

1992

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

MAGISTRATES COURT (AMENDMENT) BILL 1992

EXPLANATORY MEMORANDUM

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OUTLINE

The *Magistrates Court Act 1930* (the Principal Act) provides for matters relating to the Magistrates Court of the Territory.

Part VIIA of the Principal Act provides for a procedure under which a person charged with an offence under the *Motor Traffic Act 1936* or the *Traffic Act 1937* for which the penalty is a fine not exceeding \$500 may plead to the charge by post and be dealt with by the Magistrates Court administratively (the "pleas by post" scheme). The Magistrates Court (Amendment) Bill 1992 amends the Principal Act to extend this procedure to a wider range of minor offences under the *Motor Traffic Act 1936*, to the *Motor Vehicles (Dimensions and Mass) Act 1990*, and to offences under other laws in force in the Territory for which the penalty is a fine not exceeding \$1,000. The Bill also includes a validation provision for any matters relating to an offence under the *Motor Traffic Act 1936* for which the penalty was a fine exceeding \$500 but which were proceeded against under Part VIIA between December 1991 and the date of commencement of the clause 10 of the Bill.

The Magistrates Court (Amendment) Bill 1992 will amend the Principal Act to facilitate the Voluntary Agreement to Attend Court procedure (VATAC) under which a person alleged to have committed an offence may agree to appear before the Court rather than be brought before the Court by summons; to provide for a determined fee to become payable where a warrant of commitment is issued consequent on a failure of a person to comply with an order of the Court; and to include costs in an amount ordered to be paid by the Court for which a warrant of commitment may be issued in default of payment and to strengthen the contempt provisions in the Principal Act.

Section 189 of the Principal Act provides for the scale of imprisonment for non-payment of money owing. The Magistrates Court (Amendment) Bill 1992 amends section 189 to raise the base of the scale of imprisonment from one day for each \$25 or part of \$25 to one day for each \$100 or part of \$100.

The Magistrates Court (Amendment) Bill 1992 also amends the Principal Act to revise the provisions which require the consent of the Minister before a Magistrate undertakes other, remunerated employment; the appointment of officers of the Court; and the making of forms for the purposes of the Principal Act.

FINANCIAL CONSIDERATIONS

There may be some minor savings and additional revenue.

DETAILS

The commencement of the Bill is split in clause 2 in order to provide for the separate commencement of clause 20 and clause 25. Clause 20 provides for a notice to be given to a defendant and the Court will need to have in place administrative arrangements prior to the commencement of the requirement to give this notice. Clause 25 changes the scale of imprisonment for non-payment of an amount of money. Clause 25 will affect persons liable to be committed to prison in default of payment and persons in prison for default of payment. It is intended that the changed scale will come into force at a time at which, as far as is practicable, persons in default and persons imprisoned may be subject to the same scale.

Clause 4 of the Bill makes a technical amendment to section 5 of the Principal Act and provides for definitions of revised forms to be used under the "pleas by post" scheme.

AUTHORITY FOR MAGISTRATES TO TAKE OTHER WORK

Section 10E of the Principal Act provides restrictions on the taking of other work by a Magistrate. Clause 5 of the Bill will provide that a Magistrate will be required to obtain the consent of the Minister before engaging in paid employment outside the duties of the office of Magistrate, other than any office or appointment held in the Defence Force, or employment in connection with the duties of office as a Magistrate. The Minister is to consult with the Chief Magistrate before giving consent under section 10E.

APPOINTMENT OF OFFICERS OF THE COURT

Section 10M of the Principal Act provides that the Attorney-General may appoint a Registrar of the Magistrates Court and such Deputy Registrars of the Court, bailiffs and other officers as are required. Clause 6 of the Bill will amend section 10M to provide that the Minister may appoint a Registrar of the Court and that the Registrar may appoint such Deputy Registrars, bailiffs and other officers of the Court as are required.

