



Australian Capital Territory

# Courts Legislation Amendment Act 2015 (No 2)

A2015-52

## Contents

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	Page
<b>Part 1</b>	<b>Preliminary</b>
1	Name of Act 2
2	Commencement 2
3	Legislation amended 2
<b>Part 2</b>	<b>ACT Civil and Administrative Tribunal Act 2008</b>
4	Time and place of proceedings Section 28 (2) 3

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	Page	
5	Definitions—div 5.3 Section 30A	3
6	Mediation for applications Section 35 (3), new note	3
7	Sections 35A to 35C	3
<b>Part 3</b>	<b>Civil Law (Wrongs) Act 2002</b>	
8	Referral by tribunal for mediation or neutral evaluation Section 195 (2), new note	4
<b>Part 4</b>	<b>Coroners Act 1997</b>	
9	Objects of Act Section 3BA (1) (b)	5
10	Section 5	5
11	Coroner’s jurisdiction in relation to deaths Section 13 (1) (c)	6
12	New section 13 (4)	6
13	New section 99B	6
14	Annual report of court Section 102 (9)	7
15	New part 12	8
<b>Part 5</b>	<b>Court Procedures Act 2004</b>	
16	New section 5A	9
17	Advisory committee New section 11 (2) (ca)	10
18	New part 2A	10
19	Recovery of fees in civil proceedings if fees not otherwise payable Section 16 (2)	13
20	New part 5A	13
21	Dictionary, new definition of <i>principal registrar</i>	15
<b>Part 6</b>	<b>Court Procedures Rules 2006</b>	
22	Purpose of ch 2 etc Rule 21	16

---

		Page
<b>Part 7</b>	<b>Domestic Violence and Protection Orders Act 2008</b>	
23	Referrals to mediation Section 25 (2), new note	17
<b>Part 8</b>	<b>Freedom of Information Act 1989</b>	
24	New section 5A	18
25	Dictionary, definition of <i>prescribed authority</i> , new paragraph (aa)	18
26	Dictionary, definition of <i>principal officer</i> , new paragraph (b) (ia)	18
<b>Part 9</b>	<b>Freedom of Information Regulation 1991</b>	
27	Agencies exempt in respect of particular documents Schedule 2, new item 6	19
<b>Part 10</b>	<b>Judicial Commissions Amendment Act 2015</b>	
28	Commencement Section 2 (2)	20
<b>Part 11</b>	<b>Juries Act 1967</b>	
29	Section 27 heading	21
30	Section 27 (3)	21
31	New section 27A	21
32	Sheriff's return to precept Section 28 (1) (c)	21
33	Informalities etc not to invalidate verdict Section 30	22
34	Part 6 heading and section 31	22
35	Standing persons by Section 33 (1)	23
36	Section 33 (2)	24
37	Dictionary, definition of <i>jury card</i>	24
38	Dictionary, new definition of <i>identifying number</i>	24
39	Dictionary, definition of <i>person called</i>	24

		Page
<b>Part 12</b>	<b>Legal Aid Act 1977</b>	
40	Constitution of board Section 16 (1) (c) (iv)	25
41	New section 16 (5)	25
<b>Part 13</b>	<b>Magistrates Court Act 1930</b>	
42	New division 3.5.1A	26
43	ACT and corresponding courts Schedule 2, item 1, column 3	26
44	Schedule 2, item 1, column 3	26
<b>Part 14</b>	<b>Supreme Court Act 1933</b>	
45	Resident judges New section 37U (5) (c)	27
46	New section 37U (7)	27



Australian Capital Territory

# **Courts Legislation Amendment Act 2015 (No 2)**

**A2015-52**

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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:

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Courts Legislation Amendment Act 2015 (No 2)*.

### 2 Commencement

- (1) Sections 5 to 7 and section 20 commence on 7 April 2016.

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

- (2) The remaining provisions commence on the 14th day after this Act's notification day.

### 3 Legislation amended

This Act amends the following legislation:

- *ACT Civil and Administrative Tribunal Act 2008*
- *Civil Law (Wrongs) Act 2002*
- *Coroners Act 1997*
- *Court Procedures Act 2004*
- *Court Procedures Rules 2006*
- *Domestic Violence and Protection Orders Act 2008*
- *Freedom of Information Act 1989*
- *Freedom of Information Regulation 1991*
- *Judicial Commissions Amendment Act 2015*
- *Juries Act 1967*
- *Legal Aid Act 1977*
- *Magistrates Court Act 1930*
- *Supreme Court Act 1933*.

