

2024

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Crimes (Disclosure) Legislation Amendment Bill 2024

Contents

	Page
Part 1	
Preliminary	
1 Name of Act	2
2 Commencement	2
3 Legislation amended	2
Part 2	
Court Procedures Act 2004	
4 New division 8.2A	3

Part 3	Evidence (Miscellaneous Provisions) Act 1991	
5	Definitions—div 4.4.3 Section 79, new definition of <i>counselled person</i>	11
6	Application for leave to disclose protected confidence New section 79E (3) to (6)	11
7	Threshold test—legitimate forensic purpose New section 79F (2A) and (2B)	12
8	Preliminary examination of protected confidence evidence New section 79G (2A)	12
9	Section 79G (6)	13
10	Giving of leave to disclose protected confidence Section 79H (6)	13
11	New sections 79IA and 79IB	13
12	New chapter 13	14
13	Dictionary, new definition of <i>counselled person</i>	15
Part 4	Magistrates Court Act 1930	
14	Section 90	16
15	Written statements may be admitted in evidence Section 90AA (1)	22
16	New part 3.5A	22
17	New chapter 15	29

2024

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Crimes (Disclosure) Legislation Amendment Bill 2024

A Bill for

An Act to amend legislation about the prosecution of crimes, court proceedings,
and for other purposes

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 *Crimes (Disclosure) Legislation Amendment Act 2024*.

4 **2 Commencement**

5 (1) This Act (other than parts 2 and 4) commences on the day after its
6 notification day.

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

9 (2) Parts 2 and 4 commence 12 months after this Act's notification day.

10 **3 Legislation amended**

11 This Act amends the following legislation:

- 12 • [Court Procedures Act 2004](#)
13 • [Evidence \(Miscellaneous Provisions\) Act 1991](#)
14 • [Magistrates Court Act 1930](#).

Part 2 Court Procedures Act 2004

4 New division 8.2A

insert

Division 8.2A Pre-trial disclosure—general

76A Application—div 8.2A

- (1) This division applies to a criminal proceeding that—
- (a) begins on or after the day the *Crimes (Disclosure) Legislation Amendment Act 2024*, section 4 commences; and
 - (b) is a trial on indictment in which the Supreme Court has jurisdiction.
- (2) However, the court may, by order, dispense with the application of any or all of the provisions of this division to a particular proceeding if satisfied it is in the interests of justice.

76B Pre-trial disclosure of relevant material by prosecutor

- (1) The prosecutor in a criminal proceeding must give the following to an accused person:
- (a) a copy of, or a written notice about the right to inspect, any information, document or other thing that—
 - (i) was provided to the prosecutor by a police officer or other person responsible for investigating the offence, or is otherwise in the possession or control of the prosecutor; and

- 1 (ii) would reasonably be regarded as relevant to either the
2 prosecution case or the defence case; and
- 3 (iii) has not otherwise been disclosed to the accused person;
- 4 *Note* If the accused person was committed to trial by the Magistrates
5 Court, some things may have already been disclosed to the accused
6 person in the brief of evidence before the committal hearing (see
7 [Magistrates Court Act 1930](#), s 90).
- 8 (b) a list identifying—
- 9 (i) any information, document or other thing of which the
10 prosecutor is aware and that—
- 11 (A) would reasonably be regarded as relevant to either
12 the prosecution case or the defence case; and
- 13 (B) is not in the possession or control of the prosecutor
14 or the accused person; and
- 15 (C) has not otherwise been disclosed to the accused
16 person; and
- 17 (ii) the place where the prosecutor believes the information,
18 document or other thing may be found;
- 19 (c) a list of all statements given by witnesses whom the prosecutor
20 proposes to call at the trial.
- 21 (2) Subsection (1) requires the prosecutor to give the accused person
22 information, a document or another thing, or a notice about inspection
23 of it, whether or not it could be admitted as evidence.
- 24 (3) The prosecutor must comply with this section—
- 25 (a) in accordance with a timetable determined by the court; or
- 26 (b) if no timetable is determined by the court—not later than
27 28 days before the date set for the trial in the proceeding.

