



Australian Capital Territory

Magistrates Court Act 1930

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About this republication

The republished law

This is a republication of the *Magistrates Court Act 1930* effective from 11 October 1994 to 28 November 1994.

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Australian Capital Territory

MAGISTRATES COURT ACT 1930

As at 11 October 1994

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Australian Capital Territory

MAGISTRATES COURT ACT 1930

An Act to establish a Magistrates Court, to provide for the appointment of Magistrates, and for other purposes

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Magistrates Court Act 1930*.¹

Repeal

- 3.³ (1) The *Court of Petty Sessions Ordinance 1930* is repealed.

(2) Notwithstanding anything contained in the *Court of Petty Sessions Ordinance 1930* or in this Act, where any action or proceedings have been instituted before the commencement of this Act in pursuance of the provisions of any Act of the State of New South Wales which by reason of section three of the *Court of Petty Sessions Ordinance 1930* has ceased to apply to the Territory, the action or the proceedings may be continued and determined, and any person in whose favour a judgment or order of any Court has been or shall be given or made in pursuance of any such Act shall be entitled to enforce it by execution or otherwise, as if the *Court of Petty Sessions Ordinance 1930* and this Act had not been made.

Interpretation

5. (1) In this Act, unless the contrary intention appears—
“approved form” means a form approved under subsection 256 (3);

- “bail undertaking” means an undertaking given by a person charged with an offence in order to obtain bail in relation to the offence;
- “Bailiff” means a bailiff appointed under this Act;
- “Charge of an indictable offence” means charge of an indictable offence as such and an order to a committal for trial therefor;
- “Claim” means a claim under the *Magistrates Court (Civil Jurisdiction) Act 1982*;
- “Court” means Magistrates Court;
- “Crimes Act” means the Crimes Act, 1900 of the State of New South Wales in its application to the Territory;
- “Decision” includes a committal for trial and an admission to bail, and a conviction, order, order of dismissal, or other determination;
- “Defendant” means a person against whom an information is laid;
- “Hearing” includes the examination of a person charged with an indictable offence;
- “Indictable offence” means an offence which may be prosecuted before the Supreme Court by charge or indictment;
- “Indictment” means an information for an indictable offence presented by some authorized officer to a court having jurisdiction to try the accused person;
- “Information” includes a complaint or application under the *Maintenance Act 1968* and any complaint upon which an order may be made for the payment of money under any Act of the State of New South Wales which has been continued in force as a law by virtue of section six of the *Seat of Government Acceptance Act 1909* of the Commonwealth;
- “Judge” means a Judge of the Supreme Court;
- “Magistrate” means the Chief Magistrate, a magistrate or a special magistrate appointed under this Act and, where any power or function of a magistrate is exercisable by a Registrar, includes a Registrar;
- “Motor Traffic Act” means the *Motor Traffic Act 1936*;
- “Notice to Defendant form” means the approved form containing the heading “Notice to Defendant”;

“Notice of Intention to Defend form” means the approved form containing the heading “Notice of Intention to Defend”;

“Plea of Guilty form” means the approved form containing the heading “Plea of Guilty”;

“Police officer” means any member of the Police Force of the Territory;

“Registrar” means the Registrar of the Court, and includes a Deputy Registrar of the Court;

“Remand Centre” means a remand centre or a temporary remand centre established under the *Remand Centres Act 1976*;

“Summary conviction” or “Conviction” means a conviction by a magistrate for an offence;

“Superintendent” has the same meaning as in the *Remand Centres Act 1976*;

“the Territory” includes the Territory accepted by the Commonwealth in pursuance of the *Jervis Bay Territory Acceptance Act 1915* of the Commonwealth.

(2) A reference in this Act to a certified copy of depositions or to a certified copy of a statement made by a person in reply to the question referred to in subsection 92 (1) shall be read as a reference to—

- (a) if a record of the depositions or statement was made in accordance with subsection 54A (2)—a transcript of the record certified in accordance with subsection 255B (2); or
- (b) if the depositions were or the statement was taken down in writing and signed in accordance with subsection 54A (3)—the depositions or statement as so taken down and signed.

Application to Jervis Bay Territory

6. (1) This Act extends to the Territory accepted by the Commonwealth in pursuance of the *Jervis Bay Territory Acceptance Act 1915* of the Commonwealth.

PART II—APPOINTMENT AND JURISDICTION OF MAGISTRATES

Division 1—Appointment of Chief Magistrate and Magistrates

Interpretation

6A. In this Division, “Magistrate” means—

- (a) a person who holds the office of Chief Magistrate; or
- (b) a person who is appointed under section 7 to hold an office of Magistrate.

Chief Magistrates, Magistrates

7. (1) For the purposes of this Act, there shall be a Chief Magistrate and such other Magistrates as from time to time hold office in accordance with this Act.

(2) The Chief Magistrate and each other Magistrate shall be appointed by the Executive.

(3) Where a person holding an office of Magistrate is appointed to hold the office of Chief Magistrate, the person ceases to hold the office of Magistrate.

Eligibility for appointment as Magistrate

8. A person is not eligible for appointment under subsection 7 (2) unless he is enrolled as a legal practitioner of the High Court or of the Supreme Court of a State or Territory and has been so enrolled for not less than 5 years.

Seniority of Magistrates

9. The Magistrates other than the Chief Magistrate have seniority according to the dates on which their appointments took effect or, where the appointments of 2 or more of them took effect on the same date, according to the precedence assigned to them by the instruments of their appointment.

Terms and conditions of appointment

10. Subject to the *Remuneration Tribunals Act 1973* of the Commonwealth, a Magistrate—

- (a) shall be paid such remuneration and allowances; and

(b) holds office on such terms and conditions, as the Executive, from time to time, determines.

Tenure of office

10A. (1) Subject to this Act, a Magistrate holds office until she or he attains the age of 65 years.

(2) A person who has attained the age of 65 years shall not be appointed under section 7.

Resignation

10B. A Magistrate may resign her or his office by writing signed by her or him and delivered to the Executive.

Acting Chief Magistrate

10C. (1) Where—

- (a) there is a vacancy in the office of Chief Magistrate; or
- (b) the Chief Magistrate is absent from duty or from the Territory or, for any other reason, is unable to carry out the duties of her or his office,

the Executive may appoint a Magistrate to act as Chief Magistrate during that vacancy, absence or inability, as the case may be.

(2) Where—

- (a) either—
 - (i) there is a vacancy in the office of Chief Magistrate; or
 - (ii) the Chief Magistrate is absent from duty or from the Territory or, for any other reason, is unable to carry out the duties of her or his office; and
- (b) no appointment is in force under subsection (1),

the senior Magistrate who is in the Territory and is able and willing to do so shall act as Chief Magistrate.

(3) Subject to this section, a person appointed under subsection (1) shall not continue to act as Chief Magistrate for more than 12 months.

(4) Where a person is acting as Chief Magistrate in pursuance of subsection (1) or (2)—

- (a) a reference in a law of the Territory (including this Act) to the Chief Magistrate includes a reference to that person; and
- (b) that person has all the powers, functions and duties conferred or imposed upon the Chief Magistrate by this Act or by any other law of the Territory.

(5) The Executive may—

- (a) determine the terms and conditions of appointment of a person under this section; and
- (b) at any time terminate such an appointment.

(6) Where a person is acting as Chief Magistrate in pursuance of an appointment under subsection (1) and the office of Chief Magistrate becomes vacant while that person is so acting, that person may continue so to act until the Executive otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(7) A person may resign an appointment under subsection (1) by writing signed by her or him and delivered to the Executive.

(8) The validity of anything done by a person acting as Chief Magistrate in pursuance of this section shall not be called in question—

- (a) on the ground that the occasion for her or his action had not arisen or had ceased; or
- (b) in the case of a person acting in pursuance of an appointment under subsection (1)—by reason of any defect or irregularity in, or in connexion with, that appointment.

Retirement

10D. The Executive may, with the consent of a Magistrate who is—

- (a) an eligible employee for the purposes of the *Superannuation Act 1976* of the Commonwealth; or
- (b) a member of the Superannuation Scheme for the purposes of the *Superannuation Act 1990* of the Commonwealth;

retire the Magistrate from office on the ground of invalidity.

Magistrates not to undertake other work

10E. (1) A Magistrate shall not engage in practice as a barrister, as a solicitor or as a barrister and solicitor.

(2) A Magistrate is not, without the written approval of the Minister, entitled to—

- (a) engage in remunerative employment otherwise than in connection with the duties of office as a Magistrate or any office, appointment or commission held by him or her in the Defence Force of the Commonwealth; or
- (b) accept appointment to another office under a law of the Territory, the Commonwealth, a State or another Territory.

(3) The Minister shall consult with the Chief Magistrate before giving the approval.

Rights of public servants

10F. Where a Magistrate was, immediately before his or her appointment—

- (a) an officer of the Government Service;
- (b) an officer of the Australian Public Service; or
- (c) a person to whom the *Officers' Rights Declaration Act 1928* of the Commonwealth applied;

he or she retains his or her existing and accruing rights.

Arrangement of business of Courts

10G. The Chief Magistrate is responsible for ensuring the orderly and expeditious discharge of the business of the Magistrates Court and the Childrens Court and accordingly may, subject to this Act and to such consultation with the Magistrates and special magistrates as is appropriate and practicable, make arrangements as to the Magistrate or special magistrate who is to constitute each of those Courts in particular matters or classes of matters.

Division 2—Special Magistrates

Appointment of special magistrates

10H. For the purposes of this Act, the Executive may appoint such special magistrates as are required.

Tenure of office

10J. (1) A special magistrate holds office—

- (a) for the period specified in the instrument of appointment; or

- (b) if a period is not so specified—until he or she attains the age of 70 years.

(2) A person who has attained the age of 70 years shall not be appointed under section 10H.

Resignation

10K. A special magistrate may resign her or his office by writing signed by her or him and delivered to the Executive.

Terms and conditions of appointment

10L. Subject to the *Remuneration Tribunals Act 1973* of the Commonwealth and to section 10J, a special magistrate holds office upon such terms and conditions, whether as to remuneration or otherwise, as the Executive, from time to time, determines.

Division 3—Registrar and other officers of the Magistrates Court

Appointment of Registrar etc.

10M. (1) The Minister may appoint a Registrar of the Magistrates Court.

(2) The Registrar may appoint such Deputy Registrars of the Court, bailiffs and other officers as are required.

(3) The power conferred by subsection (2) may not be exercised by a Deputy Registrar of the Court.

Staff assisting the Registrar

10MA. (1) The staff assisting the Registrar shall be employed under the *Public Sector Management Act 1994*.

(2) The *Public Sector Management Act 1994* applies in relation to the management of the staff assisting the Registrar.

Duties of the Registrar

10N. The Registrar shall perform such duties as are prescribed by or under this Act or as the Chief Magistrate directs.

Division 4—Jurisdiction of Magistrates

Oath etc. of office

10P. (1) A person appointed under subsection 7 (2) or section 10H shall not exercise or perform any of the powers, functions or duties

conferred or imposed upon a Magistrate by any law of the Territory unless she or he has made an oath or affirmation in accordance with the form in the Second Schedule.

(2) An oath or affirmation for the purpose of subsection (1) shall be made before the Chief Justice of the Supreme Court.

Acts done beyond the Territory

10Q. (1) An act done by a Magistrate, by virtue of her or his office, outside the Territory for the purpose of authenticating the signature of a person to an instrument intended to take effect in the Territory shall, unless the act is required by law to be done in the Territory, be effective for the purposes of any law of the Territory.

(2) An oath or affirmation administered by a Magistrate, by virtue of her or his office, outside the Territory in any case in which an oath or affirmation may be administered by a Magistrate shall, unless the oath or affirmation is required by law to be administered in the Territory, be effective for the purposes of any law of the Territory.

Authentication of acts of Magistrate or Registrar

11.³ Every summons, warrant, conviction, and order (not being by law authorized to be made by word of mouth only) shall be under the hand of the Magistrate or Registrar issuing or making it.

Acts by a Magistrate or Registrar

12. (1) Any Magistrate out of court or a Registrar may receive an information and grant a summons or warrant thereon and may issue her or his summons or warrant to compel the attendance of witnesses and do all other necessary acts and matters preliminary to the hearing.

(2) Without affecting the generality of the last preceding subsection, where it is provided in any law in force in the Territory that an information or complaint may be laid or made before, or a summons or warrant issued by, a Court, a Justice of the Peace, Clerk of Petty Sessions or a Registrar of Petty Sessions, the information or complaint may be laid or made, and the summons or warrant may be issued by, a Magistrate or the Registrar.

Issue of warrant of execution or commitment

13.³ After a case has been heard and determined, any Magistrate or a Registrar may issue any warrant of execution or commitment thereon.

Summons or warrant not avoided by death of Magistrate or Registrar

15.³ A warrant or summons issued by a Magistrate or Registrar shall not be avoided by reason of the Magistrate or Registrar dying or ceasing to hold office.

Order in lieu of mandamus

16. (1) Where a Magistrate or Registrar refuses to do any act relating to the duties of her or his office as a Magistrate or Registrar, the party requiring the act to be done may apply to the Supreme Court, upon affidavit of the facts, for an order calling upon the Magistrate or Registrar and also the party to be affected by the act to show cause why the act should not be done, and if, after due service of the order, good cause is not shown against it, the Supreme Court may make the order absolute, with or without payment of costs.

(2) A Magistrate or Registrar upon being served with an order absolute shall obey the order, and do the act required by it to be done.

(3) Where, before the date fixed under subsection 3 (2) of the *Court of Petty Sessions (Amendment) Ordinance 1977*, a Magistrate or the Registrar had refused to do an act relating to the duties of her or his office, subsections (1) and (2) apply, on and after that date, and proceedings under subsection (1) may be continued, as if—

- (a) sections 7, 10H and 10M had been in operation at the time of the refusal; and
- (b) the Magistrate or Registrar had held office under section 7, section 10H or section 10M, as the case may be.

Powers and functions of Magistrates

17. Where in pursuance of any law in force in the Territory, anything is required or permitted to be done before, to or by a justice of the peace, it may be done before, to or by a Magistrate.

PART III—MAGISTRATES COURT

Division 1—Establishment of Magistrates Court

Constitution of the Court

18. (1) There is hereby established a Magistrates Court which shall have and exercise jurisdiction in the Territory and shall sit at Canberra, Jervis Bay and such other places as are notified in the *Gazette*.

(2) The jurisdiction of the Court may be exercised by a Magistrate (other than a Special Magistrate) or by one or more Special Magistrates.

(3) When two or more Special Magistrates are divided in opinion on any case, the case shall be decided according to the decision of the majority, if there is a majority; but if the Court is equally divided in opinion, the case shall be adjourned for hearing and determination by a Magistrate (other than a Special Magistrate) on the next day appointed for the holding of the court constituted by that Magistrate.

Division 2—Jurisdiction of Magistrates Court

Jurisdiction of the Court

19. (1) Whenever, by any law for the time being in force in the Territory, any offence is punishable on summary conviction or any person is made liable to a penalty or punishment or to pay a sum of money for any offence, act or omission, and no other provision is made for the trial of the person committing the offence, the matter may be heard and determined by the Court in a summary manner under the provisions of this Act, and the jurisdiction shall be deemed to be conferred on and may be exercised by the Court.

(2) Where, by any law in force in the Territory pursuant to section 6 of the *Seat of Government Acceptance Act 1909* of the Commonwealth or the *Imperial Acts Application Act 1986*, any jurisdiction is given to a Court of Petty Sessions or of summary jurisdiction or any court constituted by a Police or Stipendiary Magistrate or justices, or to a Magistrate or to a justice or justices or a Children's Court the jurisdiction shall be deemed to be conferred on, and may be exercised by, the Court.

Jurisdiction of the Court where defendant absent from the Territory

21. (1) The Court shall have jurisdiction notwithstanding that the defendant is not within the Territory.

Proceedings of Court where it considers offence should be dealt with on indictment

22. If, in the case of an information with respect to an offence which is punishable either summarily or upon indictment it appears to the Court, upon the close of the case for the prosecution, that the offence ought to be dealt with on indictment, the Court shall abstain from adjudication thereon and shall deal with the case for the purpose of committal for trial only.

***Ex parte* order may be set aside**

23. (1) Where a conviction or order is made when one party does not appear, the party in whose absence the conviction or order was made may apply to the Court for an order that the Court set aside the conviction or order.

(2) Subsection (1) does not apply to or in relation to a conviction or order made in the absence of a defendant who has entered a plea of guilty in accordance with section 116D and has not, before the entry of the conviction or the making of the order, withdrawn her or his plea.

(3) Where, in her or his absence, a conviction is entered or an order is made against a person who has duly been served with a summons in accordance with section 116B and—

- (a) that person did not return the Notice of Intention to Defend form or the Plea of Guilty form to the Registrar before the day on which he or she was required by the summons to appear before the Court;
- (b) the Court, in a case in which it has previously, in the absence of that person, adjourned the hearing in pursuance of subsection 116E (3), is satisfied that a notice under that subsection did not come to her or his attention before the conviction is entered or the order made; or
- (c) the Court is satisfied that the notice referred to in section 116F or 116H did not come to her or his attention before the date fixed under that section for the hearing of the matter,

the Court, upon the application of that person, shall set aside the conviction or order.

(4) In any case other than an application to set aside a conviction or order referred to in subsection (3), the Court may set aside the conviction, order or judgment on such terms as to costs or otherwise as the Court thinks just.

(7) Where, in pursuance of this section, the Court has set aside a conviction, the Court may set aside a warrant issued under this Act in consequence of the conviction.

(7A) Where, pursuant to this section, the Court has set aside a conviction or order for a parking or traffic offence within the meaning of Division 2 of Part IX—

- (a) the Court shall set aside any further order made under section 150A or 150B, as the case requires, in consequence of that conviction or order; and
- (b) if, in consequence of that conviction or order or an order made under section 147A, a driving licence, the registration of a motor vehicle, a person's right to drive in the Territory or the right to drive a motor vehicle in the Territory has been suspended, under section 162E or 180F of the Motor Traffic Act, the Court shall make an order directing the Registrar of Motor Vehicles, pursuant to section 162H or 180H, as the case requires, of that Act—
 - (i) to reinstate the licence;
 - (ii) to reinstate the registration of the motor vehicle; or
 - (iii) to cancel the suspension;

as the case requires.

(8) Where, in pursuance of this section, the Court has set aside a conviction or order, the Court may, upon service of such reasonable notice upon the parties as the Court directs, proceed to hear and determine the matter, or may adjourn the hearing to such time and place as the Court thinks fit.

(9) Where the Court has adjourned the hearing of a matter under subsection (8), the Court shall direct such notice as the Court thinks fit of the adjourned hearing to be given to the parties.

***Ex parte* conviction may be set aside on application by informant**

23AA. (1) Subject to subsection (2), where a conviction is entered or an order is made against a person charged with an offence and the conviction is entered or the order is made in the absence of that person, the informant may apply to the Court for an order that the Court set aside the conviction or order.

(2) Subsection (1) does not apply to, or in relation to, a conviction entered or an order made in the absence of a defendant who has entered a plea of guilty in accordance with section 116D and has not, before the entry of the conviction or the making of the order, withdrawn her or his plea.

(3) Where an application to set aside a conviction or order is made under this section, the Court may set aside the conviction or order on such terms as to costs or otherwise as the Court thinks just.

(4) Where, in pursuance of this section, the Court sets aside a conviction or order, the Court shall dismiss the information and set aside any warrant issued under this Act in consequence of the conviction.

Requests under Conventions regarding Legal Proceedings in Civil and Commercial Matters

23A. The Court shall have jurisdiction to make any Order or take any action which is necessary in order to comply with any request received from the Consular or other authority of a foreign country, with which a Convention regarding Legal Proceedings in Civil and Commercial Matters has been made and extended to the Commonwealth, for the service of documents in the Territory or for the taking of evidence in the Territory.

Rectification of certain orders etc.

23B. (1) In this section—

- (a) a reference to a penalty shall be read as including a reference to a cancellation, forfeiture, suspension or other loss of a licence or privilege and to a disqualification of a person from obtaining, holding, using or enjoying a licence or exercising a privilege;
- (b) a reference to the Court in relation to proceedings shall be read as a reference to the magistrate who convicted the defendant or made the order against the defendant; and
- (c) a reference to a business day shall be read as a reference to a day other than a Saturday, a Sunday or a public holiday.

(2) Subject to subsection (3), where the Court enters a conviction or makes an order against a defendant and—

- (a) imposes a penalty that is contrary to law; or
- (b) fails to impose a penalty that is required by law to be imposed,

the Court may, of its own motion or on the application of a party to the proceedings, re-open the proceedings and, after giving the parties an opportunity of being heard, amend the conviction or order to impose a penalty that is in accordance with the law.

(3) The Court may re-open proceedings under subsection (2)—

- (a) of its own motion before the expiration of 28 days after the day on which the penalty was imposed, the conviction was entered or the order was made, as the case may be;

- (b) on application under subsection (2) before the expiration of 28 days after the day on which the penalty was imposed, the conviction was entered or the order was made, as the case may be; or
- (c) with the consent of the parties to the proceedings—at any time.

(4) Subject to subsection (5)—

- (a) the Registrar shall serve on each party to the proceedings written notice of the intention of the Court to re-open proceedings of its own motion under subsection (2) at least 3 business days before the proceedings are re-opened; and
- (b) an applicant shall serve on the Registrar and, at least 3 business days before the day on which the application is heard, on the other party to the proceedings, written notice of an application referred to in subsection (2).

(5) The requirements of subsection (4) may be dispensed with by the Court when each of the parties is before the Court.

(6) Where, under subsection (2), the Court re-opens proceedings and, in the absence of a party to those proceedings, amends a conviction or an order, the Registrar shall cause written notice of the amended conviction or order to be served on that absent party forthwith.

(7) Service of any notice referred to in subsection (4) or (6) may be effected in accordance with section 41 as if the notice were a summons issued in respect of an information.

(8) The jurisdiction conferred on the Court by subsection (2) shall be exercised only on the evidence and material before the Court in the original proceedings.

(9) Proceedings shall not be re-opened under subsection (2) in respect of a conviction or order that is the subject of an appeal.

(10) Where proceedings re-opened under this section have not been determined in respect of a conviction or order that, after the proceedings have been re-opened but before they are determined, becomes the subject of an appeal, the re-opened proceedings shall be stayed until the appeal is determined.

(11) Where the Court re-opens proceedings under subsection (2), the Court may make such order as to costs as it thinks just and reasonable.

(12) Subject to subsection (13), an order made or a conviction or order amended by the Court in determining proceedings that have been re-opened under this section shall, unless the Court otherwise directs, take effect from the beginning of the day on which the original conviction was entered or on which the original order was made, as the case requires.

(13) For the purposes of Part XI, where the Court, in determining proceedings that have been re-opened under this section, makes an order or amends a conviction or order, the time within which an appeal may be made from that order, amended conviction or amended order shall commence on the day on which that order was made, or that conviction or order was amended, as the case may be.

PART IV—COMMENCEMENT OF PROCEEDINGS

Division 1—General

Informations

25. Proceedings may be commenced in the Court by information laid by the informant or by that person's counsel or solicitor or other person authorized in that behalf.

Division 2—Informations

Laying of informations

26. (1) An information may be laid before a Magistrate in any case where a person has committed or is suspected of having committed, in the Territory, an indictable offence or an offence which may be dealt with summarily as provided in section 19.

Description of persons and property and of offences

27. (1) Such description of persons or things as would be sufficient in an indictment shall be sufficient in informations.

(2) The description of any offence in the words of the Act, Ordinance, law, order, by-law, regulation, or other instrument creating the offence, or in similar words, shall be sufficient in law.

Power of Court to amend information

28. If at the hearing of any information or summons any objection is taken to an alleged defect therein in substance or form or if objection is taken to any variance between the information or summons and the evidence adduced at the hearing thereof, the Court may make such

amendment in the information or summons as appears to it to be desirable or to be necessary to enable the real question in dispute to be determined:

Provided that the Court shall not make any such amendment where it considers that the amendment cannot be made without injustice to the defendant.

Court may adjourn hearing where amendment made

29. If in any case where an amendment in an information or summons has been made under the last preceding section the Court considers that the defendant has been misled by the form in which the information or summons has been made out, it may adjourn the hearing of the case for such period as it thinks fit and may make such order as to the costs of the adjournment as it thinks proper.

Form of information

30. (1) Where it is intended to issue a warrant in the first instance against the party charged, the information shall be in writing and on oath, which oath may be made either by the informant or some other person.

(2) Where it is intended to issue a summons instead of a warrant in the first instance, the information need not be in writing or on oath, but may be verbal merely, and without oath, whether any law under which the information is laid requires it to be in writing or not.