## Part 2                      ACT Civil and Administrative Tribunal Act 2008

### 4                      Time and place of proceedings Section 28 (2)

*omit*

### 5                      Definitions—div 5.3 Section 30A

*omit*

### 6                      Mediation for applications Section 35 (3), new note

*insert*

*Note 2*    The *Court Procedures Act 2004*, pt 5A (Mediation) applies to a mediation ordered under this section.

### 7                      Sections 35A to 35C

*omit*

## Part 3 Civil Law (Wrongs) Act 2002

### 8 Referral by tribunal for mediation or neutral evaluation Section 195 (2), new note

*insert*

*Note* The *Court Procedures Act 2004*, pt 5A (Mediation) applies to a mediation in relation to an application to the ACAT.



## Part 4 Coroners Act 1997

### 9 Objects of Act Section 3BA (1) (b)

*substitute*

(b) provide—

- (i) that a person who is a magistrate (other than a special magistrate) is also a coroner; and
- (ii) that the Chief Coroner may appoint a special magistrate as a coroner; and
- (iii) for the appointment of deputy coroners; and

### 10 Section 5

*substitute*

### 5 Coroners

- (1) A magistrate, other than a special magistrate, is a coroner for the Territory.
- (2) The Chief Coroner may appoint a special magistrate as a coroner for the Territory.

*Note* For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

**11 Coroner's jurisdiction in relation to deaths  
Section 13 (1) (c)**

*substitute*

- (c) dies and the death appears to be completely or partly attributable to an operation or procedure (other than an operation or procedure prescribed by regulation for this paragraph); or
- (ca) dies after having undergone an operation or procedure and in circumstances that, in the opinion of the Chief Coroner, should be better ascertained; or

**12 New section 13 (4)**

*before the note, insert*

- (4) In this section:

*operation or procedure* means—

- (a) an operation of a medical, surgical, dental or similar nature; or
- (b) an invasive medical or diagnostic procedure.

**13 New section 99B**

*insert*

**99B Protection if information given to coroner**

- (1) An entity may give information to a coroner if—
  - (a) a coroner asks the entity for the information in connection with the exercise of the coroner's functions under this Act; or

- (b) the entity believes on reasonable grounds that the information is relevant to the exercise of the coroner's functions under this Act.

**Example**

information from a theatre nurse who was present during an operation where the patient died unexpectedly

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

- (2) If an entity gives information to a coroner under this section—
- (a) giving the information is not—
- (i) a breach of confidence; or
  - (ii) a breach of professional etiquette or ethics; or
  - (iii) a breach of a rule of professional conduct; and
- (b) the entity does not incur civil or criminal liability only because of giving the information; and
- (c) for an entity who is a public servant—the entity is not liable to administrative action (including disciplinary action or dismissal) only because of giving the information.

**14 Annual report of court  
Section 102 (9)**

*omit*

Chief Magistrate

*substitute*

Chief Coroner

**15 New part 12**

*insert*

**Part 12 Transitional—Courts Legislation  
Amendment Act 2015 (No 2)**

**120 Special magistrates**

- (1) A special magistrate under the *Magistrates Court Act 1930* who is a coroner immediately before this part commences continues to be a coroner as if the *Courts Legislation Amendment Act 2015 (No 2)* had not been enacted.
- (2) This part expires 1 year after the day it commences.

*Note* Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

---

## Part 5 Court Procedures Act 2004

### 16 New section 5A

*in part 1, insert*

#### 5A Main purpose of civil procedure provisions

- (1) The main purpose of the civil procedure provisions is to facilitate the just resolution of disputes—
  - (a) according to law; and
  - (b) as quickly, inexpensively and efficiently as possible.
- (2) Without limiting subsection (1), the main purpose includes the following objectives:
  - (a) the just resolution of the real issues in civil proceedings;
  - (b) the efficient use of court resources, including administrative resources;
  - (c) the efficient disposal of a court's overall caseload;
  - (d) the timely disposal of civil proceedings;
  - (e) the resolution of disputes at a cost that is proportionate to the importance and complexity of the matters in dispute.
- (3) The civil procedure provisions must be interpreted and applied, and any power or duty imposed by them (including the power to make rules) must be exercised or carried out, in the way that best promotes the main purpose.
- (4) The parties to a civil proceeding must help the court to achieve the objectives.

