

2008

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Crimes Legislation Amendment Bill 2008

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(As presented)

(Attorney-General)

Crimes Legislation Amendment Bill 2008

A Bill for

An Act to amend legislation in relation to criminal proceedings

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

- 1 **1** **Name of Act**
- 2 This Act is the *Crimes Legislation Amendment Act 2008*.
- 3 **2** **Commencement**
- 4 (1) This Act commences on a day fixed by the Minister by written
- 5 notice.
- 6 *Note 1* The naming and commencement provisions automatically commence on
- 7 the notification day (see Legislation Act, s 75 (1)).
- 8 *Note 2* A single day or time may be fixed, or different days or times may be
- 9 fixed, for the commencement of different provisions (see Legislation
- 10 Act, s 77 (1)).
- 11 (2) If this Act has not commenced within 9 months beginning on its
- 12 notification day, it automatically commences on the first day after
- 13 that period.
- 14 (3) The Legislation Act, section 79 (Automatic commencement of
- 15 postponed law) does not apply to this Act.
- 16 **3** **Legislation amended—sch 1**
- 17 This Act amends the legislation mentioned in schedule 1.

1 **Schedule 1** **Legislation amended**

2 (see s 3)

3 **Part 1.1** **Confiscation of Criminal Assets**
4 **Act 2003**

5 **[1.1] Part 3, note 1, dot point**

6 *omit*

- 7 • *indictable offence*—see s 13 (2)

8 **[1.2] Part 3, note 1, dot point**

9 *omit*

- 10 • *ordinary indictable offence*—see s 13 (2)

11 *substitute*

- 12 • *ordinary offence*—see s 13 (2)

13 **[1.3] Part 3, note 1, new dot point**

14 *insert*

- 15 • *relevant offence*—see s 13 (2)

16 **[1.4] Section 13 (2)**

17 *substitute*

18 (2) In this Act:

19 *ordinary offence* means a relevant offence other than a serious
20 offence.

21 *relevant offence*—

22 (a) means an offence punishable by imprisonment for longer than
23 12 months; and

1 (b) includes an offence (however described) against the law of the
2 Commonwealth, a State or another Territory that may be dealt
3 with under a law of the Commonwealth, the State or the other
4 Territory as an indictable offence (or in a way corresponding to
5 the way in which an indictable offence against an ACT law
6 may be dealt with), even if it may also be dealt with as a
7 summary offence (however described) in some circumstances.

8 *Note* An offence against an ACT law is an indictable offence if it is
9 punishable by imprisonment for longer than 2 years, or is
10 declared by law to be an indictable offence (see Legislation Act,
11 s 190 (1)).

12 *serious offence* means—

13 (a) an offence punishable by imprisonment for 5 years or longer;
14 or

15 (b) any other offence prescribed by regulation.

16 **[1.5] Section 83 (1), note 2**

17 *omit*

18 **[1.6] Section 129 (2), note**

19 *omit*

20 **[1.7] Section 157, note 3**

21 *omit*

22 **[1.8] Section 190 (4), note**

23 *omit*

24 **[1.9] Dictionary, note 2, dot point**

25 *omit*

26 • indictable offence

- 1 **[1.10] Dictionary, definition of *indictable offence***
2 *omit*
- 3 **[1.11] Dictionary, definition of *ordinary indictable offence***
4 *substitute*
5 *ordinary offence*—see section 13 (2).
- 6 **[1.12] Dictionary, new definition of *relevant offence***
7 *insert*
8 *relevant offence*—see section 13 (2).
- 9 **[1.13] Further amendments, mentions of *indictable offence* and**
10 ***ordinary indictable offence***

column 1 item	column 2 provision	column 3 omit	column 4 substitute
1	section 9, note 2	an indictable offence	a relevant offence
2	section 9, note 4	an indictable offence	a relevant offence
3	section 12 (2), example	an indictable offence	a relevant offence
4	section 16	an indictable offence	a relevant offence
5	section 27 (2)	ordinary indictable offence	ordinary offence
6	section 29 (1) (a)	indictable offence	relevant offence
7	section 29 (1) (b)	stated indictable offence	stated relevant offence
8	section 29 (1) (b) (i)	ordinary indictable offence	ordinary offence
9	section 29 (1) (b) (i)	related indictable offence	related relevant offence

