

2013

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Attorney-General)

## Courts Legislation Amendment Bill 2013

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(Attorney-General)

## **Courts Legislation Amendment Bill 2013**

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### **A Bill for**

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:

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Courts Legislation Amendment Act 2013*.

4 **2 Commencement**

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

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

8 **3 Legislation amended**

9 This Act amends the following legislation:

- 10 • *ACT Civil and Administrative Tribunal Act 2008*
- 11 • *Births, Deaths and Marriages Registration Act 1997*
- 12 • *Coroners Act 1997*
- 13 • *Magistrates Court Act 1930*
- 14 • *Supreme Court Act 1933*.

1 **Part 2** **ACT Civil and Administrative**  
2 **Tribunal Act 2008**

3 **4 Section 32 heading**

4 *substitute*

5 **32 Dismissing or striking out applications**

6 **5 Section 32 (1)**

7 *substitute*

8 (1) This section applies if the tribunal considers that an application, or  
9 part of an application is—

10 (a) frivolous or vexatious; or

11 (b) lacking in substance; or

12 (c) otherwise an abuse of process; or

13 (d) made by a person who has been dealt with by a court or  
14 tribunal in Australia as frivolous or vexatious.

15 **6 Section 32 (2) (a) and (b)**

16 *after*

17 application

18 *insert*

19 or part of the application

1 **7 Applications to be heard**  
2 **Section 36 (a)**

3 *after*  
4 application  
5 *insert*  
6 , or part of the application,

7 **8 Section 36, note 1**

8 *after*  
9 application  
10 *insert*  
11 , or part of an application,

12 **9 Costs of proceedings**  
13 **Section 48 (2) (a)**

14 *substitute*  
15 (a) if the tribunal decides an application in favour of the applicant,  
16 the tribunal may order the other party to pay the applicant—  
17 (i) the filing fee for the application; and  
18 (ii) any other fee incurred by the applicant that the tribunal  
19 considers necessary for the application; or

20 **Examples—subpar (ii)**

- 21 • a fee for a business name or company search  
22 • a filing fee for a subpoena  
23 • hearing fees

24 *Note* An example is part of the Act, is not exhaustive and may  
25 extend, but does not limit, the meaning of the provision in  
26 which it appears (see [Legislation Act](#), s 126 and s 132).



1 **10 Section 48 (2) (d)**

2 *omit*

3 Frivolous and vexatious applications

4 *substitute*

5 Dismissing or striking out applications

6 **11 Section 48 (3), note**

7 *omit*

8 **12 Interim orders**  
9 **Section 53 (3)**

10 *substitute*

11 (3) An interim order remains in force until the tribunal—

12 (a) orders otherwise; or

13 (b) makes an order at the end of the hearing to which the interim  
14 order relates.

15 **13 Section 53 (4) (c)**

16 *omit*

17 **14 Statement of reasons**  
18 **Section 60 (2)**

19 *after*

20 reasons

21 *insert*

22 or a transcript of an oral statement of reasons

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

3 *insert*

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

6 **16 Reserving decisions**  
7 **Section 62 (4) and (5)**

8 *substitute*

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

1 **Part 3** **Births, Deaths and Marriages**  
2 **Registration Act 1997**

3 **17 Notification of deaths by doctors**  
4 **Section 35 (1), penalty and note**

5 *substitute*

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

10 Maximum penalty: 5 penalty units.

11 **Examples—par (c)**

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

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

17 *Note 2* An example is part of the Act, is not exhaustive and may extend, but  
18 does not limit, the meaning of the provision in which it appears (see  
19 [Legislation Act](#), s 126 and s 132).

1 **Part 4 Coroners Act 1997**

2 **18 Coroner's jurisdiction in relation to deaths**  
3 **Section 13 (1) (e)**

4 *omit*

5 72

6 *substitute*

7 24

8 **19 Section 13 (1) (g)**

9 *omit*

10 3

11 *substitute*

12 6

13 **20 Warrant for exhumation of body or recovery of ashes**  
14 **Section 27 (2) (c)**

15 *after*

16 a post-mortem

17 *insert*

18 examination

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

2 *insert*

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

6 **Examples**

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

10 *Note* An example is part of the Act, is not exhaustive and may extend, but  
11 does not limit, the meaning of the provision in which it appears (see  
12 [Legislation Act](#), s 126 and s 132).