1 (4) The prosecutor must give the accused person a notice under
2 subsection (1) (a) about the right to inspect information, a document
3 or another thing only if—

4 (a) it is impracticable to copy the information, document or other
5 thing; or

6 (b) the accused person agrees to inspect the information, document
7 or other thing instead of receiving a copy of it.

8 **76C Ongoing duty of disclosure by prosecutor**

9 (1) The prosecutor in a criminal proceeding must give an accused person
10 a copy of, or a written notice about the right to inspect, any
11 information, document or other thing that—

12 (a) comes into the prosecutor's possession or control, or to their
13 notice, after complying with section 76B (1); and

14 (b) is mentioned in that subsection; and

15 (c) has not been given to the accused person.

16 *Note* The prosecutor must comply with this subsection as soon as possible after
17 the information, document or other thing comes into their possession or
18 control, or to their notice (see [Legislation Act](#), s 151B).

19 (2) The prosecutor must give the accused person a notice under
20 subsection (1) about the right to inspect information, a document or
21 another thing only if—

22 (a) it is impracticable to copy the information, document or other
23 thing; or

24 (b) the accused person agrees to inspect the information, document
25 or other thing instead of receiving a copy of it.

1 **76D Prosecutor must allow inspection of certain disclosed**
2 **matters on request**

- 3 (1) This section applies if an accused person has been given a notice
4 mentioned in section 76B (1) (a) or section 76C (1) about the right to
5 inspect information, a document or another thing.
- 6 (2) The accused person or their lawyer may ask the prosecutor to allow
7 the accused person or their lawyer to inspect the information,
8 document or other thing.
- 9 (3) The prosecutor must comply with a request under this section.

10 **76E Address and contact details of people generally must not**
11 **be disclosed under div 8.2A**

- 12 (1) This section applies if—
- 13 (a) the prosecutor is required under this division to do any of the
14 following (a *disclosure obligation*):
- 15 (i) give an accused person a copy of, or a notice about the
16 right to inspect, information, a document or another thing;
- 17 (ii) allow the accused person or their lawyer to inspect the
18 information, document or other thing; and
- 19 (b) complying with the disclosure obligation would—
- 20 (i) disclose an address or contact details of a witness proposed
21 to be called by the prosecutor or any other living person;
22 or
- 23 (ii) allow the address or contact details to be worked out; and
- 24 (c) the address or contact details are not relevant to the prosecution
25 case or the defence case.

1 (2) The prosecutor must comply with the disclosure obligation to the
2 extent possible without—

3 (a) disclosing the address or contact details; or

4 (b) allowing the address or contact details to be worked out.

5 **Examples**

6 1 The prosecutor redacts a person's address or contact details from a copy of
7 a document given to the accused person.

8 2 The prosecutor, when allowing the accused person to inspect something with
9 a person's address or contact details on it, temporarily conceals the address or
10 contact details so it cannot be read by the accused person.

11 3 The prosecutor does not give the accused person a copy of a document that
12 consists solely of the address or contact details of a person, and notifies the
13 accused person why the document was not disclosed.

14 (3) The court may make an order requiring the prosecutor to comply with
15 subsection (2) in a particular way or subject to particular conditions.

16 (4) Subsection (2) does not apply if the court is satisfied that—

17 (a) it is in the interests of justice (including the right of the accused
18 person to prepare for the hearing of the evidence for the
19 prosecution) that the person's address or contact details be
20 disclosed; and

21 (b) either—

22 (i) disclosure of the address or contact details is not likely to
23 create a reasonably foreseeable risk to the welfare or safety
24 of the person or any other person; or

25 (ii) if there is a risk mentioned in subparagraph (i)—the
26 interests of justice outweigh the risk.

- 1 (5) This section does not apply to the disclosure of a person's address or
2 contact details in general terms that does not—
- 3 (a) disclose the person whose address or contact details it is; or
- 4 (b) allow the person whose address or contact details it is to be
5 worked out.
- 6 **76F Material used to give evidentiary certificate need not be**
7 **disclosed under div 8.2A**
- 8 (1) This division does not require a prosecutor to give an accused person
9 a copy of, or a notice about the right to inspect, any information,
10 document or other thing that was prepared or used only in the course
11 of giving an evidentiary certificate.
- 12 (2) In this section:
- 13 *evidentiary certificate* means a certificate that, under a territory law,
14 is evidence of the matters stated in the certificate.
- 15 **76G Sanctions for non-compliance with disclosure**
16 **requirements**
- 17 (1) This section applies if—
- 18 (a) the prosecutor in a criminal proceeding seeks to adduce
19 evidence in the proceeding; and
- 20 (b) the prosecutor failed to disclose the evidence to an accused
21 person in accordance with this division.
- 22 (2) The court may refuse to admit the evidence.
- 23 (3) The court may grant an adjournment to a party to the proceeding
24 (other than the prosecutor) if admission of the evidence would
25 prejudice the case of the party.

