

AUSTRALIAN CAPITAL TERRITORY

MAGISTRATES COURT (AMENDMENT) ORDINANCE (NO.4) 1986

ORDINANCE NO. 83, 1986

EXPLANATORY STATEMENT

The main purpose of this Ordinance is to amend the Magistrates Court Ordinance 1930 ('the Principal Ordinance') to allow the evidence of the informant or another person in an ex parte hearing of a summary prosecution to be given by the tendering of a sworn written statement of the facts. The amendments will reduce the time spent by police informants in attending the Magistrates Court to give evidence in such cases.

The Court deals with a large number of summary prosecutions. Under the Principal Ordinance if the defendant does not appear the Court is empowered to deal with the case ex parte.

A significant number of summary prosecutions are dealt with in the Court ex parte. Previously, the informant was required to attend to give oral evidence to support the charge. Procedurally, the informant is called by the prosecution and proceeds to give a statement of facts under oath.

The Ordinance enables the prosecution to tender in evidence a sworn written statement by the informant, who would not need to attend. Provision is made to give the Court power to adjourn the proceedings and require the attendance of the informant if, for example, it considers that further clarification of the evidence is required.

The amendment involves no prejudice to a defendant. The provisions of the Principal Ordinance allowing the defendant to have an ex parte conviction set aside continue to apply. The usual criminal sanctions against false testimony apply to the sworn written statement. The amendment does not restrict the right of the prosecution to have an informant attend to give oral evidence in appropriate cases.

The amendment is limited to summary prosecutions dealt with ex parte. The Principal Ordinance already includes provisions allowing the use of written statements in committal proceedings and these provisions have been drawn upon in preparing the amendments.

In some summary prosecutions, particularly in traffic matters, the police use common informants. In such cases the police officer who attends Court to give evidence to support the charges is not the informant but the police officer who was present at the time the alleged offence occurred. The Ordinance takes account of these cases by referring not only to evidence of the informant but also to evidence of another person.

The Ordinance also amends the Principal Ordinance to bring the provision relating to remission of fees into line with provisions applicable in the ACT Supreme Court and Federal courts.

Details of the Ordinance are as follows:

Section 1 provides that the Ordinance may be cited as the Magistrates Court (Amendment) Ordinance (No. 4) 1986.

Section 2 defines the Principal Ordinance to mean the Magistrates Court Ordinance 1930.

Section 3 amends section 1 of the Principal Ordinance ('the Short title') by omitting 'Court of Petty Sessions' and substituting 'Magistrates Court'. This was overlooked in the Magistrates Court Ordinance 1985 which changed the name of the Court. Although that Ordinance enables the Principal Ordinance to be cited as the Magistrates Court Ordinance 1930 it did not formally change its short title.

Section 4 amends section 54A of the Principal Ordinance consequent upon the amendment to section 110 of the Principal Ordinance in section 5.

Section 5 amends section 110 of the Principal Ordinance by adding new sub-sections 110(2) to (6).

Provision is made that where the Court proceeds to hear and determine a summary prosecution ex parte, the evidence of the informant or another person may be given orally or a written statement made by the informant or another person may be admitted as evidence of the matters contained in it (sub-section 110(2)).

A written statement admitted in evidence constitutes the depositions of the person who made the statement (sub-section 110(3)).

A written statement is not to be admitted in evidence unless it is sworn. Provision is made for the persons before whom a written statement may be sworn (sub-section 110(4)).

Where the Court admits a written statement in evidence under new sub-section 110(2) it is empowered, of its own motion, to require the person who made the statement to attend before it to give evidence (sub-section 110(5)).

Where part of a written statement is inadmissible according to the rules of evidence, the Court is nevertheless empowered to admit the statement as evidence of the matters contained in the remainder of the statement provided that if it does so it is to identify the part that is inadmissible and with reference to that part, write on the statement 'ruled inadmissible' or words to that effect (sub-section 110(6)).

Section 6 repeals section 245A of the Principal Ordinance (Remission of Fees) and inserts a new section 245A. Under the new section 245A a court fee is not payable by a person under the Principal Ordinance if the Clerk is satisfied that the person is a legally assisted person within the meaning of the Legal Aid Ordinance 1977, legal aid has been granted to that person from a legal aid scheme or service approved by the Attorney-General, or payment of the fee would impose hardship on the person. This amendment brings the provision into line with provisions applicable in the A.C.T. Supreme Court and Federal courts.

Authorised by the
Attorney-General

Ord 91/86