2023

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Supreme Court Amendment Bill 2023

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Supreme Court Amendment Bill 2023

A Bill for

An Act to amend the [Supreme Court Act 1933](http://www.legislation.act.gov.au/a/1933-34%22%20%5Co%20%22A1933-34)

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

1 Name of Act

This Act is the *Supreme Court Amendment Act 2023*.

2 Commencement

This Act commences 6 months after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](http://www.legislation.act.gov.au/a/2001-14), s 75 (1)).

3 Legislation amended

This Act amends the [Supreme Court Act 1933](http://www.legislation.act.gov.au/a/1933-34).

4 Appellate jurisdiction
New section 37E (2) (e)

insert

 (e) applications and appeals under part 8AB (Appeals against conviction for fresh and compelling evidence).

5 New part 8AB

insert

Part 8AB Appeals against conviction for fresh and compelling evidence

Division 8AB.1 Application—pt 8AB

68ZC Application—pt 8AB

 (1) This part applies in relation to a person who is convicted or found guilty of an offence in the Supreme Court or the Magistrates Court (the convicted person).

 (2) In this section:

convicted or found guilty, of an offence, includes a conviction or finding of guilt entered before the commencement of this part.

Division 8AB.2 Important concepts

68ZD Definitions—pt 8AB

In this part:

compelling, evidence—see section 68ZE (3).

convicted person––see section 68ZC (1).

court means the Court of Appeal.

fresh, evidence—see section 68ZE (1).

68ZE Meaning of fresh and compelling evidence—pt 8AB

 (1) For this part, evidence in relation to an offence is fresh if the evidence—

 (a) has not been tendered in the proceeding in which the convicted person was convicted or found guilty of the offence, or any appeal against the conviction or finding of guilt; and

 (b) could not, in the course of an exercise of reasonable diligence, have been tendered in a proceeding mentioned in paragraph (a).

 (2) To avoid any doubt, subsection (1) does not prevent evidence from being fresh only because the evidence was, or would have been considered to be, inadmissible in the proceeding in which the convicted person was convicted or found guilty of the offence.

 (3) For this part, evidence in relation to an offence is compelling if the evidence is—

 (a) reliable; and

 (b) substantial; and

 (c) highly probative in the context of the issues in dispute in the proceeding in which the person was convicted or found guilty.

Division 8AB.3 Application of pt 2A

68ZF Certain provisions of pt 2A taken to apply

The following provisions of part 2A (Court of Appeal) are taken to apply to this part:

 section 37E (Appellate jurisdiction)

 section 37H (Appeal bench)

 section 37I (Presiding judge)

 section 37J (Appeal court constituted by a single judge)

 section 37K (Decision‑making)

 section 37L (Appeal judge unable to continue sitting)

 section 37M (Reserved judgments)

 section 37N (Evidence on appeal)

 section 37P (New trials)

 section 37Q (Bail time on appeal does not count towards sentence).

Division 8AB.4 Appeal against conviction

68ZG Court may grant leave to appeal conviction

 (1) The court may, on application by a convicted person, grant leave for the convicted person to bring an appeal against their conviction or finding of guilt if satisfied that—

 (a) there is fresh and compelling evidence in relation to the offence that should be considered on an appeal; and

 (b) it is in the interests of justice for the order to be made.

 (2) To remove any doubt, the court may grant leave under this section if a convicted person has previously made an application or been granted leave under this section.

68ZH Orders on appeal against conviction

 (1) This section applies if the court grants leave under section 68ZG.

 (2) The court, on an appeal against a conviction or finding of guilt, may—

 (a) allow the appeal if it considers that—

 (i) there is fresh and compelling evidence; and

 (ii) after taking into account the fresh and compelling evidence, there has been a substantial miscarriage of justice; or

 (b) dismiss the appeal.

 (3) If the court allows the appeal, the court must—

 (a) set aside the conviction or finding of guilt; and

 (b) either order—

 (i) a verdict of not guilty to be entered; or

 (ii) a new trial or hearing.

6 Dictionary, notes 1 and 2

substitute

Note The [Legislation Act](http://www.legislation.act.gov.au/a/2001-14) contains definitions relevant to this Act. For example:

 ACAT

 Criminal Code

 director of public prosecutions

 exercise

 function

 legal practitioner

 may (see s 146)

 month

 must (see s 146)

 indictable offence (see s 190)

 indictment

 police officer

 proceeding

 public servant

 the Territory.

7 Dictionary, definition of compelling

substitute

compelling, evidence—

 (a) for part 8AA (Acquittals)—see section 68K; and

 (b) for part 8AB (Appeals against conviction for fresh and compelling evidence)—see section 68ZE (3).

8 Dictionary, new definition of convicted person

insert

convicted person, for part 8AB (Appeals against conviction for fresh and compelling evidence)—see section 68ZC (1).

9 Dictionary, definition of court, new paragraph (c)

insert

 (c) for part 8AB (Appeals against conviction for fresh and compelling evidence)—see section 68ZD.

10 Dictionary, definition of fresh

substitute

fresh, evidence—

 (a) for part 8AA (Acquittals)—see section 68K; and

 (b) for part 8AB (Appeals against conviction for fresh and compelling evidence)—see section 68ZE (1).

Endnotes

1 Presentation speech

 Presentation speech made in the Legislative Assembly on 10 May 2023.

2 Notification

 Notified under the [Legislation Act](http://www.legislation.act.gov.au/a/2001-14) on 2023.

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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