



AUSTRALIAN CAPITAL TERRITORY

Magistrates Court (Amendment) Act 1994

No. 4 of 1994

An Act to amend the *Magistrates Court Act 1930*

[Notified in ACT Gazette S44: 14 March 1994]

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

Short title

1. This Act may be cited as the *Magistrates Court (Amendment) Act 1994*.

Commencement

2. (1) Sections 1 to 4 (inclusive), 10, 12 and 13 commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on the day on which the first determination under subsection 248A (1) of the Principal Act as amended by this Act comes into effect.

Principal Act

3. In this Act, “Principal Act” means the *Magistrates Court Act 1930*.¹

Interpretation

4. Section 5 of the Principal Act is amended by omitting from subsection (1) the definition of “determined fee”.

Laying of informations

5. Section 26 of the Principal Act is amended—

- (a) by omitting from subsection (1) “nineteen of this Act” and substituting “19”; and

- (b) by omitting subsections (2), (3) and (4).

Copies of informations and other documents

6. Section 144 of the Principal Act is amended—

- (a) by omitting from subsection (1) “made to her or him by a person and upon payment by that person of the determined fee, the Registrar shall furnish to that person” and substituting “, the Registrar shall give the applicant”; and

- (b) by omitting subsection (2) and substituting the following subsection:

“(2) The Registrar may refuse an application under subsection (1) if—

- (a) the applicant is not a party to the relevant proceedings; and
(b) the Registrar or a Magistrate is not satisfied that the applicant has a good reason for being given that copy.”.

Warrants of execution

7. Section 147 of the Principal Act is amended by omitting from subsection (2C) all the words after “also” and substituting “contain a statement to the effect that, in default of compliance with the order, the person would become liable to pay the fee determined under subsection 248A (1) for the purposes of this subsection”.

Heading to Part XIII

8. The heading to Part XIII of the Principal Act is amended by omitting “AND FEES”.

Repeal

9. Sections 245 and 245A of the Principal Act are repealed.

Insertion

10. After Part XIII of the Principal Act the following Part is inserted:

“PART XIII A—FEES AND CHARGES

Determination of fees and charges

“248A. (1) The Minister may, by notice in writing published in the *Gazette*, determine fees and charges for any of the following purposes:

- (a) proceedings in the Court, and matters incidental to such proceedings, including—
(i) the service and execution of the process of the Court; and

- (ii) the taxation of costs by officers of the Court;
- (b) facilities and services provided by the Court, including the service and execution of the process of any court of the Commonwealth, a State or another Territory, or of any court of a foreign country;
- (c) the general purposes of this Act, the *Magistrates Court (Civil Jurisdiction) Act 1982*, the *Small Claims Act 1974* and rules and regulations made under this Act and any of those Acts.

“(2) A determination under subsection (1) may provide for any of the following matters:

- (a) the exemption of persons from liability to pay filing fees or fees for the service and execution of process, in whole or in part;
- (b) exemptions from liability for the payment of filing fees or fees for the service and execution of process, in whole or in part, in particular circumstances;
- (c) the remission or refund of fees or charges by the Registrar, in whole or in part, in particular circumstances;
- (d) the deferral of liability by the Registrar for the payment of fees or charges, in whole or in part, in particular circumstances.

“(3) A determination under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

Fees and charges—payment

“248B. (1) A fee or charge determined under subsection 248A (1) is payable, in advance, in accordance with the determination, subject to this section.

“(2) A fee or charge determined under subsection 248A (1) is payable on notification from the Registrar if it is calculated by reference to expenses actually incurred in performing the function, or in providing the facility or service, for which the fee or charge is payable.

“(3) If a fee or charge determined under subsection 248A (1) and payable in advance is not paid when due, there is no obligation on the Registrar or the Court to perform the function, or provide the facility or service, for which the fee or charge is payable.

Fees and charges—remission, refund, deferral, waiver, exemption

“248C. (1) A fee or charge determined under subsection 248A (1) may be remitted or refunded, or liability for its payment deferred, in accordance with the determination.

“(2) A fee or charge determined under subsection 248A (1) is not payable—

- (a) if the person otherwise liable to pay the fee or charge is—
 - (i) exempt from paying the fee or charge under subsection 93 (1) of the *Legal Aid Act 1977*; or
 - (ii) legally assisted under a scheme or service provided or approved by the Attorney-General;
- (b) if the Registrar waives payment of the fee or charge in whole or in part because he or she considers that it would impose hardship on the person liable to pay the fee or charge—to the extent of the waiver;
- (c) for filing a document, or for the service or execution of process, in relation to proceedings—
 - (i) under Part X;
 - (ii) on an application arising out of a conviction or order in respect of an offence;
 - (iii) under the *Children's Services Act 1986*;
 - (iv) under the *Domestic Violence Act 1986*;
 - (v) under the *Guardianship and Management of Property Act 1991*;
 - (vi) under the *Maintenance Act 1968*;
 - (vii) under the *Mental Health Act 1983*; or
 - (viii) under the *Workers' Compensation Act 1951*;
- (d) for the laying of an information—
 - (i) by the Director of Public Prosecutions acting in the performance of an official function;
 - (ii) by a police officer acting in the performance of an official function; or
 - (iii) for an offence under subsection 255 (1); or
- (e) for inspection under section 306A of the *Magistrates Court (Civil Jurisdiction) Act 1982* of a record relating to a default judgment by—
 - (i) a party to the proceedings in which the judgment was given or entered; or
 - (ii) the legal representative of such a party.