Limitation of proceedings

31. (1) A prosecution in respect of an offence of which cognizance may be taken by the Court may be commenced as follows:

- (a) Where the maximum term of penal servitude or imprisonment in respect of the offence, in the case of a first conviction, exceeds six months—at any time after the commission of the offence;
- (b) Where the maximum term of penal servitude or imprisonment in respect of the offence, in the case of a first conviction, does not exceed six months—at any time within one year after the commission of the offence; and
- (c) Where the punishment provided in respect of the offence is a pecuniary penalty and no term of penal servitude or imprisonment is mentioned—at any time within one year after the commission of the offence.

(2) Where by any law in force in the Territory, any longer time than the time provided by this section is provided for the commencement of a prosecution in respect of an offence against that law, a prosecution in respect of the offence may be commenced at any time within that longer time.

Division 4—Summonses

When Magistrate may issue summonses

37. (1) Where an information is laid before a Magistrate as hereinbefore provided, the Magistrate may issue a summons.

Form of summons

38. (1) A summons issued in the case of an information shall be directed to the defendant, and shall state shortly the matter of the information and require her or him to appear at a certain time and place before the Court, to answer to the information and to be further dealt with according to law.

Signature of summons

40. (1) A summons shall be signed by the person issuing it.

(2) A summons or process shall not be signed in blank.

Service of summons

41. (1) A summons issued in respect of an information may be served upon the person to whom it is directed by—

- (a) delivering a copy of the summons to that person; or
- (b) by leaving a copy of the summons at the last known or usual place of abode or business of that person with some other person who is apparently an inmate of, or employed at, that place and apparently over the age of sixteen years.

(1A) Service of a summons under subsection (1) shall be effected at least 72 hours before the time appointed in the summons for the hearing of the information.

(2) If it appears to the Court or a Magistrate or the Registrar, by statement on oath or by affidavit, that from any cause service in accordance with the preceding provisions of this section cannot be effected, the Court or Magistrate or the Registrar may extend the time for hearing.

(3) Service of a summons in accordance with this section may be proved by the oath of the person who served it or by affidavit or otherwise.

Division 5—Warrants of Arrest

Issue of warrant and summons

42. (1) Where an information is laid before a Magistrate as hereinbefore provided, against any person and the matter thereof is substantiated by the oath of the informant or a witness, the Magistrate may, if such a person is not then in custody, issue her or his warrant in the first instance for the arrest of that person, and for bringing her or him before the Court to answer to the information, and to be further dealt with according to law:

Provided that the Magistrate, if she or he thinks fit, instead of issuing her or his warrant in the first instance for the arrest of the person charged, may proceed by summons and issue a summons against her or him accordingly.

(2) Subject to subsection (3), a Magistrate may, notwithstanding the issue of a summons, issue her or his warrant at any time before or after the time mentioned in the summons for the appearance of the defendant.

(3) Subsection (2) does not authorize the issue of a warrant for bringing a person before the Court to answer to an information in relation to which a summons has been served in accordance with section 116B.

Procedure on filing of indictment

43. (1) Where an indictment in respect of an offence committed in the Territory has been filed in the Supreme Court by the Attorney-General, Attorney-General of the Commonwealth or other officer, authority or person duly appointed in that behalf against any person then at large, whether on bail or not, the Registrar of the Supreme Court shall at any time after the end of the then sittings of such Court if the person so indicted has not already appeared and pleaded to such indictment, upon application by or on behalf of the prosecutor, grant to the prosecutor or person applying on her or his behalf a certificate that such indictment has been filed.

(2) Upon production of such certificate to a Magistrate, the Magistrate shall—

- (a) In any case where the person so indicted is, at the time of the application for the certificate, and of the production thereof, confined in prison for any other offence than that charged in the

indictment, upon proof upon oath that the person so confined in prison is the person charged and named in the indictment, issue her or his warrant directed to the gaoler of the prison in which the person is so confined, commanding her or him to detain such person in her or his custody until, by His Majesty's writ of *habeas corpus*, she or he is removed therefrom for the purpose of being tried upon the indictment, or until she or he is otherwise removed or discharged out of custody by due course of law; and

- (b) In any other case, issue her or his warrant to apprehend the person so indicted and to cause her or him to be brought before the Court to be dealt with according to law and the Court when any person apprehended under any such warrant is brought before it shall upon proof upon oath that such person is the person charged and named in such indictment, and without further inquiry commit her or him for trial or admit her or him to bail in accordance with the provisions of the *Bail Act 1992*.

Direction of warrant

44. A warrant to apprehend a defendant that she or he may answer to an information may be directed either to any police officer by name or generally to all police officers within the Territory, without naming them, or to both.

Any police officer may execute warrant

45. When a warrant is directed to all police officers, any police officer may execute the warrant as if it were directed specially to her or him by name.

Warrants to be signed and, where so required, sealed

46. Every warrant shall be in writing and shall be signed by the Magistrate issuing the same and, where expressly provided by any Act or law of the Territory, sealed with the seal of such Magistrate.

Form of warrant

47. A warrant shall state shortly the offence or matter of the information on which it is founded, and shall name or otherwise describe the person against whom it is issued, and it shall order the police officers to whom it is directed to apprehend the defendant, and to bring her or him before the Court to answer to the information and to be further dealt with according to law.

Warrant to be in force till executed

48. A warrant need not be returnable at any particular time, but may remain in force until executed.

Sunday warrants

49. A Magistrate may grant or issue a warrant upon an information of an indictable offence, or a search warrant, on a Sunday as on any other day.

PART V—HEARING

Division 1—General

Open Court

51. The room or place in which the Court sits to hear and determine any information shall be deemed an open and public Court, to which all persons may have access so far as it can conveniently contain them:

Provided that, in any case in which, in the opinion of the Court, the interests of public morality require that all or any persons should be excluded from the Court, the Court may exclude those persons therefrom accordingly:

Provided further that that power shall not be exercised for the purpose of excluding the counsel or attorney for the defendant.

Exclusion of strangers

52. The room or place in which the Court takes the examinations and statements of persons charged with indictable offences for the purpose of committal for trial, and the depositions of the witnesses in that behalf, shall not be deemed an open Court, and the Court may order that no person shall be in that room or place without its permission; but it shall not make the order unless it appears to it that the ends of justice require it so to do.

Conduct of case

53. (1) The informant may herself or himself or by her or his counsel or solicitor conduct her or his case and may examine and cross-examine the witnesses giving evidence for or against her or him and may, if the defendant gives any evidence or examines any witness as to any matter other than as to general character, call and examine witnesses in reply.

(2) The defendant may herself or himself or by her or his counsel or solicitor make full answer and defence and may give evidence herself or

himself and may examine and cross-examine the witnesses giving evidence for or against her or him respectively.

Where both parties present Court to hear case

54. If both parties appear either personally or by their respective counsel or solicitors or other persons empowered by law to appear for them before the Court, the Court shall proceed to hear and determine the information.

Recording of proceedings

54A. (1) In this section, unless the contrary intention appears, “deposition” includes a statement made by an accused person in reply to the question referred to in subsection 92 (1), but does not include a written statement admitted in pursuance of section 90AA or subsection 110 (2).

(2) Subject to subsection (3), a record of the depositions of a witness in any proceedings shall be made—

- (a) by means of sound-recording apparatus; or
- (b) if the Court so directs, by means of shorthand or any similar means.

(3) Where the Court so directs, the depositions of a witness in any proceedings shall not be recorded in accordance with subsection (2), but shall be taken down in writing, and, after being read over to the witness or given to her or him to read, signed by the witness and the Magistrate constituting the Court.

(4) The Registrar shall have the custody of any record of depositions made in accordance with subsection (2).

(5) The Registrar may cause to be erased the record of the depositions of a witness recorded by means of sound-recording apparatus and the record of any other part of a proceeding made by means of sound-recording apparatus after the expiration of 7 years after the date of completion of the proceedings in which the record was made.

(5A) Notwithstanding subsection (5), the sound recording of any part of proceedings—

- (i) under the *Maintenance Act 1968*;
- (ii) in which a person charged with an indictable offence is committed to take his or her trial before the Supreme Court;

- (iii) in which evidence is taken in pursuance of a request referred to in section 23A;
- (iv) under the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* of the Commonwealth; or
- (v) under the *Workers' Compensation Act 1951* (other than prosecutions for offences against that Act),

shall not be erased unless a transcript of the record of that part of the proceedings has been prepared.

(6) This section applies to and in relation to proceedings before a Magistrate as if a reference to the Court were a reference to a Magistrate.

Division 2—Evidence

Examination to be on oath

55. (1) Every person appearing to give evidence shall be examined on oath.

(2) The Court may administer or cause to be administered to every person so appearing the usual or other lawful oath:

Provided that it shall not be necessary to administer an oath to any person who appears solely for the purpose of producing documents.

Power to order witnesses out of Court

56. (1) The Court may, if it thinks fit, and shall, if required by any party, except in so far as in particular cases and for special circumstances it sees fit otherwise so to do, at any time during the hearing, order all witnesses, other than the informant, the defendant and the witnesses under examination, to go and remain outside and beyond the hearing of the Court until required to give evidence.

(2) If any witness wilfully disobeys any such order she or he shall be deemed guilty of a contempt of court.

Defendant and husband or wife, when competent in criminal proceedings

58. Every accused person in a criminal proceeding, and the husband or wife of such person shall be competent, but not compellable, to give evidence in such proceeding:

Provided that no such person shall be liable—

- (a) to be called as a witness on behalf of the prosecution; or

- (b) without the leave of the Court, to be questioned on cross-examination as to her or his previous character or antecedents.

Proof of negative etc.

59. If the information in any case negatives any exemption, exception, proviso, or condition contained in the Act, Ordinance or law on which the information is framed, it shall not be necessary for the informant to prove the negative; but the defendant may prove the affirmative in her or his defence.

Record of proceedings and transcript

60. (1) Where a record made by means of sound-recording apparatus, shorthand or similar means is produced out of the custody of the Registrar and the record purports to be a record made in accordance with subsection 54A (2) of the depositions of a witness in any proceedings, the record is evidence that that person made those depositions in those proceedings.

(2) Where—

- (a) a sound-recording is produced out of the custody of the Registrar; and
- (b) the sound-recording contains a record of comments that purport—
 - (i) to have been made at the same time as a sound-recording made in accordance with subsection 54A (2) of the depositions of a person in any proceedings; and
 - (ii) to have been made for the purpose of identifying the proceedings, voices recorded on the last-mentioned sound-recording or any other matter or thing so recorded,

the first-mentioned sound-recording is evidence of the identity of the proceedings, of the voices or of that other matter or thing, as the case may be.

(3) Where—

- (a) a document purports to be a transcript, or a copy of a transcript, of a record made in accordance with subsection 54A (2) of depositions made by a person in any proceedings; and
- (b) the document bears a certificate that purports to be a certificate given in accordance with subsection 255B (2) or 255C (6),

the document is evidence that the person made those depositions in those proceedings.

- (4) Where a document—
- (a) purports to be the depositions of a witness in any proceedings as taken down in writing and signed in accordance with subsection 54A (3); or
 - (b) purports to be a copy of the depositions of a witness in any proceedings as so taken down in writing and signed and bears a certificate that purports to be a certificate given in accordance with subsection 255C (6),

the document is evidence that the witness made those depositions in those proceedings.

Power of Magistrate to summon witnesses to attend and give evidence

61. If it is made to appear to a Magistrate that any person is likely to give material evidence, and will not voluntarily appear for the purpose of being examined as a witness at the hearing of any information, the Magistrate shall issue her or his summons to that person, requiring her or him to be and appear at a time and place mentioned in the summons before the Court, to testify what she or he knows concerning the matter of the information.

Service etc. of summons on witness

62. A summons to a witness shall be served, and proof of service may be given, in the same manner as provided in section forty-one of this Act in the case of a summons to a defendant.

Warrant to attend

63. (1) If a person summoned as a witness refuses or neglects to appear at the time and place appointed by the summons, and no just excuse is offered for the refusal or neglect, then (after proof upon oath that the summons was duly served upon that person, and that a reasonable sum was paid or tendered to her or him for her or his costs and expenses of attendance) the Court may then and there impose upon her or him in her or his absence a penalty not exceeding Forty dollars, which may be recovered in the same manner as penalties imposed upon a summary conviction as provided in this Act.

(2) The Court may also issue its warrant to bring and have that person, at a time and place to be therein mentioned, before the Court so to testify.

Warrant in the first instance

64. If a Magistrate is satisfied by evidence upon oath that it is probable that a person whose evidence is desired will not attend to give evidence without being compelled to do so, then, instead of issuing a summons, she or he may issue a warrant in the first instance.

Refusal of witness to be examined

65.³ (1) Where any person appears to give evidence or to produce any document or writing, either in obedience to a summons or by virtue of a warrant, or being present is orally required by the Court to give evidence or produce documents, if that person—

- (a) without lawful excuse, refuses to be examined on oath touching the matter of the information; or
- (b) refuses to take the oath; or
- (c) having taken the oath, refuses, without lawful excuse, to answer any question concerning the matter that is put to her or him; or
- (d) refuses or neglects to produce any documents mentioned in the summons or warrant or orally required to be produced (without offering sufficient excuse for any such refusal or neglect),

the Court may adjourn the proceedings for any period not exceeding eight clear days, and may in the meantime by warrant commit that person to gaol, a lock-up or a remand centre.

(2) If that person, upon being brought up on the adjourned hearing, again so refuses or neglects, the Court if it thinks fit may again adjourn the proceedings and commit the person for the like period, and so again from time to time until she or he consents to be sworn or to give evidence or to produce the documents:

Provided that any such imprisonment shall not in any case in the whole exceed one month.

Production of documents before Magistrate

66. Where a Magistrate has authority to summon any person as a witness, she or he shall have the like authority to require and compel her or him to bring and produce, for the purposes of evidence, all documents and writings in her or his possession or power, and to proceed against her or him, in case of neglect or refusal so to do, in the same manner as in case of neglect or refusal to attend or refusal to be examined:

Provided that a person shall not be bound to produce any document or writing not specified or otherwise sufficiently described in the summons, or which she or he would not be bound to produce upon a subpoena *duces tecum* in the Supreme Court.

Setting aside summons

66A. (1) A summons issued under section 61 or 66 may be set aside, wholly or in part, by the Court on the application of the person to whom the summons is addressed.

(2) An applicant shall serve a copy of the application on the party to the proceedings on whose request the summons was issued.

Person about to leave Territory may be ordered to be examined or produce documents

67. (1) Where, by evidence on oath, a Magistrate is satisfied that any person is able to give material evidence or to produce relevant or material documents relating to any information or claim pending before a Court, and that that person is likely to be absent from the Territory when the case comes on for hearing, the Magistrate may, on the application of any party, order that the evidence of that person be taken or the documents be produced before her or him, at any time before the hearing, in the same manner as the evidence would be taken or the documents be produced at the hearing and after reasonable notice of the intended examination or production is given to the other party.

(2) The taking of depositions before a Magistrate under subsection (1) is a proceeding for the purposes of section 54A.

Examination of witnesses—application of *Magistrates Court (Civil Jurisdiction) Act 1982*

67A. Section 201 of the *Magistrates Court (Civil Jurisdiction) Act 1982* applies in relation to proceedings on an information in respect of the alleged commission of an offence against a law in force in the Territory, as if references in that section to proceedings were references to proceedings on an information.

Affidavits—application of *Magistrates Court (Civil Jurisdiction) Act 1982*

67B. Sections 202, 203, 204, 209, 210, 211, 212 and 213 of the *Magistrates Court (Civil Jurisdiction) Act 1982* apply in relation to affidavits for use in proceedings under this Act.

Witnesses' rights and liabilities

68. Upon service on any person of an order in pursuance of the last preceding section, together with the payment or tender of a reasonable sum for expenses, that person shall attend at the time and place thereby appointed, and shall have all the rights and liabilities which she or he would have if she or he was duly summoned to appear to give evidence or to produce documents on the hearing.

Depositions to be delivered to the Registrar

69. (1) Where depositions are taken before a Magistrate in pursuance of section 67 there shall be delivered to the Registrar—

- (a) the record of the depositions made in accordance with subsection 54A (2) or the document containing the depositions as taken down in writing and signed in accordance with subsection 54A (3); and
- (b) any documents produced to the Magistrate.

(2) Where documents are produced by a person not giving evidence, the documents, shall, on delivery to the Registrar, be accompanied by a certificate signed by the Magistrate stating the name of the person producing them.

(3) Where the Court is satisfied that the person who made the depositions is not in the Territory, her or his depositions may be read by any party.

(4) Any documents so delivered to the Registrar may, subject to all just exceptions, be put in at the hearing as if produced at the hearing by the person producing them.

Division 3—Remand**Remand of defendant**

70. In any case of a person alleged to have committed an indictable offence, if, from the absence of witnesses or from any other reasonable cause, it becomes necessary or advisable to defer the hearing of the case, the Court may adjourn the hearing to the same or some other place, and may by its warrant from time to time remand the defendant to some gaol, lock-up or other place of security, for such period as the Court, in its discretion, deems reasonable, but not exceeding fifteen clear days at any one time, to be there kept, and to be brought before the Court at the time or place appointed for continuing the hearing.

Verbal remand

71. If the remand is for a time not exceeding three clear days, the Court may verbally order the person in whose custody the defendant then is, or any other person named by the Court in that behalf, to keep the defendant in her or his custody, and bring her or him before the Court at the time and place appointed for continuing the hearing.

Bringing up during remand

72. The Court may order the defendant to be brought before it at any time before the expiration of the time for which she or he was so remanded, and the officer in whose custody she or he then is shall duly obey the order.

Bail of defendant during examination

73. Instead of detaining the defendant in custody during the period for which she or he is remanded, the Magistrate before whom she or he appears or is brought may admit the defendant to bail in accordance with the provisions of the *Bail Act 1992*.

Division 4—Committal and Recognizance

Application of Division

73A. This Division applies in relation to a person in respect of whom a warrant has been issued under subsection 185 (8) of the *Magistrates Court (Civil Jurisdiction) Act 1982*.

Place of committal or detention

74. Where the Court commits a defendant by way of remand or upon adjournment, or at any time before the decision, it may commit to a gaol or lock-up, or any other place of security, or to such other safe custody as it thinks fit.

Places to which committal to be made

75. (1) Where the Court commits a witness, or a person sought to be made a witness, it shall commit the person to a gaol, lock-up or remand centre.

(2) Where the Court commits a defendant after the decision, it shall commit the person to a gaol or lock-up.

Witnesses may be discharged on recognizance

76.³ A witness, other than a witness committed under section 65 or under section 196 of the *Magistrates Court (Civil Jurisdiction) Act 1982*, or person sought to be made a witness may be discharged upon recognizance.

Recognizances

77. Where the Court is authorized to discharge the witness, or person sought to be made a witness, upon recognizance, it may order her or his discharge upon her or his entering into a recognizance, with or without a surety or sureties at its discretion, conditioned for her or his appearance at the time and place to which the hearing is adjourned, or which is named in the recognizance.

Issue of warrant for non-appearance

78. If the witness, or person sought to be made a witness does not appear at the time and place mentioned in the recognizance the Court may adjourn the hearing, and may issue a warrant for her or his apprehension in accordance with the provisions of Division 5 of Part IV of this Act.

Recognizances taken out of Court

79. Notwithstanding anything in this or any other Act, a recognizance under this Act need not be entered into before the Court, but may be entered into by the parties before any Magistrate or before any Registrar, or before a police officer who is in charge of a police station, or, where any one of the parties is in gaol or in a remand centre, before the keeper of the gaol or Superintendent of the remand centre, as the case requires; and thereupon all the consequences of the law shall ensue, and the provisions of this Act with respect to recognizances taken before the Courts shall apply, as if the recognizance had been entered into before the Court in accordance with the provisions of section seventy-seven of this Act.

Forfeited recognizances—how enforced

80. (1) Where the conditions, or any of them, in a recognizance entered by a witness or a person sought to be made a witness are not complied with, any Magistrate may certify upon the back of the recognizance in what respect the conditions have not been observed, and transmit it to the proper officer, to be proceeded upon in like manner as other recognizances, and that certificate shall be deemed sufficient *prima facie* evidence of the recognizance having been forfeited.

Conveying prisoners to gaol etc.

82. The person to whom a warrant of commitment is directed shall convey the person therein named or described to the gaol or other place mentioned in the warrant and there deliver her or him together with the warrant to the keeper of the gaol or place or, in the case of a remand centre, to the Superintendent of the remand centre, who shall thereupon give the person delivering the prisoner into her or his custody a receipt for the prisoner, setting forth the state and condition in which the prisoner was when she or he was delivered into the custody of the keeper or Superintendent.

Division 5—Adjournment of Proceedings

Magistrate may adjourn Court generally

83. Where all the cases have not been heard and determined at any sitting of the Court, the Magistrate may adjourn the cases remaining unheard or undetermined, either to the next day appointed for the holding of the Court or to such other time as she or he thinks fit.

Particular cases may be adjourned

84. (1) Where, before or during the hearing or further hearing of any information, it appears advisable, the Magistrate may, in her or his discretion, adjourn the hearing or further hearing to a certain time and place to be then appointed and stated in the presence and hearing of the parties or their respective counsel or solicitors or other persons appearing for them.

(2) The Magistrate may, in the meantime, suffer the defendant to go at large or commit her or him to gaol or a place of security, or to such other safe custody as the Magistrate thinks fit, or may admit the defendant to bail in accordance with the provisions of the *Bail Act 1992*.

Proceedings when either party is not present at adjourned hearing

85. If, at the time and place to which the hearing or further hearing is so adjourned, either or both of the parties do not appear personally or by her or his or their counsel or solicitors or other persons appearing for them respectively, the Court may proceed to the hearing or further hearing as if the party or parties were present, or, if the informant does not appear, the Court may dismiss the information, with or without costs as to the Court appears just.

Proceedings when both parties are present at adjourned hearing

86. If, at the time and place to which the hearing or further hearing is so adjourned, the parties appear personally or by their respective counsel,

solicitors or other persons appearing for them, the Court may, subject to the provisions of this Act, proceed with the further hearing.

Witnesses to attend adjourned sittings

87. All persons whose attendance to give evidence or produce documents has been required by summons in any cases which have been adjourned or postponed, shall attend at the time and place to which the case has been adjourned or postponed without the issue or service of any further summons, but shall nevertheless be entitled to their additional expenses for so attending.

Postponement of hearing

88. If, on the return of any summons or at any adjournment of the hearing or at the time to which the hearing is postponed, a Magistrate is not present, the Registrar may, and after the lapse of an hour, at the request of the informant, shall, postpone the hearing until the next day on which a Court will be held at the place mentioned in the summons or to which the case has been so adjourned.

PART VI—PROCEEDINGS IN CASE OF INDICTABLE OFFENCES

Division 1A—Preliminary

Meaning of “jury”

88A. In this Part, “jury” means a reasonable jury properly instructed.

Division 1—Institution of Proceedings

Disobedience of summons

89. (1) Subject to subsection (2), where a person who is alleged by an information to have committed an indictable offence and against whom a summons has been issued does not appear before the Court at the time and place mentioned in the summons, and it is made to appear to the Court, by oath, that the summons was duly served upon her or him a reasonable time before the time therein appointed for appearing to it, the Court, upon oath being made before it substantiating the matter of the information to its satisfaction, may issue its warrant for the arrest of the defendant and to bring her or him before the Court to answer to the information and to be further dealt with according to law.

(2) Subsection (1) does not apply where an order has been made under subsection 89A (1).

Accused person may be excused from attendance before Court

89A. (1) Where—

- (a) an information for an indictable offence has been laid; and
- (b) a summons has been issued against the person named in the information;

the Court may, on an application made by or on behalf of that person, by order excuse that person from attendance before the Court to answer the information or for any other purpose in connexion with the proceedings commenced by the information.

(2) An order under subsection (1) may be made—

- (a) at any time after the issue of the summons and before the completion of the taking of evidence for the prosecution;
- (b) whether or not any evidence has been taken in the proceedings; and
- (c) whether or not the applicant for the order is before the Court or has attended before the Court in connexion with the proceedings.

(3) The Court shall not make an order under subsection (1) unless the Court has been informed, by or on behalf of the applicant, that the applicant is represented by counsel or solicitor for the purposes of the proceedings.

(4) The Court may, at any time during proceedings commenced by an information for an indictable offence, direct the informant to give to a person in respect of whom an order has been made under subsection (1) notice in writing requiring her or him to attend before the Court, for the purposes of those proceedings, at such time and place as are specified by the Court.