76H Effect of div 8.2A on other laws

- (1) This division does not limit another territory law that requires the prosecution in a criminal proceeding to disclose something to an accused person.

Note **Territory law** includes the common law (see [Legislation Act](#), dict, pt 1, def **territory law** and **law**, of the Territory).

- (2) This division does not require the disclosure by the prosecutor of anything that is the subject of—

- (a) a claim of privilege or public interest immunity; or
- (b) an immunity conferred by a law applying in the ACT or elsewhere; or
- (c) a prohibition or restriction under a law applying in the ACT or elsewhere on the disclosure of the thing to the accused person (a **non-disclosure obligation**).

- (3) However, if the prosecutor does not disclose something mentioned in subsection (2), they must instead give the accused person a statement that—

- (a) describes the thing to the extent possible without—
 - (i) prejudicing a claim or intended claim of privilege or immunity or an application in relation to a non-disclosure obligation; or
 - (ii) contravening a non-disclosure obligation; and
- (b) outlines the nature of the claim or intended claim of privilege or immunity or the non-disclosure obligation that applies to the thing.

- (4) A statement under subsection (3) must be given to the accused person—

- (a) if the thing was not disclosed under section 76B—at the same time as disclosure is required under section 76B (3); or

- 1 (b) if the thing was not disclosed under section 76C—as soon as
2 possible after the thing comes into the prosecutor’s possession
3 or control, or to their notice.

Part 3 Evidence (Miscellaneous Provisions) Act 1991

5 Definitions—div 4.4.3 Section 79, new definition of *counselled person*

insert

counselled person—see section 79A (1).

6 Application for leave to disclose protected confidence New section 79E (3) to (6)

insert

- (3) The applicant must give written notice of the application to—
- (a) for a civil proceeding—the counselled person who is the subject of the protected confidence; or
 - (b) for a criminal proceeding—the prosecutor.
- (4) The notice must—
- (a) state the known protected confidence evidence that is the subject of the application; and
 - (b) state that the counselled person may, under section 79IA, appear in the proceeding; and
 - (c) state the day when the application is to be heard.
- (5) If the prosecutor in a criminal proceeding is given a notice under subsection (3) (b), the prosecutor must give it to the counselled person who is the subject of the protected confidence.

Section 7

- 1 (6) However, a requirement under this section to give notice to a
2 counselled person does not apply if the court is satisfied that—
- 3 (a) the applicant in a civil proceeding, or the prosecutor in a
4 criminal proceeding, has taken all reasonable steps to find the
5 counselled person, but has not found the counselled person; or
- 6 (b) the counselled person has consented in writing to not be notified
7 about the application; or
- 8 (c) the counselled person has already been given a notice under this
9 section about another application for leave in the same
10 proceeding about the same protected confidence.

11 **7 Threshold test—legitimate forensic purpose**
12 **New section 79F (2A) and (2B)**

13 *insert*

- 14 (2A) If the applicant is required to give notice of the application under
15 section 79E, the court must not decide whether or not to refuse the
16 application under this section until at least 14 days after the applicant
17 has given the notice.
- 18 (2B) However, the court may make a decision in a shorter period after the
19 notice has been given if satisfied it is in the interests of justice.

20 **8 Preliminary examination of protected confidence**
21 **evidence**
22 **New section 79G (2A)**

23 *insert*

- 24 (2A) The court may also permit a written statement be made by the
25 counselled person about the harm the counselled person is likely to
26 suffer if leave is given.

9 Section 79G (6)*substitute*

(6) Evidence taken at the preliminary examination—

(a) if the evidence is a statement taken under subsection (2A)—must not be disclosed to the parties or their lawyers (other than the counselled person or their lawyer); or

(b) in any other case—must not be disclosed to the parties or their lawyers, except to the extent otherwise decided by the court.

