

1991

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

MAGISTRATES COURT (AMENDMENT) BILL 1991

EXPLANATORY MEMORANDUM

**Circulated by authority of
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MAGISTRATES COURT (AMENDMENT) BILL 1991

The *Magistrates Court Act 1930* (the Principal Act) deals with matters relating to the Magistrates Court, in particular, with matters relating to the criminal jurisdiction of the Court.

The Magistrates Court (Amendment) Bill 1991 (the Bill) repeals subsection 26 (2) of the Principal Act to allow more than one charge to be included in a summons issued. The fee for the issue of a summons will, in future, be per charge, rather than per summons.

The Bill repeals paragraphs 37(2)(c) to (f) of the Principal Act. The paragraphs provide that the Corporate Affairs Commission, the Commissioner of Taxation, the ACT Community and Health Service or a public servant or a Territory authority acting in the exercise of a power or the performance of a function is not liable to pay the fee in respect of the issue of a summons prescribed by Rules under the Act. Repeal of the paragraphs means that government agencies, other than the Director of Public Prosecutions and the Police, will be liable to pay fees under the Act. The Bill also repeals the definition of the Director of Public Prosecutions; as a consequence, a reference in the Act to the Director of Public Prosecutions will be, by virtue of section 25 of the *Interpretation Act 1967* to the ACT Director of Public Prosecutions.

Subsection 37(3) is amended to provide that where a fee has not been paid by virtue of section 245A, the defendant, on conviction, will be liable for the fee. Section 245A, which provides for the exemption from the payment of a fee for a person legally aided, or for whom payment would cause hardship, is amended to include in the exemption, fees payable for a matter under Part X of the Act.

The Bill empowers the Minister to set fees by Determination. Rule 68 of the Magistrates Court Rules, which prescribed fees for the purposes of the Act, is to be repealed by the Magistrates Court Rules (Amendment). Amendments necessary as a consequence are made to the Act by the Bill.

Financial Considerations

There will be an increase in revenue due to the setting of a fee per charge in a summons, the removal of the exemption from payment of fees for Government agencies and the requirement that a defendant meet a fee not paid due to the informant being the recipient of legal aid, or where payment of the fee would have caused hardship.

Details of the Bill are set out in the Attachment.

ATTACHMENT

Clause 1 cites the short title of the Bill, once enacted, to be the Magistrates Court (Amendment) Act 1991.

Clause 2 provides for commencement.

Clause 3 provides that, in the Bill, "the Principal Act" means the *Magistrates Court Act 1930*.

Clause 4 amends section 5 of the Principal Act.

Paragraph 4(a) inserts a definition of "determined fee".

Paragraph 4(b) omits from subsection 5(1) the definition of the Director of Public Prosecutions with the effect that, by virtue of section 25 of the *Interpretation Act 1967*, a reference in the Principal Act to the Director of Public Prosecutions will be to the ACT Director of Public Prosecutions.

Clause 5 amends section 26 of the Principal Act by omitting subsection 26(2). This will allow more than one charge to be included in a summons. The amendment removes the conflict between section 26 and section 33C of the *Interpretation Act 1967* which provides that where the charges against a person are founded on the same facts or form, or are part of a series of offences of the same or a similar character, those charges may be joined in the same information or summons.

Clause 6 amends section 37 of the Principal Act.

Paragraphs 6(a), (b) and (c) make technical amendments to subsections 37(1) and (2) and paragraph 37(2)(a), respectively.

Paragraph 6(d) omits paragraphs 37(2)(c) to (f), which has the effect of removing from Government agencies, other than the police and the ACT Director of Public Prosecutions, the exemption from liability to pay a filing fee.

Paragraph 6(e) inserts a reference to section 245A into subsection 37(3), which has the effect of providing that an amount equal to a fee which has not been paid by virtue of the exemption under section 245A shall be payable, on conviction, by a defendant. Section 245A provides for an exemption from payment of a fee where the informant is legally aided or where payment of the fee would cause hardship.

Clause 7 amends section 144 by substituting a reference to the "determined fee" for the "prescribed fee".

Clause 8 amends section 245 of the Principal Act .

Paragraphs 8(a) and (b) substitute references to the "determined fee" for the "prescribed fee" in subsections 245(1) and (2).

Paragraph 8(c) inserts a new subsection which provides that no fees are payable in respect of proceedings under Part X of the Act. Part X provides for the Court, on application, to make a restraining order.

Clause 9 amends section 255C of the Principal Act.

Paragraph 9(a) omits a reference in subsection 255C(3) to "an amount calculated in accordance with the Rules" and substitutes a reference to "the determined fee".

Paragraph 9(b) removes a redundant reference to the Commonwealth from subsection 255C(8).

Clause 10 amends the Principal Act by inserting a new section 257 which provides that the Minister may, by notice in the *Gazette*, determine fees for the purposes of the Act.