(5) Where—

- (a) a person has been excused, under subsection (1), from attendance before the Court; and
- (b) after all the evidence for the prosecution has been taken, the Court is of the opinion, having regard to all the evidence before it, that the evidence is capable of satisfying a jury beyond reasonable doubt that the person has committed an indictable offence;

the Court shall direct the informant to give to the person a notice in writing requiring her or him to attend, at such time and place as are specified by the Court, to be dealt with in accordance with section 92.

(6) A notice under subsection (4) or (5) may be given to a person by delivering a copy of the notice to her or him or by leaving a copy of the notice at her or his last-known or usual place of residence or business with a person who is apparently an inmate of, or employed at, that place and is apparently over the age of 16 years.

(7) The giving of a notice under subsection (4) or (5) may be proved in the same manner as the service of a summons.

(8) If an accused person does not attend before the Court in accordance with a notice under subsection (4) or (5), the Court may issue a warrant for the arrest of the person and for bringing her or him before the Court at the time and place specified in the warrant.

Procedure where informant proposes to tender written statements to Court

90. (1) Where a person is alleged to have committed an indictable offence, the informant, not later than 14 days, or such shorter period as the Court may approve, before the date fixed for the taking of the preliminary examination, may give to that person a notice in writing—

- (a) informing her or him of the time and place of the preliminary examination;
- (b) stating that the Court will be asked to admit written statements as evidence without requiring the attendance of the persons who made the statements; and
- (c) setting out the terms of this section and section 90AA.

(2) A notice under subsection (1) is not duly given unless it is accompanied by—

- (a) a copy of the information;
- (b) a list of persons who have made written statements which the informant proposes to tender to the Court at the preliminary examination;
- (c) a copy of each of those statements;

- (d) a list of the documents and things (if any) referred to in those statements which the informant proposes to tender to the Court at the preliminary examination;
- (e) where a thing, not being a document, cannot adequately be described in that list, a photograph of that thing; and
- (f) a copy of each document mentioned in the list.

(3) A notice and accompanying documents may be given to an accused person in any manner in which a summons issued in respect of an information may be served under any provision of this Act.

(4) The giving of a notice under subsection (3) may be proved in the same manner as the service of a summons.

(5) Where a notice has been given to an accused person under this section, the informant, not later than 7 days, or such shorter period as the Court may approve, before the date set down for the preliminary examination, shall file with the Registrar a copy of the notice together with a copy of each document and photograph accompanying the notice.

(6) Where copies are filed with the Registrar under subsection (5), she or he shall transmit them before the preliminary examination to the Magistrate constituting the Court for the preliminary examination.

(7) The informant, if so requested by the accused person or her or his counsel or solicitor shall, before the taking of the preliminary examination, permit that person or her or his counsel or solicitor to inspect the documents and things referred to in the list (if any) given to the accused person in pursuance of paragraph (2) (d).

Written statements may be admitted in evidence

90AA. (1) Subject to this section, where an informant has duly given notice to an accused person under section 90, the Court at the preliminary examination may admit a written statement, a copy of which accompanied that notice, as evidence of the matters stated in the statement, and the statement shall thereupon constitute depositions of the person who made it.

(2) A written statement shall not be admitted in evidence by the Court unless—

- (a) it is made in the form of a statutory declaration;
- (b) it contains a statement that the person who made it—

- (i) has attained the age of 18 years; or
 - (ii) has attained the age of 14 years but not the age of 18 years;
and
- (c) it contains a statement that before she or he signed it, the person who made it read the statement or had it read to her or him.

(3) Where a person has made a written statement which, but for this subsection, would be admissible under subsection (1), that statement shall not be admissible where the accused person, not later than 5 days before the date set down for the preliminary examination, gives notice in writing to the informant that she or he requires the attendance at the preliminary examination of the person who made the statement.

(4) Where the accused person gives notice in writing to the informant under subsection (3), she or he shall file a copy of that notice with the Registrar.

(5) Where an accused person has given notice under subsection (3), she or he may, at any time before the preliminary examination, notify the informant in writing that she or he withdraws that notice and this section shall apply as if the notice under subsection (3) had not been given.

(6) Notwithstanding the failure by an accused person to give notice under subsection (3), she or he may object at the preliminary examination to a written statement being tendered in evidence and the Court may, if it thinks fit, uphold the objection and require the person who made the statement to attend and give evidence to the Court.

(7) Where, under this section, the Court admits a written statement, the Court may, of its own motion, require the person who made the statement to attend before the Court to give evidence.

(8) Where it appears to the Court that any part of a written statement tendered in evidence under this section is inadmissible according to the rules of evidence, the Court may, where the statement is otherwise admissible under this section, admit that statement, but, where it does so, shall identify the part that is inadmissible and shall, with reference to that part, write on the statement the words “ruled inadmissible” or words to that effect.

(9) Where the Court admits a written statement under this section, the informant, or the counsel or solicitor for the prosecution, may call the person who made the statement to give oral evidence and that person and

any other witnesses, not being witnesses called by the accused person, who attend before the Court—

- (a) shall be examined in the presence or hearing of the accused person and, if the accused person so desires, in the presence or hearing of her or his counsel or solicitor; and
- (b) may be cross-examined by the accused person or her or his counsel or solicitor.

Preliminary examination where written statements not tendered

90AB. Where a person is alleged to have committed an indictable offence and a notice has not been given to that person in accordance with section 90, the Court shall, in the presence or hearing of the accused person and, if the accused person so desires, in the presence or hearing of her or his counsel or solicitor, take the preliminary examination or statement on oath of any persons who know the facts and circumstances of the case, and the accused person or her or his counsel or solicitor may cross-examine those persons.

Attendance not required under section 90AA or 90AB where order made under subsection 89 (1)

90ABA. An accused person is not required to be present during the preliminary examination under subsection 90AA (9) or section 90AB where she or he is excused from attendance during that examination under section 89A.

Plea of guilty in committal proceedings

90A. (1) This section does not apply in relation to a person charged with an indictable offence punishable by imprisonment for life.

(1A) Subsections (1B), (2), (3) and (4) do not apply in relation to a person charged with an offence in relation to which section 477 of the Crimes Act applies.

(1B) A person (in this section referred to as “the accused person”) who is before the Court charged with an indictable offence may at any stage of the proceedings plead guilty to the charge.

(2) The Court may accept or reject the plea but the rejection of the plea at any stage of the proceedings does not prevent the accused person from pleading guilty in pursuance of this section at a later stage of the proceedings and the Court may accept or reject the plea at that later stage.

(3) Where the Court rejects the plea, the proceedings before the Court shall continue as if the plea had not been made.

(4) Where the Court accepts the plea and—

- (a) the offence is one that, under any law in force in the Territory is punishable either on indictment or on summary conviction;
- (b) the offence is one that may be dealt with summarily without the consent of the accused person;
- (c) the offence is one that may be dealt with summarily if the accused person consents to its being so dealt with and the accused person does so consent; or
- (d) the offence is one that may, upon the request of the prosecutor, be dealt with summarily and the prosecutor requests that it be so dealt with,

and it appears to the Court that it is proper to deal with the case summarily, the Court may, without hearing further evidence, sentence or otherwise deal with the accused person and finally dispose of the charge and all incidental matters.

(5) Where the Court accepts the plea and—

- (a) it does not appear to the Court that it is proper to deal with the case summarily;
- (b) the offence is one that is punishable only on indictment;
- (c) the offence is one that may be dealt with summarily if the accused person consents to it being so dealt with and the accused person does not so consent;
- (d) the offence is one that may, upon the request of the prosecutor, be dealt with summarily and the prosecutor does not so request; or
- (e) this section applies to an accused person by virtue of section 477 of the Crimes Act,

the Court shall commit the accused person to such sittings of the Supreme Court as the Court directs and the Supreme Court shall deal with the accused person in accordance with the succeeding provisions of this section.

(6) A committal under the last preceding subsection shall, for all purposes relating to the venue or change of venue of proceedings consequent on that committal, be deemed to be a committal for trial.

(7) The Supreme Court shall, where it appears to the Supreme Court from the information or evidence given to or before it that the facts in respect of which the accused person was charged before the Court do not support the charge to which the accused person pleaded guilty or where the accused person or counsel for the Crown requests that an order be made under this subsection, and may, where for any other reason it sees fit so to do, order that the proceedings before the Court at which the accused pleaded guilty be continued at a time or place specified in the order.

(8) Except where an order is made in pursuance of the last preceding subsection, the Supreme Court has the same powers of sentencing or otherwise dealing with the accused person and of finally disposing of the charge and of all incidental matters as it would have had if the accused person, or arraignment at any sittings of the Court, had pleaded guilty to the offence charged on an indictment filed by the Attorney-General or the Attorney-General of the Commonwealth.

(9) The procedure relating to committal for trial applies, as nearly as may be, to a committal under subsection (5) of this section and bail may be granted as on a committal for trial, but a person shall not be bound over to give evidence on a committal under that subsection unless the Court otherwise orders.

(10) Where an order is made by the Supreme Court under subsection (7) of this section that proceedings before a Court at which an accused person pleaded guilty be continued at a time and place specified in the order—

- (a) those proceedings shall be continued in all respects as if the accused person had not pleaded guilty and as if those proceedings had been adjourned by the Court to the time and place so specified; and
- (b) the Supreme Court may exercise any power that the Court might have exercised under Division 3 of Part V of this Act if the order had been an order made by the Court adjourning the proceedings to the time and place so specified, and the provisions of Division 3 of Part V apply to and in respect of the accused person.

Court may discharge accused

91. When all the evidence offered upon the part of the prosecution against a person charged with an indictable offence has been taken, the Court shall—

- (a) if the Court is not of the opinion referred to in paragraph (b)—forthwith order the accused person, if in custody, to be discharged from custody in respect of that offence; or
- (b) if the Court is of the opinion, having regard to all the evidence before it, that the evidence is capable of satisfying a jury beyond reasonable doubt that the accused person has committed an indictable offence—proceed as hereinafter provided.

Proceedings where evidence sufficient to put accused on trial

92. (1) Where the Court is of the opinion, having regard to the evidence for the prosecution, that the evidence is capable of satisfying a jury beyond reasonable doubt that the accused person has committed an indictable offence, the Court shall charge the accused person with such offence and shall say to the accused person these words, or words to the like effect: “Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so; but whatever you say may be given in evidence against you upon your trial. You are clearly to understand that you have nothing to hope from any promise or favour, and nothing to fear from any threat which may have been held out to you to induce you to make any admission or confession of your guilt; but whatever you now say may be given in evidence against you upon your trial, notwithstanding any such promise or threat.”.

(1A) Subsection (1) does not apply in relation to a person charged with an indictable offence if the Court has decided to dispose of the case summarily pursuant to a law in force in the Territory.

(2) Where the Court commits the accused person for trial before the Supreme Court, any statement made by the person in reply to the question referred to in subsection (1) is, upon the trial of the accused person, admissible as evidence.

(3) Whether or not the accused person makes a statement in reply to the question referred to in subsection (1), the Magistrate shall ask her or him if she or he desires to give evidence herself or himself or to call any witnesses on her or his behalf and, if the accused person or any other person then gives evidence, the prosecutor is at liberty to cross-examine the witness and to adduce evidence in reply.

Committal for sentence for indictable offence tried summarily

92A. (1) Upon the summary conviction of a person charged with an indictable offence, the Court may, where it appears to it that by reason of the character and antecedents of that person it is desirable that sentence be passed upon her or him by the Supreme Court, commit her or him for sentence to such sittings of the Supreme Court as the Court directs.

(2) Where the Court commits a person for sentence in pursuance of subsection (1), the Court shall deal with her or him in the same way as a person who is committed for trial in pursuance of paragraph 94 (b).

(3) The Supreme Court has the same powers of sentencing or otherwise dealing with a person committed for sentence in pursuance of this section as it would have had if that person had been convicted in that court.

Depositions as evidence

92B. Where—

- (a) a person is charged with an indictable offence;
- (b) the person has not admitted the truth of the charge; and
- (c) the Court has decided to dispose of the case summarily pursuant to a law in force in the Territory,

the depositions of the witnesses who gave evidence for the prosecution at the preliminary hearing shall be deemed to be evidence given on the hearing of the charge and those witnesses, or any of them, shall, if so required by the prosecutor or the defendant, be called or recalled, as the case requires, for examination or cross-examination.

Admissions and confessions

93.

(4) Nothing in this Act shall prevent the prosecutor in any case from giving in evidence any admission or confession or other statement of the defendant made at any time, which by law would be admissible as evidence against that person.

Division 2—Proceedings subsequent to Hearing of Evidence

Discharge or committal for trial

94. When all the evidence for the prosecution and the defence has been taken—

- (a) if the Court is of opinion, having regard to all the evidence before it, that a jury would not convict the defendant of an indictable offence—it shall forthwith order the defendant, if she or he is in custody, to be discharged as to the information then under inquiry; and
- (b) if the Court is not of the opinion referred to in paragraph (a)—it shall commit her or him to take her or his trial for the offence before the Supreme Court, and in the meantime either shall by warrant commit her or him to gaol, a lock-up or a remand centre, to be there safely kept until the sittings of the Court before which she or he is to be tried, or until she or he is delivered by due course of law or admitted to bail as provided in this Act or at once admit her or him to bail as hereinafter provided.

Depositions of dead or absent persons

95. Where, upon the trial of a person who has previously been charged before the Court with an indictable offence and committed for trial, it is proved—

- (a) that a witness whose depositions were taken at the hearing of the charge before the Magistrate is dead or so ill as not to be able to travel or to give evidence, or is absent from the Commonwealth;
- (b) that the depositions of the witness were taken in the presence of the accused person; and
- (c) that the accused person or her or his counsel or solicitor had a full opportunity of cross-examining the witness,

the depositions are admissible as evidence—

- (d) if taken in the manner specified in subsection 54A (3), be read as evidence at the trial of the accused person without further proof unless it is proved that the Magistrate by whom the depositions purport to have been signed did not in fact sign them; or
- (e) if recorded by one of the means specified in subsection 54A (2), be read as evidence at the trial of the accused person if it is proved that the record is a correct record of the depositions and that the transcript is a correct transcript of that record.

Evidence for defence

96. Where a person is charged with an indictable offence as such, the Court shall be bound to hear any evidence tendered on her or his behalf

tending to show that the defendant is not guilty of the offence with which she or he is charged.

Division 2A—Costs

Discontinued proceedings

97. Where—

- (a) in proceedings under this Part, the Court is of the opinion that the evidence for the prosecution is not capable of satisfying a jury beyond reasonable doubt that the accused person has committed an indictable offence or is of the opinion, having regard to all the evidence before it, that a jury would not convict the defendant of an indictable offence; or
- (b) proceedings under this Part are discontinued for any other reason,

the Court may order that the informant shall pay to the defendant such costs as the Court thinks just.

Division 3—Recognizances of Witnesses

Recognizance of witnesses etc.

103. (1) The Court may bind by recognizance every person whose written statement was admitted in evidence in pursuance of section 90AA, or who was examined before it, to appear at the court at which the defendant is to be tried, and then and there to give evidence against the defendant.

(2) The recognizance shall particularly specify the profession, trade, or calling of every person who enters into it, together with her or his Christian name and surname, and the place of her or his residence.

Signature of Magistrate

Notice to witnesses

104. Every such recognizance shall be duly acknowledged by every person who enters into it, and shall be subscribed by the Magistrate before whom it is acknowledged, and a notice thereof signed by the Magistrate shall at the same time be given to every person bound thereby.

Court may commit refractory witness

105. If a witness refuses to enter into the recognizance, the Court may by warrant commit her or him to gaol or to a remand centre, there to be

safely kept until after the trial of the defendant, unless in the meantime the witness duly enters into the recognizance before a Magistrate:

Provided that if afterwards, the defendant is not committed for trial for the offence with which she or he is charged, or if the duly appointed officer declines to file an information against the defendant for the offence, any Magistrate, upon being duly informed of the fact, may, by her or his order in that behalf, order and direct the keeper of the goal or Superintendent of the remand centre, as the case requires where the witness is in custody to discharge her or him from custody, and the keeper or Superintendent shall thereupon forthwith discharge her or him accordingly, as to that warrant.

Division 4—Miscellaneous

Transmission of depositions etc. to Director of Public Prosecutions

106. (1) Where a defendant is committed for trial or for sentence the Court shall as soon as possible after the conclusion of the case before it, transmit to the Director of Public Prosecutions or a person authorized by the Director of Public Prosecutions all informations, examinations, depositions, statements, bail undertakings and other documents sworn taken or acknowledged in the case.

(2) The reference in the last preceding subsection to depositions shall be read as a reference to a certified copy of depositions and the reference in that subsection to statements shall be read as including a reference to a certified copy of the statement, if any, made by a defendant in reply to the question referred to in subsection 92 (1).

Delivery of documents to proper officer of Court

107. (1) After the transmission of the documents and before the day of trial, the Director of Public Prosecutions or a person authorized by the Director of Public Prosecutions shall have and be subject to the same duties and liabilities with respect to the documents upon a *certiorari* directed to her or him, or upon a rule or order directed to her or him in lieu of that writ, as the Court would have had and been subject to upon a *certiorari* to it if the documents had not been transmitted.

(2) The Director of Public Prosecutions, a person authorized by the Director of Public Prosecutions, the person representing the Director of Public Prosecutions or the officer in any case prosecuting on behalf of the Crown, shall, at any time after the opening of the Court at the sitting at which the trial is to be had, deliver or cause to be delivered the documents

or any of them to the proper officer of the Court, if the presiding judge so directs.

Copies of depositions may be obtained by accused

108. (1) Where any person charged with any indictable offence is directed by the Court to be tried, if that person, at any time after the examinations in her or his case have been concluded and before the first sitting of the Court at which she or he is to be tried, makes application to the officer having the custody thereof, that person shall receive from the officer certified copies of the depositions on which she or he has been directed to be tried, and of the evidence given on the cross-examination or the examination of any witnesses that have been cross-examined or called and examined by or on behalf of that person.

(2) Any gaoler or officer having that person in his custody shall convey or cause to be conveyed any such application to the officer having the custody of the depositions and evidence.

PART VII—PROCEEDINGS IN CASE OF OFFENCES PUNISHABLE SUMMARILY

Indictable offences dealt with summarily

108A. Where—

- (a) a person is charged with an indictable offence; and
- (b) the Court has decided to dispose of the case summarily pursuant to a law in force in the Territory,

this Part applies, so far as it is applicable, to the summary disposal of the case.

Dismissal or adjournment in absence of informant

109. If upon the day at the place appointed by the summons for hearing and determining an information of an offence punishable summarily, the defendant attends voluntarily in obedience to the summons, or is brought before the Court by virtue of a warrant, and the informant (having had notice of the day and place) does not appear by herself or himself, her or his counsel, or solicitor, the Court shall dismiss the information unless for some reason it thinks proper to adjourn the hearing of the information to some other day.

***Ex parte* hearing in absence of defendant**

110. (1) Where a summons has been served in accordance with section 41 and the defendant does not appear when called, the Court may either—

- (a) proceed *ex parte* to hear and determine the case in the absence of the defendant; or
- (b) upon oath being made before it, substantiating the matter of the information to its satisfaction, issue its warrant for the arrest of the defendant and to bring her or him before the Court to answer to the information and be further dealt with according to law.

(2) Where the Court proceeds pursuant to paragraph (1) (a)—

- (a) the evidence of the informant or another person may be given orally; or
- (b) a written statement made by the informant or another person may be admitted as evidence of the matters contained in it.

(3) A written statement admitted in evidence shall constitute the depositions of the person who made the statement.

(4) A written statement shall not be admitted in evidence unless it is sworn before—

- (a) a person who is enrolled as a legal practitioner of the High Court or of the Supreme Court of a State or Territory;
- (b) a Justice of the Peace;
- (c) a Commissioner for Affidavits;
- (d) a Commissioner for Declarations;
- (e) a Notary Public; or
- (f) a police officer holding or acting in the rank of Superintendent authorised in writing by the Commissioner of Police for the purpose.

(5) Where the Court admits a written statement in evidence it may, of its own motion, adjourn the hearing of the information and require the person who made the statement to attend before the Court to give evidence.

(6) Although a part of a written statement tendered in evidence under this section is inadmissible according to the rules of evidence, that

statement is nevertheless admissible under this section as evidence of the matters contained in the remainder of that statement, but if the Court admits such a statement, the Court shall identify the part that is inadmissible and shall, with reference to that part, write on the statement “ruled inadmissible” or words to that effect.

Magistrate may adjourn the case

111. Where the Court upon the non-appearance of the defendant issues its warrant, it shall adjourn the hearing of the information until the defendant is arrested, and if the defendant is afterwards arrested under the warrant she or he shall be detained in safe custody until she or he can be brought up before the Court at a convenient time and place of which the informant shall have due notice.

Both parties appearing

112. If both parties appear either personally or by counsel or solicitor, the Court shall proceed to hear and determine the information.

Proceedings at the hearing on defendant’s confession

113. Where the defendant is present at the hearing, the substance of the information shall be stated to her or him, and she or he shall be asked if she or he has any cause to show why she or he should not be convicted or why an order should not be made against her or him, and if she or he has no cause to show, the Court may convict her or him, or make an order against her or him accordingly.

Where defendant does not admit the case

114. If the defendant does not admit the truth of the information, the Court shall proceed to hear the informant and her or his witnesses and also the defendant and her or his witnesses and also such witnesses as the informant may examine in reply, if the defendant has given any evidence other than as to her or his general character; and the Court having heard what each party has to say, and the evidence so adduced, shall consider the whole matter and determine it, and shall convict or make an order upon the defendant or dismiss the information as justice requires.

Court may proceed to hearing in absence of both or either of the parties

115. If at the time or place to which a hearing or further hearing is adjourned, either or both of the parties does not or do not appear personally or by counsel or solicitor, the Court may proceed to the hearing or further

hearing as if the party or parties were present, or if the informant does not appear the Court may dismiss the information with or without costs.

Conduct of summary proceedings regulated

116. The defendant or her or his counsel or solicitor may address the Court after all the evidence for the informant and the evidence (if any) for the defendant and for the informant in reply has been given and the informant or her or his counsel or solicitor shall have a closing address.

PART VIIA—SERVICE AND PLEADING BY POST WITH RESPECT TO CERTAIN OFFENCES

Interpretation

116A. (1) In this Part, unless the contrary intention appears—

“defendant” means a person who has been duly served with a summons in accordance with section 116B;

“prescribed offence” has the meaning given by subsection (3).

(2) A reference in this Part, other than in subsection 116B (2), to the Notice to Defendant form, the Notice of Intention to Defend form or the Plea of Guilty form shall be read as a reference to a copy of that form printed on the back of a copy of a summons.

(3) An offence against a law in force in the Territory is a prescribed offence in relation to a person if—

- (a) in the case of an offence against the *Motor Traffic Act 1936*—the maximum penalty applicable to that person is a fine not exceeding the amount specified in subsection 192 (2) of that Act;
- (b) in the case of an offence against the *Motor Vehicles (Dimensions and Mass) Act 1990*—the maximum penalty applicable to that person is a fine not exceeding \$2,000; or
- (c) in the case of an offence against any other law in force in the Territory—the maximum penalty applicable to that person is a fine not exceeding \$1,000;

whether or not any other penalty may be imposed with that fine.

(4) In this Part, a reference to a law in force in the Territory includes a reference to—

- (a) the Australian National University Parking and Traffic Statute as amended and in force from time to time; and

- (b) where that statute is repealed and remade—any such remade statute as amended and in force from time to time.

Service of summons

116B. (1) Without prejudice to the methods of service provided for by subsection 41 (1), a summons with respect to a prescribed offence may be served upon the person to whom it is directed—

- (a) by delivering 2 copies of the summons to her or him personally;
- (b) by sending 2 copies of the summons by post addressed to her or him at her or his last known place of residence or business; or
- (c) by leaving 2 copies of the summons at her or his last known place of residence or business with a person apparently resident or employed at that place and apparently over the age of 16 years.

(2) One copy of a summons with respect to a prescribed offence served in accordance with this section shall have the Notice to Defendant form printed on the back of it, and the other copy of that summons so served shall have the Notice of Intention to Defend form and the Plea of Guilty form printed on the back of it.

(3) Service in accordance with this section of a summons with respect to a prescribed offence, being service in a manner referred to in paragraph (1) (a) or (c), shall be effected not less than 14 days before the day on which the person to whom it is directed is required by the summons to appear before the Court.

(4) Where a summons with respect to a prescribed offence is served in accordance with this section in the manner referred to in paragraph (1) (b), the 2 copies of the summons shall be sent by post not less than 21 days before the day on which the person to whom it is directed is required by the summons to appear before the Court.

Giving of notice

116BA. Where the Registrar is required to give notice to a person under this Part, the notice may be served by sending a copy by post addressed to the person at his or her last known place of residence or business.