**10 Giving of leave to disclose protected confidence
Section 79H (6)***after*

disclosure of the evidence

insert

(other than a statement taken under section 79G (2A))

11 New sections 79IA and 79IB*insert***79IA Counsellor person may appear in proceeding if protected confidence sought to be disclosed**

A counselled person may appear in any proceeding in relation to—

(a) the disclosure of a protected confidence made by, to or about the counselled person; or

(b) the production of a document recording a protected confidence made by, to or about the counselled person; or

(c) the admission of protected confidence evidence for a protected confidence made by, to or about the counselled person.

- 1 **79IB** **Court must be satisfied counselled person is informed of**
2 **rights under div 4.4.3**
- 3 If it appears to the court that a counselled person may have grounds
4 to make an objection or seek an order in relation to something
5 mentioned in section 79IA (a) to (c), the court must satisfy itself that
6 the counselled person—
- 7 (a) is aware of the effect of this division; and
8 (b) has been given a reasonable opportunity to seek legal advice
9 about whether to make an objection or seek an order.

10 **12** **New chapter 13**

11 *insert*

12 **Chapter 13** **Transitional—Crimes**
13 **(Disclosure) Legislation**
14 **Amendment Act 2024**

15 **165** **Meaning of *commencement day*—ch 13**

16 In this chapter:

17 *commencement day* means the day the *Crimes (Disclosure)*
18 *Legislation Amendment Act 2024*, section 12 commences.

19 **166** **Amendments do not apply to proceedings begun before**
20 **commencement day**

21 The amendments to this Act made by the *Crimes (Disclosure)*
22 *Legislation Amendment Act 2024* do not apply to a proceeding that
23 was begun before the commencement day.

- 1 **167** **Amendments apply to protected confidences made**
2 **before, on or after commencement day**
- 3 (1) The amendments to this Act made by the *Crimes (Disclosure)*
4 *Legislation Amendment Act 2024* apply to a protected confidence
5 made before, on or after the commencement day.
- 6 (2) This section is subject to section 166.
- 7 **168** **Expiry—ch 13**
- 8 This chapter expires 3 years after the commencement day.
- 9 *Note* A transitional provision is repealed on its expiry but continues to have
10 effect after its repeal (see [Legislation Act](#), s 88).
- 11 **13** **Dictionary, new definition of *counselled person***
- 12 *insert*
- 13 *counselled person*, for division 4.4.3 (Sexual and family violence
14 offence proceedings—protection of counselling communications)—
15 see section 79A (1).

Part 4 Magistrates Court Act 1930

14 Section 90

substitute

90 Committal proceedings—prosecutor must give brief of evidence to accused person

- (1) This section applies in relation to a person charged with an indictable offence (an ***accused person***) if—
 - (a) the accused person is charged with the offence on or after the day the *Crimes (Disclosure) Legislation Amendment Act 2024*, section 14 commences; and
 - (b) a committal hearing is to be held in relation to the charge.
- (2) The prosecutor must give the accused person a brief of evidence about the offence that is the subject of the proceeding—
 - (a) in accordance with a timetable determined by the court; or
 - (b) if no timetable is determined by the court—not later than 28 days before the date set for the committal hearing.
- (3) The brief of evidence must include—
 - (a) a copy of each written statement that the prosecutor proposes to tender at the hearing; and
 - (b) for each exhibit identified in a statement mentioned in paragraph (a)—a copy of the exhibit or a notice about the right to inspect the exhibit; and
 - (c) a copy of, or a written notice about the right to inspect, any information, document or other thing obtained by the prosecutor (whether or not it could be admitted as evidence) that—
 - (i) is relevant to the basis of the prosecution case; or