1                   **Part 5**   **Magistrates Court Act 1930**

2                   **22**                   **New division 3.5.1**

3   *insert*

4                   **Division 3.5.1**                   **Dispensing with application of part**

5                   **88A**                   **Dispensing with application of part in interests of justice**

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

9                   **23**                   **New section 90B**

10   *insert*

11                   **90B**                   **Back-up and related offences—transfer to Supreme Court**

12   (1) This section applies if a person (the *accused person*)—

13   (a) is committed for trial under section 90A (7); and

14   (b) has been charged with a back-up or related offence.

15   *Note*           *Back-up offence* and *related offence*—see the dictionary.

16   (2) The prosecutor must tell the court about the back-up or related  
17   offence.

18   (3) The court must transfer the proceeding for the back-up or related  
19   offence to the Supreme Court, to be dealt with under the  
20   [Supreme Court Act 1933](#), part 8 (Back-up and related offences).

21   (4) Subsection (3) does not prevent the accused person being charged  
22   with an offence after committal under section 90A (7).

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

5 **24 Committal for sentence for indictable offence tried**  
6 **summarily**  
7 **Section 92A (2)**

8 *substitute*

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

17 **25 Discharge or committal for trial**  
18 **New section 94 (2) to (4)**

19 *before the notes, insert*

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

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

5 **26 Transfer of action from Supreme Court**  
6 **New section 268 (2A)**

7 *insert*

- 8 (2A) The Supreme Court may make an order under subsection (2) if,  
9 when the application for transfer is made, the cause of action could  
10 have been properly begun in the Magistrates Court.

11 **27 Assignment of other magistrates for Childrens Court**  
12 **matters**  
13 **Section 291C (3) and (4)**

14 *omit*

15 **28 Childrens Court may send cases to Supreme Court for**  
16 **sentencing**  
17 **New section 291G (5)**

18 *insert*

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

25 **29 Dictionary, new definitions**

26 *insert*

- 27 *back-up offence*, in relation to an indictable offence—see the  
28 *Supreme Court Act 1933*, section 68CA.



1            *related offence*, in relation to an indictable offence—see the  
2            *Supreme Court Act 1933*, section 68CA.

1 **Part 6** **Supreme Court Act 1933**

2 **30** **Part 8 heading**

3 *substitute*

4 **Part 8** **Back-up and related offences**

5 **31** **New section 68CA**

6 *in part 8, insert*

7 **68CA** **Definitions—pt 8**

8 In this part:

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

11 (a) that is—

12 (i) a summary offence; or

13 (ii) an indictable offence that is capable of being dealt with  
14 summarily by the Magistrates Court under the  
15 *Magistrates Court Act 1930*, part 3.6 (Proceedings for  
16 offences punishable summarily); and

17 (b) at least some of the elements of which are similar to the  
18 elements that constitute the first indictable offence; and

19 (c) that is to be prosecuted on the same facts as the first indictable  
20 offence.

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

4 (a) that is—

5 (i) a summary offence; or

6 (ii) an indictable offence that is capable of being dealt with  
7 summarily by the Magistrates Court under the  
8 *Magistrates Court Act 1930*, part 3.6 (Proceedings for  
9 offences punishable summarily); and

10 (b) that arises from substantially the same circumstances as those  
11 from which the first indictable offence has arisen.

## 12 **32 Section 68D**

13 *substitute*

### 14 **68D Back-up and related offences**

15 (1) This section applies in the following circumstances:

16 (a) if the Magistrates Court commits an accused person for trial or  
17 sentencing to the Supreme Court under any of the following  
18 provisions of the *Magistrates Court Act 1930*:

19 (i) section 90B (Back-up and related offences—transfer to  
20 Supreme Court);

21 (ii) section 92A (1) (Committal for sentence for indictable  
22 offence tried summarily);

23 (iii) section 94 (1) (b) (Discharge or committal for trial);

24 (iv) section 291G (2) (Childrens Court may send cases to  
25 Supreme Court for sentencing);

26 (b) at the conclusion of the trial of an accused person for an  
27 indictable offence, or in the course of a sentencing proceeding.

1 (2) The court must deal with any back-up or related offence with which  
2 the accused person has been charged if the court considers that it is  
3 in the interests of justice.

4 (3) The court may deal with a back-up or related offence with which an  
5 accused person has been charged even though it is not doing so in  
6 relation to a back-up or related offence with which another accused  
7 person in the same proceedings is charged.

8 **33 Procedure**  
9 **Section 68E**

10 *omit*

11 related summary offence

12 *substitute*

13 back-up or related offence

14 **34 Section 68F**

15 *substitute*

16 **68F Remission of back-up and related offences to Magistrates**  
17 **Court**

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

20 **35 Dictionary, new definitions**

21 *insert*

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

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

- 1 **36 Dictionary, definition of *related summary offence***
- 2 *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 2013.
- 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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