Proof of service

116C. (1) Service of a summons or notice for the purposes of this Part may be proved by the oath of the person who served it, by affidavit or otherwise.

(2) For the purposes of this Part, where—

- (a) a summons has been served in accordance with section 116B; and
- (b) a copy of the summons is returned to the Registrar with the Notice of Intention to Defend form or the Plea of Guilty form completed,

the defendant shall, unless the contrary is proved, be taken to have completed and signed the form so completed and to have returned the form to the Registrar.

(3) The Plea of Guilty form shall be signed in the presence of one of the following persons:

- (a) the Registrar;
- (b) a person who is enrolled as a legal practitioner of the High Court or of the Supreme Court of a State or Territory;
- (c) a Justice of the Peace;
- (d) a prescribed person.

Pleas

116D. A defendant may—

- (a) without prejudice to any other means of pleading guilty, enter a plea of guilty by completing the Plea of Guilty form and returning the form, whether by post or otherwise, to the Registrar; or
- (b) give notice of her or his intention to defend by completing the Notice of Intention to Defend form and returning the form, whether by post or otherwise, to the Registrar.

Procedure where plea of guilty entered

116E. (1) Where—

- (a) a defendant enters a plea of guilty in accordance with section 116D;
- (b) the defendant—
 - (i) does not appear at the hearing; or

(ii) appears but does not withdraw her or his plea of guilty;

and

(c) the Court accepts the plea of guilty,

the Court shall record a plea of guilty and determine the proceedings accordingly.

(2) The Court shall, in determining proceedings in pursuance of subsection (1), have regard to the matters (if any) drawn to the attention of the Court in the plea of guilty and shall give to those matters such weight as to the Court seems proper.

(3) Where the Court declines to accept a plea of guilty entered in accordance with section 116D—

(a) the Court shall adjourn the hearing and fix a time and place for the hearing of the proceedings; and

(b) if the defendant is not before the Court, the Registrar shall give to the defendant notice of the time and place so fixed.

(4) Where a defendant does not appear at the time and place fixed under subsection (3), the Court may hear and determine the proceedings in the absence of the defendant.

Procedure where notice of intention to defend given

116F. Where a defendant returns the Notice of Intention to Defend form to the Registrar before the day on which she or he is required by the summons to appear before the Court—

(a) the Court shall fix a time and place for the hearing of the proceedings; and

(b) the Registrar shall give to the defendant notice of the time and place so fixed.

Procedure where defendant pleads not guilty

116FA. Where the defendant appears before the Court at the time and place at which he or she is required by the summons to appear and pleads not guilty, the Court shall 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.

Procedure where defendant does not plead

116G. Where—

- (a) a summons has been served in accordance with section 116B;
- (b) either—
 - (i) the defendant does not enter a plea of guilty in accordance with section 116D or return the Notice of Intention to Defend form to the Registrar before the day on which she or he is required by the summons to appear before the Court, and does not appear before the Court at the time and place specified in the summons; or
 - (ii) the defendant does not appear before the Court at the time and place specified in the notice given to her or him in accordance with section 116F or fixed by the Court in accordance with section 116FA; and
- (c) the Court is satisfied—
 - (i) that the matters alleged in the summons are reasonably sufficient to inform the defendant of the offence alleged against her or him; and
 - (ii) that the matters so alleged constitute the offence charged in the summons,

the Court may convict the defendant of the offence charged in the summons.

Restrictions on the imposition of penalties under this Part**116H. (1)** Subject to subsection (4), where—

- (a) a defendant is convicted under this Part of an offence against a law referred to in a paragraph of subsection 116A (3); and
- (b) at the time that the defendant is sentenced, the defendant is not before the Court or is not represented before the Court by counsel or a solicitor;

the only penalty that the Court may impose is a fine of an amount not exceeding the amount referred to in that paragraph.

(2) Subsection (1) does not prevent a Court imposing a penalty of imprisonment in default of payment of a fine.

(3) Where—

- (a) the Court convicts a defendant of an offence against a law referred to in a paragraph of subsection 116A (3);
- (b) the law provides in effect that a penalty other than a fine may be imposed on the defendant; and
- (c) at the time that the defendant is sentenced, the defendant is not before the Court or is not represented before the Court by counsel or a solicitor;

and the Court considers that a penalty other than a fine may be appropriate—

- (d) the Court shall adjourn the hearing and fix a time and place for sentence; and
- (e) the Registrar shall give to the defendant notice of the time and place so fixed.

(4) Where a defendant convicted of an offence against a law referred to in a paragraph of subsection 116A (3) does not appear at the time and place fixed under subsection (3), the Court, in the absence of the defendant, may impose on the defendant any penalty that is applicable under that law.

Consequences of conviction *ex parte*

116I. (1) Where a defendant is, in her or his absence, convicted of an offence, the Registrar shall give to the defendant notice in writing of—

- (a) the conviction and order of the Court;
- (b) where the order of the Court includes the imposition of a fine, the time allowed by the Court for the payment of the fine; and
- (c) except where the proceedings are determined in accordance with subsection 116E (1), the defendant's right to apply for the setting aside of the conviction or order in accordance with section 23.

PART IX—ENFORCEMENT OF DECISIONS

Division 1—General

Minute of decision to be made and served on defendant

141. (1) Where the Court convicts or makes an order against a defendant—

- (a) a minute or memorandum of the conviction or order shall be made and signed by the Magistrate exercising the jurisdiction of the Court; and

(b) the defendant shall be notified in writing of the conviction or order.

(1AA) Failure to comply with subsection (1) does not invalidate a conviction or order or the enforcement of a conviction or order.

(1A) Where the Court convicts a person under subsection (2) of section one hundred and thirty-nine B of the *Motor Traffic Act 1936-1972* the Court shall, in the minute or memorandum of conviction, add a memorandum in accordance with or to the effect of Form 35A in the First Schedule to this Act.

(2) The minute shall not form any part of the warrant of commitment or of execution.

(3) A document purporting to be a copy of the minute or memorandum signed by the Registrar shall be *prima facie* evidence in all courts of law of the making of the conviction or order.

Formal convictions and orders

142. The conviction or order shall afterwards, if required, be drawn up by the Court in proper form, and it shall cause the conviction or order to be lodged with the Registrar, to be by her or him filed among the records of the Court:

Provided that it shall not be necessary for a Court formally to draw up a conviction or order or any other record of a decision, unless it is demanded by a party to the proceedings for the purpose of an appeal against the decision, or is required for the purpose of a return to a writ of *habeas corpus* or other writ from the Supreme Court.

Proceedings in case of dismissal

143. (1) If the Court dismisses the information the Court shall make an order of dismissal, and shall, on application, give the defendant a certificate thereof signed by the adjudicating Magistrate or the Registrar.

(2) The certificate, without further proof, shall, on its production be a bar to any other information or legal proceeding in any Court (other than proceedings on appeal) for the same matters respectively against the same party.

Copies of informations and other documents

144. (1) Upon application, the Registrar shall give the applicant a copy of—

- (a) an information;
 - (c) a minute or memorandum of a conviction or order; or
 - (d) a formal conviction or order.
- (2) The Registrar may refuse an application under subsection (1) if—
- (a) the applicant is not a party to the relevant proceedings; and
 - (b) the Registrar or a Magistrate is not satisfied that the applicant has a good reason for being given that copy.

Imprisonment in first instance

145. Where the Court upon a conviction sentences the defendant to be imprisoned with or without hard labour, it shall issue its warrant of commitment accordingly.

Division 2—Warrants of Execution and Commitment³

Interpretation

146. In this Division—

“parking offence” means the contravention, before 14 February 1990, of a provision of Part X of the Motor Traffic Act, other than sections 150, 163G, 163H, 163J, 163K and 163MA; and

“traffic offence” means the contravention, before 18 May 1992, of a provision of the Motor Traffic Act in respect of which a traffic infringement notice under section 180A may be issued.

No imprisonment for breach of reparation order

146A. A reference in subsection 147 (2) or 150 (1) or in paragraph 151 (1) (b) to an order shall not be read as including a reference to an order under section 437 of the Crimes Act, 1900 of the State of New South Wales in its application to the Territory.

Warrants of execution

147.^{2 and 3} **(1)** Except where the conviction or order is made against a corporate body, the judgment is given or entered or the order is made in respect of a claim or the order is that costs be paid by an informant to a defendant or by a defendant to an informant, any fine or penalty or any sum of money or costs adjudged to be paid by any conviction or order made by the Court shall not be, or be adjudged to be, levied by distress.

(2) Where a natural person is ordered to pay an amount being a penalty, sum of money or costs under a conviction or order, the conviction or order shall also provide that in default of payment of the amount in accordance with the terms of the conviction or order, the person shall be imprisoned for the period specified in the conviction or order until the amount is paid.

(2A) Subsection (2) does not apply to a judgment given or entered or an order made in respect of a claim.

(2B) Subsection (2) does not affect the provisions relating to periodical payments contained in the *Maintenance Act 1968* or in the Lunacy Act of 1898, of the State of New South Wales in its application in the Territory.

(2C) Where a person is ordered to pay an amount or do any other thing under a conviction or order, the conviction or order shall also contain a statement to the effect that, in default of compliance with the order, the person would become liable to pay the fee determined under subsection 248A (1) for the purposes of this subsection.

(3) Whenever any corporate body is by any conviction or order adjudged to pay any fine, penalty, sum of money or costs or an informant is ordered to pay costs to a defendant or a defendant is ordered to pay costs to an informant, the conviction or order shall operate as a judgment given or entered in respect of a claim for the payment of money and be enforceable as such order.

(3AA) Subsections (2) and (3) do not apply in relation to a natural person or a body corporate, as the case requires, against whom a conviction or order in respect of a parking offence is made after the commencement of this subsection.

(3AB) Subsections (2) and (3) do not apply in relation to a natural person or a body corporate, as the case requires, against whom a conviction or order in respect of a traffic offence is made after the commencement of this subsection.

(3A) Where, in the enforcement of a conviction or order of the kind referred to in subsection (3), a warrant of execution is issued under section 158, the provisions of Part XVII of the *Magistrates Court (Civil Jurisdiction) Act 1982*, other than section 232, apply to and in relation to property taken or to be taken by a bailiff under that warrant, and to the proceeds of a sale of that property, as if—

- (a) a reference in that Part to a judgment debtor were a reference to the party against whom the warrant is issued; and
- (b) a reference in that Part to the plaintiff or judgment creditor were a reference to the party obtaining the warrant.

(4) Notwithstanding anything contained in this section, where in any law in force in the Territory provision is made for the recovery or enforcement of payment of any fine, penalty, sum of money or costs in any particular manner, such fine, penalty, sum of money or costs may be recovered or payment thereof may be enforced in that manner.

Parking and traffic offences

147A. (1) This section applies to a conviction or order in respect of a parking offence made after the commencement of this section.

(1A) This section applies to a conviction or order in respect of a traffic offence made after the commencement of this subsection.

(2) Where, by a conviction or order in respect of a parking or traffic offence to which this section applies, it is adjudged that any penalty for the offence and costs (if any) shall be paid by a person, the Court shall order that, in default of payment in accordance with the terms of the conviction or order, a copy of the conviction or order shall be forwarded to the Registrar of Motor Vehicles—

- (a) for suspension of the person's driving licence or suspension of the registration of the motor vehicle in respect of which the parking or traffic offence occurred; or
- (b) for suspension of the person's right to drive in the Territory, suspension of the right to drive in the Territory the motor vehicle in respect of which the parking or traffic offence occurred, or suspension of the person's right to drive in the Territory and the right to drive the motor vehicle in the Territory, as the case requires;

in accordance with section 162E or 180F, as the case requires, of the Motor Traffic Act.

(3) When a conviction or order to which this section applies is made—

- (a) if the defendant is before the Court, the Registrar shall cause a copy of section 162E or 180F of the Motor Traffic Act, as the case requires, to be given to the defendant; or

- (b) if the defendant is not before the Court, the Registrar shall cause a copy of section 162E or 180F of the Motor Traffic Act, as the case requires, to be attached to the notice of the conviction or order served on the defendant.

Court may allow time to pay etc.

148. (1) Where the Court, by a conviction or order, imposes a fine or penalty, or orders that a sum of money or costs be paid—

- (a) the Court shall, in the case of a fine imposed on conviction for an offence where the summons was served in accordance with section 116B; and
- (b) the Court may, in any other case,

allow time for the payment of the amount.

(1A) In the case of a fine referred to in paragraph (1) (a), the time allowed by the Court shall be not less than 14 days from the date of conviction.

(1B) In addition to allowing time for the payment of an amount, the Court may, in any case—

- (a) direct payment of the amount to be made by instalments; and
- (b) direct that the person liable to pay the amount give security, to the satisfaction of such person as is specified by the Court, with or without sureties, for the payment of the amount or of an instalment of the amount.

(1C) The security referred to in paragraph (1B) (b) shall be given, and may be enforced, in the manner provided by this Act.

(2) Where a sum or costs is or are directed to be paid by instalments and default is made in the payment of any one instalment, the same proceedings may be taken as if the original conviction or order had ordered the payment of all the instalments then remaining unpaid and default had been made therein.

(3) The Court directing the payment of a sum or costs, or of an instalment of a sum or costs, may direct the payment to be made at such time or times and in such place, and to such person, as the Court specifies; and every person to whom any such sum or costs or instalments is or are paid, if she or he is not the Registrar, shall forthwith pay over or account for the sum or costs or instalment to the Registrar.

Committal to prison where fine or costs not paid

150. (1) Where a natural person defaults in payment of an amount being a penalty, sum of money or costs that is payable under a conviction or order, a Magistrate may, by warrant, commit the person to prison in accordance with the terms of the conviction or order until the amount is paid.

(1AA) Subsection (1) does not apply in respect of an amount payable under a judgment given or entered or an order made in respect of a claim.

(1A) Subsection (1) does not apply in relation to a person against whom a conviction or order has been made in respect of a parking offence before the commencement of this subsection if a warrant has not been issued under subsection (1).

(1B) Subsection (1) does not apply in relation to a person against whom a conviction or order has been made in respect of a traffic offence before the commencement of this subsection if a warrant has not been issued under subsection (1).

(2) Where—

- (a) the summons in proceedings was served in accordance with section 116B;
- (b) the defendant was convicted in her or his absence; and
- (c) it was adjudged that the defendant pay a fine or penalty or a sum of money,

a warrant issued under subsection (1) shall not be executed unless—

- (d) a member of the Police Force has made a demand upon the defendant for payment of the fine, penalty or sum of money;
- (e) a period of 7 days has expired since that demand was made; and
- (f) the fine, penalty or sum of money has not been paid in full.

(3) A demand referred to in paragraph (2) (d) shall be made—

- (a) to the defendant in person; or
- (b) by writing addressed to the defendant and left at her or his last known place of residence or business with a person apparently resident or employed at that place and apparently over the age of 16 years.

Parking and traffic offences—further orders in respect of natural persons

150A. (1) Where, but for subsection 150 (1A), a person would have been liable to be committed to prison pursuant to subsection 150 (1) in respect of a conviction or order in respect of a parking or traffic offence, the Court shall, on the matter being placed before the Court by the Registrar, make a further order that, unless the person pays the amount adjudged to be paid (including costs) in accordance with the conviction or order within 14 days after the date of service of a copy of the further order on the defendant, a copy of the further order shall be forwarded to the Registrar of Motor Vehicles—

- (a) for suspension of the person's driving licence or suspension of the registration of the motor vehicle in respect of which the parking or traffic offence occurred; or
- (b) for suspension of the person's right to drive in the Territory, or suspension of the person's right to drive in the Territory and the right to drive the motor vehicle in the Territory, as the case requires;

in accordance with section 162E or 180F of the Motor Traffic Act, as the case requires, and where a further order is made under this subsection, the defendant shall not be committed to prison in respect of that liability.

(2) Where a further order is made under subsection (1), the Registrar shall cause a copy of the order and a copy of section 162E or 180F of the Motor Traffic Act, as the case requires, to be served on the defendant.

Parking and traffic offences—further orders in respect of bodies corporate

150B.³ (1) Where, but for this section, in default of payment of an amount adjudged to be paid (including costs) by a body corporate a warrant of execution could be issued against the body corporate in respect of a conviction or order in respect of a parking or traffic offence, the Court shall, on the matter being placed before the Court by the Registrar, make a further order that, unless the body corporate pays the amount adjudged to be paid (including costs) in accordance with the conviction or order within 14 days after the date of service of a copy of the further order on the defendant, a copy of the further order shall be forwarded to the Registrar of Motor Vehicles—

- (a) for suspension of the registration of the motor vehicle in respect of which the parking or traffic offence occurred; or
- (b) for suspension of the right to drive in the Territory the motor vehicle in respect of which the parking or traffic offence occurred;

in accordance with section 162E or 180F of the Motor Traffic Act, as the case requires.

(2) Where a further order is made under subsection (1), the Registrar shall cause a copy of the order and a copy of section 162E of the Motor Traffic Act to be served on the defendant.

(3) Where a further order is made under subsection (1), a warrant of execution shall not be issued in respect of the parking or traffic offence to which the order relates.

Further orders—service

150C. A copy of a further order required to be served under section 150A or 150B shall be served by sending it by pre-paid post to the address of the place of residence or business of the person last-known to the Registrar.

Committal to prison

151. (1) Where—

- (a) a conviction does not order the payment of any fine or penalty but orders that the defendant be imprisoned with or without hard labour for her or his offence; or
- (b) an order is not for the payment of money but for the doing of some other act and directs that, if she or he neglects or refuses to do the act, the defendant be imprisoned with or without hard labour and the defendant neglects or refuses to do such act,

the Court or a Magistrate may by warrant commit the defendant to prison there to be kept according to the terms in that behalf of the conviction or order.

Form of warrant of commitment

152. Every such warrant of commitment shall be under the hand and seal of the Magistrate issuing it and shall require the police officer to whom it is directed to take and convey the person named therein to a prison therein mentioned and there deliver her or him to the keeper of such prison

and shall further require the keeper to receive the person into the prison and there imprison her or him or to imprison her or him and keep her or him to light or hard labour according to the terms of the warrant of commitment.

Term of imprisonment where part payment is made

153. (1) The Court, Magistrate or Registrar to whom application is made to issue a warrant of commitment for non-payment of an amount adjudged to be paid by a conviction or order may, if it or she or he deems it expedient so to do, allow further time for the payment of the amount or any part thereof or direct that payment of the amount or any part thereof be made by instalments or may postpone the issue of the warrant until such time and on such conditions, if any, as it or she or he thinks just.

(2) Where, upon an application to the Court or a Magistrate to issue any such warrant of commitment, it appears to the Court or magistrate to whom the application is made that, by payment of part of the amount, whether by instalments or otherwise, the amount has been reduced, the Court or the Magistrate shall by its or her or his warrant of commitment order that the term of imprisonment be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days in the term as the amount of the reduction bears to the total amount adjudged to be paid.

Parking offences—instalment payments

153A. (1) Where the Court makes a further order under subsection 150A (1) or 150B (1), the defendant may apply in writing to the Court, Magistrate or Registrar—

- (a) for further time for the payment of the whole or any part of the amount the subject of the order; or
- (b) for a direction that payment of the whole or any part of that amount be made by instalments.

(2) The Court, Magistrate or Registrar, as the case requires, may, if satisfied that it is expedient to do so—

- (a) allow further time for the payment of the whole or any part of the amount the subject of the order; or
- (b) direct that payment of the whole or any part of that amount be made by instalments.

(3) The Registrar shall not forward a copy of a further order to the Registrar of Motor Vehicles under section 153B unless default is made in the payment of an instalment or the further time allowed for payment has expired.

Consequence of non-compliance with certain orders

153B. In default of payment in accordance with—

- (a) a conviction or order to which section 147A applies;
- (b) a further order under subsection 150A (1) or 150B (1), as the case may be;

the Registrar shall cause a copy of the order or further order to be forwarded to the Registrar of Motor Vehicles.

Part payments

153C. Where the defendant pays part of an amount in accordance with an order to which section 147A applies, or a further order under subsection 150A (1) or 150B (1), the Registrar shall endorse on the order or further order the amount the subject of the order or further order remaining unpaid.

Warrant of commitment where defendant already in prison

154. (1) Where by any conviction or order it is adjudged that the defendant be imprisoned and the defendant is then undergoing imprisonment upon a conviction for another offence the warrant of commitment in respect of the subsequent offence shall be forthwith delivered to the gaoler to whom it is directed.

(2) The Court or Magistrate issuing the warrant of commitment may order thereby that the imprisonment for the subsequent offence shall commence at the termination of the imprisonment which the defendant is then undergoing.

Moneys to be paid to Registrar

155. If a person adjudged by the conviction or order of a Court or Magistrate to pay any amount of money pays the amount to any police officer or other person such police officer or other person shall forthwith pay the amount to the Registrar.

Costs to be paid to Registrar by Registrar of Motor Vehicles

155A. Where a sum of money payable on account of costs pursuant to a conviction or order in respect of a parking or traffic offence is paid to the

Registrar of Motor Vehicles, he or she shall pay an amount equal to that sum to the Registrar.

Execution to cease on payment of amount due

156. In any case where a warrant of commitment has been issued, the defendant pays or tenders to the police officer having the execution of the warrant the sum or sums mentioned therein, the police officer shall cease to execute the warrant.

Payment of amount to keeper or Superintendent

157. (1) Where a person is imprisoned for non-payment of an amount adjudged to be paid by a conviction or order of the Court or a Magistrate, the person may pay, or cause to be paid, to the keeper of the prison or, in the case of a person in respect of whom a warrant under section 255A has been issued, the Superintendent of the remand centre, and the keeper or Superintendent shall receive—

- (a) the sum mentioned in the warrant of commitment and the keeper or Superintendent shall thereupon discharge the person unless she or he is in custody for some other matter;
- (b) any sum in part satisfaction of the sum so adjudged to be paid and thereupon the term of imprisonment shall be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which she or he was committed as the sum so paid bears to the sum for which she or he is so liable and the keeper or Superintendent shall on the expiration of the term so reduced discharge the person unless she or he is in custody for some other matter.

(2) The keeper or Superintendent shall forthwith pay all sums received by her or him under the last preceding subsection to the Registrar.

Issue of warrant of execution

158.³ Whenever the Court gives or enters a judgment or makes an order in respect of a claim for the payment of money or orders the amount of any penalty, compensation or sum of money or costs to be levied by distress and sale of the goods and chattels of the person liable to make the payment or by execution, the Registrar may on the application of the person in whose favour the order was made issue a warrant of execution.

Payment of amounts levied to the Registrar

159.³ In every warrant of execution the person to whom it is directed shall be thereby ordered to pay the amount of the sum and costs to be levied to the Registrar.

Cross judgments

160.³ If there are cross judgments between the parties execution shall be taken out by that party only who has obtained judgment for the larger sum and for so much only as remains after deducting the smaller sum and satisfaction for the remainder shall be entered as well as satisfaction on the judgment for the smaller sum and if both sums are equal satisfaction shall be entered upon both judgments.

Issue of execution without revival of judgment

161.³ During the lives of the parties to a judgment given or entered or an order made in respect of a claim, or those of them during whose lives execution may at present issue within a year and a day without a *scire facias*, and within six years from the giving or entering of the judgment or the making of the order, execution may issue without a revival of the judgment.

Procedure on execution

162.³ (1) A warrant of execution issued by the Court or a Magistrate shall be executed by a seizure and sale of the goods and chattels of the person against whom the warrant is issued, and shall be executed by or under the direction of a police officer or a bailiff:

Provided that any such warrant of execution shall not apply to the wearing apparel, bedding, tools and implements of trade of the person, against whom the warrant is issued, and her or his family, to the value of One hundred dollars in the whole.

(2) Except so far as the person against whom the execution is issued otherwise consents in writing, the goods and chattels seized shall be sold by public auction, and five clear days, at least, shall intervene between the making of the levy and the sale, of which due and public notice shall be given, except in the case of perishable goods, which may be sold at the expiration of twenty-four hours after seizure after such notice as is practicable; but where written consent is so given, the sale may be made in accordance with the consent.

(3) Subject to the last preceding subsection, the goods and chattels seized shall be sold within the period fixed by the warrant, and if no period is so fixed, then within the period of fourteen days after the date of making

the levy, unless the sum for which the warrant was issued, together with the charges of the execution, is sooner paid.

(4) Subject to any directions to the contrary given by the warrant of execution, where household goods are seized, the goods shall not, except with the consent in writing of the person against whom the execution is issued, be removed from the house until the day of sale; but so much of the goods as is, in the opinion of the person executing the warrant, sufficient to satisfy the execution shall be impounded by affixing to the articles impounded a conspicuous mark; and any person who removes any goods so marked, or defaces or removes the mark, shall be guilty of an offence.

Penalty: Ten dollars.