Schedule 1
Part 1.1

Legislation amended
Confiscation of Criminal Assets Act 2003

Amendment [1.13]

column 1 item	column 2 provision	column 3 omit	column 4 substitute
10	section 31 (2) (b) (i)	ordinary indictable offence	ordinary offence
11	section 31 (2) (b) (i)	related indictable offence	related relevant offence
12	section 47 heading	ordinary indictable offences	ordinary offences
13	section 47 (1)	ordinary indictable offence	ordinary offence
14	section 47 (3), notes	ordinary indictable offences	ordinary offences
15	section 47 (6)	ordinary indictable offence	ordinary offence
16	table 47 heading	ordinary indictable offences	ordinary offences
17	section 48 (5) (b)	ordinary indictable offences	ordinary offences
18	section 49 (1)	an indictable offence	a relevant offence
19	section 52	an indictable offence	a relevant offence
20	section 53	an indictable offence	a relevant offence
21	section 54 (1)	indictable offence	relevant offence
22	section 76 heading	ordinary indictable offences	ordinary offences
23	section 76 (1)	ordinary indictable offence	ordinary offence
24	section 76 (4) (b) and (d)	relevant indictable offence	relevant offence

column 1 item	column 2 provision	column 3 omit	column 4 substitute
25	section 83 (1)	an indictable offence	a relevant offence
26	section 84 heading	ordinary indictable offences	ordinary offences
27	section 84 (1)	ordinary indictable offence	ordinary offence
28	section 91 heading	ordinary indictable offence	ordinary offence
29	section 91 (1)	ordinary indictable offence	ordinary offence
30	section 91 (1)	ordinary indictable offences	ordinary offences
31	section 91 (2), example	ordinary indictable offence	ordinary offence
32	section 93 (2), example 2	ordinary indictable offence	ordinary offence
33	section 95, example	ordinary indictable offence	ordinary offence
34	section 98 (a)	ordinary indictable offences	ordinary offences
35	section 129 (2) (a)	an indictable offence	a relevant offence
36	section 142 (1) (a)	an indictable offence	a relevant offence
37	section 157 (a) (ii)	an indictable offence	a relevant offence

Schedule 1
Part 1.1

Legislation amended
Confiscation of Criminal Assets Act 2003

Amendment [1.13]

column 1 item	column 2 provision	column 3 omit	column 4 substitute
38	section 158 (2) (a)	an indictable offence	a relevant offence
39	section 158 (2), note	<i>An indictable offence</i>	<i>A relevant offence</i>
40	section 164, definition of <i>investigation</i> , paragraph (a) (ii)	an indictable offence	a relevant offence
41	section 190 (4)	an indictable offence	a relevant offence
42	section 195, definition of <i>target material</i> , paragraphs (b) and (d)	an indictable offence	a relevant offence
43	section 202 (1) (c)	an indictable offence	a relevant offence
44	section 239 (3) (b)	an indictable offence	a relevant offence
45	section 239 (3), example	an indictable offence	a relevant offence
46	section 249	an indictable offence	a relevant offence

1 **Part 1.2** **Corrections Management Act**
2 **2007**

3 **[1.14] Section 31A, note**

4 *omit*

5 indictable offences against ACT laws.

6 *substitute*

7 offences against ACT laws punishable by imprisonment for longer than
8 12 months.

9 **Part 1.3** **Crimes Act 1900**

10 **[1.15] Section 22 heading**

11 *substitute*

12 **22** **Assault with intent to commit other offence**

13 **[1.16] Section 26A**

14 *omit*

15 **[1.17] Section 49, table 49, item 6, column 2**

16 *omit*

17 (Assault with intent to commit indictable offence)

18 *substitute*

19 (Assault with intent to commit other offence)

