



Australian Capital Territory

Courts and Other Justice Legislation Amendment Act 2018

A2018-9

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Australian Capital Territory

Courts and Other Justice Legislation Amendment Act 2018

A2018-9

An Act to amend legislation about courts, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Courts and Other Justice Legislation Amendment Act 2018*.

2 Commencement

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

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

3 Legislation amended

This Act amends the following legislation:

- *ACT Civil and Administrative Tribunal Act 2008*
- *ACT Civil and Administrative Tribunal Regulation 2009*
- *Children and Young People Act 2008*
- *Coroners Act 1997*
- *Corrections Management Act 2007*
- *Crimes (Sentence Administration) Act 2005*
- *Evidence Act 2011*
- *Evidence (Miscellaneous Provisions) Act 1991*
- *Judicial Commissions Act 1994*
- *Juries Act 1967*
- *Legislation Act 2001*
- *Magistrates Court Act 1930*
- *Oaths and Affirmations Act 1984*
- *Royal Commissions Act 1991*
- *Supreme Court Act 1933*
- *Unit Titles (Management) Act 2011*
- *Utilities Act 2000*.

Part 2

ACT Civil and Administrative Tribunal Act 2008

4 Tribunal jurisdiction and powers of Magistrates Court Section 22, new note

insert

Note The *Magistrates Court Act 1930*, pt 4.2 deals with the civil jurisdiction of the Magistrates Court, including that the Magistrates Court—

- (a) may hear and decide any personal action at law, including an action relating to the detention of goods, subject to a monetary limit (see s 257); and
- (b) may grant any relief, redress or remedy and must give effect to any defence, counterclaim or set-off in the same way as the Supreme Court (see s 258); and
- (c) does not have jurisdiction to hear and decide a proceeding questioning title to land (unless incidental in the proceeding) (see s 264).

5 Powers in relation to witnesses etc New section 41 (7)

insert

- (7) The tribunal is taken to be a court of competent jurisdiction for the *Health Records (Privacy and Access) Act 1977* when exercising its powers under this section.

6 Procedure in absence of party Section 44, new note

insert

Note If the tribunal makes an order after hearing an application in the absence of a party, the tribunal may, on application by a party, amend or set aside the order (see s 56 (c) (i)).

7 **Costs of proceedings
Section 48 (1)**

after

this Act

insert

or another territory law

8 **Section 48 (2), new note**

insert

Note A legal expense relating to a proceeding in the tribunal may be recoverable as a debt under the *Unit Titles (Management) Act 2011*, s 31.

9 **Other actions by tribunal
Section 56 (c) (i), new note**

insert

Note A party may apply to the tribunal under this provision if the tribunal makes an order under s 44 after hearing an application in the absence of a party.

10 **New section 69A**

in part 7, insert

69A **Meaning of *appropriate court*—pt 7**

In this part:

appropriate court means—

- (a) if the amount payable under an enforceable money order or the form of relief under an enforceable non-money order is within the Magistrates Court's jurisdiction—the Magistrates Court; or
- (b) for any other enforcement proceeding—the Supreme Court.

11 Section 71

substitute

71 Enforcement of orders

- (1) A money order or non-money order made by the tribunal may be enforced by filing in the appropriate court—
 - (a) a copy of the order sealed by the tribunal; and
 - (b) a supporting affidavit stating—
 - (i) for a money order—the amount owed under the money order; and
 - (ii) for a non-money order—non-compliance with the non-money order.
- (2) The money order or non-money order is taken to be an enforceable order of the appropriate court in which it is filed for the purposes of the *Court Procedures Rules 2006*, part 2.18 (Enforcement).

Note 1 The *Court Procedures Rules 2006*, r 2015 requires certain documents to be served on the enforcement debtor or other liable person before an enforcement proceeding can be started for an enforceable money order or non-money order.

Note 2 A person entitled to enforce an enforceable money order or non-money order (the original order) may obtain an enforcement order from the appropriate court to enforce the original order (see *Court Procedures Rules 2006*, pt 2.18).

- (3) In this section:

money order—see the *Court Procedures Rules 2006*, rule 2000.

non-money order—see the *Court Procedures Rules 2006*, rule 2000.

**12 Faulty filed orders referred back to tribunal
Section 72 (1)**

substitute

- (1) This section applies if there is an error in an order (a *faulty order*) mentioned in section 71 (1) that prevents the appropriate court from enforcing the order.

13 Section 72 (2)

omit

Magistrates Court

substitute

appropriate court

**14 Fixed faulty orders
Section 73 (2)**

substitute

- (2) The faulty order, as amended or corrected, is taken to be filed in the appropriate court under section 71 for enforcement under the [Court Procedures Rules 2006](#), part 2.18 (Enforcement).

15 Dictionary, new definition of *appropriate court*

insert

appropriate court, for part 7 (Enforcement and offences)—see section 69A.

Part 3 ACT Civil and Administrative Tribunal Regulation 2009

16 Maximum amount payable under occupational discipline order—Act, s 66 (2) (h) Section 4 (a) and (b)

substitute

- (a) for an individual—\$5 000;
- (b) for a corporation—\$25 000.

17 Appointment of senior and ordinary members of the tribunal—Act, s 96 Section 6 (2) to (5) and note

substitute

- (2) As part of taking reasonable steps, the Attorney-General must consider the desirability of the tribunal including—
 - (a) not less than the number of members mentioned in an item in table 6, column 2, each of whom the Attorney-General is satisfied has the interest, qualification or experience mentioned in column 3 for the item; and
 - (b) as many other members, each of whom is a health practitioner, as are required to allow the tribunal to exercise its functions.