(5) In this section:

*civil procedure provisions* means—

- (a) the rules made under section 7, in their application to civil proceedings; and
- (b) any provision of this Act in relation to the practice and procedure of a court in civil proceedings.

*court* includes a tribunal that is a prescribed tribunal under section 6.

**17 Advisory committee  
New section 11 (2) (ca)**

*insert*

- (ca) the principal registrar;

**18 New part 2A**

*insert*

## **Part 2A Principal registrar of courts**

### **11A Appointment of principal registrar**

- (1) The Executive must appoint a person as the Principal Registrar and Chief Executive Officer of ACT Courts and Tribunals (the *principal registrar*).

*Note 1* For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

*Note 2* In particular, an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

- (2) However, the Executive must not appoint a person as the principal registrar—
- (a) without first considering any recommendation about the appointment made by the Chief Justice, the Chief Magistrate and the general president of the ACAT; and
  - (b) unless satisfied that the person has the experience or expertise to qualify the person to exercise the functions of the principal registrar.
- (3) The principal registrar must be appointed for a term of not longer than 5 years.

*Note* A person may be reappointed to a position if the person is eligible to be appointed to the position (see [Legislation Act](#), s 208 and dict, pt 1, def *appoint*).

- (4) The appointment of a principal registrar is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

### **11B Administrative functions of principal registrar**

- (1) The function of the principal registrar is to support—
- (a) the Chief Justice in the exercise of an administrative function of the Supreme Court; and
  - (b) the Chief Magistrate in the exercise of an administrative function of the Magistrates Court; and
  - (c) the general president of the ACAT in the exercise of an administrative function of the ACAT.
- (2) For subsection (1), the principal registrar may do the following:
- (a) exercise the powers of the head of service relating to the appointment, engagement and employment of a person employed to assist a registrar;

*Note* **Registrar**—see the [Legislation Act](#), dictionary, pt 1.

- (b) direct a public employee in relation to the exercise of an administrative function of a court or the ACAT;
- (c) make arrangements with the director-general to use the services of a public servant or Territory facilities;
- (d) make arrangements about the use and allocation of resources and facilities;
- (e) exercise any other function given to the principal registrar under this Act or another Territory law.

### **11C Ending principal registrar's appointment**

The Executive may end the principal registrar's appointment if the principal registrar—

- (a) becomes bankrupt or personally insolvent; or
- (b) is convicted, or found guilty, in the ACT of an offence punishable by imprisonment for at least 1 year; or

*Note Found guilty*—see the [Legislation Act](#), dictionary, pt 1.

- (c) is convicted, or found guilty, outside the ACT of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year; or
- (d) for physical or mental incapacity, if the incapacity affects the principal registrar's ability to exercise a function.

### **11D Principal registrar not to direct registrars in relation to court functions**

- (1) A registrar or deputy registrar of a court is not subject to direction by the principal registrar in the exercise of a function of the court.
- (2) A registrar or deputy registrar of the ACAT is not subject to direction by the principal registrar in the exercise of a function of the ACAT.



**19 Recovery of fees in civil proceedings if fees not otherwise payable  
Section 16 (2)**

*substitute*

- (2) The court or ACAT may order the second party to pay to the registrar of the court or ACAT the amount of the fee exempted, remitted, refunded or waived.

**20 New part 5A**

*insert*

## **Part 5A Mediation**

### **52A Definitions—pt 5A**

In this part:

***accredited mediator*** means a person who is entered as a mediator in the register of nationally accredited mediators maintained by the Mediator Standards Board.

***mediation*** means a meeting between parties to a proceeding in a court or an application to the ACAT and an accredited mediator for resolving a matter to which the proceeding or application relates, and includes a thing done—

- (a) to arrange the meeting (whether or not successfully); or
- (b) to follow up anything raised in the meeting.

***mediation material*** means—

- (a) a communication made at mediation; or
- (b) a document, whether delivered or not, prepared—
  - (i) for or during mediation; or

- (ii) following a decision made or undertaking given in mediation.