- 1 **[1.18] Section 114A, definition of *proceeds of crime*,**
2 **paragraphs (a) and (b) (ii)**
- 3 *omit*
- 4 an indictable offence
- 5 *substitute*
- 6 an offence punishable by imprisonment for longer than 12 months
- 7 **[1.19] Section 185, definition of *evidential material***
- 8 *substitute*
- 9 *evidential material* means a thing relevant to an offence, including a
10 thing in electronic form.
- 11 **[1.20] Section 185, new definition of *serious offence***
- 12 *insert*
- 13 *serious offence* means an offence punishable by imprisonment for
14 longer than 12 months.
- 15 **[1.21] Section 185, definitions of *thing relevant to an indictable***
16 ***offence* and *thing relevant to a summary offence***
- 17 *substitute*
- 18 *thing relevant to* an offence means—
- 19 (a) anything in relation to which the offence has been committed
20 or is suspected on reasonable grounds to have been committed;
21 or
- 22 (b) anything suspected on reasonable grounds to provide evidence
23 of the commission of the offence; or
- 24 (c) anything suspected on reasonable grounds to be intended to be
25 used for the purpose of committing the offence.

1 **[1.22] Section 187 (1) and note**

2 *substitute*

3 (1) The Commonwealth Crimes Act, part 1C (Investigation of
4 Commonwealth offences) and the schedule (Form of explanation
5 under section 23V) apply to offences not punishable by
6 imprisonment, or punishable by imprisonment for 12 months or less,
7 in the same way as they apply to offences punishable by
8 imprisonment for longer than 12 months.

9 *Note* The Cwlth Crimes Act provisions apply to offences against ACT laws
10 that are punishable by imprisonment for longer than 12 months if the
11 investigating officer is a police officer (see that Act, s 23A (6)).

12 **[1.23] Section 187 (3)**

13 *omit*

14 a summary offence:

15 *substitute*

16 an offence not punishable by imprisonment, or punishable by
17 imprisonment for 12 months or less:

18 **[1.24] Section 194 (6) (ii) and (7) (ii)**

19 *omit*

20 an indictable offence

21 *substitute*

22 a serious offence

23 **[1.25] Section 195 (1) (d) (ii) and (2) (c) (ii)**

24 *omit*

25 indictable offence

26 *substitute*

27 serious offence

1 **[1.26] Section 207 (1) (a)**

2 *omit*

3 an indictable offence

4 *substitute*

5 a serious offence

6 **[1.27] Section 209 (1) (a)**

7 *omit*

8 an indictable offence

9 *substitute*

10 a serious offence

11 **[1.28] Section 217 (1)**

12 *omit*

13 an indictable offence

14 *substitute*

15 a serious offence

16 **[1.29] Section 220 (2) (b)**

17 *substitute*

18 (b) the offence is a relevant offence; and

1 **[1.30] Section 220 (4), definition of *relevant summary offence***

2 *substitute*

3 *relevant offence* means—

4 (a) a serious offence; or

5 (b) an offence against any of the following:

6 (i) section 380 (Possession of offensive weapons and
7 disabling substances);

8 (ii) section 381 (Possession of offensive weapons and
9 disabling substances with intent);

10 (iii) the Criminal Code, section 321 (Minor theft);

11 (iv) the *Road Transport (Alcohol and Drugs) Act 1977*,
12 section 19 (Prescribed blood alcohol concentration
13 exceeded).

14 **[1.31] Section 253 (1), definition of *offence to which this Act***
15 ***applies***

16 *omit*

17 indictable offence

18 *substitute*

19 offence punishable by imprisonment for longer than 12 months

20 **[1.32] Section 300, definition of *serious offence*, paragraph (a)**

21 *substitute*

22 (a) an offence involving actual or threatened violence and
23 punishable by imprisonment for longer than 12 months; or

24 **[1.33] Section 374**

25 *omit*

- 1 **[1.34] New section 375 (1) (c)**
- 2 *insert*
- 3 (c) an offence against the Criminal Code, section 310 (Aggravated
- 4 robbery) or section 312 (Aggravated burglary).
- 5 **[1.35] Section 375 (3) (b)**
- 6 *omit*
- 7 \$10 000
- 8 *substitute*
- 9 \$30 000
- 10 **[1.36] New section 375 (6A)**
- 11 *insert*
- 12 (6A) When the court is satisfied the case is ready to be listed for hearing,
- 13 the court must ask the defendant whether the defendant consents to
- 14 the case being disposed of summarily.
- 15 **[1.37] Section 375 (7) (c)**
- 16 *substitute*
- 17 (c) the defendant consented to the case being disposed of
- 18 summarily and the consent has not been withdrawn under
- 19 section 375A; and
- 20 (d) if the charge is for an offence against the Criminal Code,
- 21 section 310 or section 312—the prosecutor also consents to the
- 22 case being disposed of summarily.