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

18 Table 6.1 heading

substitute

Table 6 Senior and ordinary members generally

19 Table 6.2 and example and note

omit

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

20 **Appearance at disciplinary hearing by audiovisual or
audio link
Section 335 (1) (b)**

omit

place other than participating State

substitute

another place

Part 5 Coroners Act 1997

21 Control and release of body of deceased Section 15 (4)

omit

22 New section 17A

in division 3.1, insert

17A Considerations before exercising function or making decision

In exercising a function or making a decision in relation to an inquest, a coroner must have regard to the desirability of minimising the causing of distress or offence to people who, because of their cultural attitudes or spiritual beliefs, could reasonably be expected to be distressed or offended by the exercise of the function or decision.

23 New sections 19A to 19C

in part 4, insert

19A Meaning of *ancillary examination*—pt 4

In this part:

ancillary examination, in relation to the body of a person, means 1 or more of the following procedures:

- (a) taking a sample of blood or other bodily fluids;
- (b) taking a sample of tissue, bone or hair;
- (c) taking fingerprints;
- (d) conducting radiographic imaging and examination;

- (e) conducting an external examination, including taking photographs.

19B Directions to obtain medical records

- (1) This section applies if a person has died in any of the circumstances in relation to which a coroner has jurisdiction to hold an inquest.
- (2) A coroner may, by order, direct a person who has responsibility for or control of any medical records relating to the deceased person, including someone in charge of a hospital or residential institution, to give the records to the coroner or the doctor stated in the order.

Example

a person in charge of an aged care facility or residential disability care facility is directed to give a deceased person's medical records to the coroner

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).

- (3) Unless the coroner otherwise orders, a doctor who is given records under this section must return the records to the person who gave them as soon as reasonably practicable after a coroner has, under section 20 (1) or section 21, dispensed with or completed a post-mortem examination.
- (4) An order under subsection (2) or (3) must be in writing.

19C Ancillary examination

- (1) This section applies if a person has died in any of the circumstances in relation to which a coroner has jurisdiction to hold an inquest.
- (2) A coroner may authorise a person, in writing, to conduct an ancillary examination of the body of the person.

**24 Dispensing with post-mortem examination
Section 20 (1)**

omit

the information

substitute

any medical records or other information

**25 Directions to doctors to conduct post-mortem
examinations
Section 21 (1)**

omit

Subject to section 28, a coroner

substitute

A coroner

26 Section 21 (3), (4) and (5)

substitute

- (3) An order under subsection (1) or (2) must be in writing.

**27 Removal of body to place of post-mortem examination
Section 26 (1)**

omit

Subject to section 28, if a coroner

substitute

If a coroner

**28 Warrant for exhumation of body or recovery of ashes
Section 27 (1)**

omit

Subject to section 28, a coroner

substitute

A coroner

**29 Prior considerations before directing post-mortem
examinations
Section 28**

omit

30 Section 33

substitute

33 Assistance at post-mortems etc

- (1) This section applies if a coroner—
 - (a) authorises an ancillary examination; or
 - (b) makes an order for a post-mortem examination, reinterment or analysis of ashes; or
 - (c) issues a warrant for an exhumation of a body or the recovery of the ashes of a deceased.
- (2) The coroner may authorise a person, in writing, to assist in the ancillary or post-mortem examination, reinterment, exhumation, analysis or recovery.
- (3) A doctor who is authorised to conduct the ancillary examination or ordered to conduct the post-mortem examination, may authorise a person, in writing, to assist with the examination.

**31 Appearance by audiovisual or audio links
Section 42A (1)**

omit

place other than participating State

substitute

another place

32 Sections 68C (7), 68D and 68E

after

police officer

insert

or other person

**33 Exercise of investigation scene powers under pt 5A
Section 68G (1)**

after

police officer

insert

or other person

34 Section 68G (1) (a)

after

officer

insert

or other person

35 Section 68G (2) and (3)

substitute

- (2) If a police officer or other person secures a place, the officer or other person must, if it is reasonable in the circumstances, give notice to members of the public that the place is an investigation scene.
- (3) In this section:
investigation scene power, under this part, means a power exercisable under section 68E or section 68F (4).

**36 Part does not limit other powers
Section 68H**

after

police officer

insert

or other person

37 Dictionary, new definition of *ancillary examination*

insert

ancillary examination, for part 4 (Post-mortem examinations and exhumations)—see section 19A.

Part 6 Corrections Management Act 2007

38 Appearance at disciplinary hearing—audiovisual or audio link Section 203 (1) (b)

omit

place other than participating State

substitute

another place

Part 7

**Crimes (Sentence
Administration) Act 2005**

**39 Appearance at board hearing by audiovisual or audio link
Section 207 (1)**

omit

place other than participating State

substitute

another place

Part 8 Evidence Act 2011

40 Postal articles Section 160 (1)

omit

fourth

substitute

7th

Part 9 **Evidence (Miscellaneous Provisions) Act 1991**

41 **Part 3.4 heading**

substitute

Part 3.4 **Use of audiovisual links or audio links with other places in ACT proceedings**

42 **Section 32 heading**

substitute

32 **Territory courts may take evidence and submissions from another place**

43 **Section 32 (1) (b) and note**

substitute

(b) a place outside the ACT but within Australia; or

Note If the place is a participating jurisdiction, a territory court may make a direction (on application or on its own initiative) under pt 3.2 (Use of audiovisual links or audio links with participating States in ACT proceedings).

44 New section 32 (1) (c)

insert

- (c) a place outside Australia (other than New Zealand).

Note The *Trans-Tasman Proceedings Act 2010* (Cwlth), pt 6, div 2 (Remote appearances from New Zealand in Australian proceedings) and the *Court Procedures Rules 2006*, div 6.10A.4 (Trans-Tasman proceedings—remote appearances) apply to remote appearances from New Zealand in an ACT proceeding.

45 Section 32 (2) (b) and (c)

substitute

- (b) it is in the interests of the administration of justice to make the direction.

