

1993

LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY

***MAGISTRATES COURT ACT 1930***

**NOTICE OF APPROVAL OF FORMS**

**EXPLANATORY STATEMENT**

Circulated by authority of

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**NOTICE OF APPROVAL OF FORMS UNDER THE *MAGISTRATES COURT ACT 1930***

The *Magistrates Court Act 1930* (the Act) provides for matters relating to the Magistrates Court of the Territory. Section 256 of the Act provides that forms for the purposes of the Act may be approved by the Minister by notice published in the *Gazette*.

Part VIIA of the Act provides for a procedure under which a person charged with an offence under the *Motor Traffic Act 1936* or the *Motor Vehicles (Dimensions and Mass) Act 1990* for which the penalty is a fine not exceeding \$2,000; or under another law in force in the Territory for which the penalty is a fine not exceeding \$1,000; may plead to the charge by post and be dealt with by the Magistrates Court administratively (the "pleas by post" scheme).

The *Motor Traffic Act 1936* allows the Court to impose, in addition to a fine, the penalty of the cancellation of a convicted defendant's driving licence. Before Part VIIA of the Act was amended by the *Magistrates Court (Amendment) Act 1993* it was possible, under the "pleas by post" scheme, for a person convicted of an offence under the *Motor Traffic Act 1936* to have his or her driving licence cancelled in his or her absence. This aspect of the scheme and the associated Forms 84 ("Notice to Defendant"), 85 ("Notice of Intention to Defend") and 86 ("Plea of Guilty"), were criticised by the Supreme Court as providing insufficient warning to a defendant as to the possible consequences to a defendant of a non-appearance in Court, particularly where the defendant has prior convictions.

The Act now provides that, where a defendant is not before the Court, the Court may only impose a fine and, where the Court intends to impose a penalty more severe than a fine and a defendant is not before the Court or is not legally represented, the Court shall adjourn and fix a time for a hearing for sentence and notify the defendant of that hearing. Where a defendant has been notified of the hearing but does not appear the Court may then impose a penalty more severe than a fine in the absence of the defendant.

The Notice of Approval of Forms provides for forms to replace Forms 84, 85 and 86. The new Forms, "Notice to Defendant", "Notice of Intention to Defend" and "Plea of Guilty" have been redrafted in plain English.

The new Forms include notification to a defendant that any prior convictions the defendant may have may be taken into account by the Court when considering the penalty to be imposed on the defendant, that where the Court intends to impose a penalty in addition to a fine, the Court will adjourn and notify the defendant to appear for sentence and that the Form "Plea of Guilty", consistent with the amendment of section 116C by the *Magistrates Court (Amendment) Act 1993*, is to be signed before the Registrar of the Court, a barrister and solicitor, or a Justice of the Peace.

#### **FINANCIAL CONSIDERATIONS**

Nil.