VATAC PROCEDURE

A procedure, known as the Voluntary Agreement to Attend Court (VATAC), has been instituted to allow a person to volunteer to appear before the Court to be charged by information rather than being brought before the Court by summons or

arrest. A summons is issued following the laying of an information. Although any person may lay an information, the informant is usually the police or the Director of Public Prosecutions. Currently, section 37 of the Principal Act provides that, where a summons is issued following the laying of an information by the police or the Director of Public Prosecutions, neither of whom are required to pay a fee for the issue of a summons, or, where a private person has laid an information and the fee for the issue of a summons has been remitted on the grounds of hardship, and a person is convicted as a consequence, an amount equal to the fee for the summons shall be paid, as costs, by the person convicted. The provision refers to a fee for a summons and a convicted person is not required to pay an equivalent amount if he or she is convicted consequent to arrest or as a consequence of the laying of an information without the issue of a summons.

Section 26 of the Principal Act provides for the laying of an information. In order to allow for payment of an amount as costs by all person convicted and to ensure that the same amount is paid by a person voluntarily appearing in Court and convicted of an offence, clause 8 of the Bill will amend section 26 of the Principal Act to provide that a fee is to be charged for the laying of an information.

Clause 9 omits subsections 37(a) and (b) to remove the requirement that a fee be paid for the issue of a summons.

Clause 8 further provides that, where an information is laid by the police or the Director of Public Prosecutions, where a fee is remitted due to hardship or an information is laid in respect of an alleged contempt of Court, an amount equal to the fee for the laying of an information is to be payable, as costs, by a person convicted of the offence alleged in the information

PLEAS BY POST SCHEME

Part VIIA of the Principal Act provides for the "pleas by post" scheme whereby a person charged with certain minor offences under the *Motor Traffic Act 1936* or the *Traffic Act 1937* may plead by post. Clause 10 of the Bill will widen the range of offences which are prescribed offences for the purposes of the "pleas by post" scheme. The scheme is extended by prescribing for the purposes of Part VIIA offences under other laws in force in the Territory (including Commonwealth laws and the Australian National University Parking and Traffic Statute) for which the penalty is a fine not exceeding \$1,000; offences under the *Motor Vehicles (Dimensions and Mass) Act 1990* for which the penalty is a fine not exceeding \$2,000; or an offence under the *Motor Traffic Act 1936* for which a fine at or below the general offence penalty provision (subsection 192(2) of the *Motor Traffic Act*

1936) may be imposed. As the general penalty level is increased in the future, the Part VIIA provision will remain in step.

When the general penalty level in the *Motor Traffic Act 1936* was increased from \$500 to \$2,000 a corresponding amendment was not made to Part VIIA of the Principal Act. Clause 31 provides for the validation of acts done in consequence of any proceedings heard and determined under Part VIIA between 20 December 1991 and the commencement of clause 10 of the Bill in respect of an offence under the *Motor Traffic Act 1936* for which the penalty was an amount exceeding \$500 but not exceeding \$2,000.

The forms to be used in the "pleas by post scheme" are to be revised. Clause 7, subclause 10(b), clause 11, subclause 13(a), clause 14, subclause 16(a), clause 17 and subclause 29(b) amend sections 23, subsection 116A(2), sections 116B, 116C, 116D, 116F and 116G, and subsection 256(1A), respectively, to amend the references to the forms used in the "pleas by post" scheme.

Clause 30 amends the First Schedule to the Principal Act by omitting the forms which are to be revised consequent to changes made by the Bill. The revised forms will be approved by the Minister as is provided by clause 29.

Clause 12 of the Bill insets new section 116BA into the Principal Act to consolidate the provisions dealing with the service of notices under Part VIIA. Clause 15, subclause 16(b) and clause 19 amend sections 116E and 116F and 116I, respectively, consequentially.

Section 116C of the Principal Act provides for proof of service of a summons or notice and that the form of a plea of guilty is to be signed before a barrister and solicitor, a Justice of the Peace, a Commissioner for Affidavits, a Commissioner for Declarations or a Notary Public. Clause 13 of the Bill will amend section 116C to provide that the form of a plea of guilty is to be signed before the Registrar of the Court, a barrister and solicitor, a Justice of the Peace, or a prescribed person.

The "pleas by post" scheme allows a person charged with certain offences under the *Motor Traffic Act 1936* or the *Traffic Act 1937* to plead by post to the charge and avoid having to attend Court and allows the Court to hear and determine the matter in the absence of the defendant. 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. Under the "pleas by post" scheme, it is possible 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 procedure has been criticised by the Supreme Court. Section 116H of the Principal Act provides for restrictions on the penalties which may be imposed in the absence of the defendant.

