

1993

**LEGISLATIVE ASSEMBLY
FOR THE
AUSTRALIAN CAPITAL TERRITORY**

SUPREME COURT (AMENDMENT) BILL 1993

EXPLANATORY MEMORANDUM

**Circulated by authority of
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Supreme Court (Amendment) Bill 1993

OUTLINE

The Supreme Court (Amendment) Bill 1993 amends the *Supreme Court Act 1933* to insert two new Parts. Part VII safeguards the right to trial by jury for persons charged with indictable offences in the Supreme Court, and provides a means whereby a person who faces such charges may elect to be tried by judge alone, rather than by judge and jury. Part VIII enables the Supreme Court, at the end of a trial for an indictable offence and with the consent of the accused person, to dispose of any summary offence that is related to the indictable offence if the Court considers that to do so is in the interests of justice.

Financial Considerations: None.

DETAILS

Formal Clauses

Clauses 1, 2 and 3 are formal requirements. They set out the short title to the Bill, establish the commencement date and define the term "Principal Act" to mean the *Supreme Court Act 1933*.

Interpretation

Clause 4 adds two new definitions to the terms presently defined in the interpretation section of the Act (section 2).

Main Amendments

Clause 5 inserts the heading for the new Part VII of the Act. Existing section 68 is included in the new Part.

Clause 6 inserts the substance of the two new Parts

PART VII firstly provides that the usual method of trial on criminal charges in the Supreme Court is by judge and jury (section 68A). This provision complements section 395 of the *Crimes Act 1900*.

It then provides that an accused person may waive that right and elect, in writing, to be tried by judge alone [paragraph 68B(1)(a)].

In making such an election, an accused person must produce a certificate signed by a barrister or solicitor stating that he or she advised the accused person about the election, and the accused person has made the election freely [paragraph 68B(1)(b)].

An election may only be made before the Court allocates a date for the trial [paragraph 68B(1)(c)]. Once made, an election may be withdrawn at any time before the trial commences [subsection 68B(2)], and once withdrawn no further election may be made [subsection 68B(3)].

In a trial where there is more than one defendant, the trial can only be by judge alone if all defendants so elect [paragraph 68B(1)(d)].

Where a judge tries criminal proceedings without a jury the judge in effect acts as a jury, and the judge's findings in that regard have the same effect as if made by a jury [section 68C].

PART VIII provides that the Supreme Court may, at the conclusion of the trial of an accused person for an indictable offence, deal with any related summary offence with which the accused person has been charged [subsection 68D(1)].

The Court may deal with a related summary offence on the application of either the defendant or the prosecutor, or on its own motion [subsection 68D(3)], but can only do so with the consent of the accused person [subsection 68D(2)] and where the Court considers that it is in the interests of justice to do so [subsection 68D(1)].

In a trial where there is more than one defendant, the Court may deal with a related summary offence with which one defendant has been charged, even though it does not deal with a related summary offence with which another defendant in the same proceedings has been charged [subsection 68D(4)].

When the Supreme Court deals with a related summary offence it shall do so without a jury and on the basis of evidence given in relation to the indictable offence, except where the Court gives leave for additional evidence to be called [subsections 68E(1) and (2)]. The Supreme Court has the same functions as the Magistrates Court when it sentences or otherwise deals with an accused person charged with a related summary offence [subsection 68E(3)].

The Supreme Court is not required to deal with a related summary offence; it may remit such an offence to the Magistrates Court at any time [section 68F].

The Part heading "Miscellaneous", previously Part VII, is reinstated for existing sections 69 to 75 inclusive.

Transitional Provision

Clause 7 applies the new provisions to proceedings that have been commenced but not completed at the time the Act commences.