**Mediator Standards Board** means the Mediator Standards Board Limited (ACN 145 829 812).

### **52B Admissibility of information given at mediation**

- (1) Evidence of mediation material is not admissible in a proceeding before any of the following, except in accordance with the *Evidence Act 2011*, section 131 (Exclusion of evidence of settlement negotiations):
  - (a) a court;
  - (b) an entity authorised to hear and receive evidence;
  - (c) an entity authorised by the consent of the parties to hear evidence.
- (2) Evidence of mediation material is not admissible in a proceeding under the *ACT Civil and Administrative Tribunal Act 2008* unless all parties agree to the giving of the evidence.

### **52C Secrecy**

- (1) A person who is or has been an accredited mediator must not disclose mediation material.
- (2) However, this section does not apply if—
  - (a) the disclosure is required under a territory law or Commonwealth law; or
  - (b) the disclosure is made with the consent of the parties to mediation; or
  - (c) the disclosure is made with the consent of the person who gave the material to the accredited mediator; or

- (d) the person mentioned in subsection (1) believes on reasonable grounds that—
  - (i) a person's life, health or property is under serious and imminent threat and the disclosure is necessary to avert, or mitigate the consequences of, its realisation; or
  - (ii) the disclosure is necessary to report to the appropriate authority the commission of an offence or prevent the likely commission of an offence.
- (3) In this section:
  - offence* means an offence involving—
    - (a) violence, or the threat of violence, to a person; or
    - (b) intentional damage, or the threat of intentional damage, to property.

## **52D Protection of accredited mediator from liability**

- (1) An accredited mediator is not civilly liable for anything done or omitted to be done honestly for the purpose of a mediation.
- (2) The same privilege in relation to defamation that applies to judicial proceedings applies to—
  - (a) mediation; or
  - (b) mediation material—
    - (i) produced at mediation; or
    - (ii) given to an accredited mediator for arranging, conducting or following up mediation.

## **21 Dictionary, new definition of *principal registrar***

*insert*

*principal registrar*—see section 11A.

## Part 6 Court Procedures Rules 2006

<b>22</b>	<b>Purpose of ch 2 etc Rule 21</b>
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*omit*

**Part 7**

**Domestic Violence and  
Protection Orders Act 2008**

**23 Referrals to mediation  
Section 25 (2), new note**

*insert*

*Note* The *Court Procedures Act 2004*, pt 5A (Mediation) applies to a mediation in relation to a proceeding in a court.

## Part 8 Freedom of Information Act 1989

### 24 New section 5A

*insert*

### 5A Act to apply to courts in relation to administrative matters

- (1) This Act does not apply to any request for access to a document of a court unless the document relates to matters of an administrative nature.
- (2) In this section:

*court* includes a registry or other office of a court, and the staff of the registry or other office.

### 25 Dictionary, definition of *prescribed authority*, new paragraph (aa)

*before paragraph (a) insert*

- (aa) a court; or

### 26 Dictionary, definition of *principal officer*, new paragraph (b) (ia)

*insert*

- (ia) in the case of a court—the principal registrar appointed under the *Court Procedures Act 2004*, section 11A; or

## Part 9

# Freedom of Information Regulation 1991

### 27 Agencies exempt in respect of particular documents Schedule 2, new item 6

*insert*

- 6 The Justice and Community Safety Directorate in relation to documents relating to a court unless the documents relate to matters of an administrative nature.

## Part 10 Judicial Commissions Amendment Act 2015

### 28 Commencement Section 2 (2)

*substitute*

- (2) If this Act has not commenced before 1 February 2017, it automatically commences on that day.



## Part 11 Juries Act 1967

### 29 Section 27 heading

*substitute*

### 27 Preparation of panel of jurors, list of jurors excused and jury cards and allocation of identifying numbers

### 30 Section 27 (3)

*substitute*

- (3) The sheriff must—
- (a) allocate a unique number (an *identifying number*) to each person named in the panel of jurors; and
  - (b) prepare a card for each person named in the panel that states the identifying number for the person.

### 31 New section 27A

*insert*

### 27A Record of identifying numbers

- (1) The sheriff must keep a record of identifying numbers for each panel of jurors.
- (2) The record of identifying numbers for a panel of jurors must not be kept in the panel.

### 32 Sheriff's return to precept Section 28 (1) (c)

*substitute*

- (c) the jury cards for the people named in the panel.

