

EXPLANATORY STATEMENT

MAGISTRATES COURT (APPEALS AGAINST SENTENCE) ORDINANCE
1990

No. 9, 1990

The purpose of the Ordinance is to introduce a right of appeal by the prosecution against a sentencing decision by the ACT Magistrates Court for an offence punishable summarily. The right of appeal will also extend to any order made where the Court is satisfied that the charge is proved but no conviction is entered; for example, where an order is made under section 556A of the Crimes Act of New South Wales in its application to the Territory.

Since the introduction in 1989 of a right of appeal by the prosecution against a sentence imposed for a summary offence by the Local Court in New South Wales, the Australian Capital Territory has been the only jurisdiction in Australia where the prosecution does not have a right of appeal against a sentence imposed at the summary level.

Amendments have also been made to the Children's Services Act 1986 to provide for prosecution appeals from decisions of the Childrens Court relating to young offenders. Part X of that Act applies the appeals provisions in the Magistrates Court Ordinance to appeals under the Act.

Details of the provisions in the Ordinance are set out in the attachment.

Details of Magistrates Court (Appeals Against Sentence) Ordinance 1990

Section 1 provides for the citation of the Ordinance.

Section 2 defines "Principal Ordinance" to mean the Magistrates Court Ordinance 1930 for the purpose of Part II.

Section 3 inserts a new paragraph and subsection into section 219B of the Principal Ordinance (appeals by way of orders to review). New paragraph 219B(1)(g) provides that a sentence or penalty imposed by the Magistrates Court for an offence dealt with by that Court under section 90A (plea of guilty in committal proceedings), Part VII (proceedings in cases of offences punishable summarily) or VIIA (service and pleading by post with respect to certain offences), section 255 (penalty for insulting or interrupting magistrate) or section 477 of the Crimes Act (summary disposal of certain cases) is a decision from which an appeal by way of order to review may be made.

New subsection 219B(2) provides that, for the purposes of new paragraph 219B(1)(g), reference to a sentence or penalty shall include a reference to a decision or order made under provisions in sections 556A, 556B, 556C or 556D of the Crimes Act 1900 in its application to the Territory. These sections deal with conditional release of offenders.

Section 4 amends section 219C of the Principal Ordinance to give the informant the right to appeal against a sentencing decision and to provide a ground for review of the decision (paragraphs 4(b) and (g) respectively). The ground of appeal is that the sentence or penalty was manifestly inadequate or otherwise in error. The remaining paragraphs make formal amendments consequent upon insertion of new subsection 219B(2).

Section 5 amends section 219D of the Principal Ordinance consequent upon the insertion of new subsection 219B(2).

Section 6 amends section 219F of the Principal Ordinance to provide that, in the case of a sentencing decision specified in new paragraph 219B(1)(g) of the Ordinance, the Supreme Court may impose such sentence or penalty as the Court thinks fit, or exercise any power which the

Magistrates Court might have exercised (paragraph 6(e)).

For the purposes of a prosecution appeal against a sentencing decision, the Supreme Court shall not vary a sentence or penalty such that the sentence or penalty as varied could not have been imposed by the Magistrates Court, or impose a sentence or penalty which could not have been imposed by the Magistrates Court (paragraph 6(f)).

Where the Supreme Court varies or imposes a sentence or penalty, the sentence or penalty as varied or imposed shall have effect as if it were a decision of the Magistrates Court and may be enforced by that Court accordingly (paragraph 6(g)).

The section also provides that the cost of a prosecution appeal against a sentencing decision must be ordered to be paid by the appellant (paragraph 6(h)).

The remaining paragraphs make formal amendments consequent upon the insertion of the new provisions mentioned above and new subsection 219B(2).

Section 7 defines the Principal Act for the purposes of Part III to mean the Children's Services Act 1986.

Section 8 inserts into the Principal Act a new paragraph 144(1)(h) to provide for an appeal, by way of order for review, by the informant from an order of the Childrens Court made under Division 3 of Part IV of the Principal Act (which deals with the disposition of young offenders).

Section 9, paragraph (g), inserts a new paragraph 145(3)(e) into the Principal Act to apply the order to review provisions in the Magistrates Court Ordinance 1930, to an appeal under paragraph 144(1)(h) of the Principal Act, as if it were a sentencing decision of the kind referred to under new paragraph 219B(1)(g) inserted in the Principal Ordinance.

The remaining paragraphs amend section 145 of the Principal Act consequent upon the insertion of new paragraph 145(e), paragraph 144(1)(h) and subsection 219B(2).

Section 10 amends subsection 147(2) to provide that, in a sentencing appeal under new paragraph 144(1)(h), the Supreme Court may make any order that could have been made by the Childrens Court in the proceedings appealed from.

Section 11 provides that the amendments effected by the Ordinance will apply in relation to proceedings instituted after its commencement.