1 **[1.38] Section 375 (8) (c)**

2 *substitute*

3 (c) the defendant consents to the case being disposed of summarily
4 and the consent is not withdrawn under section 375A; and

5 (d) if the charge is for an offence against the Criminal Code,
6 section 310 or section 312—the prosecutor also consents to the
7 case being disposed of summarily.

8 **[1.39] Section 375 (11) (b)**

9 *substitute*

10 (b) the defendant's consent to the case being disposed of
11 summarily has been withdrawn under section 375A;

12 **[1.40] New section 375 (11A)**

13 *insert*

14 (11A) If the Magistrates Court disposes of a case summarily under this
15 section and convicts the defendant of the offence, the court must not
16 impose a penalty that exceeds—

17 (a) a fine of \$15 000, imprisonment for 5 years or both; or

18 (b) if the maximum penalty provided for the offence by the law
19 creating it is less than the penalty mentioned in paragraph (a)—
20 the maximum penalty.

21 **[1.41] Section 375 (12)**

22 *omit*

23 If the court

24 *substitute*

25 If the Childrens Court

- 1 **[1.42] New section 375A**
- 2 *insert*
- 3 **375A Withdrawal of consent to summary disposal of case**
- 4 (1) A consent given by a defendant under section 375 (6A) to summary
5 disposal of a case can be withdrawn only if the court grants leave
6 under this section.
- 7 (2) The defendant may apply to the court for leave to withdraw the
8 consent.
- 9 (3) However, an application may not be made if a prosecution witness
10 has given evidence in person at the hearing.
- 11 (4) The court may grant leave only if satisfied on reasonable grounds
12 that—
- 13 (a) a significant change in relation to the defendant or the case
14 happened after the consent was given; and
- 15 (b) granting the leave is justified in all the circumstances.
- 16 **Examples—par (a)**
- 17 1 the defendant changed his or her legal representative before the start of the
18 hearing
- 19 2 the prosecution provided new evidence before the start of the hearing.
- 20 *Note* An example is part of the Act, is not exhaustive and may extend, but
21 does not limit, the meaning of the provision in which it appears (see
22 Legislation Act, s 126 and s 132).

1 **[1.43] New part 30**

2 *insert*

3 **Part 30 Transitional—Crimes Legislation**
4 **Amendment Act 2008**

5 **600 Application of amendments**

6 The amendments of part 17 (Offences punishable summarily and
7 summary procedure generally) made by the *Crimes Legislation*
8 *Amendment Act 2008* do not apply to a proceeding for an offence if
9 the hearing in the proceeding has started before the amendments
10 commence.

11 **601 Transitional regulations**

- 12 (1) A regulation may prescribe transitional matters necessary or
13 convenient to be prescribed because of the enactment of the *Crimes*
14 *Legislation Amendment Act 2008*.
- 15 (2) A regulation may modify this part (including in relation to another
16 territory law) to make provision in relation to anything that, in the
17 Executive's opinion, is not, or is not adequately or appropriately,
18 dealt with in this part.
- 19 (3) A regulation under subsection (2) has effect despite anything else in
20 this Act or another territory law.

21 **602 Expiry—pt 30**

22 This part expires 1 year after the day it commences.

1 **Part 1.4** **Crimes (Forensic Procedures)**
2 **Act 2000**

3 **[1.44] Meaning of *serious offence* and *serious offender***
4 **Section 9 (1) (a)**

5 *substitute*

- 6 (a) an offence against a territory law punishable by imprisonment
7 for longer than 12 months; or

8 **Part 1.5** **Crimes (Sentencing) Act 2005**

9 **[1.45] Section 48 (b)**

10 *substitute*

- 11 (b) an offence against any of the following provisions of the
12 *Crimes Act 1900*;

13 (i) section 25 (Causing grievous bodily harm);

14 (ii) section 26 (Common assault);

15 (iii) section 35 (Stalking);

16 (iv) section 39 (Neglect etc of children);