46 New section 32 (2A)

insert

- (2A) In considering whether it is in the interests of the administration of justice to make the direction, the court may consider—
- (a) whether the evidence or submission can more conveniently be given or made from the place; and
 - (b) whether the making of the direction is unfair to any party opposing the making of the direction; and
 - (c) whether the making of the direction could support court efficiency by reducing costs or delay to the proceeding; and
 - (d) anything else that the court considers appropriate.

47 Section 32 (4)

omit

48 Part 3.6 heading

substitute

Part 3.6 General matters

49 New sections 35A to 35D

in part 3.6, insert

35A Application—pt 3.6

This part applies to any proceeding before a territory court.

Note The *Trans-Tasman Proceedings Act 2010* (Cwlth), pt 6, div 2 (Remote appearances from New Zealand in Australian proceedings) and the *Court Procedures Rules 2006*, div 6.10A.4 (Trans-Tasman proceedings—remote appearances) apply to remote appearances from New Zealand in a proceeding in an Australian court or a prescribed Australian tribunal.

35B Administration of oaths and affirmations by audiovisual or audio link

- (1) An oath to be sworn, or an affirmation to be made, by a person (the *remote person*) who is to give evidence by audiovisual link or audio link may be administered—
 - (a) by audiovisual link or audio link, in a way that, as nearly as practicable, corresponds to the way in which the oath or affirmation would be administered if the remote person were to give evidence in the courtroom or other place where a territory court is sitting; or

- (b) if the territory court allows another person who is present at the place where the remote person is located to administer the oath or affirmation—by the other person.
- (2) However, a person giving evidence by audiovisual link or audio link from a place outside Australia is not required to give the evidence on oath or affirmation if—
 - (a) the law in force in that place—
 - (i) does not permit the person to give evidence on oath or affirmation for the purposes of the proceeding; or
 - (ii) would make it inconvenient for the person to give evidence on oath or affirmation for the purposes of the proceeding; and
 - (b) the territory court is satisfied that it is appropriate for the evidence to be given otherwise than on oath or affirmation.
- (3) Subsection (2) applies despite anything to the contrary in the *Evidence Act 2011* or any other territory law.

35C Putting documents to person by audiovisual or audio link

- (1) This section applies if, in the course of an examination or appearance of a person by audiovisual link or audio link, it is necessary to put a document to the person.
- (2) The territory court may direct or allow the document to be put to the person in any way that the court considers appropriate.

35D Premises to be considered part of territory court

- (1) This section applies to any place within or outside the ACT where audiovisual link or audio link facilities are being used for a person to give evidence or make a submission in any proceeding.

- (2) The place is taken, for all purposes, to be part of the territory court that is sitting at a courtroom or other place to conduct the proceeding.
- (3) To remove any doubt, a law relating to evidence, procedure, contempt of court, perjury or otherwise relating to the administration of justice will apply in relation to the place in the same way it applies in relation to the courtroom or other place.

Examples

- [Court Procedures Act 2004](#)
- [Court Procedures Rules 2006](#)
- [Criminal Code 2002](#), ch 7
- [Evidence Act 2011](#)

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).

**50 Power to order payment of costs
Section 36**

omit

place other than participating State

substitute

another place

Part 10 Judicial Commissions Act 1994

51 Section 51

substitute

51 Council—delegation

- (1) The council may delegate its functions under this Act to a member of the council's staff.

Note For the making of delegations and the exercise of delegated functions, see the [Legislation Act](#), pt 19.4.

- (2) However, the council must not delegate its function of—
- (a) dismissing a complaint, other than its function under section 35B (1) (a), (f) or (g); or
 - (b) referring a complaint; or
 - (c) making a recommendation in relation to a complaint.

52 Medical examination of judicial officer Section 35 (1)

omit everything after

may request

insert

the judicial officer to—

- (a) undergo a specified medical examination within a reasonable stated time; and
- (b) give the council a copy of any report of the medical examination.

- (1A) A specified medical examination must relate only to the physical or mental fitness of the judicial officer to exercise efficiently the functions of his or her office.

53 Section 35 (2)

after

fails

insert

, without reasonable excuse,

**54 Examination of complaint by council
New section 35D (4) and (5)**

insert

- (4) The council must tell the Attorney-General when it starts conducting an examination of a complaint about a judicial officer and when, and the way in which, the complaint is disposed of.
- (5) Subsection (4) applies whether or not the Attorney-General has requested the information about the complaint.

**55 Dismissal of complaint by council
Section 35I (2)**

substitute

- (2) If the council dismisses a complaint, the council must prepare a report of its examination.

**56 Substantiation of complaint by council
Section 35J (2) (b) (ii)**

omit

and the Attorney-General

57 New section 35JA

insert

35JA Notifying Attorney-General about complaint

- (1) This section applies to a complaint referred to the council under section 15.
- (2) The council must, as soon as practicable after dealing with the complaint, notify the Attorney-General about whether the matter was—
 - (a) dismissed under section 35B; or
 - (b) referred to the relevant head of jurisdiction under section 35C.

Note The council must also notify the Attorney-General under s 35D (4) when it starts examining a complaint about a judicial officer and when, and the way in which, the complaint is disposed of.

**58 Appearance by audiovisual or audio links
Section 43A (1)**

omit

place other than participating State

substitute

another place

59 **New section 61B***insert***61B** **Information about complaint to be provided to Attorney-General**

- (1) The council must, at the request of the Attorney-General, provide the Attorney-General with the following information in relation to a particular judicial officer:
 - (a) whether a complaint has been made, when a complaint was made or when the matter about which a complaint was made is alleged to have happened;
 - (b) the subject matter of the complaint;
 - (c) the stage of the procedure for dealing with a complaint that the complaint has reached;
 - (d) for a complaint that has been disposed of, the way in which the complaint was disposed of;
 - (e) other information the council considers relevant.
- (2) However, unless a complaint has been referred to a judicial commission, the council is not required to provide information about the complaint against a particular judicial officer if the council considers it is not in the public interest to provide the information.

