

2009

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

MAGISTRATES COURT (TRANSITIONAL PROVISIONS) REGULATION 2009

SL2009-20

EXPLANATORY STATEMENT

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Magistrates Court (Transitional Provisions) Regulation 2009

Outline

The *Crimes Legislation Amendment Act 2008* (Act) contains provisions that reform the criminal justice system, including amendments to the *Magistrates Court Act 1930*. The Act commences operation on 30 May 2009. It contains transitional provisions to cover the application of the amendments upon the commencement of the Act, including provisions that determine the application of the new provisions under the *Magistrates Court Act 1930* to matters where charges have been laid prior to the commencement of the Act.

The Magistrates Court (Transitional Provisions) Regulation 2009 (Regulation) is made under section 452 of the *Magistrates Court Act 1930* as introduced in clause 1.91 of the Act. That section provides that a regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the Act, including modification to the provisions contained in clause 1.91 of the Act.

The transitional provisions in the Act provide that the amendments do not apply to a proceeding for an offence if the hearing in the proceeding has started before the amendments commence. The Regulation provides clarity that a hearing has started if evidence has been taken in that proceeding other than in relation to bail or an interlocutory matter.

The Regulation also inserts a section to clarify that written statements that are not attested exactly as required under the *Magistrates Courts Act 1930* at the time of the commencement of the Act will not be inadmissible solely on that ground. This is to overcome difficulties that may arise between police practice in taking statements prior to amendments to the *Magistrates Court Act 1930* that occurred earlier in 2009, and the practice that is anticipated in the amendments in the Act.

Magistrates Court (Transitional Provisions) Regulation 2009

Detail

Clause 1 – Name of regulation

This is a technical clause that states that the regulation is the *Magistrates Court (Transitional Provisions) Regulation 2009*.

Clause 2 – Commencement

This clause provides that the regulation commences immediately after the commencement of the *Crimes Legislation Amendment Act 2008, schedule 1, part 1.11*.

Clause 3 – Modification of Act, ch 11 – Act, s 452(2)

This clause modifies the transitional provisions of the *Magistrates Court Act 1930* as inserted by the *Crimes Legislation Amendment Act 2008*, to include an explanation of when a hearing has commenced for the purposes of determining whether the new provisions apply to the proceeding, or whether the previous provisions apply to the proceeding. This is intended to provide clarity in cases where the charges have been laid prior to the commencement of the provisions of the *Crimes Legislation Amendment Act 2008*. If evidence has been given, whether orally or by tendering written statements, other than in an interlocutory or bail matter, a hearing has commenced and the new provisions will not apply to the proceeding.

The clause also inserts a further section that allows written statements taken prior to the commencement of the Act to be admissible if the endorsement on the statement is similar to the endorsement set out in section 90AA(3)(a) when the Act commences. It is intended that this will ensure that statements will still be admissible in committal proceedings even if the endorsement is not precisely as required, to overcome changes in police practises that do not affect the veracity of statement taken, during this time.