(5) Where a person charged with the execution of a warrant of execution wilfully retains from the produce of any goods sold to satisfy the execution, or otherwise exacts, any greater costs and charges than those to which she or he is for the time being entitled by law, or makes any improper charge, she or he shall be liable to a penalty not exceeding Forty dollars; and the Court may order her or him to pay any sum so retained, exacted, or improperly charged, to the person entitled thereto.

(6) A written account of the costs and charges incurred in respect of the execution of any warrant of execution shall be sent by the police officer or bailiff charged with the execution of the warrant, as soon as practicable, to the Registrar; and the person against whom the warrant was issued may, at any time within one month after the levy, inspect the account without fee or reward at any reasonable time, and take a copy of the account.

(7) The police officer or bailiff charged with the execution of a warrant of execution shall cause the goods and chattels seized under it to be sold, and may deduct out of the amount realized by the sale all costs and charges actually incurred in effecting the sale, and shall render to the owner the overplus (if any) after retaining the amount of the sum for which the warrant was issued, and the proper costs and charges of the execution of the warrant.

(8) Where a person pays or tenders to the police officer or bailiff charged with the execution of a warrant of execution the sum mentioned in the warrant, or produces the receipt of the Registrar for the sum, and also pays the amount of the costs and charges of the execution up to the time of the payment or tender, the police officer or bailiff, as the case may be, shall not execute the warrant.

(9) Any police officer or bailiff by whom a warrant of execution is executed may, after the levying of the distress, leave the house or place in which any goods on which she or he has levied then are, and at all reasonable times re-enter therein.

(10) Any such police officer or bailiff leaving and subsequently returning to any such house or place shall not be deemed thereby to have abandoned the distress.

Money, Australian notes and bank notes may be seized and choses in action may be seized, sued on and sold

164.³ Where this Act or any other Act, Ordinance, law or any warrant of a Magistrate directs any sum to be levied by execution against the goods and chattels of any person—

- (a) any money, Australian notes or bank notes belonging to that person may be seized, taken and applied towards satisfaction of the warrant but need not be sold; and
- (b) any cheques, bills of exchange, promissory notes, bonds, specialities, or securities for money belonging to that person may be seized and taken and held as security or securities for the amount directed to be levied, or so much thereof as has not been otherwise levied or raised for the benefit of the person on whose behalf the warrant has issued; and, when the time of payment has arrived, that person may demand and receive payment thereof, and may sue in any proper court in the name of the person against whom the warrant has issued, or in the name of any person in whose name the person against whom the warrant has issued might have sued, for the recovery of the sum or sums secured or made payable thereby.

Time of application to be recorded

165.³ The precise time when any application is made to the Registrar to issue a warrant of execution shall be entered by her or him in a book to be kept by her or him for that purpose and on the warrant and when one or more than one warrant is delivered to any police officer or bailiff she or he shall execute them in the order of the times as entered.

Warrant of execution, when to be executed

166.³ (1) A warrant of execution shall not be executed at any time after sunset and before sunrise.

(2) If any person executes any such warrant after sunset and before sunrise she or he shall be guilty of an offence.

Penalty: Twenty dollars.

Division 2A—Reciprocal Enforcement of Fines against Bodies Corporate

Interpretation

166A. In this Division, unless the contrary intention appears—

“conviction” means a conviction or order entered or made by a court in the exercise of summary jurisdiction in proceedings for an offence;

“fine” includes—

- (a) a pecuniary penalty, pecuniary forfeiture and pecuniary compensation; and
- (b) fees, charges and costs payable by a body corporate under an order made in proceedings in which a conviction was entered in respect of the body corporate;

“reciprocating court” means—

- (a) a court declared under section 166B to be a reciprocating court; and
- (b) a court included in a class of courts declared under section 166B to be a class of reciprocating courts;

“relevant officer”, in relation to a reciprocating court, means the Registrar or other corresponding officer of the court;

“State” includes a Territory other than the Australian Capital Territory and the Jervis Bay Territory;

“Territory fine” means a fine payable under a conviction of the Court.

Declarations relating to reciprocating courts

166B. Where a State has laws providing for enforcement in the State of a Territory fine against a body corporate, the Attorney-General may, by notice published in the *Gazette*—

- (a) declare a court of summary jurisdiction in the State to be a reciprocating court; or

- (b) declare a class of courts of summary jurisdiction in the State to be a class of reciprocating courts.

Enforcement of fine

166C.³ (1) Where a fine is payable by a body corporate under a conviction of a reciprocating court and the Registrar receives a request in writing from the relevant officer of the reciprocating court for the enforcement of the conviction accompanied by—

- (a) a copy, certified by the relevant officer to be correct, of the conviction; and
- (b) a certificate under the hand of the relevant officer specifying the amount of the fine that remains unpaid,

the Registrar shall—

- (c) register the conviction by filing in the Court the certified copy of the conviction; and
- (d) note the date of the registration on the copy.

(2) On the registration of a conviction under subsection (1)—

- (a) the conviction shall, for the purposes of this Part, be deemed to be a conviction of the Court adjudging payment of a fine by the body corporate in the amount specified as unpaid in the certificate referred to in paragraph (1) (b);
- (b) the Registrar shall issue a warrant of execution for the purpose of recovering the amount referred to in paragraph (a); and
- (c) the provisions of this Act shall, subject to this section, apply to and in relation to a warrant so issued and the execution of such a warrant as if the warrant had been issued in connection with a conviction of the Court.

(3) Where a request is made under this section in respect of a fine payable under a conviction of a reciprocating court and the Registrar later receives a notification from the relevant officer of the reciprocating court of payment of an amount in satisfaction in whole or part of the amount of the fine, the Registrar shall note the particulars of the payment on the certified copy of the conviction filed in the Court.

(4) Notwithstanding anything in this Part, where—

- (a) a warrant is issued under subsection (2) in respect of a fine; and

- (b) before execution, the Registrar receives a notification referred to in subsection (3) relating to the fine,

the Registrar shall arrange for the return of the warrant and, upon its return, she or he shall—

- (c) if the amount of the fine has been paid in full—withdraw the warrant; or
- (d) if part of the amount of the fine remains unpaid—amend the warrant to show the amount still unpaid.

(5) Where a warrant is amended in pursuance of subsection (4), the warrant shall be enforced in respect of the amount of the fine for the time being shown in the warrant as unpaid.

(6) Notwithstanding section 190, where a sum of money is paid to the Registrar in satisfaction in whole or in part of a fine payable under a conviction registered under subsection (1), the Registrar shall remit the sum of money to the relevant officer of the reciprocating court by which the conviction was entered.

(7) For the purposes of this section, a document that purports to have been signed by the relevant officer of a reciprocating court shall be taken to have been so signed unless the contrary is proved.

Effect of enforcement by reciprocating court

166D. A sum of money received by the Registrar from a reciprocating court in satisfaction in whole or in part of a Territory fine shall be applied to the Registrar as if the sum had been paid to her or him by the body corporate by which the fine was payable in satisfaction in whole or in part of the fine.

Registrar to notify payment of Territory fine

166E. Where—

- (a) a conviction of the Court under which a fine is payable is registered by the relevant officer of a reciprocating court; and
- (b) a sum of money is received by the Registrar in satisfaction in whole or in part of the fine,

the Registrar shall, as soon as practicable, notify the relevant officer of the amount of that payment.

Division 4—Attachment of Debts³

Oral Examination of Debtor

170.³ (1) Where—

- (a) an order has been made by the Court for the recovery of a sum of money from, or for the payment of a sum of money by, a person (in this Division referred to as “the debtor”); and
- (b) the amount or any part of the amount payable by the debtor has not been paid,

the Registrar may, upon application made by the person entitled to enforce the order, issue a summons calling upon the debtor or, in a case where the debtor is a corporate body, a specified officer of the corporate body to attend to be orally examined before the court on the day and at the time specified in the summons for the purpose of ascertaining—

- (c) whether any, and, if so, what debts are owing to the debtor; and
- (d) whether the debtor has any property or other means of satisfying the order, and, if so, what the property or other means are.

(1A) A reference in paragraph (a) of the last preceding subsection to an order made by the Court for the payment of a sum of money—

- (a) shall be read as including a reference to an order for the payment of costs; and
- (b) shall not be read as including a reference to an order made by the Court in or by which the Court has, under subsection (2) of section one hundred and forty-seven of this Act, adjudged that, in default of payment of the sum of money specified in the order, the person against whom the order has been made shall be imprisoned for a specified period.

(2) The debtor shall be examined on oath, and any person may be summoned to give evidence or produce documents and may be examined on oath as in any case of summary jurisdiction.

Order nisi for attachment of debt

171.³ (1) The Court or any Magistrate or the Registrar may, upon the *ex parte* application of any person who has obtained any such order for the recovery or payment of money or costs, and upon affidavit by herself or himself or her or his solicitor stating that the order has been made and that it is still unsatisfied and to what amount, and that any other person is indebted to the debtor and is within the Territory, order that all debts owing

or accruing from the other person (in this Division referred to as “the garnishee”) to the debtor shall be attached to answer the order.

(2) By the same or any subsequent order, the Court or Magistrate or the Registrar may order that the garnishee shall appear before the Court to show cause why she or he should not pay, to the person who has obtained the order for the recovery, or payment of money or costs, the debt due from her or him to the debtor, or so much thereof as is sufficient to satisfy the order.

(3) Upon any application under this section the Court or Magistrate or the Registrar may, if it or she or he thinks fit, refuse to make an order where, from the smallness of the amount to be recovered or of the debt sought to be attached or otherwise, the remedy sought would in its or her or his opinion be worthless or vexatious.

Service of order *nisi* to bind debts

172.³ (1) Service of a true copy of an order that debts due or accruing to a debtor shall be attached, or notice thereof to the garnishee in such manner as the Court directs, shall bind the debts in her or his hands.

(2) In the absence of any direction the service shall be personal or may be made by leaving a true copy of the order with a person apparently an inmate and apparently not less than sixteen years of age at the last or most usual place of abode of or business of the garnishee.

(3) For the purposes of subsection (2), a place of business shall not be taken to be the place of business of a garnishee unless he or she is the principal or one of the principals of the business.

Court’s power where garnishee does not dispute debt

173.³ If the garnishee does not pay to the Registrar the amount due from her or him to the debtor or an amount equal to the amount specified in the order and the garnishee—

- (a) appears at the hearing of the order directing her or him to appear and does not dispute the debt due or claimed to be due from her or him to the debtor; or
- (b) does not appear upon the hearing of the order directing her or him to appear,

the Court may order a warrant of execution to issue, and the warrant may be issued accordingly, without any previous writ or other process, to levy

the amount due from the garnishee or so much thereof as is sufficient to satisfy the order.

Where garnishee disputes debt

174.³ (1) If the garnishee disputes her or his liability, the Court, instead of making an order that a warrant shall issue may make an order that any issue or question necessary for determining her or his liability be tried and determined between the person who has obtained the order for the recovery or payment of money or costs and the garnishee in any manner and in any court in which the issue or question might be tried or determined if a claim were made or an action commenced in respect of the issue or question by the debtor against the garnishee.

(2) The Court in which the issue or question shall be tried or determined shall be specified in this order.

Issue may be filed

175.³ The party obtaining the order for the trial or determination of the issue or question may, within the time fixed by the order, or such further time as the Court allows, file it in the court mentioned in the order, and thereupon the issue or question shall be tried and determined in that Court, and the judgment order or other determination of the Court may be enforced and all subsequent proceedings taken therein as nearly as may be according to the usual practice thereof.

Where third party claims lien or charge on debt

176.³ Whenever in proceedings to obtain an attachment of debt it is suggested by the garnishee that the debt sought to be attached belongs to any third person, or that any third person has a lien or charge upon it, the Court may order the third person to appear and state the nature and particulars of her or his claim (if any) upon the debt.

Court may order warrant to levy amount or issue to be tried

177.³ After hearing the allegations of any third person under an order made in pursuance of the last preceding section, and of any other person whom the Court orders to appear, or, in the case of that third person or other person not appearing when ordered, the Court may—

- (a) order a warrant of execution to issue to levy the amount due from the garnishee; or
- (b) order any issue or question to be tried and determined; and

- (c) order the determination to be enforced and subsequent proceedings to be taken as provided in section one hundred and seventy-five of this Act; and
- (d) bar the claim (if any) of the third or other person to an extent not greater than the amount due from the garnishee to the debtor; and
- (e) make any such order upon such terms, in all cases, with respect to the lien or charge (if any) of the third or other person and to costs as the Court thinks just and reasonable.

Payment by debtor under order to be valid discharge

178.³ Payment made by, or execution levied upon, the garnishee under any proceeding under this Division, shall be a valid discharge to her or him as against the debtor to the amount paid or levied although the proceedings may be set aside or order reversed.

Debt attachment book

179.³ (1) The Registrar shall keep a debt attachment book and shall make therein entries of the attachment and proceedings thereon with names, dates and statements of the amounts recovered and otherwise.

(2) On application to the Registrar any person may take copies of entries in the debt attachment book.

Costs of attachment

180.³ The costs of any application for an attachment of debts and of any proceedings arising from or incidental to the applications shall be in the discretion of the Court determining the application, and the costs of the party who has obtained the order for the recovery or payment of money or costs mentioned in section one hundred and seventy of this Act shall, unless otherwise directed, be retained out of the money recovered by her or him under the garnishee order and in priority to the amount due under the order so mentioned.

Division 5—Imprisonment of Fraudulent Debtors³**Defendants in civil cases not to be imprisoned except under certain circumstances**

181.³ (1) An order made by the Court—

- (a) for the payment of any damages, civil debt or demand recoverable before it, or of any instalment thereof, and whether with or without costs; or
- (b) for the payment of damages for an assault or for trespass by cattle, or of any instalment thereof, or for the payment of damages summarily recoverable and not enforceable as a fine or any instalment thereof, and in every such case whether with or without costs; or
- (c) for costs ordered to be paid by an informant; or
- (d) for the delivery of goods detained without just cause after due notice, and, in the event of neglect or refusal to deliver up the goods according to the order, for the payment of the value of the goods to the party aggrieved,

shall not in default of distress or otherwise be enforced by imprisonment—

- (i) unless it is proved to the satisfaction of the Court that the person making default in payment of the civil debt, damages, demand, instalment or costs either—
 - (1) has then, or has had since the date of the order sufficient means and ability to pay the sum of which she or he has made default or any instalment thereof, where an order has been made to pay by instalments, and has refused or neglected or refuses or neglects to pay the sum or instalment; or
 - (2) is about to leave the Territory without paying the debt, damages, demand, costs or money or instalment or so much thereof as is still unsatisfied; or
 - (3) has neglected or refused to comply with any order under this Act for the delivery of goods detained without just cause after due notice, and has not paid the value thereof to the party aggrieved; or
- (ii) unless it is proved to the satisfaction of the Court that that person, if a defendant incurring the liability which is the subject of the proceedings in which the order was made—
 - (1) obtained credit or contracted the liability under false pretences or by means of fraud or breach of trust; or

- (2) wilfully contracted the liability without having at the same time a reasonable expectation of being able to discharge it; or
- (3) has made or caused to be made any gift, delivery or transfer of any property, or has charged, removed or concealed it with intent to defraud her or his creditors or any of them.

(2) Proof of any of the matters mentioned in the last preceding subsection may be given in such manner as the Court thinks just, and for the purposes of that proof the person making default may be personally served with a summons in accordance with Form 80 in the First Schedule to this Act, and may be examined on oath on the return thereof as to any of the matters mentioned in this section and set out in the summons, and any witnesses (including the person making default) may be summoned and examined on oath according to the provisions relating to the summoning and examination of witnesses in cases of summary jurisdiction.

(3) If any of the matters mentioned in subsection (1) of this section are proved to the satisfaction of the Court, the Court may if it thinks fit make an order in accordance with Form 81 in the First Schedule to this Act or to the like effect that, unless the person making the default pays to the Registrar, either forthwith or within the time limited in the order, and either in one sum or by such instalments as the Court orders, the money so unsatisfied together with such costs of, and occasioned by the summons and examination as are directed by the order, she or he shall be committed to prison for a term of not more than two months:

Provided that no such order for commitment shall be made against any person who, since the order under which the money was recoverable was made, has become a bankrupt.

Warrant in default of compliance

182.³ Where any order for commitment has been made under the provisions of the last preceding section, and the money and costs or any instalment of the money or costs named therein has or have not been paid in pursuance thereof, the Registrar shall, without any previous notice or summons to the party required to pay the money, costs, or instalment, issue a warrant in accordance with Form 82 in the First Schedule to this Act or to the like effect, and the keeper of the gaol to whom the warrant is directed shall execute and obey the warrant, and all police officers shall aid and assist in the execution of the warrant.

***Ex parte* order of commitment**

183.³ (1) Any order for commitment under the foregoing provisions of this Division may, if the special circumstances of the case appear to the Court to warrant it, be made by the Court *ex parte* and without notice, upon proof by affidavit only of any of the matters mentioned in section one hundred and eighty-one of this Act.

(2) Any order made under the last preceding subsection under the hand of the Magistrate constituting the Court may be filed in the Court, and the person against whom the order is made may be dealt with as if an order for commitment had been made as provided in section one hundred and eighty-one of this Act, and the warrant to be issued by the Registrar in that case shall be in accordance with Form 83 in the First Schedule to this Act or to the like effect.

Debtor, how discharged

184.³ (1) Any person imprisoned by virtue of any warrant under this Division who pays or satisfies the sum mentioned in the order of commitment shall be discharged out of custody upon the certificate of the payment or satisfaction signed by the Registrar.

(2) Notwithstanding anything contained in this Division, the Court may at any time, by order under the hand of the Magistrate (if under the special circumstances of the case it thinks fit so to do), direct that any person in gaol or custody under any order made under this Division shall be forthwith discharged, and that person shall be forthwith discharged accordingly.

Examination to be a judicial proceeding

186.³ The examination of any person examined under the provisions of this Division shall be deemed to be a judicial proceeding, and any person in any such examination wilfully, knowingly and corruptly giving or making any untrue or false statement or declaration, shall be deemed to have committed wilful and corrupt perjury.

Imprisonment for fraud no satisfaction of debt

187.³ Imprisonment under this Division shall not operate as a satisfaction or discharge of the amount due on any order, but notwithstanding the imprisonment a fresh warrant against the property or other proceedings to recover the amount may be issued on the order and executed in due course of law.

Division 6—Miscellaneous**Mitigation of payment by court**

188. (1) Where in a case when either imprisonment or fine is imposed there is prescribed a requirement for the defendant to enter into her or his recognizance and to find sureties for keeping the peace, or being of good behaviour, and observing some other condition, or to do any of such things, the Court may dispense with any such requirement or any part thereof.

(2) Where the Court has authority under any law in force in the Territory (other than this Act), whether past or future, to impose imprisonment for an offence punishable on summary conviction, and has no authority to impose a fine for that offence, it may notwithstanding, when adjudicating on that offence, if it thinks that the justice of the case will be better met by a fine than by imprisonment, impose a penalty not exceeding \$5,000, and not being of such an amount as will subject the offender under the provisions of this Act in default of payment of the penalty, to any greater term of imprisonment than that to which she or he is liable under the law authorizing the imprisonment.

Scale of imprisonment for non-payment of money

189.³ Subject to Division 5 of this Part and to the provisions of the law under which a conviction or order is made, the period of imprisonment imposed by the Court in default of payment of an amount being a penalty, sum of money or costs under a conviction or order shall be such period as in the opinion of the Court will satisfy the justice of the case, but not exceeding in any case a period calculated at the rate of one day for each \$100, or part of \$100, included in the amount ordered to be paid or 6 months, whichever is the less.

Proceeds of warrants of execution

190.³ (1) Where the Registrar receives a sum as the proceeds of a warrant of execution issued pursuant to a judgment given or entered on a claim, the Registrar shall, unless section 25 of the *Public Trustee Act 1985* or an order of the Court otherwise requires, pay the sum to the judgment creditor.

(2) Where the Registrar receives a sum as the proceeds of a warrant of execution issued other than pursuant to a judgment given or entered on a claim, the Registrar shall, unless a law in force in the Territory or an order of the Court otherwise requires, pay the sum into the Consolidated Revenue Fund.

Accounts to be kept in the form in Third Schedule

191. Every Registrar, keeper of a gaol and Superintendent of a remand centre shall keep a true and exact account of all moneys received by her or him under or by virtue of any conviction or order, showing the persons from whom and the time when the sums were received and to whom and when the sums were paid, in accordance with the form in the Third Schedule to this Act.

Penalty: Four dollars for every default.

Executors and Administrators may enforce orders in civil matters

192.³ (1) Where an order for the recovery or payment of money with or without costs or for costs ordered to be paid on a conviction or for costs alone (including costs ordered to be paid by an informant) has been made, and the party entitled to enforce the order dies, her or his executor or administrator, after filing with the Registrar an affidavit showing that she or he is the executor or administrator, may enforce the order to the same extent and by the like means and in the same circumstances as the party might have done if living.

(2) In all such cases, where necessary, there may be substituted for the name of the party the name of the executor or administrator as the executor or administrator of the party deceased.

Forfeited goods may be sold

193. Except where otherwise provided, all forfeitures, not pecuniary, which are incurred in respect of an offence triable by the Court or which may be enforced by the Court, may be sold or disposed of or dealt with in such a manner as the Court directs, and the proceeds of the sale shall be applied in like manner as if the proceeds were a fine imposed under the Act, Ordinance or law on which the proceeding for forfeiture is founded.

Warrant of commitment or distress not to be void for form only

194.³ A warrant of commitment or of execution shall not be held void by reason only of any defect or error therein if there is a conviction or order which is good and valid or which may be amended and made good and valid under this Act to sustain it.

Convictions etc. to be transmitted to Registrar of Supreme Court

195. Where any person is convicted before, or an information is dismissed by, the Court in respect of any prosecution for an indictable

offence, the Court shall forthwith thereafter transmit the conviction and recognizances, or a copy of the certificate of dismissal (if any), as the case may be, to the Registrar of the Supreme Court, to be kept by the Registrar among the records of the Supreme Court; and the Court shall also cause all such decisions to be registered in a book to be kept of the purpose.

PART X—RESTRAINING ORDERS

Interpretation

196. In this Part, unless the contrary intention appears—

“aggrieved person” means the person in respect of whom, or in respect of whose property, conduct or alleged conduct was engaged in;

“child” means a person who has not attained the age of 18 years;

“interim restraining order” means an order under section 206C;

“relative”, in relation to an aggrieved person, means—

- (a) a parent of the person;
- (b) a child of the person who has attained the age of 18 years;
or
- (c) a brother or sister of the person who has attained the age of 18 years;

“respondent”, in relation to a restraining order or interim restraining order, means the person in respect of whom the order is sought or made;

“restraining order” means an order under section 197.

“vary” includes adapt and modify.

Power to make

197. (1) The Court may, on application and if satisfied on the balance of probabilities that—

- (a) the respondent has caused personal injury or damage to property and, unless the respondent is restrained, the respondent is likely to cause further personal injury or damage to property;
- (b) the respondent has threatened to cause personal injury or damage to property and, unless the respondent is restrained, the respondent is likely to carry out the threat; or
- (c) the respondent has behaved in an offensive or harassing manner;

make an order restraining the respondent from 1 or more of the following:

- (d) causing personal injury or damage to property;
- (e) threatening to cause personal injury or damage to property;
- (f) behaving in an offensive or harassing manner;

and may impose 1 or more of the prohibitions and conditions specified in section 205.

(2) Subsection (1) applies in respect of conduct engaged in outside the Territory.

Entitlement to apply

198. (1) An application may be made by—

- (a) the aggrieved person;
- (b) a relative of the aggrieved person;
- (c) where the aggrieved person is a child—
 - (i) a person with whom the child normally resides;
 - (ii) a parent or guardian of the child; or
 - (iii) the child; or
- (d) a police officer.

(2) A person is not entitled to make an application in respect of alleged conduct under this Part if the person is entitled to make an application in respect of that conduct under the *Domestic Violence Act 1986*.

Hearing dates

199. The Registrar shall fix a date for the hearing of an application that is not more than 2 days after the date on which the application is filed.

Parties—applications by relatives and police officers

200. (1) Where the applicant is—

- (a) a relative; or
- (b) a police officer;

the aggrieved person shall be a party to the proceedings.

(2) Subsection (1) does not apply where the aggrieved person is a child.

Parties—applications involving children

201. (1) Where the aggrieved person is a child, the Registrar shall, as soon as practicable, cause a copy of the application, together with notice of the date, time and place of the hearing, to be served—

- (a) on a person (other than the respondent) with whom the child normally resides; and
- (b) where the child has a parent or guardian with whom the child does not normally reside—on that parent or guardian.

