion, is not, or is not adequately or  
24 appropriately, dealt with in this chapter.

25 (3) A regulation under subsection (2) has effect despite anything else in  
26 this Act or another territory law.



1 **Part 1.19** **Supreme Court Act 1933**

2 **[1.46] New part 11**

3 *insert*

4 **Part 11** **Transitional—Courts Legislation**  
5 **Amendment Act 2010**

6 **110** **Application of amendments**

7 (1) In this section:

8 *commencement day* means the day the *Courts Legislation*  
9 *Amendment Act 2010*, schedule 1, amendment 1.35 commences.

10 (2) This section applies if, before the commencement day, a proceeding  
11 had been commenced but not finally decided in the Supreme Court  
12 in relation to an offence punishable by imprisonment for longer  
13 than 2 years but not longer than 5 years.

14 (3) The Supreme Court may deal with the matter as if the offence were  
15 still an indictable offence.

16 **111** **Transitional regulations**

17 (1) A regulation may prescribe transitional matters necessary or  
18 convenient to be prescribed because of the enactment of the *Courts*  
19 *Legislation Amendment Act 2010*.

20 (2) A regulation may modify this part (including in relation to another  
21 territory law) to make provision in relation to anything that, in the  
22 Executive's opinion, is not, or is not adequately or appropriately,  
23 dealt with in this part.

24 (3) A regulation under subsection (2) has effect despite anything else in  
25 this Act or another territory law.

1    **112            Expiry—pt 11**

2                    This part expires 1 year after the day it commences.

3    **Part 1.20                    Territory Records Act 2002**

4    **[1.47]            Section 36 (c)**

5                    *substitute*

6                    (c) if the director is convicted or found guilty of an offence  
7                    punishable by imprisonment for longer than 2 years; or

8    **[1.48]            Section 47 (2) (c)**

9                    *substitute*

10                   (c) if the member is convicted or found guilty of an offence  
11                   punishable by imprisonment for longer than 2 years; or

12   **Part 1.21                    Victims of Crime Act 1994**

13   **[1.49]            Section 22G (3) (d)**

14                    *substitute*

15                    (d) if the member is convicted of an offence punishable by  
16                    imprisonment for longer than 2 years; or

17   **Part 1.22                    Victims of Crime Regulation 2000**

18   **[1.50]            Section 42 (b)**

19                    *substitute*

20                    (b) the service provider is a suspect in an investigation of an  
21                    offence punishable by imprisonment for longer than 2 years; or

- 1 **[1.51] Section 43 (c)**
- 2 *substitute*
- 3 (c) the approved service provider has been convicted or found
- 4 guilty of an offence punishable by imprisonment for longer
- 5 than 2 years; or
- 

### Endnotes

- 1 **Presentation speech**  
Presentation speech made in the Legislative Assembly on 2010.
- 2 **Notification**  
Notified under the Legislation Act on 2010.
- 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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