Part 11 Juries Act 1967

60 Persons not qualified to serve as jurors Section 10

omit

61 Section 11

substitute

11 Disqualified people, exempt people and people who may claim exemption

A regulation may prescribe a person who—

- (a) is disqualified from serving as a juror; or
- (b) is exempt from serving as a juror; or
- (c) may claim an exemption from serving as a juror.

62 Section 14

substitute

14 Excusing of jurors

- (1) This section applies if a judge or the sheriff is satisfied that a person summoned or appointed to attend to serve as a juror has shown sufficient reason to be excused from attendance.

Examples—sufficient reason

- 1 pregnancy
- 2 illness
- 3 the person has care of children or of aged or ill people

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) The judge or the sheriff may, at any time after service of the summons or the appointment, excuse the person from attendance or further attendance on the Supreme Court during the period that the judge or sheriff states.

63 Section 15

substitute

15 Partners or coworkers as jurors

- (1) This section applies if a judge or the sheriff is satisfied that 2 or more people who have been summoned or appointed to attend as jurors on the same day are employed in the same establishment or are partners in the same partnership.
- (2) The judge or the sheriff may excuse 1 or more of them from attending as jurors on that day if satisfied that attendance would substantially inconvenience or adversely impact the establishment or partnership.

64 Section 16

substitute

16 Reasonable support because of insufficient understanding or disability

- (1) This section applies if a judge is satisfied that a person summoned or appointed to attend to serve as a juror, and who has not claimed an exemption or otherwise been excused from attendance, may be unable to properly discharge the duties of a juror, because the person—
 - (a) has an insufficient understanding of the English language; or
 - (b) is suffering from a mental or physical disability.

- (2) The judge—
- (a) must consider if support that would enable the person to properly discharge the duties of a juror can reasonably be given; and
 - (b) if satisfied that support that would enable the person to properly discharge the duties of a juror can reasonably be given, must make a direction that the support be given.

Examples—support

- 1 an interpreter, including an Auslan interpreter
- 2 an assistance animal, disability aid or support person

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).

- (3) To determine if support can reasonably be given, the judge may consider the following:
- (a) whether the support would impose a disproportionate or undue burden on court resources, facilities and time frames;
 - (b) if the support would require a non-juror being present during jury deliberations, whether the non-juror's presence would inhibit or restrict discussion, or unduly pressure or influence any juror;
 - (c) any other issue the judge considers relevant.
- (4) If the judge makes a direction allowing an interpreter or support person to assist the person to properly discharge the duties of a juror—
- (a) the common law rule against having a non-juror in the jury room is not a relevant consideration; and
 - (b) a direction to allow a non-juror to be present during jury deliberations is solely for assisting the person to properly discharge the duties of a juror; and

- (c) the direction is subject to the interpreter or support person agreeing to make an oath or affirmation in accordance with schedule 1, part 1.1A or part 1.1B.
- (5) If the judge is not satisfied that support that would enable the person to properly discharge the duties of a juror can reasonably be given, the judge may discharge that person from further attendance on the Supreme Court under that summons or appointment.

65 **Choosing jurors**
Section 24 (2) (a)

after

exempt

insert

or excused

66 **Section 24 (3)**

substitute

- (3) For subsection (1) and (2), the names must be chosen randomly (whether by electronic or other means).

67 **Section 24 (4)**

after

under subsection (1) or (2)

insert

(the *jury roll*)

68 Section 24 (5)

substitute

- (5) A police officer may make the inquiries that the police officer considers appropriate to determine whether any person whose name is included on the jury roll is a disqualified person and the officer must report in writing, electronically or otherwise, the result of the inquiries to the sheriff.

69 Section 24 (7)

substitute

- (7) If it appears to the sheriff, after considering a report under subsection (5), that a person whose name is included on the jury roll is a disqualified person, the sheriff must remove the name of the person from the jury roll and jury list.

70 Section 24 (8), (9) and (10)

substitute

- (8) The sheriff must remove the name of a person from the jury roll if it appears to the sheriff, after considering a report made under subsection (5) that—
- (a) the person is not a disqualified person but has been convicted of an offence punishable on summary conviction; and
 - (b) having regard to the regulation, schedule 1, part 1.2, (Disqualified people) and the nature and seriousness of the offence, the person would be unable to adequately exercise the functions of a juror.
- (9) If the sheriff removes the name of a person from the jury roll under subsection (8), the sheriff must, by written notice sent by post addressed to the person at the person's last known address, advise the person that their name has been removed and that the person may object to the removal by written application to a judge.

- (9A) If a person makes an application under subsection (9), the judge must fix a date and time for the hearing of the application and notify the applicant and sheriff of the date and time.
- (10) If the judge decides that an applicant's name should not have been removed from the jury roll, the sheriff must put the applicant's name back on the jury roll.

71 Section 27

substitute

27 Preparation of jury pool, allocation of identifying numbers and excused jurors

- (1) The sheriff must—
- (a) prepare a pool of jurors for the jury precept by listing the names of people who have been served with a jury summons and have not been disqualified, excused or exempted from serving as a juror (the *jury pool*); and
 - (b) allocate a unique number (an *identifying number*) to each person in the jury pool.
- (2) The sheriff must also notify any person who is excused from attendance on the Supreme Court in compliance with the requirements of the jury summons.

72 Section 27A

substitute

27A Record of identifying numbers

- (1) The sheriff must keep a record of the identifying numbers for each jury pool.
- (2) The record must be kept in a way that maintains its confidentiality.

73 Sections 28 and 29

substitute

28 Sheriff's return to precept

On the day and at the time stated in a jury precept for the attendance of the people summoned under the jury precept, the sheriff must return into the Supreme Court the jury precept and must give it to the proper officer together with the jury pool.

