

1992
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Magistrates Court (Amendment) Bill 1992

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A BILL

FOR

An Act to amend the *Magistrates Court Act 1930*

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

Short title

- 5 1. This Act may be cited as the *Magistrates Court (Amendment) Act 1992*.

Commencement

2. (1) Section 1, this section and section 3 commence on the day on which this Act is notified in the *Gazette*.
- 10 (2) Sections 4 to 19 (inclusive), 21 to 24 (inclusive) and 26 to 32 (inclusive) commence on a day fixed by the Minister by notice in the *Gazette*.
- (3) Section 20 commences on a day fixed by the Minister by notice in the *Gazette*.

(4) Section 25 commences on a day fixed by the Minister by notice in the *Gazette*.

5 (5) If a provision referred to in subsection (2), (3) or (4) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Principal Act

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

Interpretation

10 4. Section 5 of the Principal Act is amended—

(a) by omitting from the definition of "Magistrate" in subsection (1) all the words from and including "and includes" to and including "1930"; and

(b) by inserting in subsection (1) the following definitions:

15 " 'approved form' means a form approved under subsection 256 (3);

'Notice to Defendant form' means the approved form containing the heading 'Notice to Defendant';

20 'Notice of Intention to Defend form' means the approved form containing the heading 'Notice of Intention to Defend';

'Plea of Guilty form' means the approved form containing the heading 'Plea of Guilty';".

Magistrates not to undertake other work

25 5. Section 10E of the Principal Act is amended by omitting subsections (2) and (3) and substituting the following subsections:

"(2) A Magistrate is not, without the written approval of the Minister, entitled to—

30 (a) engage in remunerative employment otherwise than in connection with the duties of office as a Magistrate or any office, appointment or commission held by him or her in the Defence Force of the Commonwealth; or

(b) accept appointment to another office under a law of the Territory, the Commonwealth, a State or another Territory.

35 "(3) The Minister shall consult with the Chief Magistrate before giving the approval."

Substitution

6. Section 10M of the Principal Act is repealed and the following section substituted:

Appointment of Registrar etc.

5 "10M. (1) The Minister may appoint a Registrar of the Magistrates Court.

"(2) The Registrar may appoint such Deputy Registrars of the Court, bailiffs and other officers as are required.

10 "(3) The power conferred by subsection (2) may not be exercised by a Deputy Registrar of the Court."

Ex parte order may be set aside

7. Section 23 of the Principal Act is amended—

15 (a) by omitting from paragraph (3) (a) "Form 85 or Form 86 to the Registrar before the day on which he" and substituting "the Notice of Intention to Defend form or the Plea of Guilty form to the Registrar before the day on which he or she"; and

(b) by inserting in paragraph (3) (c) "or 116H" after "116F".

Offences for which an information may be laid

20 8. Section 26 of the Principal Act is amended by adding at the end the following subsections:

"(2) The determined fee in respect of the laying of an information under subsection (1) is not payable where the information is laid by—

(a) the Director of Public Prosecutions; or

(b) a police officer;

25 acting in the exercise of a power or the performance of a function.

"(3) The determined fee in respect of the laying of an information under subsection (1) is not payable in respect of an offence under subsection 255 (1).

"(4) Where—

30 (a) an information is laid in circumstances in which, under subsection (2) or (3) or section 245A, no fee is paid by the informant; and

(b) the defendant is convicted of the alleged offence and is ordered to pay a fine;

35 the Court shall order the defendant to pay by way of costs, in addition to the amount of the fine and any other costs, an amount equal to the amount that

would have been payable on the laying of an information but for subsection (2) or (3) or section 245A.”.

When Magistrate may issue summons

- 5 9. Section 37 of the Principal Act is amended by omitting subsections (2) and (3).