17 (v) section 47 (Concealment of birth); or

18 **[1.46] Section 48, note**

19 *omit*

20 punishable by imprisonment for longer than 1 year

21 *substitute*

22 punishable by imprisonment for longer than 2 years

1 **Part 1.6** **Criminal Code 2002**

2 **[1.47] Section 317**

3 *relocate as section 322A*

4 **[1.48] Division 3.2.3 heading**

5 *relocate before section 319*

6 **[1.49] Division 3.8.1 heading**

7 *omit*

8 **[1.50] Division 3.8.2 heading**

9 *omit*

10 **[1.51] Section 363 heading**

11 *substitute*

12 **363 Obstructing territory official—minor offence**

13 **Part 1.7** **Domestic Violence and**
14 **Protection Orders Act 2001**

15 **[1.52] Schedule 1, item 6**

16 *substitute*

6 22 assault with intent to commit other offence

17 **[1.53] Schedule 1, item 10A**

18 *omit*

1 **[1.58] Section 38A (3)**

2 *omit*

3 committal proceeding

4 *substitute*

5 committal hearing

6 **[1.59] Section 41 (4)**

7 *omit*

8 committal proceeding

9 *substitute*

10 committal hearing

11 **[1.60] Section 41 (4), note**

12 *substitute*

13 *Note* A complainant is not required to attend and give evidence at a
14 committal hearing in relation to a sexual offence (see *Magistrates Court*
15 *Act 1930*, s 90AB (1) (a)).

16 **[1.61] Section 41A (3))**

17 *omit*

18 committal proceeding

19 *substitute*

20 committal hearing

1 **Part 1.10 Legislation Act 2001**

2 **[1.62] Section 190 (1)**

3 *substitute*

4 (1) An offence is an *indictable offence* if—

5 (a) it is punishable by imprisonment for longer than 2 years; or

6 (b) it is declared by an ACT law to be an indictable offence.

7 **Part 1.11 Magistrates Court Act 1930**

8 **[1.63] Section 17B**

9 *omit*

10 **[1.64] Section 90 heading**

11 *substitute*

12 **90 Notice of committal hearing and statements to be**
13 **tendered by prosecution**

14 **[1.65] Section 90 (1)**

15 *omit*

16 the taking of the preliminary examination,

17 *substitute*

18 the committal hearing,

1 **[1.66] Section 90 (1) (a)**

2 *omit*

3 preliminary examination

4 *substitute*

5 committal hearing

6 **[1.67] Section 90 (1) (c)**

7 *substitute*

8 (c) setting out the terms of this section, section 90AA and
9 section 90AB.

10 **[1.68] Section 90 (2) (b)**

11 *substitute*

12 (b) a list of the people who have made written statements that the
13 prosecution proposes to tender to the court at the committal
14 hearing; and

15 **[1.69] Section 90 (2) (d)**

16 *substitute*

17 (d) a list of the documents and things (if any) mentioned in the
18 statements that the prosecution proposes to tender to the court
19 at the committal hearing; and

20 **[1.70] Section 90 (5) and (6)**

21 *omit*

22 preliminary examination

23 *substitute*

24 committal hearing

1 **[1.71] Section 90 (7)**
2 *omit*
3 the taking of the preliminary examination,
4 *substitute*
5 the committal hearing,

6 **[1.72] Section 90AA (4) to (8)**
7 *omit*

8 **[1.73] Section 90AA (10)**
9 *omit*

10 **[1.74] Section 90A heading**
11 *substitute*

12 **90A Plea of guilty at committal hearing**

13 **[1.75] Section 90A (11)**
14 *omit*

15 **[1.76] Section 90A (12), definitions of *proceeding for a sexual***
16 ***offence and sexual offence***
17 *omit*

18 **[1.77] Section 90AB**
19 *substitute*

20 **90AB Witnesses generally not to be cross-examined at**
21 **committal hearing**

22 (1) The court must not require a witness to be called for
23 cross-examination at a committal hearing if—