Fees and charges (civil proceedings)—recovery where otherwise not payable

“248D. (1) This section applies in civil proceedings in the Court between 2 parties (in this section called ‘the first party’ and ‘the second party’), where—

- (a) a filing fee, or a fee for the service and execution of process, otherwise payable by the first party is—
 - (i) not payable (in whole or in part) due to the exemption of the first party as referred to in paragraph 248A (2) (a) or (b) or 248C (2) (a);
 - (ii) remitted or refunded (in whole or in part) under subsection 248C (1); or
 - (iii) the subject of waiver (in whole or in part) under paragraph 248C (2) (b);
- (b) judgment is given or entered, or an order is made, in favour of the first party; and
- (c) the first party’s costs are payable by the second party.

“(2) Where this section applies, the second party shall pay to the Registrar an amount equal to the amount in relation to which the first party was exempted, or the amount of the remission, refund or waiver, as the case requires.

“(3) This section does not apply where the Court is sitting as the Small Claims Court.

Fees and charges (criminal proceedings)—recovery where otherwise not payable

“248E. (1) This section applies in criminal proceedings in the Court, where—

- (a) the fee that would otherwise be payable for the laying of an information is not payable, in whole or in part, due to the operation of paragraph 248C (2) (a), (b) or (d); and
- (b) the defendant is convicted of the offence alleged in the information and ordered to pay a fine.

“(2) Where this section applies, the defendant shall pay to the Registrar, in addition to the amount of the fine, an amount equal to—

- (a) if payment of the fee is waived in part under paragraph 248C (2) (b)—the amount of the waiver; or
- (b) in any other case—the fee for the laying of the information which would otherwise have been payable by the informant.

Fees and charges—review of decisions

“248F. (1) The following decisions of the Registrar are reviewable under this section:

- (a) a decision referred to in paragraph 248A (2) (c) in relation to the remission or refund of a fee or charge (in whole or in part);
- (b) a decision referred to in paragraph 248A (2) (d) in relation to the deferral of liability for the payment of a fee or charge (in whole or in part);
- (c) a decision under paragraph 248C (2) (b) in relation to the waiver of payment of a fee or charge (in whole or in part).

“(2) After making a reviewable decision, the Registrar shall give a written notice of the decision to the eligible person including a statement to the effect that—

- (a) the person may apply to the Registrar for a statement of reasons for the decision; and
- (b) the person may apply to a Magistrate for review of the decision within the review period.

“(3) On written application by the eligible person within 28 days after the person’s receipt of a notice under subsection (2), the Registrar shall give the person a written statement of reasons for the relevant decision.

“(4) On written application by the eligible person within the review period, a Magistrate may review a reviewable decision.

“(5) On review under subsection (4), the Magistrate may make such order as he or she considers appropriate.

“(6) No fee or charge is payable in relation to an application for review under subsection (4).

“(7) In this section—

‘eligible person’, in relation to a reviewable decision, means the person who claims to be entitled to the relevant remission, refund, deferral or waiver;

‘review period’, in relation to a reviewable decision, means—

- (a) the period of 28 days after receipt by the eligible person of notice of the decision under subsection (2); or
- (b) if the eligible person applies under subsection (3) for a statement of reasons for the decision—the period of 28 days after he or she receives the statement of reasons.”.

Applications for transcripts

11. Section 255C of the Principal Act is amended—

- (a) by omitting subsections (2) and (3) and substituting the following subsection:
- “(2) The Registrar shall give the applicant a copy of the record or a transcript or a copy of the transcript of the record—
- (a) if the applicant is a party to the proceedings; or
 - (b) if the applicant is not a party to the proceedings—if the Registrar or a Magistrate is satisfied that he or she has good reason for applying.”;

(b) by omitting subsection (4) and substituting the following subsection:

“(4) Where a person applies for a transcript that has not been prepared, the Registrar may require the applicant to deposit with him or her in advance an amount which the Registrar considers will not exceed the amount of the fee determined under subsection 248A (1) for the preparation of the transcript.”;

(c) by omitting from subsection (8) “paid” and substituting “deposited”; and

(d) by omitting from subsection (8) “amount payable under subsection (3)” and substituting “fee determined under subsection 248A (1) for the preparation of the transcript”.

Repeal

12. Section 257 of the Principal Act is repealed.

Saving—existing fees and charges

13. (1) Notwithstanding section 12, a determination under section 257 of the Principal Act, being a determination in force immediately before the day on which this section commences, continues in force by virtue of this subsection until the first determination under subsection 248A (1) of the Principal Act as amended by this Act comes into effect.

(2) For the purposes of the interpretation of the Principal Act from and including the day on which this section commences until the first determination under subsection 248A (1) of the Principal Act as amended by this Act comes into effect, a reference to a determined fee is to be taken to be a reference to a fee determined in a determination continued in force by virtue of subsection (1).

NOTE

1. Reprinted as at 3 August 1992. See also Acts Nos. 2, 4 and 48, 1993.

[Presentation speech made in Assembly on 9 December 1993]

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