

2016

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

SUPREME COURT AMENDMENT BILL 2016
Amendments to be moved by the
Attorney-General

SUPPLEMENTARY EXPLANATORY STATEMENT

Presented by
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Attorney-General

SUPREME COURT AMENDMENT BILL 2016

Introduction

This explanatory statement relates to an amendment to the *Supreme Court Amendment Bill 2016* (the Bill) as presented to the Legislative Assembly.

The Bill

The Bill provides three exceptions to the law of double jeopardy in the ACT, allowing retrial of an acquitted person in 2 exceptional circumstances and allowing the prosecution of an acquitted person for an administration of justice offence which directly contradicts the original acquittal.

Purpose of the amendment

The amendment amends the Bill by inserting new sections 68M(3A), 68N(4A) and 68O(2A) of the Bill.

These new provisions provide that an acquitted person is entitled to appear at the hearing of an application for a retrial made pursuant to section 68M or 68N. The acquitted person is also entitled to appear at the hearing of an application for a trial made pursuant to section 68O.

The new provisions also provide that the acquitted person may be represented by a legal practitioner at the hearing of an application.

Outline

Background

In the interests of procedural fairness, it is appropriate that the acquitted person is entitled to appear at a hearing for applications under sections 68M, 68N and 68O of the Bill and if they wish, to put their position to the court in respect of the application and have their interests represented by a legal practitioner at that hearing.

Human Rights considerations

The amendment supports the justification for limiting the right at section 24 of the *Human Rights Act 2004* (HRA) which provides that no-one may be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with law.

The Explanatory Statement to the Bill provides a full discussion of the engagement and limitation of this right by the Bill and the justification for such limitation. The amendment is a further safeguard to ensure that the Bill balances the rights of the acquitted person with the need to ensure that the rule of double jeopardy doesn't operate unjustly.

Clause notes

Amendment 1 Clause 5

Proposed new section 68M 3A)

Page 7, line 14-

This amendment provides that an acquitted person is entitled to appear (and may be represented by a legal practitioner) at a hearing of an application for a retrial of a category A offence under section 68M of the Bill.

Amendment 2 Clause 5

Proposed new section 68N (4A)

Page 8, line 12-

This amendment provides that an acquitted person is entitled to appear (and may be represented by a legal practitioner) at a hearing of an application for a retrial of a category B offence under section 68N of the Bill.

Amendment 3 Clause 5

Proposed new section 68O (2A)

Page 8, line 30-

This amendment provides that an acquitted person is entitled to appear (and may be represented by a legal practitioner) at a hearing of an application for a retrial of an administration of justice offence under section 68O of the Bill.