- 1 (ii) is reasonably capable of being relevant to the case for the
2 accused person; or
- 3 (iii) would affect the strength of the prosecution case.
- 4 (4) A copy of each document mentioned in subsection (3) (a) and (b)
5 must be filed in the court—
- 6 (a) in accordance with a timetable determined by the court; or
- 7 (b) if no timetable is determined by the court—not later than
8 28 days before the date set for the committal hearing.
- 9 (5) The prosecutor must give the accused person a copy of, or a written
10 notice about the right to inspect, any other information, document or
11 thing that—
- 12 (a) comes into the prosecutor's possession or control, or to their
13 notice, after giving the brief of evidence to the accused person;
14 and
- 15 (b) is mentioned in subsection (3) (c); and
- 16 (c) was not disclosed in the brief of evidence.
- 17 *Note* The prosecutor must comply with this subsection as soon as possible after
18 the information, document or other thing comes into their possession or
19 control, or to their notice (see [Legislation Act](#), s 151B).
- 20 (6) The prosecutor must give the accused person a notice under
21 subsection (3) (c) or (5) about the right to inspect information,
22 a document or another thing only if—
- 23 (a) it is impracticable to copy the information, document or other
24 thing; or
- 25 (b) the accused person agrees to inspect the information, document
26 or other thing instead of receiving a copy of it.

1 **90AAA Address and contact details of people generally must not**
2 **be disclosed as part of pre-committal disclosure**

3 (1) This section applies if—

4 (a) the prosecutor is required under section 90 (3) (c) or (5) or
5 section 90AAD to do any of the following (a *disclosure*
6 *obligation*):

7 (i) give an accused person a copy of, or a notice about the
8 right to inspect, information, a document or another thing;

9 (ii) allow the accused person or their lawyer to inspect
10 information, a document or another thing in a notice
11 mentioned in section 90 (3) (c) or (5); and

12 (b) complying with the disclosure obligation would—

13 (i) disclose an address or contact details of a witness proposed
14 to be called by the prosecutor or any other living person;
15 or

16 (ii) allow the address or contact details to be worked out; and

17 (c) the address or contact details are not relevant to the prosecution
18 case or the defence case.

19 (2) The prosecutor must comply with the disclosure obligation to the
20 extent possible without—

21 (a) disclosing the address or contact details; or

(b) allowing the address or contact details to be worked out.

Examples

- 1 The prosecutor redacts a person's address or contact details from a copy of a document given to the accused person.
- 2 The prosecutor, when allowing the accused person to inspect something with a person's address or contact details on it, temporarily conceals the address or contact details so it cannot be read by the accused person.
- 3 The prosecutor does not give the accused person a copy of a document that consists solely of the address or contact details of a person, and notifies the accused person why the document was not disclosed.

(3) The court may make an order requiring the prosecutor to comply with subsection (2) in a particular way or subject to particular conditions.

(4) Subsection (2) does not apply if the court is satisfied that—

(a) it is in the interests of justice (including the right of the accused person to prepare for the hearing of the evidence for the prosecution) that the person's address or contact details be disclosed; and

(b) either—

(i) disclosure of the address or contact details is not likely to create a reasonably foreseeable risk to the welfare or safety of the person or any other person; or

(ii) if there is a risk mentioned in subparagraph (i)—the interests of justice outweigh the risk.

(5) This section does not apply to the disclosure of a person's address or contact details in general terms that does not—

(a) disclose the person whose address or contact details it is; or

(b) allow the person whose address or contact details it is to be worked out.

1 **90AAB Material used to give evidentiary certificate etc need not**
2 **be disclosed as part of pre-committal disclosure**

3 (1) Section 90 (3) (c) and (5) do not require a prosecutor to give an
4 accused person a copy of, or a notice about the right to inspect, any
5 information, document or other thing that was prepared or used only
6 in the course of giving an evidentiary certificate about a matter.

7 (2) In this section:

8 *evidentiary certificate* means a certificate that, under a territory law,
9 is evidence of the matters stated in the certificate.

10 **90AAC Effect of pre-committal disclosure obligations on other**
11 **laws**

12 (1) Section 90 does not limit another territory law that requires the
13 prosecution in a criminal proceeding to disclose something to a
14 person charged with an indictable offence in relation to a committal
15 hearing.

16 *Note* *Territory law* includes the common law (see [Legislation Act](#), dict, pt 1,
17 def *territory law* and *law*, of the Territory).

18 (2) Section 90 (3) (c) and (5) do not require the disclosure by the
19 prosecutor of anything that is the subject of—

20 (a) a claim of privilege or public interest immunity; or

21 (b) an immunity conferred by a law applying in the ACT or
22 elsewhere; or

23 (c) a prohibition or restriction under a law applying in the ACT or
24 elsewhere on the disclosure of the thing to the accused person
25 (a *non-disclosure obligation*).