Clause 18 of the Bill will amend section 116H to provide 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 impose a penalty more severe than a fine in the absence of the defendant.

NOTIFICATION OF A DECISION OF THE COURT TO A DEFENDANT

Clause 20 amends section 141 of the Principal Act to clarify the intention of that section which is that a defendant be notified of an order or conviction. A minute or memorandum of a decision, being a conviction or order, is to be made by a Magistrate and the defendant notified, in writing, of the conviction or order. A failure to notify a defendant is not to affect the validity of a conviction or order nor any enforcement of a conviction or order.

WARRANT OF COMMITMENT AND INCLUSION OF COSTS

Section 147 of the Principal Act provides for the enforcement of the payment of an amount of money, other than an amount in a judgement given or entered into or an order made in respect of a claim, which does not include costs, by the issue of a warrant of commitment to prison in default of payment of that amount.

Clause 22 amends section 147 to provide that costs are to be included in a sum of money ordered to be paid and that, where a person is ordered to pay a sum of money or to do a thing under a conviction or order, other than a judgement given or entered into or an order made in respect of a claim, that conviction or order shall also provide that, on the issue of a warrant of commitment following a failure to comply, the person shall become liable to pay a determined fee. The determined fee will only become payable where a warrant of commitment is issued.

Clause 23 amends section 150 of the Principal Act to include costs in a sum of money ordered to be paid and in default of payment of which a person may be committed to prison.

SCALE OF IMPRISONMENT FOR NON-PAYMENT OF MONEY

Section 189 of the Principal Act provides for the scale of imprisonment for non-payment of money.

Clause 25 repeals section 189 and substitutes a new section 189 which renders the content of the section more accessible and substitutes the sum of \$100 for the sum of \$25 as the basis of the scale of imprisonment for non-payment of money. This amendment brings the scale of imprisonment for non-payment of money into line with that in force in New South Wales.

CONTEMPT OF COURT

Section 255 of the Principal Act provides for the offence of contempt of court. Section 255 provides only for a summary conviction, an order excluding a person from the Court and a penalty of \$50, and, in default of immediate payment, a period of imprisonment not exceeding 14 days.

Clause 27 repeals section 255 and substitutes a new section 255 to provide for stronger powers in respect of an offence of contempt in the face of the Court. The new section will allow a Magistrate to make an order in respect of an alleged contemnor before the matter is heard and in relation to a person convicted of contempt and provides for a penalty of a fine of \$5,000 or imprisonment for 6 months or both for an offence of contempt. Subclause 8(3) amends section 26 of the Principal Act consequent to the amendments made in clause 27 to section 255 of the Principal Act so that a Magistrate is not required to pay the fee for the laying of an information in respect of an alleged offence of contempt of Court.

THE MAKING OF FORMS UNDER THE ACT

Section 256 of the Principal Act provides that the forms, or like forms, in the First Schedule to the Principal Act, other than forms 84 ("Notice to Defendant"), 85 ("Notice of Intention to Defend") and 86 ("Plea of Guilty"), may be varied for use for the purposes of the Act. Currently the forms used under the Principal Act are included in the First Schedule to the Principal Act.

Clause 29 amends section 256 of the Principal Act to insert a reference to forms in the First Schedule or forms approved by the Minister. It is intended that, in future, forms in the First Schedule will be replaced by forms approved by the Minister by notice published in the *Gazette*. The notice in the *Gazette* is to be a disallowable instrument, must include the text of the form and may include a declaration that

the form supersedes a form in the First Schedule which will then cease to have effect.

TECHNICAL AMENDMENTS

Clause 21 makes a technical amendment to section 146 of Division 2, Part IX of the Principal Act which provides for a definition of a "traffic offence" for the purposes of Division 2.

Clause 24 amends section 172 of the Principal Act to substitute a neutral term for a masculine term.

Clause 26 makes technical amendments to section 245A of the Principal Act.

Clause 28 makes a technical amendment to section 255C of the Principal Act.

Clause 32 provides for savings and transitional matters.