

1995

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

MAGISTRATES COURT (AMENDMENT) BILL 1995

EXPLANATORY MEMORANDUM

Circulated by authority of

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OUTLINE

General outline

The purpose of the Bill is to amend the *Magistrates Court Act 1930* so as to allow a person who has been sentenced to a period of imprisonment and who has lodged an appeal against conviction to be remanded in custody to a remand centre in the Territory pending the hearing of the appeal, rather than being sent to a prison in New South Wales

The Bill also removes a reference to section 202 of the Principal Act, as this section was repealed and substituted in 1991. Instead it provides that a person may be remanded at a remand centre under section 547(2) of the *Crimes Act 1900*, for reasons outlined below at clause 5

Financial impact

Nil.

NOTES ON CLAUSES

Clause 1 - Short title

This clause is a formal clause to provide for the short title of the Act.

Clause 2 - Commencement

This clause provides for commencement of the Act by notification in the Gazette or within six months

Clause 3 - Principal Act

This clause cites the *Magistrates Court Act 1930* as the Principal Act.

Clause 4 - Stay of execution pending appeal in certain cases

This clause states that a person who has been sentenced to a period of imprisonment and who has lodged an appeal against conviction may be detained in a remand centre, if not granted bail or detained for any other cause. This is to clarify any uncertainty over this practice after remarks made by an ACT Supreme Court judge in a decision in 1990 raised doubt over whether there existed a power to remand such a person to a remand centre or whether the existing warrant of commitment to a New South Wales prison would take precedence (see *Wood*, SCA No. 202 of 1990, per Gallop J).

Clause 5 - Commitment to remand centre

This clause deletes the reference to section 202 of the Principal Act which dealt with recognizances to keep the peace and be of good behaviour. That section was repealed and substituted in 1991. The clause refers to the appropriate section of the *Crimes Act 1900* (section 547(2)) which deals with recognizances for good behaviour when a breach of the peace may have been induced by the person's offensive or defamatory words. Section 547(2) allows a magistrate, where he or she requires a person to enter a recognizance to be of good behaviour, to imprison the person for three months or until he or she agrees to enter the recognizance. The effect of this amendment is to allow the detention of the person in a remand centre rather than in a New South Wales prison. Since a magistrate's powers in such a case are preventative rather than flowing from the commission of a criminal offence, it is appropriate that such person be detained in a remand centre with other unconvicted persons.

The clause also corrects the reference to the *Removal of Prisoners Act 1968* .