29 Inspection of jury pools

- (1) Except by leave of the Supreme Court, a person must not, before the day fixed for a trial, inspect or obtain a copy of the jury pool for the trial.
- (2) The legal practitioner representing the prosecution, the accused or the accused person's legal practitioner may, on the day fixed for a trial, inspect or obtain from the sheriff a copy of the jury pool for the trial.

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

omit

panel of jurors

substitute

jury pool

**75 Empanelling a jury
Section 31 (1)**

substitute

- (1) At the beginning of a criminal trial, the proper officer must randomly choose, whether by electronic or other means, the identifying number for a person in the jury pool and call aloud the identifying number chosen until 12 people have entered the jury box.

76 Section 31 (3)

omit

jury cards are drawn

substitute

identifying numbers are called

77 Section 31 (4) (a)

omit

the jury panel

substitute

the jury pool

78 Section 31 (4) (b)

substitute

- (b) the sheriff must allocate a unique number (an *identifying number*) to the person;

79 Section 31 (6) and (7)

substitute

- (6) If a person's identifying number has been called but the person is not sworn, the person's name remains in the jury pool 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 identifying numbers must, unless the Supreme Court otherwise orders, be returned to the jury pool.

80 Section 31A (4) and (5)

substitute

- (4) If, immediately before a jury is to retire to consider its verdict, the jury consists of more than 12 jurors, the proper officer must select the jurors to be discharged by randomly selecting, by electronic or other means, identifying numbers one at a time until 12 jurors remain unselected.
- (5) If a juror is selected under subsection (4), the name of the juror is returned to the jury pool unless the Supreme Court orders otherwise.

81 Section 33

substitute

33 Standing persons by

- (1) At a criminal trial, the Supreme Court may, at the request of the legal practitioner representing the prosecution, order a person called to stand by until all identifying numbers are called.

- (2) If all the identifying numbers are called and fewer than 12 people have entered the jury box, the identifying numbers for the people who have been ordered to stand by must be returned to the jury pool and again randomly chosen from the jury pool in accordance with section 31.

82 Sections 41, 42 and 42A, penalty

omit

5 penalty units

substitute

10 penalty units

83 Section 42B

substitute

42B Contravention of s 41, s 42 and s 42A

- (1) This section applies if a judge or sheriff is satisfied that a person has contravened section 41 (Nonattendance), section 42 (Leaving without permission) or section 42A (Failing to comply with conditions).
- (2) The sheriff may serve a notice on the person stating that if the person does not wish to have the matter referred to the Supreme Court, the person must—
- (a) pay to an officer stated in the notice at a stated place and time a penalty amount equivalent to 5 penalty units for the contravention; or
 - (b) show cause to the sheriff within a stated time why the penalty should not be imposed for the contravention.

- (3) The sheriff may require the person to verify the person's statements under subsection (2) (b) by statutory declaration.

Note 1 The [Statutory Declarations Act 1959](#) (Cwlth) applies to the making of statutory declarations under ACT laws.

Note 2 It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see [Criminal Code](#), pt 3.4).

- (4) If the sheriff is not satisfied that a person has shown reasonable cause why a penalty should not be imposed for the contravention, the sheriff must tell the person and state a further period of time within which the person may pay the penalty amount.

- (5) A person served with a notice under subsection (2)—

(a) has the right to refuse to be dealt with under this section; and

(b) is taken to have refused to be dealt with under this section if the person—

(i) does not show reasonable cause why a penalty should not be imposed for the contravention, within the time stated in the notice; and

(ii) fails to pay the penalty amount within the time stated in the notice or within any further time as may be allowed by the sheriff.

Note **Fail** includes refuse (see [Legislation Act](#), dict, pt 1).

- (6) If the penalty amount is paid, no person will be liable for any further proceedings for the contravention.

**84 Personation of jurors
Section 43**

omit

on a panel of jurors

substitute

in a jury pool

**85 Oath by jurors
New section 45 (2)**

insert

- (2) A person may make the oath or affirmation individually or as part of a group of people.

86 New sections 45A and 45B

insert

45A Oath by interpreter

Before assisting a juror to properly discharge the duties of a juror, an interpreter must make an oath or affirmation in the form stated in schedule 1, part 1.1A.

45B Oath by support person

Before assisting a juror to properly discharge the duties of a juror, a support person must make an oath or affirmation in the form stated in schedule 1, part 1.1B.

87 Section 49

substitute

49 Food and refreshment for jury

- (1) At any time after a jury has been sworn, and whether or not it has retired to consider its verdict, the sheriff may order—
 - (a) that the jury be given the refreshments that the sheriff considers appropriate; or
 - (b) that each juror be paid the amount determined by the Minister for a meal (a *meal allowance*).
- (2) The sheriff must ensure the refreshments or meal allowance are given.
- (3) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

88 New section 53

insert

53 Juries Regulation 2018—sch 2

- (1) The provisions set out in schedule 2 are taken, on the commencement of this section, to be a regulation made under section 52.
- (2) To remove any doubt and without limiting subsection (1), the regulation may be amended or repealed as if it had been made by the Executive under section 52.

- (3) Also to remove any doubt, the regulation is taken—
- (a) to have been notified under the [Legislation Act](#) on the day the *Courts and Other Justice Legislation Amendment Act 2018* is notified; and
 - (b) to have commenced on the commencement of this section; and
 - (c) not to be required to be presented to the Legislative Assembly under the [Legislation Act](#), section 64 (1).
- (4) Subsections (1) to (3) are laws to which the [Legislation Act](#), section 88 (Repeal does not end effect of transitional laws etc) applies.
- (5) This section and schedule 2 expire on the day they commence.

89 New schedule 2

insert

Schedule 2 Juries Regulation 2018

(see s 53)



Australian Capital Territory

Juries Regulation 2018

Subordinate Law SL2018–

made under the

[Juries Act 1967](#)

1 Name of regulation

This regulation is the *Juries Regulation 2018*.