Interpretation

10. Section 116A of the Principal Act is amended—

- (a) by omitting from subsection (1) the definition of “prescribed offence” and substituting the following definition:
- 10 “ ‘prescribed offence’ has the meaning given by subsection (3);
- (b) by omitting from subsection (2) “Form 84, 85 or 86” and substituting “the Notice to Defendant form, the Notice of Intention to Defend form or the Plea of Guilty form”; and
- 15 (c) by adding at the end the following subsections:
- “(3) An offence against a law in force in the Territory is a prescribed offence in relation to a person if—
- (a) in the case of an offence against the *Motor Traffic Act 1936*—the maximum penalty applicable to that person is a fine not exceeding the amount specified in subsection 192 (2) of that Act;
- 20 (b) in the case of an offence against the *Motor Vehicles (Dimensions and Mass) Act 1990*—the maximum penalty applicable to that person is a fine not exceeding \$2,000;
- 25 or
- (c) in the case of an offence against any other law in force in the Territory—the maximum penalty applicable to that person is a fine not exceeding \$1,000;
- whether or not any other penalty may be imposed with that fine.
- 30 “(4) In this Part, a reference to a law in force in the Territory includes a reference to—
- (a) the Australian National University Parking and Traffic Statute as amended and in force from time to time; and
- 35 (b) where that statute is repealed and remade—any such remade statute as amended and in force from time to time.”.

Service of summons

11. Section 116B of the Principal Act is amended—

- (a) by omitting from subsection (2) “Form 84” and substituting “the Notice to Defendant form”; and
- 5 (b) by omitting from subsection (2) “Forms 85 and 86” and substituting “the Notice of Intention to Defend form and the Plea of Guilty form”.

Insertion

10 12. After section 116B of the Principal Act the following section is inserted:

Giving of notice

15 “116BA. Where the Registrar is required to give notice to a person under this Part, the notice may be served by sending a copy by post addressed to the person at his or her last known place of residence or business.”.

Proof of service

13. Section 116C of the Principal Act is amended—

- 20 (a) by omitting from paragraph (2) (b) “Form 85 or 86” and substituting “the Notice of Intention to Defend form or the Plea of Guilty form”; and
- (b) by omitting subsection (3) and substituting the following subsection:

“(3) The Plea of Guilty form shall be signed in the presence of one of the following persons:

- 25 (a) the Registrar;
- (b) a person who is enrolled as a legal practitioner of the High Court or of the Supreme Court of a State or Territory;
- (c) a Justice of the Peace;
- 30 (d) a prescribed person.”.

Pleas

14. Section 116D of the Principal Act is amended—

- (a) by omitting from paragraph (a) “Form 85” and substituting “the Plea of Guilty form”; and

- (b) by omitting from paragraph (b) "Form 86" and substituting "the Notice of Intention to Defend form".

Procedure where plea of guilty entered

- 5 15. Section 116E of the Principal Act is amended by omitting from paragraph (3) (b) "by post".

Procedure where notice of intention to defend given

16. Section 116F of the Principal Act is amended—
- (a) by omitting "Form 86" and substituting "the Notice of Intention to Defend form"; and
- 10 (b) by omitting from paragraph (b) "by post".

Procedure where defendant does not plead

17. Section 116G of the Principal Act is amended by omitting from subparagraph (b) (i) "Form 86" and substituting "the Notice of Intention to Defend form".

15 **Substitution**

18. Section 116H of the Principal Act is repealed and the following section substituted:

Restrictions on the imposition of penalties under this Part

- "116H. (1) Subject to subsection (4), where—
- 20 (a) a defendant is convicted under this Part of an offence against a law referred to in a paragraph of subsection 116A (3); and
- (b) at the time that the defendant is sentenced, the defendant is not before the Court or is not represented before the Court by counsel or a solicitor;
- 25 the only penalty that the Court may impose is a fine of an amount not exceeding the amount referred to in that paragraph.

"(2) Subsection (1) does not prevent a Court imposing a penalty of imprisonment in default of payment of a fine.

- "(3) Where—
- 30 (a) the Court convicts a defendant of an offence against a law referred to in a paragraph of subsection 116A (3);
- (b) the law provides in effect that a penalty other than a fine may be imposed on the defendant; and

- (c) at the time that the defendant is sentenced, the defendant is not before the Court or is not represented before the Court by counsel or a solicitor;

and the Court considers that a penalty other than a fine may be appropriate—

- 5 (d) the Court shall adjourn the hearing and fix a time and place for sentence; and
- (e) the Registrar shall give to the defendant notice of the time and place so fixed.