(2) A person who has been served shall, on application to the Court, be made a party to the proceedings.

Representation of children

202. (1) Where—

- (a) an application has been made by a child;
- (b) the child is not separately represented by another person; and
- (c) it appears to the Court that the child should be so represented;

the Court may, of its own motion or on the application of a person (including the child), order that the child be separately represented by another person and the Court may make such other orders as it thinks necessary to secure that representation.

(2) Where the Court orders that a child be separately represented, the Court may request that the representation be arranged by the Legal Aid Office (A.C.T.).

Hearing of applications

203. (1) Section 20 of the *Magistrates Court (Civil Jurisdiction) Act 1982* (other than paragraph (4) (a) and subsection (5)) applies in relation to proceedings under this Part.

(2) Section 198 of the *Magistrates Court (Civil Jurisdiction) Act 1982* does not apply in relation to proceedings under this Part.

(3) Notwithstanding the provisions of sections 205 and 206 of the *Magistrates Court (Civil Jurisdiction) Act 1982*—

- (a) an affidavit; and
- (b) a notice referred to in subsection 206 (1) of that Act;

shall each be served—

- (c) as soon as practicable before the hearing; or
- (d) within such other time as the Court orders.

(4) Where a period of time, being a period of 5 days or less, is prescribed or allowed for any purpose under this Part, that period shall be reckoned exclusive of any day on which the office of the Court is closed.

Matters to be taken into account

204. (1) When determining an application, the Court shall have regard to the following:

- (a) the need to ensure that the aggrieved person is protected from violence, threats or harassment;
- (b) the welfare of a child affected, or likely to be affected, by the respondent's conduct;
- (c) the need to ensure that property is protected from damage;
- (d) any other matter that the Court considers relevant.

(2) The Court shall regard the matters specified in paragraphs (1) (a) and (b) as being of primary importance.

Restrictions in orders

205. A restraining order may—

- (a) prohibit the respondent from being on premises on which the aggrieved person resides or works;
- (b) prohibit the respondent from being on premises specified in the order, being premises frequented by the aggrieved person;
- (c) prohibit the respondent from being in a locality specified in the order;
- (d) prohibit the respondent from approaching within a specified distance of the aggrieved person;
- (e) prohibit the respondent from contacting, harassing, threatening or intimidating the aggrieved person;

- (f) prohibit the respondent from damaging property of the aggrieved person;
- (g) prohibit the respondent from causing another person to engage in conduct referred to in paragraph (e) or (f); or
- (h) specify conditions subject to which the respondent may—
 - (i) be on premises;
 - (ii) be in a locality; or
 - (iii) approach or contact a person;specified in the order.

Consent orders

206. The Court may make any order with the consent of the parties to the proceedings.

Service of applications

206A. (1) Subject to section 206M, the Registrar shall, as soon as practicable after an application has been filed, cause—

- (a) a copy of the application, together with a notice in accordance with Form 1 in the First Schedule, to be served personally on the respondent; and
- (b) where the applicant is a relative or police officer—a copy of the application, together with notice of the date, time and place of the hearing, to be served personally on the aggrieved person (other than an aggrieved person who is a child).

(2) Where a hearing is adjourned because the respondent has not been served, the date, time and place stated in the notice shall be the date, time and place fixed by the Court for the adjourned hearing.

Procedure in absence of respondent

206B. Where the respondent—

- (a) has been served; and
- (b) fails to appear in person at the Court at the time fixed for the hearing;

the Court may—

- (c) proceed to hear and determine the application in the respondent's absence; or
- (d) where the Court is satisfied that it is appropriate to do so—adjourn the matter and issue a warrant for the respondent to be apprehended and brought before the Court.

Interim restraining orders

206C. (1) Where—

- (a) an application has been made; and
- (b) the Court is satisfied that it is necessary, in order to ensure the safety of the aggrieved person, to make an interim restraining order;

the Court may make an interim restraining order whether or not the respondent has been served.

(2) The Court shall not make an interim restraining order unless the application is supported by oral evidence on oath given by the applicant or the aggrieved person.

(3) An interim restraining order—

- (a) shall restrain the respondent from engaging in conduct on which the application is based and—
 - (i) if the conduct consisted of causing personal injury or damage to property—from threatening to cause further injury or damage; or
 - (ii) if the conduct consisted of a threat—from carrying out the threat;
- (b) may prohibit the respondent from being on premises on which the aggrieved person resides or works or which the aggrieved person frequents; and
- (c) shall not contain any other prohibition or condition specified in section 205 unless the Court is satisfied, by reason of the circumstances of the case, that it is necessary to do so to ensure the safety of the aggrieved person.

Seizure of weapons

206D. (1) Where a restraining order is made in respect of a person who is the holder of a licence under the *Weapons Act 1991*, the licence is

by force of this section cancelled unless, on application being made to it at the time of the making of the order, the Court is satisfied that the licence should not be cancelled.

(2) In determining an application under subsection (1), the Court shall have regard to the matters specified in section 204.

(3) The Court may, in addition to making the restraining order, order the seizure, and detention for the period during which the order is in force, of any dangerous weapon or restricted weapon in the respondent's possession.

(4) Where a licence is cancelled by force of subsection (1), cancellation of the licence takes effect on the date of service of the order on that person.

(5) Where the Court makes an interim restraining order, it may, if the respondent is the holder of a licence under the *Weapons Act 1991*, make an order—

- (a) suspending the licence for the period specified in the order; and
- (b) directing the seizure and detention for that period of any dangerous weapon or restricted weapon in the respondent's possession.

(6) In this section—

“dangerous weapon” and “restricted weapon” have the same respective meanings as in the *Weapons Act 1991*.

Explaining proposed orders

206E. (1) Where—

- (a) the Court proposes to make a restraining order or interim restraining order; and
- (b) the respondent is before the Court;

the Court shall, before making the order, explain or cause to have explained to the respondent in language likely to be understood by the respondent—

- (c) the purpose, terms and effect of the proposed order;
- (d) the consequences that may follow if the respondent fails to comply with the terms of the proposed order;
- (e) the means by which the proposed order may be varied or revoked; and

- (f) that, where a State or another Territory has reciprocal legislation in force, the proposed order may be registered, and enforced, in that State or other Territory without notice of registration being given to the respondent.

(2) Where—

- (a) the Court proposes to make a restraining order or interim restraining order; and
- (b) the aggrieved person is before the Court;

the Court shall, before making the order, explain or cause to have explained to the aggrieved person in language likely to be understood by that person—

- (c) the matters specified in paragraphs (1) (c), (d) and (e); and
- (d) the consequences of the aggrieved person aiding or abetting the respondent in the commission of an offence against section 206L.

Counselling

206F. Where the Court makes a restraining order, the Court may recommend that the respondent, the aggrieved person or any other person participate in counselling, or attend a conflict resolution service, of a nature specified by the Court.

Power of Court to make orders where person charged

206G. The power of the Court to make a restraining order or interim restraining order in respect of a person may be exercised notwithstanding that the person has been charged with an offence arising out of conduct in respect of which the application has been made.

Duration of orders

206H. (1) A restraining order remains in force for the period (not exceeding 12 months) specified by the Court in the order.

(2) Where a restraining order contains a prohibition or condition of a kind specified in section 205, the Court may specify the period (not exceeding the period of the order) for which the prohibition or condition remains in force.

(3) An interim restraining order remains in force for the period (not exceeding 10 days) specified by the Court in the order.

(4) Where—

- (a) the Court adjourns the hearing of an application; and
- (b) an interim restraining order is in force;

the Court may, with or without hearing further evidence, extend the period for which the order remains in force until the date fixed for the further hearing of the application.

- (5) An interim restraining order ceases to be in force—
 - (a) where a restraining order is made and the respondent is present when that order is made—when that order is made;
 - (b) where a restraining order is made but the respondent is not present when that order is made—when that order is served on the respondent; or
 - (c) when the application is dismissed.

Variation and revocation of orders

206J. (1) Where a restraining order or interim restraining order is in force, the Court may, on application by—

- (a) a party to the proceedings in which the order was made; or
- (b) the aggrieved person;

vary or revoke the order.

(2) The Registrar shall cause a copy of the application to be served personally on each other party to those proceedings.

(3) When determining an application, the Court shall have regard to the matters specified in subsection 204 (1).

Service etc. of orders

206K. (1) Where a restraining order or interim restraining order is made or varied by the Court, the Registrar shall—

- (a) arrange for an order in the prescribed form to be engrossed and filed in the Court;
- (b) cause a copy of the order to be served personally on the respondent; and
- (c) cause a copy of the order to be given to—
 - (i) the Commissioner of Police;

- (ii) the Registrar of Gun Licences; and
- (iii) each other party to the proceedings.

(2) In subsection (1), a reference to an order in the prescribed form shall be read as a reference to—

- (a) in the case of the making of a restraining order or interim restraining order—an order in accordance with Form 1A in the First Schedule; and
- (b) in the case of the varying of a restraining order or interim restraining order—an order in accordance with Form 1B in the First Schedule.

(3) Where an order is made under section 206D, the Registrar shall cause a copy of the order to be forwarded to the Registrar of Gun Licences.

Offence

206L. (1) Where—

- (a) a restraining order or interim restraining order is in force;
- (b) the respondent—
 - (i) was present at the time the order was made; or
 - (ii) was served personally with a copy of the order; and
- (c) the respondent contravenes the order;

the respondent is guilty of an offence punishable, on conviction, by a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months, or both.

(2) In paragraph (1) (c), a reference to contravening an order shall be read as including a reference to engaging in conduct outside the Territory that, if it were engaged in within the Territory, would contravene the order.

Service other than personal service

206M. Where it appears to the Court that it is not practicable to serve a copy of an application personally, the Court may—

- (a) order that the copy be served by such other means as the Court thinks just; or
- (b) make an order for substituted service.

Service by police officers

206N. (1) Where the Court is satisfied that it is appropriate to do so, the Court may direct that a document be served by a police officer.

(2) Where the Court gives such a direction, the police officer for the time being in charge of a police station shall, when requested to do so by the Registrar, arrange for the document to be served by a police officer.

Restrictions on publication of reports of proceedings

206P. (1) A person shall not, otherwise than pursuant to a direction or order of a court, print or publish by any means a report or account of proceedings under this Part if the printing or publication identifies—

- (a) a party to the proceedings;
- (b) a person who is related to, or associated with, a party to the proceedings or is, or is alleged to be, in any other way concerned in the matter to which the proceedings relate; or
- (c) a witness in the proceedings.

(2) A person who contravenes subsection (1) is guilty of an offence punishable, on conviction—

- (a) in the case of a body corporate—by a fine not exceeding \$25,000; or
- (b) in the case of a natural person—by a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both.

(3) Proceedings for an offence against this section shall not be commenced except by, or with the written consent of, the Attorney-General or the Director of Public Prosecutions.

Appeals

206Q. (1) Part XIXA of the *Magistrates Court (Civil Jurisdiction) Act 1982* applies in relation to an appeal from—

- (a) the making, variation or revocation of a restraining order; or
- (b) a refusal of the Court to make such an order;

as if the appeal were an appeal from a judgment or order of a kind specified in subsection 282C (2) of that Act.

(2) An appeal to the Supreme Court does not lie from—

- (a) the making, variation or revocation of an interim restraining order; or

- (b) the refusal of the Court to make such an order.

Application of Crimes Act

206R. Nothing in this Part shall be taken to affect the operation of subsection 547 (1) of the Crimes Act.

PART XI—APPEALS TO THE SUPREME COURT

Division 1—The Appellate Jurisdiction of the Supreme Court

Jurisdiction of Supreme Court

207. (1) The appellate jurisdiction of the Supreme Court with respect to decisions of the Magistrates Court under this Act (other than a decision under Part X) extends to the hearing and determination of the following appeals and to no others, namely:

- (a) appeals to which Division 2 of this Part applies; and
- (b) appeals from decisions of the Magistrates Court by way of orders to review made in accordance with Division 3 of this Part.

(2) Nothing in this Part limits the operation of any other Act that makes provisions with respect to the appellate jurisdiction of the Supreme Court.

Division 2—Appeals

Appeals to which this Division applies

208.³ (1) Each of the following appeals is an appeal to which this Division applies:

- (a) an appeal, by the person convicted, from a conviction for an offence dealt with by the Magistrates Court under Part VII, Part VIIA or section 255 of this Act or under section 477 of the Crimes Act;
- (b) an appeal, by the person against whom the order is made, from an order made in pursuance of section 113 or 114 of this Act in proceedings dealt with by the Magistrates Court under Part VII of this Act or under section 477 of the Crimes Act;
- (c) an appeal from a sentence or penalty imposed by the Magistrates Court by a person convicted of an offence dealt with by that Court under section 90A or 255, or Part VII or VIIA, of this Act, or under section 477 of the Crimes Act, whether or not that person

appeals against the conviction in respect of which the sentence or penalty was imposed;

- (d) an appeal, by the person charged, from a decision of the Magistrates Court made in pursuance of—
 - (i) subsection (1) of section five hundred and fifty-six A of the Crimes Act;
 - (ii) subsection (3) of that section;
 - (iii) subsection (1) of section five hundred and fifty-six B of that Act; or
 - (iv) paragraph (b) of subsection (7) of section five hundred and fifty-six C of that Act;
- (e) an appeal, by a person who has given a recognizance under section five hundred and fifty-six A or five hundred and fifty-six B of the Crimes Act or by her or his surety, from a decision of the Magistrates Court on an application made under section five hundred and fifty-six D of that Act to that Court; and
- (g) an appeal, by the person against whom the order is made, from an order for commitment made by the Magistrates Court under Division 5 of Part IX.

(3) Nothing in subsection (1) shall be taken to affect any power that the Supreme Court has, apart from this Act, to grant bail or to vary the conditions of bail.

Institution of appeal

209. (1) An appeal shall be instituted by the appellant filing a notice of appeal in the office of the Registrar of the Supreme Court within the period of 21 days after the conviction was entered, the order or decision was made or the sentence or penalty imposed, as the case requires, or within such further time as the Supreme Court allows.

(2) As soon as practicable after the appeal has been instituted, the appellant shall—

- (a) lodge a copy of the notice of appeal in the office of the Magistrates Court for inclusion in the records of that Court; and
- (b) serve a copy of the notice of appeal on the informant.

Substituted service of notice of appeal

210. (1) Where it appears to the Supreme Court, on an application made for an order under this section, that personal service of a notice of appeal under the last preceding section on a person on whom it is required to be served cannot be effected, the Supreme Court may make such order for substituted or other service as the Supreme Court thinks just.

(2) The Supreme Court may, on an application made for an order under this subsection, dispense with service of a notice of appeal if the Court thinks it necessary or expedient to do so.

(3) An order under the last preceding subsection may be made subject to such conditions (if any) as the Supreme Court thinks fit.

Appeals in cases other than civil cases

214. (1) This section applies to an appeal referred to in paragraph 208 (1) (a), (b), (c), (d), (e) or (g).

(2) In an appeal to which this section applies, the Supreme Court shall have regard to the evidence given in the proceedings out of which the appeal arose, and has power to draw inferences of fact.

(3) In an appeal to which this section applies, the Supreme Court shall—

- (a) if it thinks it necessary or expedient to do so in the interests of justice—
 - (i) order the production of any document or other thing that was an exhibit in, or was otherwise connected with, the proceedings out of which the appeal arose, being a document or thing the production of which appears to it to be necessary for the determination of the appeal;
 - (ii) order any person who was, or would have been if she or he had been called, a compellable witness in those proceedings to attend for examination before the Supreme Court; and
 - (iii) receive the evidence, if tendered, of any witness; and

(b) receive evidence with the consent of the parties to the appeal.

(4) Where evidence is tendered in an appeal to which this section applies, the Supreme Court shall, unless it is satisfied that the evidence

would not afford any ground for allowing the appeal, receive the evidence if—

- (a) it appears to the Supreme Court that the evidence is likely to be credible and would have been admissible in the proceedings out of the which the appeal arose on an issue relevant to the appeal; and
- (b) the Supreme Court is satisfied that the evidence was not adduced in those proceedings and there is a reasonable explanation for the failure to adduce it.

Stay of execution pending appeal in certain cases

216. (1) Where an appeal to which this Division applies has been duly instituted, the enforcement or execution of the conviction, order, sentence or penalty appealed from shall be stayed until the appeal is concluded or is abandoned or discontinued and, if the appellant is in custody, she or he may, if not detained for any other cause, be granted bail in accordance with the provisions of the *Bail Act 1992*.

Orders by Supreme Court on appeals

218. (1) On an appeal to which this Division applies, the Supreme Court may—

- (a) affirm, reverse or vary the conviction, order, sentence, penalty or decision appealed from;
- (b) give such judgment, or make such order, as, in all the circumstances, it thinks fit, or refuse to make an order; or
- (c) set aside the conviction, order, sentence, penalty or decision appealed from, in whole or in part, and remit the proceedings to the Magistrates Court for further hearing and determination, subject to such directions as the Supreme Court thinks fit.

(2) A judgment or order of the Supreme Court under paragraph (1) (a) or (b) shall have effect as if it were a decision of the Magistrates Court and may be enforced by the Magistrates Court accordingly.

Barring of right of appeal under this Division if order to review is granted

219. (1) Where an order *nisi* to review a decision of the Magistrates Court has been granted under the next succeeding Division to a person entitled to appeal against that decision to the Supreme Court under this

Division, that person ceases to be entitled to appeal to the Supreme Court under this Division.

(2) Where an order *nisi* to review a decision of the Magistrates Court is granted under Division 3 to a person after the person has instituted an appeal to the Supreme Court under this Division against that decision, the appeal shall be deemed to have been withdrawn.

Division 3—Orders to Review

Interpretation

219A.³ In this Division, “defendant” includes a person against whom an order for commitment has been made under Division 5 of Part IX.

Appeals by way of orders to review

219B.³ (1) Each of the following is a decision of the Magistrates Court from which an appeal by way of order to review may be made in accordance with this Division:

- (a) an order of the Magistrates Court dismissing an information dealt with by that Court under Part VII or Part VIIA of this Act or under section 477 of the Crimes Act;
- (b) a conviction by the Magistrates Court for an offence dealt with by that Court under Part VII or Part VIIA of this Act or under section 477 of the Crimes Act;
- (c) an order made in pursuance of section one hundred and thirteen or one hundred and fourteen of this Act in proceedings dealt with by the Magistrates Court under Part VII of this Act or under section 477 of the Crimes Act;
- (d) an order for commitment under Division 5 of Part IX;
- (e) a decision of the Magistrates Court not to commit a person to the Supreme Court for sentence pursuant to section 92A;
- (f) a decision of the Magistrates Court to dispose of a case summarily pursuant to subsection 477 (6) or 477 (7) of the Crimes Act;
- (g) a sentence or penalty imposed by the Magistrates Court for an offence dealt with by that Court under section 90A, Part VII or VIIA or section 255 of this Act or section 477 of the Crimes Act.

(2) For the purposes of paragraph (1) (g), a reference to a sentence or penalty shall be read as including a reference to a decision order made

under subsection 556A (1) or (3), 556B (1), 556C (4) or (7) or 556D (1) or (3) of the Crimes Act, whether or not the person is convicted of the offence.

Grant of order *nisi* to review

219C. (1) Where—

- (a) within 21 days of the making of an order of a kind referred to in paragraph 219B (1) (a) or within such further time as the Supreme Court allows, an application is made by the informant in the proceedings before the Magistrates Court;
- (aa) within 21 days of the making of a decision of a kind referred to in paragraph 219B (1) (e), (f) or (g) an application is made by the informant in the proceedings before the Magistrates Court; or
- (b) within 21 days after—
 - (i) the entering of a conviction of a kind referred to in paragraph 219B (1) (b); or
 - (ii) the making of an order of a kind referred to in paragraph 219B (1) (c) or (d),

or within such further time as the Supreme Court allows, an application is made by the defendant in the proceedings before the Magistrates Court,

the Supreme Court may grant an order *nisi* calling on the other party to the proceedings to show cause, on a date specified in the order *nisi*, why the decision of the Magistrates Court should not be reviewed on any one or more of the following grounds, namely—

- (c) that there was a *prima facie* case of error or mistake on the part of the Magistrates Court;
- (d) that the Magistrates Court did not have jurisdiction or authority to make the decision;
- (e) that the decision of the Magistrates Court should not in law have been made;
- (f) that, in the circumstances of the case, a decision of a kind referred to in paragraph 219B (1) (e) or (f) should not have been made; or
- (g) that a sentence or penalty of a kind referred to in paragraph 219B (1) (g) was manifestly inadequate or otherwise in error.

(2) On an application for an order to review a decision of the Magistrates Court or on an application made after the making of such an order, the Supreme Court may, if it thinks fit, make an order requiring the Magistrate by whom the Magistrates Court was constituted to furnish to the Supreme Court a report setting forth the reasons for the decision of the Magistrates Court and any facts or matters which in the view of the Magistrate were relevant to the decision of the Magistrates Court.

Security for costs and stay of execution

219D. (1) The Supreme Court, in granting an order *nisi* under the last preceding section—

- (a) may order that the person on whose application the order is made give, within such time as is specified in the order or within such further time as the Supreme Court allows, security in such amount as the Supreme Court thinks fit for the costs of the appeal; and
- (b) may order that the enforcement or execution of the decision of the Magistrates Court be stayed pending the hearing of the appeal; and
- (c) may, if the appellant is in custody and is not detained for any other cause, grant the appellant bail in accordance with the provisions of the *Bail Act 1992*; and
- (d) where the order *nisi* is made in respect of a decision of a kind referred to in paragraph 219B (1) (e) or (f) where, after making that decision, the Magistrates Court has, pursuant to section 477 of the Crimes Act, heard and determined a case and sentenced or otherwise dealt with the defendant according to law—may order that the enforcement of any further decision made by the Magistrates Court in relation to the case be stayed.

(1A) Where the Supreme Court grants an order *nisi* in relation to an application by the informant in respect of a decision of the Magistrates Court of a kind referred to in paragraph 219B (1) (e) or (f), the proceedings in the Magistrates Court shall be stayed until the appeal is concluded, abandoned or discontinued.

(2) If security for the costs of the appeal is not given in accordance with the order of the Supreme Court, the Supreme Court may, on an application made by the person called upon to show cause by the order *nisi*, revoke the order *nisi*.

Non-appearance of applicant

219E. If the person on whose application the order *nisi* has been granted under section two hundred and nineteen C of this Act fails to appear on the date specified in the order or on any date to which the hearing is adjourned, the Supreme Court may discharge the order.

Powers of Supreme Court

219F. (1) On the return of an order *nisi* to review a decision of the Magistrates Court, the Supreme Court, on consideration of the evidence before the Magistrates Court, and any further evidence called by leave of the Supreme Court—

- (a) may, if satisfied that the decision of the Magistrates Court should be confirmed, discharge the order *nisi*; or
- (b) may set aside or quash, in whole or in part, or otherwise vary or amend, the decision of the Magistrates Court.

(1A) Where, pursuant to paragraph (1) (b), the Supreme Court sets aside, quashes or otherwise varies or amends a decision of the Magistrates Court, the Supreme Court may—

- (a) in the case of a decision specified in paragraph 219B (1) (e)—
order that the Magistrates Court commit the person to whom the decision relates to the Supreme Court for sentence pursuant to section 92A;
- (b) in the case of a decision specified in paragraph 219B (1) (f)—
order that the Magistrates Court continue the preliminary examination of the person to whom the decision relates in accordance with Part VI;
- (ba) in the case of a decision specified in paragraph 219B (1) (g)—
 - (i) impose such sentence or penalty as the Supreme Court thinks fit; or
 - (ii) by order, exercise any power which the Magistrates Court might have exercised; or
- (c) in any other case—
 - (i) remit the matter to the Magistrates Court for rehearing or for further hearing with or without directions of law; or

- (ii) make such further order, including an order granting any relief that the Supreme Court is empowered to grant on certiorari, mandamus, prohibition or habeas corpus, as the Supreme Court thinks necessary to determine the matter finally.

(2) For the purpose of—

- (a) correcting any defect or error in the proceedings before the Magistrates Court; or
- (b) enabling the matter to be determined upon the merits,

the Supreme Court may make such amendments of the proceedings in the Magistrates Court as it thinks appropriate.

(2A) For the purposes of paragraphs (1) (b) and (1A) (ba), the Supreme Court shall not—

- (a) vary a sentence or penalty such that the sentence or penalty as varied could not have been imposed by the Magistrates Court; or
- (b) impose a sentence or penalty which could not have been imposed by the Magistrates Court.

(3) The Supreme Court may, notwithstanding the ground or any of the grounds on which the order *nisi* to review a decision of the Magistrates Court was granted has been established, discharge the order *nisi* if the Supreme Court is of the opinion that no substantial miscarriage of justice has occurred.