2 Notes

A note included in this regulation is explanatory and is not part of this regulation.

Note See the [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of notes.

3 Disqualified people, exempt people and people who may claim exemption—Act, s 11

- (1) A person mentioned in schedule 1, part 1.2, column 2 is disqualified for the period mentioned in column 3.
- (2) A person mentioned in schedule 1, part 1.3, column 2 is exempt for the period mentioned in column 3.
- (3) A person mentioned in schedule 1, part 1.4 may claim an exemption.

Schedule 1 Jury service

(see s 3)

Part 1.1 General

1.1 Meaning of *standard*—sch 1

In this schedule:

standard means the period during which a person is employed in the occupation or affected by the circumstance mentioned in schedule 1, part 1.3, column 2.

Note 1 *Doctor, enrolled nurse, nurse, nurse practitioner* and *public trustee and guardian* are defined in the [Legislation Act](#), dictionary, pt 1.

Note 2 *Nurse* includes a midwife (see [Legislation Act](#), dict, pt 1).

Part 1.2 Disqualified people

Table 1.2

column 1 item	column 2 disqualified people	column 3 disqualification period
1	a person who has been convicted, within or outside the ACT, of an offence punishable by life imprisonment	life
2	a person who has been convicted, within or outside the ACT, of a terrorist offence	life

column 1 item	column 2 disqualified people	column 3 disqualification period
3	<p>a person who has been convicted, within or outside the ACT, of an offence—</p> <p>(a) involving—</p> <p>(i) actual or threatened violence; or</p> <p>(ii) endangering life; and</p> <p>(b) punishable by imprisonment for 15 years or more</p> <p>Examples murder, manslaughter, grievous bodily harm</p> <p><i>Note</i> An example is part of the regulation, 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).</p>	life
4	a person who has been convicted, within or outside the ACT, of a sexual offence punishable by imprisonment for 10 years or more	life
5	a person who has been convicted, within or outside the ACT, of unlawfully possessing or making explosives	life
6	a person who has been convicted, within or outside the ACT of an offence and given a prison sentence, other than a prison sentence for failing to pay a fine, when 18 years or older	<p>(a) if sentence less than 3 months—5 years after the sentence or post-prison good behaviour order or parole ends; or</p> <p>(b) if sentence 3 months or more—10 years after the sentence or post-prison good behaviour order or parole ends</p>

column 1 item	column 2 disqualified people	column 3 disqualification period
7	a person who has been convicted, within or outside the ACT of an offence and given a detention order, other than a detention order for failing to pay a fine, when under 18 years	3 years after the detention period ends
8	a person who has been convicted, within or outside the ACT of an offence and given a good behaviour order, whether or not there is a community service order attached	3 years after the good behaviour order ends
9	a person who has been convicted, within or outside the ACT of an offence punishable by imprisonment, who is awaiting sentencing or the outcome of an appeal	period until sentence imposed or outcome of appeal known

Part 1.3 Exempt people

Table 1.3

column 1 item	column 2 exempt people	column 3 exemption period
1	a person exempt from serving as a juror under— <ul style="list-style-type: none"> • the <i>Jury Exemption Act 1965</i> (Cwlth), section 4 or regulations under that section; or • the <i>Navigation Act 2012</i> (Cwlth), section 89 	standard
2	a magistrate or coroner	2 years after the appointment as magistrate or coroner ends
3	an employee of the government of a foreign country or of an international organisation	standard
4	the official secretary to the Governor-General	standard
5	an Australian legal practitioner under the <i>Legal Profession Act 2006</i> , or an employee of an Australian legal practitioner	standard
6	a practising doctor	standard

column 1 item	column 2 exempt people	column 3 exemption period
7	a police officer	5 years after the employment as police officer ends
8	a person with full-time duties as a member of an emergency service	standard
9	a person living in the Jervis Bay Territory	standard
10	a judge or associate judge of the Supreme Court	2 years after the appointment as judge or associate judge ends
11	a member of the Legislative Assembly or a member of staff of a member of the Legislative Assembly who is an adviser or private secretary	standard
12	a director-general	standard
13	a public servant in the staff of the following: (a) the Supreme Court; (b) the Magistrates Court	2 years after the employment ends
14	a public servant providing legal professional services in the staff of the Justice and Community Safety Directorate	standard
15	a public servant providing legal professional services in the staff of the following: (a) the Legal Aid Commission (A.C.T.); (b) the Office of the Director of Public Prosecutions	2 years after the employment ends
16	a person holding any of the following positions in the Legislative Assembly: (a) clerk; (b) deputy clerk; (c) clerk assistant; (d) sergeant-at-arms; (e) editor of debates; (f) secretary to a committee of the Assembly	standard

Section 89

column 1 item	column 2 exempt people	column 3 exemption period
17	an employee at any of the following places: <ul style="list-style-type: none"> (a) a place declared to be a detention place under the <i>Children and Young People Act 2008</i>, section 142; (b) a place approved as a place of care under the <i>Children and Young People Act 2008</i>, section 525; (c) a place declared to be a therapeutic protection place under the <i>Children and Young People Act 2008</i>, section 625 	2 years after the employment ends
18	the emergency services commissioner and a chief officer, or deputy chief officer, of an emergency service	standard
19	an employee of ACT Corrective Services	2 years after the employment ends
20	a person appointed as any of the following: <ul style="list-style-type: none"> (a) a royal commission under the <i>Royal Commissions Act 1991</i>, section 5; (b) a board of inquiry under the <i>Inquiries Act 1991</i>, section 5; (c) a member of the judicial council established under the <i>Judicial Commissions Act 1994</i>, section 5A; (d) a member of a judicial commission under the <i>Judicial Commissions Act 1994</i>, section 6 	standard
21	a public servant during the period the public servant is made available to a royal commission, board of inquiry or judicial commission	standard
22	a commissioner under the <i>Human Rights Commission Act 2005</i> or the public trustee and guardian under the <i>Public Trustee and Guardian Act 1985</i>	2 years after the appointment ends
23	a person for whom a guardian has been appointed under the <i>Guardianship and Management of Property Act 1991</i>	standard