- 1 (a) the hearing relates to a sexual offence (whether or not it relates
2 also to another offence); and
- 3 (b) the witness is a complainant in relation to the sexual offence.
- 4 (2) The court must not require any other witness to be called for
5 cross-examination at a committal hearing unless, on application by
6 the party seeking to cross-examine the witness, the court is satisfied
7 that—
- 8 (a) the party has—
- 9 (i) identified an issue to which the proposed questioning
10 relates; and
- 11 (ii) provided a reason why the evidence of the witness is
12 relevant to the issue; and
- 13 (iii) explained why the evidence disclosed by the prosecution
14 does not address the issue; and
- 15 (iv) identified to the court the purpose and general nature of
16 the questions to be put to the witness to address the issue;
17 and
- 18 (b) the interests of justice cannot adequately be satisfied by
19 leaving cross-examination of the witness about the issue to the
20 trial.
- 21 (3) In this section:
- 22 *sexual offence* means an offence against the *Crimes Act 1900*,
23 part 3 (Sexual offences), part 4 (Female genital mutilation) or part 5
24 (Sexual servitude).

1 **[1.78] Section 90ABA**

2 *substitute*

3 **90ABA Attendance of accused not required if order made under**
4 **s 89A**

5 The accused person is not required to be present at the committal
6 hearing if the person is excused from attending the hearing under
7 section 89A.

8 **[1.79] Section 91**

9 *omit*

10 **[1.80] Section 92 heading**

11 *substitute*

12 **91 Proceeding following prosecution evidence**

13 **[1.81] Section 92 (1)**

14 *omit everything before*

15 the court must charge

16 *substitute*

17 When all the evidence offered by the prosecution in relation to the
18 indictable offence with which the accused person is charged has
19 been taken,

20 **[1.82] Section 94 (a) and (b)**

21 *substitute*

22 (a) if the court is of the opinion, having regard to all the evidence
23 before it, that there is a reasonable prospect that the person
24 would be convicted of the offence—commit the person for trial
25 for the offence; or

- 1 (b) otherwise—if the person is in custody in relation to the
2 offence, immediately order that the person be released from
3 custody in relation to the offence.

4 **[1.83] Section 97 (a)**

5 *substitute*

- 6 (a) in a proceeding under this part, the court is of the opinion,
7 having regard to all the evidence before it, that there is no
8 reasonable prospect that the person would be convicted of the
9 offence; or

10 **[1.84] New section 110 (1A)**

11 *insert*

- 12 (1A) However, the court may proceed under subsection (1) (a) only if
13 satisfied on reasonable grounds that the defendant—

- 14 (a) knows the hearing date; and
15 (b) understands that the court can proceed to hear and decide the
16 case in the defendant's absence if the defendant fails to appear;
17 and
18 (c) has decided not to appear at the hearing.

19 **[1.85] Section 207 (1) (c)**

20 *substitute*

- 21 (c) review appeals under division 3.10.3 (Review appeals in
22 criminal matters).

- 1 **[1.86] Section 219**
- 2 *substitute*
- 3 **219 No right of appeal under div 3.10.2 if review appeal**
- 4 (1) A person is not entitled to appeal to the Supreme Court under this
- 5 division against a decision of the Magistrates Court if the person has
- 6 instituted an appeal against the decision under division 3.10.3
- 7 (Review appeals in criminal matters).
- 8 (2) If a person institutes an appeal under division 3.10.3 in relation to a
- 9 decision of the Magistrates Court, any appeal against the decision
- 10 that has been instituted under this division is taken to be withdrawn.

11 **[1.87] Division 3.10.3 heading**

12 *substitute*

13 **Division 3.10.3 Review appeals in criminal matters**

14 **[1.88] Section 219B heading**

15 *substitute*

16 **219B Decisions subject to review appeal**

17 **[1.89] Section 219B (1)**

18 *omit everything before*

19 in accordance with this division

20 *substitute*

21 Each of the following is a decision of the Magistrates Court from

22 which an appeal by way of review (a ***review appeal***) may be made

1 **[1.90] Section 219C**

2 *substitute*

3 **219C How review appeal is instituted**

- 4 (1) A review appeal must be instituted by the appellant filing a notice of
5 appeal in the Supreme Court within 28 days after the day the
6 conviction was entered, the order or decision was made or the
7 sentence or penalty imposed, or within any further time the Supreme
8 Court allows.
- 9 (2) As soon as practicable after instituting the appeal, the appellant
10 must—
- 11 (a) file a copy of the notice of appeal in the Magistrates Court; and
12 (b) serve a copy of the notice of appeal on—
- 13 (i) for an appeal mentioned in section 219B (1) (b) or (c)—
14 the director of public prosecutions; and
- 15 (ii) for any other appeal—the person who was the defendant
16 in the proceeding in the Magistrates Court.