**33 Informalities etc not to invalidate verdict  
Section 30**

*omit*

or occupation

*substitute*

, occupation or identifying number

**34 Part 6 heading and section 31**

*substitute*

## **Part 6 Empanelling jury for criminal trial**

### **31 Empanelling a jury**

- (1) At the beginning of a criminal trial, the proper officer must draw 1 jury card at a time from the ballot box and call aloud the identifying number stated on each card until 12 people have entered the jury box.
- (2) A person called must enter the jury box unless prevented by challenge or otherwise.
- (3) If all the jury cards are drawn and fewer than 12 people have entered the jury box, the judge may order the sheriff to appoint people who are in or near the Supreme Court and are liable to serve as jurors to attend to serve as jurors.
- (4) If a person is appointed under subsection (3), the following provisions apply:
  - (a) the name of a person is taken to have been returned on the jury precept and to have been included in the jury panel;

- (b) the sheriff must—
  - (i) allocate a unique number (an *identifying number*) to the person; and
  - (ii) give the proper officer a card for the person that states the identifying number for the person;
- (c) the person may be challenged in the same way as the people whose names were included in the jury panel.
- (5) The 12 people who have entered the jury box are, when sworn, the jury for the criminal trial.
- (6) The jury card for a person who has been called but not sworn must be returned to the ballot box when the jury is sworn.
- (7) When the verdict of the jury has been given and recorded or the jury has been discharged, whichever happens first, the jury cards must, unless the Supreme Court otherwise orders, be returned to the ballot box.

**35**      **Standing persons by  
Section 33 (1)**

*omit*

cards

*substitute*

jury cards

**36 Section 33 (2)**

*substitute*

- (2) If all of the jury cards have been drawn from the ballot box and fewer than 12 people have entered the jury box, the jury cards for the people who have been ordered to stand by must be returned to the ballot box and again drawn from the ballot box in accordance with section 31.

**37 Dictionary, definition of *jury card***

*omit*

or 31 (3)

*substitute*

or section 31 (4) (b)

**38 Dictionary, new definition of *identifying number***

*insert*

***identifying number***—see section 27 (3) (a) and section 31 (4).

**39 Dictionary, definition of *person called***

*substitute*

***person called*** means a person whose identifying number stated on a jury card drawn from a ballot box is called out by the proper officer.

## Part 12                      Legal Aid Act 1977

### **40                      Constitution of board Section 16 (1) (c) (iv)**

*omit*

Council of Social Service of the Australian Capital Territory

*substitute*

Australian Capital Territory Council of Social Service Inc

### **41                      New section 16 (5)**

*insert*

- (5) The Minister may reappoint a member mentioned in subsection (1) (c) (ii) to (iv) without needing to choose from a panel of not less than 3 people if—
- (a) the entity that nominated the member recommended the reappointment; and
  - (b) the Minister consulted the president of the commission about the recommendation.

## Part 13 Magistrates Court Act 1930

### 42 New division 3.5.1A

*insert*

### Division 3.5.1A Waiver of committal proceedings

#### 88B Court may waive committal proceedings

- (1) The court may commit an accused person for trial—
  - (a) on application by the person; and
  - (b) with the prosecutor's consent.

*Note* If a form is approved under the [Court Procedures Act 2004](#), s 8 for this provision, the form must be used.

- (2) In this section:

*accused person* means a person charged with an indictable offence.

### 43 ACT and corresponding courts Schedule 2, item 1, column 3

*omit*

Alcohol Court of the Northern Territory

### 44 Schedule 2, item 1, column 3

*omit*

Court of Summary Jurisdiction of the Northern Territory

## Part 14 Supreme Court Act 1933

### 45 Resident judges New section 37U (5) (c)

*insert*

- (c) for a person who was appointed to an office that has been abolished—a reference to the amount determined by the Minister to be reasonable having regard to the rate of salary payable—
- (i) for the office before it was abolished; and
  - (ii) for other offices under this part.

### 46 New section 37U (7)

*insert*

- (7) A determination made under subsection (5) (c)—
- (a) is a notifiable instrument; and
  - (b) for the first determination made in relation to the holder of the abolished office—takes effect on, unless otherwise stated in the determination, the day immediately after the office is abolished.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 29 October 2015.

**2 Notification**

Notified under the [Legislation Act](#) on 26 November 2015.

**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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I certify that the above is a true copy of the Courts Legislation Amendment Bill 2015 (No 2), which was passed by the Legislative Assembly on 19 November 2015.

Acting Clerk of the Legislative Assembly

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