Part 1.4 People who may claim exemption

Table 1.4

column 1 item	column 2 people who may claim exemption
1	a minister of religion
2	a practising member of a religious society or order the beliefs or principles of which are incompatible with jury service
3	a professor, lecturer, school principal or teacher engaged in full-time teaching of organised classes at a university, college or school
4	an editor of a newspaper
5	a practising nurse, practising enrolled nurse, practising nurse practitioner
6	a household officer or member of staff of the Governor-General
7	a person who is 70 years old or older
8	a person with disability within the meaning of the <i>Disability Services Act 1991</i> , including a person who is totally or partially blind, or totally or partially deaf
9	a person who is subject to a mental health order under the <i>Mental Health Act 2015</i>
10	a person who is unable to read and speak the English language
11	a person who lives with, and is caring full-time for, a person who is sick or infirm or who is a person with disability within the meaning of the <i>Disability Services Act 1991</i>

90 Schedule 1, part 1.1

substitute

Part 1.1

(see s 45)

Juror's oath

I swear (*or the person taking the oath may promise*) by Almighty God (*or the person may name a god recognised by the person's religion*) that I will give a true verdict according to the evidence.

Juror's affirmation

I solemnly and sincerely declare and affirm that I will give a true verdict according to the evidence.

91 Schedule 1, new parts 1.1A and 1.1B

insert

Part 1.1A

(see s 45A)

Interpreter's oath

I swear (*or the person taking the oath may promise*) by Almighty God (*or the person may name a god recognised by the person's religion*) that I will well and truly interpret the proceedings and the jury's deliberations and that I will not otherwise participate in the jury's deliberations or disclose anything about those deliberations, except as allowed or required by law.

Interpreter's affirmation

I solemnly and sincerely declare and affirm that I will well and truly interpret the proceedings and the jury's deliberations and that I will not otherwise participate in the jury's deliberations or disclose anything about those deliberations, except as allowed or required by law.

Part 1.1B

(see s 45B)

Supporter's oath

I swear (*or the person taking the oath may promise*) by Almighty God (*or the person may name a god recognised by the person's religion*) that I will well and truly support the juror to discharge the juror's duties, and that I will not otherwise participate in the jury's deliberations or disclose anything about those deliberations, except as allowed or required by law.

Supporter's affirmation

I solemnly and sincerely declare and affirm that I will well and truly support the juror to discharge the juror's duties, and that I will not otherwise participate in the jury's deliberations or disclose anything about those deliberations, except as allowed or required by law.

92 Schedule 1, parts 1.2, 1.3 and 1.4

substitute

Part 1.2

(see s 46)

Oath by person in charge of jury

I swear (*or the person taking the oath may promise*) by Almighty God (*or the person may name a god recognised by the person's religion*) that I will keep this jury in my charge, that I will not allow anyone to speak to any juror, except as allowed or required by law and that I will not speak to any juror myself concerning the issues before the court.

Affirmation by person in charge of jury

I solemnly and sincerely declare and affirm that I will keep this jury in my charge, that I will not allow anyone to speak to any juror, except as allowed or required by law and that I will not speak to any juror myself concerning the issues before the court.

Part 1.3

(see s 47 (2) (a))

Oath by person in charge of jurors on a view

I swear (*or the person taking the oath may promise*) by Almighty God (*or the person may name a god recognised by the person's religion*) that I will faithfully attend this jury to the place (or property) that the jury has been ordered by the judge to view, that I will not allow anyone to speak to any juror concerning the issues before the court, other than the persons appointed and sworn to show that place (or property) to this jury, except as otherwise allowed or required by law and that I will not speak to any juror myself concerning the issues before the court.

Affirmation by person in charge of jurors on a view

I solemnly and sincerely declare and affirm that I will faithfully attend this jury to the place (or property) that the jury has been ordered by the judge to view, that I will not allow anyone to speak to any juror concerning the issues before the court, other than the persons appointed and sworn to show that place (or property) to this jury, except as otherwise allowed or required by law and that I will not speak to any juror myself concerning the issues before the court.

Part 1.4

(see s 47 (2) (b))

Oath by person appointed to conduct a view

I swear (*or the person taking the oath may promise*) by Almighty God (*or the person may name a god recognised by the person's religion*) that I will attend this jury and faithfully show this jury the place (or property) that this jury has been ordered by the judge to view and that I will not speak to any juror concerning the issues before the court otherwise than to describe that place (or property).

Affirmation by person appointed to conduct a view

I solemnly and sincerely declare and affirm that I will attend this jury and faithfully show this jury the place (or property) that this jury has been ordered by the judge to view and that I will not speak to any juror concerning the issues before the court otherwise than to describe that place (or property).

93 Jury service Schedule 2

omit

94 Dictionary, definition of *ballot box*

omit

95 Dictionary, definition of *disqualified person*

omit

section 10

substitute

section 11 (a)

96 Dictionary, definition of *identifying number*

omit

section 27 (3) (a)

substitute

section 27 (1) (b)

97 Dictionary, definition of *jury card*

omit

98 Dictionary, new definition of *jury pool*

insert

jury pool—see section 27.

99 Dictionary, definition of *panel of jurors*

omit

100 Dictionary, definition of *person called*

substitute

person called means a person whose identifying number is called out by the proper officer.

101 Dictionary, new definition of *support person*

insert

support person—see the [Discrimination Act 1991](#), section 5AA (3).

