

1993

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

MAGISTRATES COURT (CIVIL JURISDICTION) (AMENDMENT) BILL 1993

EXPLANATORY MEMORANDUM

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OUTLINE

The *Magistrates Court (Civil Jurisdiction) Act 1982* (the Principal Act) provides for certain matters relating to civil procedure in the Magistrates Court of the Territory.

The amendments of the Principal Act by the *Magistrates Court (Civil Jurisdiction) Bill 1993* are part of a package of amendments of legislation relating to the Magistrates Court and the Small Claims Court designed to replace existing powers to determine fees with a broad based scheme applying to both courts and located, for ease of reference and administration, in the *Magistrates Court Act 1930*.

The *Magistrates Court (Civil Jurisdiction) (Amendment) Bill 1993* will also make a number of amendments of the Principal Act for the purposes of style and will amend the entitlement under section 306A of the Act to inspect the register containing particulars of default judgments.

FINANCIAL CONSIDERATIONS

Nil.

DETAILS OF INDIVIDUAL CLAUSES

Clauses 1, 2 and 3 are formal provisions relating to the short title of the Bill, its interpretation and its commencement. The term "Principal Act" is defined to mean the *Magistrates Court (Civil Jurisdiction) Act 1982*.

Clause 4 will omit the definition of "determined fee" from subsection 3(1) of the Principal Act. References to "determined fee" in the Principal Act will be omitted by this Bill making the definition unnecessary.

Clauses 5, 6, 7 and 9 will amend respectively subsections 11(2), 20(3), 22(1) and 306(1) of the Principal Act by omitting references to determined fees and to when they are to be paid. Section 11 of the Principal Act sets out a general procedure for the lodging and filing of originating processes and contemplates the determined fee being paid before process is filed. The amendment of section 11 also makes it clear that the fee must be paid before the Registrar is required to file a document. Section 20 sets out additional provisions relating specifically to the procedure for when proceedings are to be commenced by application and requires any determined fee to accompany an application. Section 22 deals with service of originating process by post by the Registrar of the Court on application and contemplates payment of the fee at the time of making the application. Section 306 is concerned with the provision, on receipt of an application together with the determined fee, of copies of judgments, certificates etc. The proposed amendment of the *Magistrates Court Act 1930* to introduce the new fees and charges scheme referred to above includes an amendment, new section 248B, requiring fees and charges, with some exceptions, to be paid, in advance where

appropriate, in accordance with the determination and obviates the need for individual provisions to deal with payment.

Clause 8 will repeal section 292 of the Principal Act. Section 292 imposes the liability to pay determined fees, requires the Registrar not to accept a document lodged for filing in a proceeding unless the relevant fee has been paid, except in those service and execution of processes matters where the fee cannot be calculated in advance, and makes provision for the exemption from payment of fees in certain cases. That section also makes provision for an unsuccessful party, against whom costs are awarded, to pay the fees when the successful party was exempted, in certain circumstances, from paying the fees. The substance of these provisions is included in the amendments proposed of the *Magistrates Court Act 1930*. The requirement on the Registrar not to accept a document for filing unless the fee has been paid will be reflected in proposed section 248B of the *Magistrates Court Act 1930* which will provide that, generally, fees and charges are to be paid in advance.

Clause 10 will repeal and replace section 306A of the Principal Act. Section 306A grants an entitlement to inspect a register of the Court containing particulars of default judgments. The provision is obsolete and clause 10 will insert a new section 306A which replaces the entitlement to inspect a register with one to inspect a record of the Court containing particulars of a judgment entered under section 41 of the Principal Act or the setting aside of such a judgment under section 219. The entitlement to inspect will be altered by the amendment which contemplates inspection of individual records rather than of a register as a whole. The substance of subsection 306A(2) which exempts a party or their legal representative from payment of the fee or charge will be located in proposed section 248C of the *Magistrates Court Act 1930* with other exemptions

Clause 11 will repeal section 307B of the Principal Act which grants the Minister power to determine fees. This power will be located in proposed subsection 248A(1) of the *Magistrates Court Act 1930* which, in part, implements the centralization of fees and charges determining powers in respect of the Magistrates Court and the Small Claims Court in that Act.

Clause 12 will ensure that the existing determination continues in force until the first determination made under proposed subsection 248A(1) of the *Magistrates Court Act 1930* commences and will make a consequential provision in relation to the interpretation of the Principal Act.

Clause 13 will make a consequential amendment of the *Children's Services Act 1986* by repealing section 175. Section 175 provides that no court fees are payable under section 292 of the Principal Act in respect of proceedings instituted under the Children's Services Act and this exemption will be included in proposed section 248C of the *Magistrates Court Act 1930*.