(4) On the discharge of an order *nisi* to review a decision of the Magistrates Court, that decision may be enforced, executed or given effect to as if the order *nisi* had not been granted.

(4A) Where, in respect of a sentence or penalty referred to in paragraph 219B (1) (g), the Supreme Court—

- (a) varies a sentence or penalty under paragraph (1) (b); or
- (b) imposes a sentence or penalty or makes an order under paragraph (1A) (b);

the sentence or penalty as varied or imposed or the order made shall have effect as if it were a decision of the Magistrates Court and may be enforced by the Magistrates Court accordingly.

(5) On an appeal under this Division from an order, decision, sentence or penalty referred to in paragraph 219B (1) (a), (e), (f) or (g), the Supreme Court shall order that the costs of and incidental to the appeal shall be paid by the appellant.

(6) Subsection (5) applies whether the Supreme Court orders that the order *nisi* be discharged or exercises any of the other powers conferred on it by this section.

Division 4—General Provisions

Control of Supreme Court over summary convictions

222. (1) A person brought before the Supreme Court or the Judge, on *habeas corpus*, shall not be discharged from custody by reason of any defect or error in a warrant of commitment of the Magistrates Court, unless the Court, or the magistrate constituting the Court, and the prosecutor or other party interested in supporting the warrant have received reasonable and sufficient notice of the intention to apply for the discharge.

(2) The notice shall require them to transmit or cause to be transmitted to the Supreme Court or the Judge the conviction, judgment or order, if any, on which the commitment was founded, together with the depositions and information or claim, if any, intended to be relied on in support of the conviction, judgment or order, or certified copies thereof.

Amendment

223. If any such conviction, judgment or order, information or claim and depositions or certified copies, are so transmitted, and the offence charged or intended to be charged thereby or the cause of action mentioned therein appears to have been established, and the judgment of the Court thereupon to have been in substance warranted, and the defects or errors appear to be defects of form only, or mistakes not affecting the substantial merits of the proceedings before the Magistrates Court, the Supreme Court or the Judge shall allow the warrant of commitment, and may allow the conviction, judgment or order also, to be forthwith amended in all necessary particulars in accordance with the facts, and the person committed shall thereupon be remanded to her or his former custody.

In cases of *certiorari*

224. The like proceedings as in the last two preceding sections mentioned shall be had, and the like amendments may and shall be allowed to be made, in respect of every order brought before the Supreme Court or

the Judge by writ of *certiorari*, and after amendment in any such case the order may be enforced in the proper manner, and shall in all respects and for all purposes be regarded and dealt with as if it had been drawn up originally as amended.

Notice dispensed with

225. The notice prescribed by section two hundred and twenty-two of this Act may be given either before or after the issue of the writ of *habeas corpus*, or *certiorari*:

Provided that when at the time of applying for the writ—

- (a) copies of the conviction or order and depositions are produced; or
- (b) in cases of committal for trial or for sentence all informations, depositions, and statements have been transmitted, as provided in section 106, to the Director of Public Prosecutions or a person authorized by the Director of Public Prosecutions,

the Supreme Court or the Judge may dispense with the notice.

Power of Court or Judge to admit to bail

226. (1) Where any person committed to gaol by virtue of a summary conviction or order is brought up by writ of *habeas corpus*, and the Supreme Court or the Judge postpones the final decision of the case, the Supreme Court or the Judge may admit the person to bail in accordance with the provisions of the *Bail Act 1992*.

(2) If the judgment of the Supreme Court or the Judge is against any person so brought up, the Supreme Court or the Judge may remand her or him to her or his former custody, there to serve the rest of the term for which she or he was committed.

Respecting the amendment of convictions etc.

227. (1) Whenever the facts or evidence appearing by the depositions in substance support the decision of the Magistrates Court, if the decision does not extend beyond the information, and if the facts or evidence would have justified the Court in making any necessary allegation or finding omitted in the decision, or in the formal conviction or order, or any warrant issued in pursuance of the adjudication, the powers of amendment conferred by section two hundred and twenty-three of this Act may be exercised, and where in a conviction there is some excess which may

(consistently with the merits of the case) be corrected, the conviction shall be amended accordingly and shall stand good for the remainder.

(2) All amendments shall be subject to such order as to costs and otherwise as the Supreme Court or the Judge thinks fit.

Want of summons or information

228. Where the person convicted, or against whom an order has been made, or any person whose goods have been condemned or directed to be sold as forfeited, was present at the hearing of the case, the conviction or order shall be sustained, although there may not have been any information or summons or amendment thereof unless she or he objected at the hearing that there was no information or summons or amendment thereof.

Distribution of penalty

229. A conviction or an order shall not be defeated for the want of any distribution, or for a wrong distribution of the penalty or forfeiture.

Provisions applicable in relation to security given for costs of appeal

230. (1) Where security is given, in accordance with an order made under section 219D, by deposit of money with the Registrar, the Registrar shall—

- (a) if, upon the determination of the appeal, the costs of and incidental to the appeal are not ordered to be paid by the appellant to the respondent—repay the amount deposited to the person by whom it was deposited; or
- (b) if, upon determination of the appeal, the costs of and incidental to the appeal are ordered to be paid by the appellant to the respondent, the amount payable has been ascertained and the whole or any portion of that amount has not been paid to the respondent—apply the amount deposited in, or towards, satisfaction of the amount of costs unpaid and repay the balance (if any) to the person by whom it was deposited.

(2) Where security is given by bond, the Registrar shall, if the costs of and incidental to the appeal are ordered to be paid by the appellant to the respondent, deliver the bond to the respondent who may enforce the bond according to its tenor.

PART XII—PROTECTION OF MAGISTRATES IN THE EXECUTION OF THEIR OFFICE

Magistrate sued for act not within her or his jurisdiction

231.³ Any person injured by an act done by a Magistrate in a matter in which by law she or he has no jurisdiction or in which she or he has exceeded her or his jurisdiction, or by an act done under any conviction or order made or warrant issued by a Magistrate in any such matter, may maintain in the Supreme Court an action against the Magistrate without alleging in her or his statement of claim or plaint that the act complained of was done maliciously and without reasonable and probable cause:

Provided that no such action shall be maintainable for anything done under any such conviction or order until after the conviction or order has been quashed or set aside upon appeal:

Provided further that no such action shall be maintainable for anything done under any such warrant which was issued by the Magistrate to procure the appearance of the person charged, and which has been followed by a conviction or order in the same matter, until after the conviction or order has been so quashed or set aside:

Provided also that if the last-mentioned warrant has not been followed by a conviction or order, or if it is a warrant upon an information of an alleged indictable offence, and if a summons was issued previously to the warrant being issued, and the summons was served upon the person charged either personally or by leaving it for her or him with some person at her or his last known or usual place of abode or business, and she or he did not appear according to the exigency of the summons, in that case no action shall be maintainable against the Magistrate for anything done under the warrant.

No action against Magistrate after order *nisi* to quash conviction has been granted

232. Where an order to show cause why a conviction or order should not be quashed has been granted an action shall not be maintainable against the Magistrate constituting the Court by which the conviction or order in question was made in respect of any proceeding taken under, or matter arising out of, the conviction or order.

Warrant by Magistrate upon an order of a Court

233.³ Where a conviction or order is made by the Court and a warrant of execution or of commitment is granted thereon by a Magistrate *bona fide* and without collusion, an action in respect of any defect in the conviction or order or any want of jurisdiction in the Court making the conviction or

order shall be maintainable only against the Magistrate constituting the Court which made the conviction or order.

No action for acts done under order of Supreme Court

234. Where a Magistrate does an act in obedience to an order of the Supreme Court or the Judge, an action shall not be maintainable against her or him for obeying the order and doing the act thereby required.

No action where proceeding confirmed on appeal

235.³ Where a warrant of execution or of commitment is granted by a Magistrate upon a conviction or order which, either before or after the granting of the warrant, is confirmed upon appeal, an action shall not be maintainable against the Magistrate who granted the warrant for anything done under it by reason of any defect in the conviction or order.

Actions in cases prohibited

236. If any action, which by this Act is declared to be not maintainable, is brought against a Magistrate, the Judge, upon application of the defendant, and upon affidavit of the facts, may set aside or stay the proceedings in the action with or without costs.

Payment of money into court

239. (1) After an action under this Part has been commenced but before issue is joined, the defendant may pay into court such sum of money as he or she thinks fit.

(2) If the court at the trial is of opinion that the plaintiff is not entitled to damages beyond the sum so paid into court, judgment shall be given for the defendant; and the sum of money so paid into court, or so much thereof as is sufficient to pay or satisfy the defendant's costs in that behalf, shall thereupon be paid out of court to her or him, and the residue (if any) shall be paid to the plaintiff.

(3) If when money is so paid into court the plaintiff elects to accept the same in satisfaction of her or his damages in the action, she or he may apply to the Judge for an order for the payment of the money out of court to her or him, with or without costs, and the Judge may make the order, and thereupon the action shall be determined and the order shall be a bar to any other action for the same cause.

No action against Magistrate for judicial acts in Magistrates Court

240. An action shall not be brought in the Magistrates Court against a Magistrate in respect of anything done by her or him in the execution of her or his office.

Magistrate sued for acts within her or his jurisdiction only liable in case of malice and absence of reasonable and probable cause

241. In an action against a Magistrate for any act done by her or him in the execution of her or his duty as a Magistrate with respect to any matter within her or his jurisdiction as a Magistrate, it must be expressly alleged in the statement of claim or plaint that the act was done maliciously and without reasonable and probable cause, and if the allegations are denied, and at the trial of the action the plaintiff fails to prove them, judgment shall be given for the defendant.

Verdict for defendant

242. If at the trial of any action against a Magistrate, the plaintiff—

(c) does not prove the cause of action stated in the notice,

judgment shall be given for the defendant.

Damages

243.³ Where the plaintiff in an action against a Magistrate is entitled to recover, and she or he proves the levying or payment of any penalty or sum of money under a conviction or order as parcel of the damages which she or he seeks to recover, or proves that she or he was imprisoned under the conviction or order, and seeks to recover damages in respect of the levying or payment or imprisonment, if it is proved that she or he was actually guilty of the offence of which she or he was so convicted, or that she or he was liable by law to pay the sum which she or he was so ordered to pay, and, in case of imprisonment, that she or he has undergone no greater punishment than that assigned by law for the offence of which she or he was so convicted, or for non-payment of the sum which she or he was so ordered to pay, she or he shall not be entitled to recover the amount of the penalty or sums so levied or paid, or any sum beyond the sum of One cent as damages for the imprisonment, or any costs of the suit whatsoever.

PART XIII—COSTS

Award of costs

244.³ (1) The power of the Court to award costs and the award of costs by the Court shall be subject to the following provisions:

- (a) Where the Court makes a conviction or order in favour of the informant, it may in its discretion award and order that the defendant shall pay to the informant such costs as it thinks just and reasonable;
- (b) Where the Court dismisses the information, or makes an order in favour of the defendant, it may in its discretion award and order that the informant shall pay to the defendant such costs as it thinks just and reasonable;
- (c) The sums so allowed for costs shall in all cases be specified in the conviction or order or order of dismissal;
- (d) Any sum awarded or ordered to be paid by an informant or to a defendant for costs, may be raised and levied by distress under the provisions of this Act;
- (e) Where any case is adjourned the Court may in its discretion order that the costs of and occasioned by the adjournment be paid by any party to any other party;
- (f) The costs of persons present to give evidence or produce documents, whether they have been examined or not, or have or have not produced documents shall, unless otherwise ordered by the Court, be allowed to them though they have not been summoned; but their allowance for attendance shall in no case exceed the highest rate of allowance prescribed; and
- (g) The amount of costs to be paid by one party to another whether for the attendance of those persons or otherwise shall in all cases be fixed by the Court.

Witnesses expenses

247. The amount of costs that may be awarded under section two hundred and forty-four of this Act in respect of the attendance of a person who attends for the purpose of giving evidence before the Court is such amount as the Court directs in accordance with the scale and conditions applicable in relation to persons who attend as witnesses before the Supreme Court.

Costs in garnishee proceedings

248.³ (1) The costs of an application for a garnishee order and of any proceedings arising from or incidental to the application, shall be in the discretion of the Court.

(2) Where the garnishee pays into Court, five days before the return day of the summons, all debts due, owing or accruing from her or him to the judgment debtor or so much of the debts as is sufficient to satisfy the judgment debt, she or he shall not be liable for any costs incurred by the judgment debtor.

PART XIII A—FEES AND CHARGES

Determination of fees and charges

248A. (1) The Minister may, by notice in writing published in the *Gazette*, determine fees and charges for any of the following purposes:

- (a) proceedings in the Court, and matters incidental to such proceedings, including—
 - (i) the service and execution of the process of the Court; and
 - (ii) the taxation of costs by officers of the Court;
- (b) facilities and services provided by the Court, including the service and execution of the process of any court of the Commonwealth, a State or another Territory, or of any court of a foreign country;
- (c) the general purposes of this Act, the *Magistrates Court (Civil Jurisdiction) Act 1982*, the *Small Claims Act 1974* and rules and regulations made under this Act and any of those Acts.

(2) A determination under subsection (1) may provide for any of the following matters:

- (a) the exemption of persons from liability to pay filing fees or fees for the service and execution of process, in whole or in part;
- (b) exemptions from liability for the payment of filing fees or fees for the service and execution of process, in whole or in part, in particular circumstances;
- (c) the remission or refund of fees or charges by the Registrar, in whole or in part, in particular circumstances;
- (d) the deferral of liability by the Registrar for the payment of fees or charges, in whole or in part, in particular circumstances.

(3) A determination under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

Fees and charges—payment

248B. (1) A fee or charge determined under subsection 248A (1) is payable, in advance, in accordance with the determination, subject to this section.

(2) A fee or charge determined under subsection 248A (1) is payable on notification from the Registrar if it is calculated by reference to expenses actually incurred in performing the function, or in providing the facility or service, for which the fee or charge is payable.

(3) If a fee or charge determined under subsection 248A (1) and payable in advance is not paid when due, there is no obligation on the Registrar or the Court to perform the function, or provide the facility or service, for which the fee or charge is payable.

Fees and charges—remission, refund, deferral, waiver, exemption

248C.² (1) A fee or charge determined under subsection 248A (1) may be remitted or refunded, or liability for its payment deferred, in accordance with the determination.

(2) A fee or charge determined under subsection 248A (1) is not payable—

- (a) if the person otherwise liable to pay the fee or charge is—
 - (i) exempt from paying the fee or charge under subsection 93 (1) of the *Legal Aid Act 1977*; or
 - (ii) legally assisted under a scheme or service provided or approved by the Attorney-General;
- (b) if the Registrar waives payment of the fee or charge in whole or in part because he or she considers that it would impose hardship on the person liable to pay the fee or charge—to the extent of the waiver;
- (c) for filing a document, or for the service or execution of process, in relation to proceedings—
 - (i) under Part X;
 - (ii) on an application arising out of a conviction or order in respect of an offence;
 - (iii) under the *Children's Services Act 1986*;

- (iv) under the *Domestic Violence Act 1986*;
 - (v) under the *Guardianship and Management of Property Act 1991*;
 - (vi) under the *Maintenance Act 1968*;
 - (vii) under the *Mental Health Act 1983*; or
 - (viii) under the *Workers' Compensation Act 1951*;
- (d) for the laying of an information—
- (i) by the Director of Public Prosecutions acting in the performance of an official function;
 - (ii) by a police officer acting in the performance of an official function; or
 - (iii) for an offence under subsection 255 (1); or
- (e) for inspection under section 306A of the *Magistrates Court (Civil Jurisdiction) Act 1982* of a record relating to a default judgment by—
- (i) a party to the proceedings in which the judgment was given or entered; or
 - (ii) the legal representative of such a party.

Fees and charges (civil proceedings)—recovery where otherwise not payable

248D. (1) This section applies in civil proceedings in the Court between 2 parties (in this section called “the first party” and “the second party”), where—

- (a) a filing fee, or a fee for the service and execution of process, otherwise payable by the first party is—
 - (i) not payable (in whole or in part) due to the exemption of the first party as referred to in paragraph 248A (2) (a) or (b) or 248C (2) (a);
 - (ii) remitted or refunded (in whole or in part) under subsection 248C (1); or
 - (iii) the subject of waiver (in whole or in part) under paragraph 248C (2) (b);

- (b) judgment is given or entered, or an order is made, in favour of the first party; and
- (c) the first party's costs are payable by the second party.

(2) Where this section applies, the second party shall pay to the Registrar an amount equal to the amount in relation to which the first party was exempted, or the amount of the remission, refund or waiver, as the case requires.

(3) This section does not apply where the Court is sitting as the Small Claims Court.

Fees and charges (criminal proceedings)—recovery where otherwise not payable

248E. (1) This section applies in criminal proceedings in the Court, where—

- (a) the fee that would otherwise be payable for the laying of an information is not payable, in whole or in part, due to the operation of paragraph 248C (2) (a), (b) or (d); and
- (b) the defendant is convicted of the offence alleged in the information and ordered to pay a fine.

(2) Where this section applies, the defendant shall pay to the Registrar, in addition to the amount of the fine, an amount equal to—

- (a) if payment of the fee is waived in part under paragraph 248C (2) (b)—the amount of the waiver; or
- (b) in any other case—the fee for the laying of the information which would otherwise have been payable by the informant.

Fees and charges—review of decisions

248F. (1) The following decisions of the Registrar are reviewable under this section:

- (a) a decision referred to in paragraph 248A (2) (c) in relation to the remission or refund of a fee or charge (in whole or in part);
- (b) a decision referred to in paragraph 248A (2) (d) in relation to the deferral of liability for the payment of a fee or charge (in whole or in part);

- (c) a decision under paragraph 248C (2) (b) in relation to the waiver of payment of a fee or charge (in whole or in part).

(2) After making a reviewable decision, the Registrar shall give a written notice of the decision to the eligible person including a statement to the effect that—

- (a) the person may apply to the Registrar for a statement of reasons for the decision; and
- (b) the person may apply to a Magistrate for review of the decision within the review period.

(3) On written application by the eligible person within 28 days after the person's receipt of a notice under subsection (2), the Registrar shall give the person a written statement of reasons for the relevant decision.

(4) On written application by the eligible person within the review period, a Magistrate may review a reviewable decision.

(5) On review under subsection (4), the Magistrate may make such order as he or she considers appropriate.

(6) No fee or charge is payable in relation to an application for review under subsection (4).

(7) In this section—

“eligible person”, in relation to a reviewable decision, means the person who claims to be entitled to the relevant remission, refund, deferral or waiver;

“review period”, in relation to a reviewable decision, means—

- (a) the period of 28 days after receipt by the eligible person of notice of the decision under subsection (2); or
- (b) if the eligible person applies under subsection (3) for a statement of reasons for the decision—the period of 28 days after he or she receives the statement of reasons.

PART XIV—SECURITIES

Securities taken in pursuance of Act

249. (1) A person shall give security under this Act, whether as principal or surety, either by the deposit of money with the Registrar, or by

an oral or written acknowledgment of the undertaking or condition by which, and of the sum for which, she or he is bound, in such manner and form as are prescribed.

(2) Record of the security having been made may be provided by entry thereof in the register under this Act or proceedings of the Court or as is prescribed.

Recovery of sum due under security

250. Any sum becoming due in pursuance of a security under this Act or the *Bail Act 1992* shall be recoverable on a claim by a member of the Police Force or by the Registrar or by some other person thereto authorized by the Court.

Sums paid by surety may be recovered from principal

252. Any sum paid by a surety on behalf of her or his principal in respect of a security under this Act or the *Bail Act 1992*, together with all costs, charges and expenses incurred by the surety in respect of the security, shall be deemed to be a debt due to her or him from the principal, and may be recovered on a claim by the surety.

Payment enforced by security

253. Where security is given under this Act or the *Bail Act 1992* for payment of a sum of money, the payment shall be enforced by means of the security in substitution for other means of enforcing the payment.

Enforcement of recognizance

254.³ (1) Where—

- (a) a witness or a person sought to be made a witness has entered into a recognizance for the purposes of this Act; and
- (b) the Court is satisfied that the witness or person sought to be made a witness has failed to comply with a condition of the recognizance;

the Court may declare the recognizance to be forfeited and may make an order that the witness or person sought to be made a witness pay the whole or a part of the sum in which he or she is bound under the recognizance.

(2) Where—

- (a) the Court has declared a recognizance to be forfeited under subsection (1); and

- (b) a person is bound by the recognizance as surety for the performance of that condition,

the Court may make an order that the person referred to in paragraph (b) pay the whole or a part of the sum in which she or he is bound under the recognizance.

(3) An order made under subsection (1) or (2) may be enforced as if it were a judgment entered on a claim by the Registrar.

(4) Subject to subsection (5), the Court may, on application by a person against whom an order has been made under subsection (1) or (2) or under subsection 36 (1) of the *Bail Act 1992*—

- (a) vary the order by reducing the amount payable under the order; or
(b) revoke the order and, if the order was made under subsection (1) of this section, revoke the declaration that the recognizance is forfeited.

(5) Where—

- (a) the Court has made an order under subsection (1) or (2);
(b) a warrant has been issued under section 158; and
(c) goods or chattels have been sold under the warrant,

the Court shall not make an order under subsection (4).

(6) It is not necessary that, for the purpose of hearing an application under subsection (4), the Court be constituted by the Magistrate who made the order to which the application relates.

Directions as to procedure

254A. Where the procedure for taking any step in proceedings is not prescribed in this Act or the law under which the step is to be taken, the Court may give directions with respect to the procedure to be followed as regards that step.

PART XV—MISCELLANEOUS

Contempt

255. (1) A person shall not—

- (a) wilfully threaten, disturb or insult the Court;
(b) wilfully interrupt, interfere with or obstruct the proceedings of the Court; or

(c) commit any other act that is a wilful contempt of the Court.

Penalty: \$5,000 or imprisonment for 6 months or both.

(2) Subsection (1) only applies to acts in the face, or within the hearing, of the Court.

(3) Without limiting the operation of any other provision of this Act, where a person commits an offence against subsection (1), a Magistrate may proceed to charge the person and hear and dispose of the matter immediately and for that purpose receive evidence including unsworn evidence.

(4) Where—

- (a) a person has been charged under subsection (3) but the matter has not been disposed of;
- (b) a Magistrate has reasonable grounds to believe that the person has committed an offence against subsection (1); and
- (c) the Magistrate considers that it is reasonable in all the circumstances—
 - (i) to order that the person be taken into custody to appear before the Court;
 - (ii) to order that the person be remanded in custody from time to time for periods not exceeding 15 clear days at any one time;
 - (iii) to release the person on bail; or
 - (iv) to make an order in respect of the person under subsection (8) before the alleged offence has been heard;

the Magistrate may make such an order.

(5) An order under subsection (4) need not be in writing but such an order shall be reduced to writing, and a copy served on the alleged offender, as soon as practicable.

(6) Failure to comply with subsection (5) does not invalidate an order.

(7) Where a person is convicted of an offence against subsection (1), the Court, in addition to any penalty provided for under that subsection that it imposes, may make an order in relation to the person under subsection (8).

- (8) An order under this subsection may provide for—
- (a) the exclusion of the person from any building in which the Court sits or the environs of such a building;
 - (b) prohibiting the person from approaching a Magistrate, an officer of the Court or a witness; or
 - (c) the imposition of any reasonable condition on the person.
- (9) In this section—
- “Court” includes—
- (a) a Magistrate when exercising the jurisdiction of the Court; or
 - (b) the Registrar in the performance of a judicial function.

255AA, 255AB.³ * * * *

Commitment to remand centre

255A. (1) Where—

- (a) a warrant has been issued for the commitment of a person to prison under section 145, 150, 151, 182 or 183, or to gaol under section 202; and
- (b) a warrant under section 5 of the *Removal of Prisoners (Australian Capital Territory) Act 1968* is not in force in respect of that person on the day on which the person is taken into custody by virtue of the warrant referred to in paragraph (a),

the Court or a magistrate may, by warrant, commit the person to a remand centre.

(2) Where a warrant is issued under subsection (1), the warrant referred to in paragraph (1) (a) ceases, by virtue of this section, to have any effect.

Registrar to give directions for preparation of transcript

255B. (1) Where an application has been made for a copy of a transcript of depositions of which a record was made in accordance with subsection 54A (2), the Registrar shall give such directions as she or he considers necessary for ensuring that a transcript of the record is prepared and, for the purpose of enabling the transcript to be prepared, the record shall be produced out of the custody of the Registrar.

(2) Where a transcript of a record is prepared in accordance with directions given under subsection (1), the person who prepared the transcript, or under whose supervision the transcript was prepared, shall certify on the transcript, by writing under her or his hand, that the transcript is a true transcript of a record produced out of the custody of the Registrar.