17 **219D Grounds for review**

18 The Supreme Court may review a decision of the Magistrates Court
19 under this division on any 1 or more of the following grounds:

- 20 (a) that there was a prima facie case of error or mistake on the part
21 of the Magistrates Court;
- 22 (b) that the Magistrates Court did not have jurisdiction or authority
23 to make the decision;
- 24 (c) that the decision of the Magistrates Court should not in law
25 have been made;
- 26 (d) for a decision mentioned in section 219B (1) (d) or (e)—that,
27 in the circumstances of the case, the decision should not have
28 been made;

- 1 (e) for a decision mentioned in section 219B (1) (f)—that the
2 sentence or penalty was manifestly inadequate or otherwise in
3 error.

4 **219E Report by Magistrate**

5 On a review appeal, the Supreme Court may, if it considers
6 appropriate, make an order requiring the magistrate by whom the
7 Magistrates Court was constituted to give to the Supreme Court a
8 report setting out the reasons for the decision of the Magistrates
9 Court and any facts or matters that in the view of the magistrate
10 were relevant to the decision of the Magistrates Court.

11 **[1.91] Section 219F (1)**

12 *substitute*

13 (1) On a review appeal, the Supreme Court may, after considering the
14 evidence before the Magistrates Court and any further evidence
15 called by leave of the Supreme Court—

16 (a) dismiss the appeal if satisfied that the decision of the
17 Magistrates Court should be confirmed; or

18 (b) set aside or quash, in whole or part, or otherwise vary or
19 amend, the decision of the Magistrates Court.

20 **[1.92] Section 219F (2) (b)**

21 *omit*

22 preliminary examination

23 *substitute*

24 committal hearing

1 **[1.93] Section 219F (5) and (6)**

2 *substitute*

3 (5) The Supreme Court may, despite the ground or any of the grounds
4 for review mentioned in section 219D being established, dismiss the
5 appeal if the court considers that no substantial miscarriage of
6 justice has happened.

7 (6) On the dismissal of an appeal, the decision of the Magistrates Court
8 appealed from may be enforced, executed or given effect to as if the
9 appeal had not been instituted.

10 **[1.94] Section 219F (9)**

11 *substitute*

12 (9) Subsection (8) applies whether the Supreme Court dismisses the
13 appeal or exercises any of the other powers given to it by this
14 section.

15 **[1.95] Section 244**

16 *substitute*

17 **244 Costs in criminal matters**

- 18 (1) The power of the court to award costs is subject to the following:
- 19 (a) if the court makes a conviction or order in favour of the
20 informant—it may order that the defendant must pay to the
21 informant the informant's costs;
- 22 (b) if the court dismisses the information, or makes an order in
23 favour of the defendant—it may order that the informant must
24 pay to the defendant the defendant's costs;
- 25 (c) if a matter is adjourned—the court may order that the costs of
26 and caused by the adjournment be paid by any party to any
27 other party;

- 1 (d) costs ordered to be paid—
2 (i) must be awarded in the way prescribed by regulation; and
3 (ii) may be recovered under the rules about the enforcement
4 of judgments of the court in civil proceedings.
5 (2) Subject to any order of the court, the expenses of a person who
6 attends at court to give evidence or to produce documents must be
7 allowed to the person (whether or not they have been examined or
8 produced documents and whether or not they were subpoenaed to
9 attend).

10 **[1.96] Section 289 (2)**

11 *substitute*

- 12 (2) Section 288 does not apply to the committal hearing for an
13 indictable offence alleged to have been committed jointly by a child
14 and an adult if a magistrate, having regard to the nature of the
15 alleged offence and the time and expense involved in carrying out
16 the committal hearings separately, orders that the section does not
17 apply.

18 **[1.97] New chapter 11**

19 *insert*

20 **Chapter 11 Transitional—Crimes**
21 **Legislation Amendment Act**
22 **2008**

23 **450 Application of amendments—indictable offences**

- 24 (1) In this section:
25 *commencement day* means the day the *Crimes Legislation*
26 *Amendment Act 2008*, part 1.10 (Legislation Act 2001) commences.