- 1 (3) However, if the prosecutor does not disclose something mentioned in
2 subsection (2), they must instead give the accused person a statement
3 that—
- 4 (a) describes the thing to the extent possible without—
- 5 (i) prejudicing a claim or intended claim of privilege or
6 immunity or an application in relation to a non-disclosure
7 obligation; or
- 8 (ii) contravening a non-disclosure obligation; and
- 9 (b) outlines the nature of the claim or intended claim of privilege or
10 immunity or the non-disclosure obligation that applies to the
11 thing.
- 12 (4) A statement under subsection (3) must be—
- 13 (a) if the thing was not disclosed in the brief of evidence under
14 section 90 (3) (c)—included in the brief of evidence; or
- 15 (b) if the thing was not disclosed under section 90 (5)—given to the
16 accused person as soon as possible after the thing comes into the
17 prosecutor's possession or control, or to their notice.

18 **90AAD Prosecutor must allow inspection of certain disclosed**
19 **matters on request**

- 20 (1) This section applies if an accused person has been given a brief of
21 evidence under section 90.
- 22 (2) The accused person or their lawyer may ask the prosecutor to allow
23 the accused person or their lawyer to—
- 24 (a) inspect any exhibit, information, document or other thing in a
25 notice mentioned in section 90 (3) (b) or (c) or section 90 (5);
26 and
- 27 (b) if a statement mentioned in section 90 (3) (a) is a transcript of a
28 recording mentioned in section 90AA (4)—listen to or view the
29 recording.

- 1 (3) The prosecutor must comply with a request under this section.
- 2 (4) However, this section does not entitle the accused person or their
- 3 lawyer to be given or make a copy of a recording mentioned in
- 4 section 90AA (4).

5 **15 Written statements may be admitted in evidence**

6 **Section 90AA (1)**

- 7 *omit*
- 8 the informant has served a copy of a written statement
- 9 *substitute*
- 10 the prosecutor has served a copy of a written statement mentioned in
- 11 section 90 (3) (a)

12 **16 New part 3.5A**

- 13 *insert*

14 **Part 3.5A Pre-hearing disclosure for**

15 **offences punishable summarily**

16 **108AA Application—pt 3.5A**

- 17 (1) This part applies to a criminal proceeding if—
- 18 (a) the proceeding begins on or after the day the *Crimes*
- 19 *(Disclosure) Legislation Amendment Act 2024*, section 16
- 20 commences; and
- 21 (b) the proceeding is for—
- 22 (i) a summary offence; or
- 23 (ii) an indictable offence being dealt with summarily; and
- 24 (c) the defendant pleads not guilty to the offence.

- 1 (2) However, the court may, by order, dispense with the application of
2 any or all of the provisions of this part to a particular proceeding if
3 satisfied it is in the interests of justice.

4 **108AB Prosecutor must give brief of evidence to defendant who**
5 **pleads not guilty**

- 6 (1) The prosecutor in a criminal proceeding must give the defendant a
7 brief of evidence about the offence that is the subject of the
8 proceeding—
9 (a) in accordance with a timetable determined by the court; or
10 (b) if no timetable is determined by the court—not later than
11 28 days before the date set for the court to hear the prosecution
12 case.
13 (2) The brief of evidence must include—
14 (a) a copy of all written statements taken from any person the
15 prosecutor proposes to call as a witness; and
16 (b) for each document or other thing identified in a statement
17 mentioned in paragraph (a) that the prosecutor proposes to
18 adduce as evidence—a copy of, or a written notice about the
19 right to inspect, the document or thing; and
20 (c) a copy of, or a written notice about the right to inspect, any
21 information, document or other thing that—
22 (i) was provided by a police officer or other person
23 responsible for investigating the offence to the prosecutor,
24 or is otherwise in the possession or control of the
25 prosecutor; and
26 (ii) would reasonably be regarded as relevant to either the
27 prosecution case or the defence case; and
28 (iii) has not otherwise been disclosed to the defendant; and

