

**1999**

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

**MAGISTRATES COURT (AMENDMENT) BILL 1999**

**EXPLANATORY MEMORANDUM**

**Circulated by authority of  
Gary Humphries MLA, Minister for Justice and Community Safety**

# MAGISTRATES COURT (AMENDMENT) BILL 1999

## Outline

This Bill amends the *Magistrates Court Act 1930* to confirm the legislature's intention that the *Magistrates Court (Civil Jurisdiction) Act 1982* applies to proceedings under Part 10 of the *Magistrates Court Act 1930* and to confirm that any orders under Part 10 can be made by consent without admissions by the respondent to the application for the order.

The Bill is enacted in response to a recent decision at first instance in the matter of *R v Novak* to remove expeditiously any doubt about the validity of certain restraining orders made by consent. The enactment of the Bill is not intended to indicate that the Assembly agrees with the interpretation given to the existing legislation in the *Novak* decision but to provide immediate certainty to members of the community who are parties to restraining orders of the type discussed in the *Novak* decision.

The Bill achieves this certainty by ensuring the validity of certain orders, made prior to the commencement of the Bill, which may have been invalid in light of the *Novak* decision.

## Financial Implications

The Bill has no financial implications.

## Notes on Clauses

### Clause 1      Name of Act

This clause explains that the legislation once enacted will be called the *Magistrates Court (Amendment) Bill 1999*.

### Clause 2      Commencement

The provisions in the Bill will take effect from the date the enactment of the Bill is notified in the Gazette.

### Clause 3      Act amended

This clause makes it clear that the Act to be amended by the Bill is the *Magistrates Court Act 1930*.

### Clause 4      Hearing of application

This clause amends subsection 203(1) of the *Magistrates Court Act 1930* to put it beyond doubt that, because of section 4 of the *Magistrates Court (Civil Jurisdiction) Act 1982*, the provisions of that Act do apply in relation to proceedings under Part 10 of the *Magistrates Court Act 1930* unless otherwise specified.

Amended subsection 203(1) also provides for the operation of the *Magistrates Court (Civil Jurisdiction) Act 1982* to be modified where other provisions in Part 10 are inconsistent with provisions in that Act, or where regulations are made to modify the operation of that Act.

Amended subsection 203(2) sets out the ways in which section 22 of the *Magistrates Court (Civil Jurisdiction) Act 1982* is modified in its application to Part 10 proceedings.

#### Clause 5      Insertion

This clause inserts new section 206AA which reinforces the legislature's intention that section 206 enables any orders under Part 10, including restraining orders, to be made by consent without proof or admissions.

New subsection 206AA(1) explains that section 206 can be used to make any of the orders that can be made under Part 10. The effect is to ensure that any of these orders can be made with the consent of the parties. This provision avoids the need for a hearing in cases where such consent is forthcoming.

New subsection 206AA(2) makes it clear that consent orders can be made in court or by a judge in chambers and whether or not any or all the parties are present in court or in chambers.

New subsection 206AA(3) makes it clear that when making consent orders, the Court does not need to be satisfied of the matters listed in section 197(1). In brief, those matters relate to whether the respondent has harmed or harassed, or is likely to harm or harass, the applicant for the order.

New subsection 206AA(4) explains that consent orders can be made without proof or admissions of guilt by the respondent. This subsection will ensure that respondents to applications for a restraining order can agree to the making of the order without admitting that they have done, or were likely to do, anything to harm or harass the applicant.

#### Clause 6      Insertion

This clause inserts new Part 16 into the *Magistrates Court Act 1982*. This Part will consist of new section 259, which ensures the validity certain orders made under Part 10, including consent orders purportedly made under section 206, before the commencement of the amendment Bill. It also protects proceedings relating to the enforcement of those orders which are commenced before the Bill takes effect.

However, new subsection 259(3) makes it clear that the validation will not affect any decisions or judgements in relation to contraventions of consent orders where those decisions or judgements were made before the commencement of the Bill.

New subsection 259(4) makes it clear that the changes to section 203 and the effect of new section 206AA will not have any effect on orders, proceedings or other matters which were already valid before the commencement of new section 259.

New subsection 259(5) is included to enable the transitional provisions to be removed from the *Magistrates Court Act 1930* once they no longer serve any practical purpose. As restraining orders can be in force for only 12 months, the period of five years will be sufficient time for the transitional provisions to apply to all current orders affected by the *Novak* decision as well as any proceedings (such as prosecutions for breaches of those orders) arising in relation to those orders.