- 1 (2) This section applies if, before the commencement day—
2 (a) a person has been committed to the Supreme Court under this
3 Act in relation to an offence punishable by imprisonment for
4 longer than 1 year but not longer than 2 years; and
5 (b) the matter has not been finally decided.
6 (3) The Supreme Court may deal with the matter as if the offence were
7 still an indictable offence.

8 **451 Application of certain other amendments**

- 9 (1) The amendments of the following provisions made by the *Crimes*
10 *Legislation Amendment Act 2008* do not apply to a proceeding for
11 an offence if the hearing in the proceeding has started before the
12 amendments commence:
13 (a) section 90AA;
14 (b) section 90AB;
15 (c) section 90ABA;
16 (d) section 92;
17 (e) section 94;
18 (f) section 97;
19 (g) section 110.
20 (2) The amendments of part 3.10 (Criminal appeals) made by the
21 *Crimes Legislation Amendment Act 2008* do not apply to a
22 proceeding on an appeal if the proceeding has started before the
23 amendments commence.

24 **452 Transitional regulations**

- 25 (1) A regulation may prescribe transitional matters necessary or
26 convenient to be prescribed because of the enactment of the *Crimes*
27 *Legislation Amendment Act 2008*.

1 (2) A regulation may modify this chapter (including in relation to
2 another territory law) to make provision in relation to anything that,
3 in the Executive's opinion, is not, or is not adequately or
4 appropriately, dealt with in this chapter.

5 (3) A regulation under subsection (2) has effect despite anything else in
6 this Act or another territory law.

7 **453 Expiry—ch 11**

8 This chapter expires 1 year after the day it commences.

9 **[1.98] Dictionary, new definition of *review appeal***

10 *insert*

11 *review appeal*, for division 1.10.3 (Review appeals in criminal
12 matters)—see section 219B (1).

13 **Part 1.12 Prostitution Act 1992**

14 **[1.99] Schedule 1, item 4**

15 *substitute*

4 22 assault with intent to commit other offence

16 **Part 1.13 Supreme Court Act 1933**

17 **[1.100] Section 58A (1)**

18 *omit*

19 preliminary examination

20 *substitute*

21 committal hearing

1 **[1.101] Section 58A (1) (b) and (c)**

2 *substitute*

3 (b) if the witness gave evidence in person at the committal
4 hearing, the accused person or the accused person's lawyer had
5 the opportunity to cross-examine the witness;

6 **[1.102] New part 10**

7 *insert*

8 **Part 10 Transitional—Crimes Legislation**
9 **Amendment Act 2008**

10 **100 Application of amendments**

11 (1) In this section:

12 *commencement day* means the day the *Crimes Legislation*
13 *Amendment Act 2008*, part 1.10 (Legislation Act 2001) commences.

14 (2) This section applies if, before the commencement day, a proceeding
15 had been commenced but not finally decided in the Supreme Court
16 in relation to an offence punishable by imprisonment for longer
17 than 1 year but not longer than 2 years.

18 (3) The Supreme Court may deal with the matter as if the offence were
19 still an indictable offence.

20 **101 Transitional regulations**

21 (1) A regulation may prescribe transitional matters necessary or
22 convenient to be prescribed because of the enactment of the *Crimes*
23 *Legislation Amendment Act 2008*.

24 (2) A regulation may modify this part (including in relation to another
25 territory law) to make provision in relation to anything that, in the
26 Executive's opinion, is not, or is not adequately or appropriately,
27 dealt with in this part.

1 (3) A regulation under subsection (2) has effect despite anything else in
2 this Act or another territory law.

3 **102 Expiry—pt 10**

4 This part expires 1 year after the day it commences.

5 **Part 1.14 Witness Protection Act 1996**

6 **[1.103] Section 8 (a) (i)**

7 *substitute*

8 (i) was a witness to or has knowledge of an offence
9 punishable by imprisonment for longer than 12 months
10 and is or has been a witness in a criminal proceeding
11 relating to the offence; or

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2008.

2 Notification

Notified under the Legislation Act on 2008.

3 Republications of amended laws

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