10 “(4) Where a defendant convicted of an offence against a law referred to in a paragraph of subsection 116A (3) does not appear at the time and place fixed under subsection (3), the Court, in the absence of the defendant, may impose on the defendant any penalty that is applicable under that law.”

Consequences of conviction *ex parte*

15 19. Section 116I of the Principal Act is amended by omitting subsection (2).

Minute of decision to be made and served on defendant

20 20. Section 141 of the Principal Act is amended by omitting subsection (1) and substituting the following subsections:

- “(1) Where the Court convicts or makes an order against a defendant—
- 20 (a) a minute or memorandum of the conviction or order shall be made and signed by the Magistrate exercising the jurisdiction of the Court; and
- (b) the defendant shall be notified in writing of the conviction or order.

25 “(1AA) Failure to comply with subsection (1) does not invalidate a conviction or order or the enforcement of a conviction or order.”

Interpretation

30 21. Section 146 of the Principal Act is amended by omitting “the date of commencement of section 8 of the *Motor Traffic (Amendment) Act (No. 3) 1991*” from the definition of “traffic offence” and substituting “18 May 1992”.

Warrants of execution

22. Section 147 of the Principal Act is amended by omitting subsection (2) and substituting the following subsections:

- 35 “(2) Where a natural person is ordered to pay an amount being a penalty, sum of money or costs under a conviction or order, the conviction

or order shall also provide that in default of payment of the amount in accordance with the terms of the conviction or order, the person shall be imprisoned for the period specified in the conviction or order until the amount is paid.

5 “(2A) Subsection (2) does not apply to a judgment given or entered or an order made in respect of a claim.

 “(2B) Subsection (2) does not affect the provisions relating to periodical payments contained in the *Maintenance Act 1968* or in the Lunacy Act of 1898, of the State of New South Wales in its application in the
10 Territory.

 “(2C) Where a person is ordered to pay an amount or do any other thing under a conviction or order, the conviction or order shall also provide that in default of compliance with the order the person shall become liable to pay the determined fee.”.

15 **Committal to prison where fine or costs not paid**

 23. Section 150 of the Principal Act is amended—

 (a) by omitting subsection (1) and substituting the following subsections:

20 “(1) Where a natural person defaults in payment of an amount being a penalty, sum of money or costs that is payable under a conviction or order, a Magistrate may, by warrant, commit the person to prison in accordance with the terms of the conviction or order until the amount is paid.

25 “(1AA) Subsection (1) does not apply in respect of an amount payable under a judgment given or entered or an order made in respect of a claim.”; and

 (b) by omitting from paragraph (2) (c) “money, other than costs,” and substituting “money;”.

Service of order nisi to bind debts

30 24. Section 172 of the Principal Act is amended by omitting the proviso to subsection (2) and substituting the following subsection:

 “(3) For the purposes of subsection (2), a place of business shall not be taken to be the place of business of a garnishee unless he or she is the principal or one of the principals of the business.”.

35 **Substitution**

 25. Section 189 of the Principal Act is repealed and the following section substituted:

Scale of imprisonment for non-payment of money

5 "189. Subject to Division 5 of this Part and to the provisions of the law under which a conviction or order is made, the period of imprisonment imposed by the Court in default of payment of an amount being a penalty, sum of money or costs under a conviction or order shall be such period as in the opinion of the Court will satisfy the justice of the case, but not exceeding in any case a period calculated at the rate of one day for each \$100, or part of \$100, included in the amount ordered to be paid or 6 months, whichever is the less."

10 **Remission of fees**

26. Section 245A of the Principal Act is amended—

- (a) by inserting "by that person" after "not payable"; and
- (b) by omitting from subsection (2) "subsection 37 (1)" and substituting "subsection 26 (1)".