- 1 (d) a list identifying—
- 2 (i) any information, document or other thing of which the
- 3 prosecutor is aware and that—
- 4 (A) would reasonably be regarded as relevant to either
- 5 the prosecution case or defence case; and
- 6 (B) is not in the possession or control of the prosecutor
- 7 or the defendant; and
- 8 (C) has not otherwise been disclosed to the defendant;
- 9 and
- 10 (ii) the place where the prosecutor believes the information,
- 11 document or other thing may be found; and
- 12 (e) a list of all statements given by witnesses whom the prosecutor
- 13 proposes to call at the trial.
- 14 (3) Subsection (2) requires the brief of evidence to include information,
- 15 a document or another thing, or a notice about inspection of it,
- 16 whether or not it could be admitted as evidence.
- 17 (4) The prosecutor must give the defendant a notice under
- 18 subsection (2) (b) or (c) about the right to inspect information,
- 19 a document or another thing only if—
- 20 (a) it is impracticable to copy the information, document or other
- 21 thing; or
- 22 (b) the defendant agrees to inspect the information, document or
- 23 other thing instead of receiving a copy of it.

1 **108AC Ongoing duty of disclosure by prosecutor**

2 (1) The prosecutor in a criminal proceeding must give a defendant a copy
3 of, or a written notice about the right to inspect, any information,
4 document or other thing that—

5 (a) comes into the prosecutor's possession or control, or to their
6 notice, after giving the brief of evidence to the defendant; and

7 (b) is mentioned in section 108AB (2); and

8 (c) has not been given to the defendant.

9 *Note* The prosecutor must comply with this subsection as soon as possible after
10 the information, document or other thing comes into their possession or
11 control, or to their notice (see [Legislation Act](#), s 151B).

12 (2) The prosecutor must give the defendant a notice under subsection (1)
13 about the right to inspect information, a document or another thing
14 only if—

15 (a) it is impracticable to copy the information, document or other
16 thing; or

17 (b) the defendant agrees to inspect the information, document or
18 other thing instead of receiving a copy of it.

19 **108AD Prosecutor must allow inspection of certain disclosed**
20 **matters on request**

21 (1) This section applies if a defendant has been given a notice mentioned
22 in section 108AB (2) (b) or (c) or section 108AC (1) about the right
23 to inspect information, a document or another thing.

24 (2) The defendant or their lawyer may ask the prosecutor to allow the
25 defendant or their lawyer to inspect the information, document or
26 other thing.

27 (3) The prosecutor must comply with a request under this section.

- 1 **108AE Address and contact details of people generally must not**
2 **be disclosed under pt 3.5A**
- 3 (1) This section applies if—
- 4 (a) the prosecutor is required under this part to do any of the
5 following (a *disclosure obligation*):
- 6 (i) give a defendant a copy of, or a notice about the right to
7 inspect, information, a document or another thing;
- 8 (ii) allow the defendant or their lawyer to inspect the
9 information, document or other thing; and
- 10 (b) complying with the disclosure obligation would—
- 11 (i) disclose an address or contact details of a witness proposed
12 to be called by the prosecutor or any other living person;
13 or
- 14 (ii) allow the address or contact details to be worked out; and
- 15 (c) the address or contact details are not relevant to the prosecution
16 case or the defence case.
- 17 (2) The prosecutor must comply with the disclosure obligation to the
18 extent possible without—
- 19 (a) disclosing the address or contact details; or
- 20 (b) allowing the address or contact details to be worked out.
- 21 **Examples**
- 22 1 The prosecutor redacts a person's address or contact details from a copy of
23 a document given to the defendant.
- 24 2 The prosecutor, when allowing the defendant to inspect something with
25 a person's address or contact details on it, temporarily conceals the address or
26 contact details so it cannot be read by the defendant.
- 27 3 The prosecutor does not give the defendant a copy of a document that consists
28 solely of the address or contact details of a person, and notifies the defendant
29 why the document was not disclosed.