Part 12 Legislation Act 2001

102 When document taken to be served Section 250 (2), note

omit

4th

substitute

7th

Part 13 Magistrates Court Act 1930

103 Defendant's appearance in non-bail proceedings— audiovisual links Sections 72B (1)

omit

place other than participating State

substitute

another place

104 Civil disputes under ACT Civil and Administrative Tribunal Act Section 266A (2), note

substitute

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 71 provides for the enforcement by an appropriate court of a money order or non-money order made by the tribunal under the *Court Procedures Rules 2006*, pt 2.18 (Enforcement).

105 Sections 311 (1) (a) and 316 (2) (a)

omit

place other than participating State

substitute

another place

Part 14 Oaths and Affirmations Act 1984

106 Certain provisions subject to court rules Section 5, 2nd and 3rd dot points

substitute

- section 8 (Oath or affirmation by interpreter)

107 Section 8 heading

substitute

8 Oath or affirmation by interpreter

108 Section 8

omit

to interpret a spoken language

substitute

an interpreter

109 Oath or affirmation by interpreter of signs Section 9

omit

110 Alternative form and manner for oath New section 21 (2)

insert

- (2) It is not necessary that a religious text be used in taking an oath.

111 Schedules 1 to 5*substitute***Schedule 1 Oath and affirmation of office**

(see s 6)

Oath

I, A.B., swear (*or the person taking the oath may promise*) by Almighty God (*or the person may name a god recognised by the person's religion*) that I will well and truly serve in the office of

So help me God! (*or the person may use a similar expression recognised by the person's religion*)

Affirmation

I, A.B., solemnly and sincerely declare and affirm that I will well and truly serve in the office of

Schedule 1A Oaths and affirmations by member of Legislative Assembly

(see s 6A)

Part 1A.1

Oath

I, A.B., swear (*or the person taking the oath may promise*) by Almighty God (*or the person may name a god recognised by the person's religion*) that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, Her heirs and successors according to law. So help me God! (*or the person may use a similar expression recognised by the person's religion*)

Affirmation

I, A.B., solemnly and sincerely declare and affirm that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, Her heirs and successors according to law.

Part 1A.2

Oath

I, A.B., swear (*or the person taking the oath may promise*) by Almighty God (*or the person may name a god recognised by the person's religion*) that I will faithfully serve the people of the Australian Capital Territory as a member of the Legislative Assembly and discharge my responsibilities according to law. So help me God! (*or the person may use a similar expression recognised by the person's religion*)

Affirmation

I, A.B., solemnly and sincerely declare and affirm that I will faithfully serve the people of the Australian Capital Territory as a member of the Legislative Assembly and discharge my responsibilities according to law.

Schedule 2 Oath and affirmation by witness

(see s 7)

Oath

I swear (*or the person taking the oath may promise*) by Almighty God (*or the person may name a god recognised by the person's religion*) that the evidence I give will be the truth, the whole truth, and nothing but the truth.

Affirmation

I solemnly and sincerely declare and affirm that the evidence I give will be the truth, the whole truth, and nothing but the truth.

Schedule 3 Oath and affirmation by interpreter

(see s 8)

Oath

I swear (*or the person taking the oath may promise*) by Almighty God (*or the person may name a god recognised by the person's religion*) that I will well and truly interpret the evidence that will be given and do all other matters and things that are required of me in this case to the best of my ability.

Affirmation

I solemnly and sincerely declare and affirm that I will well and truly interpret the evidence that will be given and do all other matters and things that are required of me in this case to the best of my ability.

Schedule 5 Oath and affirmation by deponent to affidavit

(see s 10)

Oath

I swear (*or the person taking the oath may promise*) by Almighty God (*or the person may name a god recognised by the person's religion*) that the signature to this affidavit is my signature and that every statement in the affidavit is true.

Affirmation

I solemnly and sincerely declare and affirm that the signature to this affidavit is my signature and that every statement in the affidavit is true.

Part 15 Royal Commissions Act 1991

112 Appearance by audiovisual or audio links Section 34A (1)

omit

place other than participating State

substitute

another place

Part 16 Supreme Court Act 1933

113 Exercise of jurisdiction Section 8 (1) (a)

substitute

- (a) when exercised by the associate judge under section 9; or

114 Section 8 (2)

substitute

- (2) The rules may provide for the jurisdiction of the court otherwise exercisable by a single judge to be exercised by the registrar, in the cases and subject to the conditions prescribed under the rules.

115 Section 9

substitute

9 Exercise of jurisdiction by associate judge

- (1) The jurisdiction (including the inherent jurisdiction) of the court that is exercisable by a single judge may be exercised by the associate judge, other than for—
- (a) a trial on indictment; or
- (b) a matter before the Court of Appeal.
- (2) However, the associate judge may exercise the jurisdiction of the court in presiding at a pre-trial hearing under the *Evidence (Miscellaneous Provisions) Act 1991*, division 4.2.2B (Sexual offence proceedings—giving evidence at pre-trial hearing).

- (3) For the exercise of jurisdiction given to the associate judge under this section, the Act has effect as if the court consisted of the judges and the associate judge.
- (4) A person who is dissatisfied with an order of the associate judge made in the exercise of jurisdiction given under this section may appeal as prescribed under the rules to the Court of Appeal.

Part 17 Unit Titles (Management) Act 2011

**116 Recovery of expenditure resulting from member or unit occupier's fault
Section 31 (4), new definition of *expense***

insert

expense, includes a reasonable legal expense reasonably incurred, including a legal expense relating to a proceeding in the ACAT.

Part 18 Utilities Act 2000

117 Payment for loss or damage Section 181 (5)

omit everything after

not more than

insert

\$25 000.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 22 February 2018.

2 Notification

Notified under the [Legislation Act](#) on 29 March 2018.

3 Republications of amended laws

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

I certify that the above is a true copy of the Courts and Other Justice Legislation Amendment Bill 2018, which was passed by the Legislative Assembly on 20 March 2018.

Clerk of the Legislative Assembly

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