

AUSTRALIAN CAPITAL TERRITORY

MAGISTRATES COURT (AMENDMENT) ORDINANCE (NO. 2) 1989

59 of 1989

EXPLANATORY STATEMENT

The purpose of the Ordinance is to make several amendments to the Magistrates Court Ordinance 1930 (the Principal Ordinance) relating to the criminal procedure in the Magistrates Court (the Court).

The Ordinance clarifies the procedure where persons appear before the Court to plead not guilty under the service and plea by post provisions of the Principal Ordinance. The service and plea by post provisions allow summonses to be served, and pleas to be entered by the defendant, by post for minor traffic offences. Where the procedure was used, the legislation and the notice given to the defendant under it did not make it clear that where the defendant elected to enter a plea of not guilty in person on the return date given in the summons the Court would, in accordance with its usual practice, fix another date for the hearing of the case.

The Ordinance also includes amendments to:

- . delete references to 'capital offence' which have been redundant since the Death Penalty Abolition Act 1973;
- . enable police officers holding or acting in the rank of Superintendent, who are authorised by the Commissioner of Police, to witness written statements to be tendered in evidence in an ex parte hearing of a summary prosecution. This overcomes problems experienced where the statement is prepared outside normal business hours;

2.

- . include a provision to permit the Court to give practice directions in criminal matters in the same way as it can give such directions in civil matters.

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

1/89

Authorised by the
Minister for Justice

ATTACHMENT

Details of Magistrates Court (Amendment) Ordinance (No.2) 1989

Section 1 provides for the citation of the Ordinance.

Section 2 provides for the commencement of the Ordinance which, except for three sections, commences on the day the Ordinance is notified in the Gazette. Sections 11, 12 and 14 (which relate to amendment of the service and plea by post provisions) will commence on a date fixed by notice in the Gazette. This will allow amended forms to be prepared and printed prior to the commencement of the provisions.

Section 3 defines "Principal Ordinance" to mean the Magistrates Court Ordinance 1930.

Section 4 amends section 5 (interpretation) of the Principal Ordinance by omitting the definition of "Capital offence" from subsection (1).

Section 5 amends section 31 (limitation of proceedings) of the Principal Ordinance by omitting the reference to 'capital offence'.

Section 6 amends section 95 of the Principal Ordinance (depositions of dead or absent persons) to substitute references to sub-sections 54A(3) and 54A(2) for the references to sub-sections 60(1) and 60(2), respectively.

Section 60 (record of proceedings and transcript) and related sections in the Principal Ordinance were restructured in 1980. It has recently come to attention that a consequential

amendment was not made at that time to section 95 to align the references with the equivalent provisions following the restructuring.

Section 7 repeals section 98 of the Principal Ordinance which prohibits admission to bail except by order of the Supreme Court or a Judge of the Court of a person charged with a capital offence.

Section 8 amends section 99 (admission to bail of persons committed for trial) of the Principal Ordinance by omitting references to "capital offence" from paragraphs (1)(a) and (b).

Section 9 amends section 100 (admission to bail of persons committed for trial or sentence who are in prison awaiting trial or sentence) of the Principal Ordinance by omitting references in paragraphs (a) and (b) to capital offence.

Section 10 amends section 110 of the Principal Ordinance to permit a police officer holding or acting in the rank of Superintendent, who is authorised in writing by the Commissioner of Police for the purpose, to take sworn written statements of facts for use in ex parte summary proceedings.

Under section 110 the Court is empowered to proceed to hear a summary prosecution ex parte where the defendant does not appear in answer to the summons. For this purpose the Principal Ordinance allows a written statement made by the informant or another person to be admitted as evidence of the matters contained in it. The amendment expands the categories of persons before whom the written statement may be sworn.

Section 11 inserts a new section 116FA into Part VIIA of the Principal Ordinance which provides for service and pleading by post with respect to certain offences. Under the new section the Court is required, where the defendant appears before the Court in response to the summons and pleads not

guilty, to adjourn the hearing, fix a time and place for the hearing of the proceedings and inform the defendant of the time and place so fixed.

Section 12 amends section 116G of the Principal Ordinance consequent upon the insertion of section 116FA by section 11.

Section 13 inserts a new section 254A into the Ordinance to give the Court the power to give directions with respect to procedure to be followed where the procedure for taking any step in proceedings is not prescribed in the Principal Ordinance or the legislation under which the step is to be taken. There is an equivalent provision, section 283, in the Magistrates Court (Civil Jurisdiction) Ordinance 1982 in relation to the civil procedure in the Court.

Section 14 amends Form 84 in the First Schedule to the Principal Ordinance by altering Block D of the Form to reflect the changes made by the introduction of section 116FA.

Form 84 contains the notice to a defendant where the service and pleading by post provisions of the Principal Ordinance are utilised. Block D of the Form contains instructions for a defendant who wishes to defend the proceedings. The alterations to the Form make it clear that where a defendant attends Court in response to a summons on the date and at the time shown on the summons and pleads not guilty the Court will not deal with the matter there and then but fix another date and time for the hearing of the charge and inform the defendant of that date and time.