15 **Substitution**

27. Section 255 of the Principal Act is repealed and the following section substituted:

Contempt

"255. (1) A person shall not—

- 20
- (a) wilfully threaten, disturb or insult the Court;
 - (b) wilfully interrupt, interfere with or obstruct the proceedings of the Court; or
 - (c) commit any other act that is a wilful contempt of the Court.

Penalty: \$5,000 or imprisonment for 6 months or both.

25 "(2) Subsection (1) only applies to acts in the face, or within the hearing, of the Court.

30 "(3) Without limiting the operation of any other provision of this Act, where a person commits an offence against subsection (1), a Magistrate may proceed to charge the person and hear and dispose of the matter immediately and for that purpose receive evidence including unsworn evidence.

"(4) Where—

- (a) a person has not been dealt with under subsection (3);
- (b) a Magistrate has reasonable grounds to believe that the person has committed an offence against subsection (1); and

- (c) the Magistrate considers that it is reasonable in all the circumstances—
- (i) to order that the person be taken into custody to appear before the Court;
 - 5 (ii) to order that the person be remanded in custody from time to time for periods not exceeding 15 clear days at any one time;
 - (iii) to release the person on bail; or
 - 10 (iv) to make an order in respect of the person under subsection (8) before the alleged offence has been heard;

the Magistrate may make such an order.

“(5) An order under subsection (4) need not be in writing but such an order shall be reduced to writing, and a copy served on the alleged offender, as soon as practicable.

- 15 “(6) Failure to comply with subsection (5) does not invalidate an order.

“(7) Where a person is convicted of an offence against subsection (1), the Court, in addition to any penalty provided for under that subsection that it imposes, may make an order in relation to the person under subsection (8).

- 20 “(8) An order under this subsection may provide for—

- (a) the exclusion of the person from any building in which the Court sits or the environs of such a building;
- (b) prohibiting the person from approaching a Magistrate, an officer of the Court or a witness; or
- 25 (c) the imposition of any reasonable condition on the person.

“(9) In this section—

‘Court’ includes—

- (a) a Magistrate when exercising the jurisdiction of the Court;
or
- 30 (b) the Registrar in the performance of a judicial function.”.

Applications for transcripts

28. Section 255C of the Principal Act is amended by inserting in subsection (3) “of” before “the determined fee”.

Forms

29. Section 256 of the Principal Act is amended—

(a) by omitting from subsection (1) “Subject to subsection (1A) the forms in the First Schedule to this Act,” and substituting—

5 “Subject to subsection (1A), the forms—

(a) in the First Schedule; or

(b) approved under subsection (3);”;

(b) by omitting from subsection (1A) “Form 84, 85 or 86” and substituting “the Notice to Defendant form, the Notice of Intention to Defend form or the Plea of Guilty form”; and

10

(c) by adding the following subsections:

“(3) The Minister may, by notice published in the *Gazette*, approve a form for the purposes of this Act.

“(4) The notice referred to in subsection (3)—

15

(a) shall include the text of the approved form; and

(b) may include a declaration by the Minister that that form supersedes a particular numbered form or forms in the First Schedule and the numbered form or forms shall be taken to be superseded accordingly.

20

“(5) Where a form in the First Schedule is superseded, it shall cease to have effect as if it had been repealed.

“(6) Where a form in the First Schedule is superseded by an approved form, the revocation of the approved form does not revive the form in the First Schedule.

25

“(7) A notice referred to in subsection (3) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.”.

First Schedule

30 30. The First Schedule to the Principal Act is amended by omitting Forms 35, 37, 46, 69, 70, 84, 85 and 86.

Validation

31. In respect of proceedings heard and determined under Part VIIA of the Principal Act during the period commencing on 20 December 1991 and ending immediately before the commencement of section 10—

35

(a) no act, matter or thing done or suffered in those proceedings;

- (b) no conviction entered or order made in those proceedings;
- (c) no penalty (whether by way of fine or imprisonment) imposed in those proceedings; or
- 5 (d) no warrant or execution or anything done in execution of a warrant or other order of the Magistrates Court in those proceedings;

is invalid or shall be called into question by reason only that the relevant offence was an offence against the *Motor Traffic Act 1936* for which the penalty was a fine of an amount exceeding \$500 but not exceeding \$2,000.