- 1 (3) The court may make an order requiring the prosecutor to comply with
2 subsection (2) in a particular way or subject to particular conditions.
- 3 (4) Subsection (2) does not apply if the court is satisfied that—
- 4 (a) it is in the interests of justice (including the right of the
5 defendant to prepare for the hearing of the evidence for the
6 prosecution) that the person's address or contact details be
7 disclosed; and
- 8 (b) either—
- 9 (i) disclosure of the address or contact details is not likely to
10 create a reasonably foreseeable risk to the welfare or safety
11 of the person or any other person; or
- 12 (ii) if there is a risk mentioned in subparagraph (i)—the
13 interests of justice outweigh the risk.
- 14 (5) This section does not apply to the disclosure of a person's address or
15 contact details in general terms that does not—
- 16 (a) disclose the person whose address or contact details it is; or
- 17 (b) allow the person whose address or contact details it is to be
18 worked out.

19 **108AF Material used to give evidentiary certificate etc need not**
20 **be disclosed under pt 3.5A**

- 21 (1) This part does not require a prosecutor to give a defendant a copy of,
22 or a notice about the right to inspect, any information, document or
23 other thing that was prepared or used only in the course of giving an
24 evidentiary certificate.
- 25 (2) In this section:
- 26 *evidentiary certificate* means a certificate that, under a territory law,
27 is evidence of the matters stated in the certificate.

1 **108AG Sanctions for non-compliance with disclosure**
2 **requirements**

- 3 (1) This section applies if—
- 4 (a) the prosecutor in a criminal proceeding seeks to adduce
- 5 evidence in the proceeding; and
- 6 (b) the prosecutor failed to disclose the evidence to the defendant in
- 7 accordance with this part.
- 8 (2) The court may refuse to admit the evidence.
- 9 (3) The court may grant an adjournment to a party to the proceeding
- 10 (other than the prosecutor) if admission of the evidence would
- 11 prejudice the case of the party.

12 **108AH Effect of pt 3.5A on other laws**

- 13 (1) This part does not limit another territory law that requires the
- 14 prosecution in a criminal proceeding to disclose something to a
- 15 defendant.

16 *Note* ***Territory law*** includes the common law (see [Legislation Act](#), dict, pt 1,
17 **def *territory law* and *law*, of the Territory).**

- 18 (2) This part does not require the disclosure by the prosecutor of anything
- 19 that is the subject of—
- 20 (a) a claim of privilege or public interest immunity; or
- 21 (b) an immunity conferred by a law applying in the ACT or
- 22 elsewhere; or
- 23 (c) a prohibition or restriction under a law applying in the ACT or
- 24 elsewhere on the disclosure of the thing to the defendant
- 25 (a ***non-disclosure obligation***).

(3) However, if the prosecutor does not disclose something mentioned in subsection (2), they must instead give the defendant a statement that—

(a) describes the thing to the extent possible without—

(i) prejudicing a claim or intended claim of immunity or an application in relation to a non-disclosure obligation; or

(ii) contravening a non-disclosure obligation; and

(b) outlines the nature of the claim or intended claim of privilege or immunity or the non-disclosure obligation that applies to the thing.

(4) A statement under subsection (3) must be—

(a) if the thing was not disclosed under section 108AB—included in the brief of evidence; or

(b) if the thing was not disclosed under section 108AC—given to the defendant as soon as possible after the thing comes into the prosecutor's possession or control, or to their notice.

17 New chapter 15

insert

Chapter 15 Transitional—Crimes (Disclosure) Legislation Amendment Act 2024

476 Meaning of *commencement day*—ch 15

In this chapter:

commencement day means the day the *Crimes (Disclosure) Legislation Amendment Act 2024*, section 17 commences.

- 1 **477** **Committal proceedings—person charged before**
2 **commencement day**
- 3 (1) This section applies if—
- 4 (a) a person was charged with an indictable offence (an *accused*
5 *person*) before the commencement day; and
- 6 (b) a committal hearing is to be held in relation to the charge.
- 7 (2) Section 90 and section 90AA (1), as in force immediately before the
8 commencement day, continue to apply in relation to the accused
9 person.
- 10 (3) Sections 90AAA to 90AAD do not apply in relation to the accused
11 person.
- 12 **478** **Expiry—ch 15**
- 13 This chapter expires 2 years after the commencement day.
- 14 *Note* A transitional provision is repealed on its expiry but continues to have
15 effect after its repeal (see [Legislation Act](#), s 88).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 10 April 2024.

2 Notification

Notified under the [Legislation Act](#) on 2024.

3 Republications of amended laws

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

© Australian Capital Territory 2024