Savings and transitional

10 32. (1) Where immediately before the commencement of this Act a consent of the Attorney-General was in force under subsection 10E (2) of the Principal Act, the consent shall be taken to be a written approval of the Minister under subsection 10E (2) of the Principal Act as amended by this Act.

15 (2) Where immediately before the commencement of this Act a Magistrate held a judicial office in another Territory, the Magistrate shall be taken to hold that office by virtue of a written approval of the Minister under subsection 10E (2) of the Principal Act as amended by this Act.

20 (3) Where immediately before the commencement of this Act a person held an office under section 10M of the Principal Act, the person shall continue to hold that office as if he or she had been appointed under section 10M of the Principal Act as amended by this Act.

(4) For the purposes of paragraph 23 (3) (a) of the Principal Act as amended by this Act—

25 (a) the reference to the Notice of Intention to Defend form includes Form 86; and

(b) the reference to the Plea of Guilty form includes Form 85.

(5) Where—

30 (a) before the commencement of this Act a summons was issued in circumstances in which, pursuant to subsection 37 (2) of the Principal Act or section 245A of the Principal Act, no fee was payable by the informant; and

(b) the defendant is convicted of the alleged offence and is ordered to pay a fine;

35 the Court shall, under subsection 26 (4) of the Principal Act as amended by this Act, order the defendant to pay by way of costs, in addition to the amount of the fine and any other costs, an amount equal to the amount that would have been payable on the issue of the summons if—

(c) the defendant had been convicted before the commencement of this Act; and

(d) subsection 37 (2) of the Principal Act or section 245A of the Principal Act did not apply to the issue of that summons.

5 (6) Where immediately before the commencement of this Act an amount of costs required to be paid under an order in force under subsection 37 (3) of the Principal Act remained unpaid, that amount may be recovered as if this Act had not been amended.

10 (7) For the purposes of Part VIIA of the Principal Act as amended by this Act—

(a) a person served, whether before or after the commencement of this Act, with a summons which contains Form 84 shall be taken to have been served with the Notice to Defendant form;

(b) where—

15 (i) a summons in respect of an information has been served, whether before or after the commencement of this Act, in accordance with the requirements of section 116B of the Principal Act; and

20 (ii) a copy of the summons is returned to the Registrar, whether before or after the commencement of this Act, before the day on which the person is required by the summons to appear before the Court with Form 85 completed and apparently signed in accordance with the requirements of subsection 116C (3) of the Principal Act;

25 the defendant shall, unless the contrary is proved, be taken—

(iii) to have completed and signed the form so completed and to have returned the form to the Registrar; and

(iv) to have completed and returned the Plea of Guilty form in respect of that information to the Registrar before that day;

30 (c) where—

(i) a summons in respect of an information has been served, whether before or after the commencement of this Act, in accordance with the requirements of section 116B of the Principal Act; and

35 (ii) a copy of the summons is returned to the Registrar, whether before or after the commencement of this Act, before the day on which the person is required by the

summons to appear before the Court with Form 86 completed;

the defendant shall, unless the contrary is proved, be taken—

- 5
- (iii) to have completed and signed the form so completed and to have returned the form to the Registrar; and
 - (iv) to have completed and returned the Notice of Intention to Defend form in respect of that information to the Registrar before that day; and

(d) where—

- 10
- (i) a summons in respect of an information has been served, whether before or after the commencement of this Act, in accordance with the requirements of section 116B of the Principal Act; and
 - 15 (ii) a copy of the summons is not returned to the Registrar with Form 85 or 86 completed before the day on which the person is required by the summons to appear before the Court;

20 the defendant shall be taken not to have completed and returned the Plea of Guilty form or the Notice of Intention to Defend form in respect of that information to the Registrar before that day.

(8) In this section, a reference to a form by number shall be read as a reference to the form printed on the back of a copy of a summons being the form so numbered in the First Schedule to the Principal Act.

NOTE

1. Reprinted as at 3 August 1992.