Applications for transcripts

255C. (1) Subject to this section, where a record of any proceedings is constituted by:

- (a) a sound-recording made in accordance with subsection 54A (2);
- (b) a shorthand or similar record made in accordance with subsection 54A (2);
- (c) writing taken down in accordance with subsection 54A (3); or
- (d) a written statement or statements in accordance with section 90AA or subsection 110 (2),

a person may make application to the Registrar for a copy or a transcript, as the case may be, of all or part of that record.

(2) The Registrar shall give the applicant a copy of the record or a transcript or a copy of the transcript of the record—

- (a) if the applicant is a party to the proceedings; or
- (b) if the applicant is not a party to the proceedings—if the Registrar or a Magistrate is satisfied that he or she has good reason for applying.

(4) Where a person applies for a transcript that has not been prepared, the Registrar may require the applicant to deposit with him or her in advance an amount which the Registrar considers will not exceed the amount of the fee determined under subsection 248A (1) for the preparation of the transcript.

(5) Subject to subsections (6) and (7), where the Registrar receives an application in accordance with this section—

- (a) she or he shall, in the case of an application relating to depositions; and
- (b) she or he may, in any other case,

furnish to the applicant a copy of the record or a copy of a transcript of the record relating to those depositions or other matter, as the case may be.

(6) The Registrar shall not furnish a copy of the record or a copy of a transcript under paragraph (5) (a) unless there is written on the copy a certificate under the hand of the Registrar stating that the copy is a true copy of the record or a true copy of a transcript of the record, as the case may be, produced out of the custody of the Registrar.

(7) Nothing in this section requires the Registrar to furnish a copy of a transcript of any proceedings if—

- (a) the proceedings were recorded by means of a sound-recording made in accordance with subsection 54A (2);
- (b) the application for the copy was made after the expiration of 7 years after the date of completion of the proceedings to which the record relates; and
- (c) the Registrar does not have the record or a transcript of that record in her or his custody.

(8) If an amount deposited by a person under subsection (4) exceeds the fee determined under subsection 248A (1) for the preparation of the transcript, there is payable to the person an amount equal to the amount of the excess.

Forms

256. (1) Subject to subsection (1A), the forms—

- (a) in the First Schedule; or
- (b) approved under subsection (3);

or forms to the like effect, may be used for the purposes to which they are respectively applicable, and instruments in those forms shall be deemed sufficient in law; but those forms, or any of them, may be varied for the purpose of adapting them to circumstances.

(1A) Subsection (1) does not apply to or in relation to the Notice to Defendant form, the Notice of Intention to Defend form or the Plea of Guilty form.

(2) No conviction, order or judgment shall be vacated, quashed or set aside for want of form, or be impeached or affected by reason of any defect, mistake or omission therein, if the proceeding or matter to which the form relates is sufficient in substance and effect.

(3) The Minister may, by notice published in the *Gazette*, approve a form for the purposes of this Act.

(4) The notice referred to in subsection (3)—

- (a) shall include the text of the approved form; and
- (b) may include a declaration by the Minister that that form supersedes a particular numbered form or forms in the First Schedule and the numbered form or forms shall be taken to be superseded accordingly.

(5) Where a form in the First Schedule is superseded, it shall cease to have effect as if it had been repealed.

(6) Where a form in the First Schedule is superseded by an approved form, the revocation of the approved form does not revive the form in the First Schedule.

(7) A notice referred to in subsection (3) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

Rules and Regulations

258. (1) The Executive may make rules or regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for giving effect to this Act, and in particular prescribing matters providing for and in relation to—

- (a) the practice and procedure before Magistrates and in the Court;
- (c) the giving of security under this Act;
- (d) the forms to be used under this Act including the forms of any recognizance mentioned in this Act, and including the variation of any of the forms in the First Schedule to this Act on the substitution of other forms therefor;
- (e) the fees, costs and charges in respect of proceedings under any other law for the time being in force so far as the same relates to any matter or proceeding as to which the Court or any Magistrate has jurisdiction;
- (g) the regulating of the form of account to be rendered by Registrars of fines, fees and other sums received by them, and including the variation of the form in the Third Schedule to this Act; and

- (h) the service of documents, and the taking of evidence, in the Territory, in pursuance of any Request from the Consular or other proper authority of a foreign country under the terms of any Convention relating to Legal Proceedings in Civil and Commercial Matters to which the Commonwealth is a party.
-

THE SCHEDULES

THE FIRST SCHEDULE³

Form 1

Paragraph 206A (1) (a)

Magistrates Court Act 1930
NOTICE OF PROCEEDINGS

IN THE MAGISTRATES
COURT AT CANBERRA

No. of 19

Between
and

(*applicant*)
(*respondent*)

To the Respondent

An application in accordance with Part X of the *Magistrates Court Act 1930* for a restraining order has been made by [*name of applicant*] against you. A copy of the application is attached. The application has been set down for hearing on 19 at
(*time*) at (*place*) .

If you do not appear in person at the hearing of the application, the Court may—

- (a) deal with the application in your absence; or
- (b) issue a warrant for your apprehension to be brought before the Court.

Dated 19 .

[*Signature*]

Registrar of the Magistrates Court

Form 1A

Paragraph 206K (2) (a)

Magistrates Court Act 1930
RESTRAINING ORDER *or*
INTERIM RESTRAINING ORDER
(*Heading as in Form 1*)

The Court, having heard an application made by [*name of applicant*] under the *Magistrates Court Act 1930* in respect of the conduct [*or threatened conduct*] of [*name of respondent*] towards [*name of aggrieved person*]:

Now the Court this day orders that, for [*period*]:

- 1. [*name of respondent*] not engage in the following conduct:
- 2. [*name of respondent*] comply with the following prohibitions and conditions:

[*specify prohibitions and conditions and any other period or periods for which they are imposed*]

Dated 19 .

[*Signature*]

Registrar of the Magistrates Court

Note: If a State or another Territory has reciprocal legislation in force, this order may be registered, and enforced, in that State or other Territory without notice of registration being given to the respondent.

THE FIRST SCHEDULE—continued

Form 1B

Paragraph 206K (2) (b)

Magistrates Court Act 1930

ORDER VARYING RESTRAINING ORDER *or*

INTERIM RESTRAINING ORDER

(Heading as in Form 1)

The Court, having heard an application made by *[name of applicant]* under the *Magistrates Court Act 1930* in respect of the conduct *[or threatened conduct]* of *[name of respondent]* towards *[name of aggrieved person]*, and having on *[date of original order]* ordered that, for *[period]*:

1. *[name of respondent]* not engage in the following conduct:
2. *[name of respondent]* comply with the following prohibitions and conditions:

[specify prohibitions and conditions and any other period or periods for which they are imposed]

Now the Court, on the application of *[name of applicant]*, this day orders that the Restraining Order *[or Interim Restraining Order]* be varied as follows:

[specify details of variation]

Dated 19 .

[Signature]

Registrar of the Magistrates Court

FORM 2

Information to Ground Search Warrant

Australian Capital Territory,
to wit. }

The information of C.D., of , in the said Territory , made this day of 19 , before the undersigned (*a Magistrate of or Registrar of Magistrates Court of the said Territory*), who says that the following goods of [her or him], the said C.D., to wit *[describe them]*, were on the day of *[or have lately been]* feloniously stolen, taken and carried away, from and out of the dwelling-house *[or as the case may be]* of the said C.D. situate at , in the said Territory, and that she or he, the said C.D., has reasonable cause to suspect, and does suspect that the said goods, or part thereof, are concealed in the dwelling-house or premises *[or as the case may be]* in the occupation of A.B., situate at , in the said Territory.

[Here state grounds of suspicion.]

Sworn before me the day and year first above-mentioned, at in the said Territory.

J.S.,
Magistrate.

THE FIRST SCHEDULE—continued

FORM 3

Information in all other cases

Australian Capital Territory,
to wit.

The information of C.D., of _____, in the said Territory _____, laid this
day of _____, 19____, before the undersigned, a Magistrate of the said
Territory, who says that on the _____ day of _____, 19____, at _____ (&c.,
stating the offence or subject matter).

Sworn (*or laid*) before me on the day of the year first mentioned, at _____, in the
said Territory.

J.S.
Magistrate

The causes of complaint in civil cases may be stated as follows:

For that you assaulted A.B. by [*state nature of assault*].

For that certain goods of A.B. are detained by you.

For that you on the _____ day of _____, at _____, in the
said _____, were indebted to A.B. in the sum of _____,
(on balance of accounts).

For goods then and there bargained and sold to you by A.B. and

For goods then and there sold and delivered to you by A.B.

For money then and there lent to you by A.B. and interest thereon.

For money paid by A.B. for you at your request.

For money received by you for the use of A.B.

For work and labour then and there done by A.B. for you at your request and

For the use and hire of divers chattels [*or beasts*] by A.B. then and there let to hire and delivered
to you at your request and

For work and labour then and there done and materials for the same then and there provided by
A.B. for you at your request and

For the use and occupation of certain land [*house or apartments*] of A.B. by you at your request
and by the permission of the said A.B. then and there held and enjoyed and

For board and lodging then and there provided and supplied by A.B. for and to you at your
request and

For feeding and taking care of horses [*sheep or cattle*] by A.B. then and there fed and taken care
of for you at your request and

For warehouse room then and there found and provided by A.B. in and about the storing and
keeping of goods and chattels by the said A.B. for you at your request and

For the carriage of goods and chattels by A.B. then and there carried for you at your request.

THE FIRST SCHEDULE—continued

For the amount of a cheque drawn by you on the Bank of _____ dated _____
or for the amount of a bill of exchange dated the _____
day of _____, now overdue, and directed by the complainant to you, and requiring you to pay
to the complainant (*Here insert amount*) _____ months after date, which was accepted
by you, but was not paid, or for the amount of your promissory note dated _____, payable
_____ months after date, and interest thereon.

For money due to A.B. on account stated.

For that certain of your cattle, to wit, (*eleven cows*), trespassed on the land of A.B.

FORM 4

Certificate of Indictment being found

I HEREBY certify that at the Sittings of the Supreme Court, held at _____ in the
_____ on the _____ day of _____ 19 _____, an information
was presented against A.B., therein described as A.B., late of _____, in the
said Territory _____, for that she or he, on the _____ day of _____
19 _____, at _____ [*&c., stating shortly the offence*], and that the said A.B.
did not appear or plead to the said information.

Dated this _____ day of _____, 19 _____.

Registrar.

THE FIRST SCHEDULE—continued

SUMMONSES

FORM 5

Summons to the defendant upon information

In the Magistrates Court at Canberra.

To A.B., of _____, in the Australian Capital Territory.

WHEREAS an information has this day been laid before the undersigned (*a magistrate of or Registrar of the Magistrates Court of the said Territory*), that you, on the _____ day of _____ 19____, at _____,

[*here state shortly the matter of the information*]. These are therefore to command you, in His Majesty's name, to appear at _____ at _____ in the said Territory, on the _____ day of _____ 19____, at _____ o'clock in the forenoon, before the said court, to answer the said information, and to be further dealt with according to law.

Given under my hand, at _____ in the said Territory, this _____ day of _____ 19____.

J.S.,

Magistrate *or* Registrar of Magistrates Court.

Affidavit of service [to be endorsed on summons].

A.B. _____ of _____ being duly sworn saith as follows:

I am a _____ of Police stationed at _____

On the _____ day of _____ 19____, I personally served the within-named C.D. with the within summons by delivering a copy of it to her or him personally and at the same time showing her or him the original summons.

Sworn before me [*&c., as in information*].

THE FIRST SCHEDULE—continued

FORM 7

Summons to a person to give evidence [and produce documents]

In the Magistrates Court at Canberra.

A.B., informant

C.D., defendant.

Date of information 19 .

Nature of information [*state shortly*].

To , of , in the Australian Capital Territory.

THESE are to require you to appear on the day of 19 , at o'clock in the noon, at in the said Territory, before the said Court to give such evidence as you know concerning the matter of the above-mentioned information. [*Where documents are required to be produced add and also to bring with you and produce at the time and place aforesaid for examination at the hearing thereof the following accounts, papers, books, or other documents, that is to say: or such of them as are in your possession or control.*]

Dated at the day of , 19 .

J.S.,

Magistrate *or* Registrar of Magistrates Court.

FORM 8

Summons to a person to produce documents

In the Magistrates Court at Canberra.

A.B., informant.

C.D., defendant.

Date of information 19 .

Nature of information [*state shortly*].

To , of , in the Australian Capital Territory.

THESE are to require you to appear on the day of 19 , at o'clock in the noon, at in the said Territory, before the said Court and to bring with you and produce for examination at the hearing of the above-mentioned information the following accounts, papers, books, or other documents, that is to say: or such of them as are in your possession or control.

Dated at the day of , 19 .

J.S.,

Magistrate *or* Registrar of Magistrates Court.

THE FIRST SCHEDULE—continued

WARRANTS

FORM 12

Warrant in the first instance to apprehend a person charged with an offence

In the Magistrates Court at Canberra.

To the Commissioner of Police at Canberra, in the Australian Capital Territory, and to all other Police Officers in the said Territory.

WHEREAS an information has this day been laid upon oath before the undersigned, *the Registrar of Magistrates Court or a magistrate* of the said Territory, for that A.B. on the day of 19 , at [*here state shortly the offence*]:

These are therefore to command you, in His Majesty's name, forthwith to apprehend the said A.B. and to bring [her or him] before a magistrate of the said Territory to answer to the said information, and be further dealt with according to law.

Given under my hand, at Canberra, in the said Territory, this day of 19 .

J.S.,

Registrar of Magistrates Court *or* Magistrate.

FORM 13

Search Warrant

In the Magistrates Court at Canberra.

To the Commissioner of Police at Canberra, in the Australian Capital Territory, and to all other Police Officers in the said Territory.

WHEREAS an information has this day been laid upon oath before the undersigned, *the Registrar of Magistrates Court, or a magistrate* of the said Territory, for that A.B., on the day of 19 , at [*here state shortly the offence*]:

These are therefore to command you, in His Majesty's name, forthwith with proper assistance, to enter the said dwelling-house and premises [*or as the case may be*] of the said A.B. [in the day time], and there diligently search for the said goods; and if the same, or any part thereof, are found upon search, that you attach the goods so found [and apprehend the said A.B., and bring (her or him) before the said court to give an account of how she or he came by the said goods, and to be further dealt with according to law].

Given under my hand, at Canberra, in the said Territory, this day of 19 .

J.S.,

Registrar of Magistrates Court *or* Magistrate.

THE FIRST SCHEDULE—continued

FORM 14

Warrant to apprehend defendant where the summons is disobeyed

In the Magistrates Court at Canberra.

To the Commissioner of Police at Canberra, in the Australian Capital Territory, and to all other Police Officers in the said Territory.

WHEREAS on the _____ day of _____, 19____, an information was laid that A.B. [*&c., as in the summons*], and a summons was then issued to the said A.B., commanding [her or him] to appear at _____ at _____ in the said Territory, on the _____ day of _____, 19____, at _____ o'clock in the forenoon, before the said court, to answer the said information: And whereas the said A.B. neglected to appear at the time and place appointed by the said summons, and it has been proved upon oath that the said summons was duly served upon the said A.B.: These are therefore to command you, in His Majesty's name, forthwith to apprehend the said A.B. and to bring [her or him] before the said court to answer the said information, and to be further dealt with according to law.

Given under my hand, at Canberra, in the said Territory, this day of _____, 19____.

J.S.,

Registrar of Magistrates Court *or* Magistrate.

FORM 14A

Warrant to apprehend defendant where a notice under section 89A is disobeyed

In the Magistrates Court at Canberra.

To the Commissioner of Police at Canberra, in the Australian Capital Territory, and to all other Police Officers in the said Territory.

WHEREAS on the _____ day of _____, 19____, an information was laid that A.B., [*&c., as in the summons or warrant*]: and whereas A.B. was excused from attendance under subsection 89A (1): and whereas a notice under subsection 89A (4) [*or* 89A (5)] was served on A.B. requiring A.B. to attend on the _____ day of _____, 19____, at _____ o'clock in the _____ noon, before the Magistrates Court: and whereas it has been proved on oath that the notice was duly served on A.B.: and whereas A.B. neglected to attend at the time and place specified in the notice: These are therefore to command you, in Her Majesty's name, forthwith to apprehend A.B. and to bring [her or him] before the Magistrates Court to be dealt with according to law.

Given under my hand, at Canberra, in the said Territory, this day of _____, 19____.

J.S.,

Registrar of Magistrates Court *or* Magistrate.

THE FIRST SCHEDULE—continued

FORM 16

Warrant where a witness has not obeyed a summons to attend the examination of a person charged with an indictable offence or the hearing of a charge punishable on summary conviction

In the Magistrates Court at Canberra.

To the Commissioner of Police at Canberra, in the Australian Capital Territory, and to all other Police Officers in the said Territory.

WHEREAS on the day of , 19 , an information was laid that A.B. [*&c., as in the summons or warrant*], and a summons was duly issued to E.F. of in the said Territory , requiring [her or him] to appear on the day of day of 19 , at , in the said Territory, before the said court, to testify what [she or he] knew concerning the matter of the said information: And whereas proof has this day been made upon oath that such summons was duly served upon the said E.F.: And whereas the said E.F. neglected to appear at the time and place appointed by the said summons, and no just excuse has been offered for such neglect: These are therefore to command you, in His Majesty's name, forthwith to apprehend the said E.F. and bring [her or him] before the said court at Canberra, in the said Territory, to testify what [she or he] knows concerning the matter of the said information.

Given under my hand, at , in the said Territory, this day of 19 .

J.S.,

Registrar of Magistrates Court *or* Magistrate.

FORM 17

Warrant for a witness in the first instance

In the Magistrates Court at Canberra.

To the Commissioner of Police at Canberra, in the Australian Capital Territory, and to all other Police Officers in the said Territory.

WHEREAS on the day of , 19 , at , an information was laid that A.B. [*&c., as in the summons or warrant*] and it being made to appear before me upon oath that E.F. of in the said Territory [] is likely to give material evidence on behalf of the prosecution [*or as the case may be*] in the matter, and it is probable that the said E.F. will not attend to give evidence without being compelled so to do: These are therefore to command you, in His Majesty's name, forthwith to apprehend the said E.F. and bring [her or him] before the said court at Canberra, in the said Territory, to testify what [she or he] knows concerning the matter of the said information.

Given under my hand, at , in the said Territory, this day of 19 .

J.S.,

Registrar of Magistrates Court *or* Magistrate.

THE FIRST SCHEDULE—continued

FORM 18

Warrant to apprehend person indicted

In the Magistrates Court at Canberra.

To the Commissioner of Police at Canberra, in the Australian Capital Territory, and to all other Police Officers in the said Territory.

WHEREAS it has been certified by the Registrar of the Supreme Court that [*&c.*, *stating the certificate (Form 4)*]: These are therefore to command you, in His Majesty's name, forthwith to apprehend the said A.B. and to bring [her or him] before the said Magistrates Court to be dealt with according to law.

Given under my hand, at Canberra, in the said Territory, this
day of 19 .

J.S.,
Magistrate.

REMANDS

FORM 19

Warrant remanding a prisoner

In the Magistrates Court at Canberra.

To the Commissioner of Police at Canberra, in the Australian Capital Territory, and to all other Police Officers in the said Territory, and to the *Keeper of the Gaol/Superintendent of the Remand Centre at , in the

WHEREAS A.B. was this day charged before the undersigned, a magistrate of the said Territory, for that [*&c.*, *as in the warrant to apprehend*], and it appears to me to be necessary to remand the said A.B.: These are therefore to command you the said police officers, in His Majesty's name, forthwith to convey the said A.B. to the *gaol/remand centre at , in the , and there to deliver [her or him] to the *keeper/Superintendent thereof together with this warrant, and I hereby command you the said *keeper/Superintendent to receive the said A.B. into your custody in the said *gaol/remand centre, and there safely keep [her or him] until the day of , 19 , or such earlier day as may be lawfully ordered in that behalf, when I hereby command you to have [her or him] at Canberra, in the said Territory, at o'clock in the forenoon, before the said court, further to answer the said charge.

Given under my hand, at Canberra, in the said Territory, this
day of 19 .

J.S.,
Magistrate.

**Strike out whichever is inapplicable.*

THE FIRST SCHEDULE—continued

FORM 20

Warrant of committal for safe custody during an adjournment of the hearing

In the Magistrates Court at Canberra.

To the Commissioner of Police at Canberra, in the Australian Capital Territory, and to all other Police Officers in the said Territory, and to the *Keeper of the Gaol/Superintendent of the Remand Centre at _____, in

WHEREAS on the _____ day of _____, 19____, an information was laid before the undersigned [*or as the case may be*], for that [*&c., as in the summons or warrant*], and whereas the hearing of the same is adjourned to the _____ day of _____, 19____, at _____ o'clock in the forenoon, at Canberra, in the said Territory, and it is necessary that the said A.B. should in the meantime be kept in safe custody: These are therefore to command you the said police officers, in His Majesty's name, forthwith to convey the said A.B. to the *gaol/remand centre at _____, in the _____, and there to deliver [her or him] into the custody of the *keeper/Superintendent thereof, together with this warrant, and I hereby command you the said *keeper/Superintendent to receive the said A.B. into your custody in the said *gaol/remand centre, and there keep [her or him] until the _____ day of _____, 19____, when I hereby require you to convey and have [her or him] the said A.B., at the time and place to which the said hearing is so adjourned as aforesaid before the said Magistrates Court, to answer further the said information, and to be further dealt with according to law.

Given under my hand, at Canberra, in the said Territory, this _____ day of _____ 19____.

J.S.,
Magistrate.

**Strike out whichever is inapplicable.*

 RECOGNIZANCES, ETC.

FORM 21

Certificate of consent to bail by the committing Magistrate indorsed on the commitment

I hereby certify that I consent to the within-named A.B. being bailed by recognizance, herself or himself in the sum of _____ and [*two*] sureties in the sum of _____ [each] (*to be included where an order is made under section 248A*) And the within-named A.B. herself or himself in the sum of _____ to comply with (*here insert terms of order under section 248A*).

J.S.,
Magistrate.

THE FIRST SCHEDULE—continued

FORM 22

The like on a separate paper

WHEREAS A.B. was, on the day of , 19 , committed by [*me*] to the *gaol/remand centre at , in the , charged with [*&c.*, *naming the offence shortly*]:

I hereby certify that I consent to the said A.B. being bailed by recognizance, herself or himself in the sum of and [*two*] sureties in the sum of [each] (*to be included where an order is made under section 248A*)

And the within-named A.B. herself or himself in the sum of to comply with (*here insert terms of order under section 248A*).

Dated this day of , 19 .

J.S.,
Magistrate.

**Strike out whichever is inapplicable.*

FORM 30

Recognizance to give evidence

Australian Capital Territory,
to wit. }

BE it remembered that on the day of , 19 , C.D., of , in the said Territory, , came before [*me*] a magistrate of the said Territory, and acknowledged [*herself or himself*] to owe to our Sovereign Lord the King the sum of to be made and levied of [*her or his*] goods and chattels, lands, and tenements, to the use of our said Lord the King, His Heirs and Successors, if [*she or he*] the said C.D. shall fail in the conditions endorsed.

Taken and acknowledged before [*me*] the day and year first abovementioned at Canberra, in the said Territory.

J.S.,
Magistrate.

Condition

THE condition of the within-written recognizance is such that whereas A.B., was this day charged before the Magistrates Court at Canberra, for that [*&c.*, *as in the caption of the depositions*]. If therefore [*she or he*] the said C.D. shall appear at the next Sittings of the Supreme Court, to be holden at in the , on , the day of , 19 , and there give evidence upon an information to be then preferred against the said A.B. for the offence aforesaid, then the said recognizance to be void, or else to stand in full force and virtue.

THE FIRST SCHEDULE—continued

FORM 31

Notices of recognizance to be given to the witnesses

Australian Capital Territory, }
to wit.

TAKE notice that you, C.D., of _____, in the said Territory, are bound in the sum of _____, to appear at the next [*as in the Condition*], and then and there to give evidence against A.B., and unless you then appear and give evidence accordingly the recognizance entered into by you will be forthwith put in suit and enforced against you.

Dated this _____ day of _____, 19 _____.

J.S.,
Magistrate.

FORM 34

Statement of the Defendant

Australian Capital Territory, }
to wit.

A.B. stands charged before the Magistrates Court, at Canberra, this _____ day of _____, 19 _____, that [she or he] [*describe the offence as in a warrant of commitment*], and the charge being read to the said A.B. and the witnesses for the prosecution, C.D. and E.F., being severally examined the said A.B. is now addressed by the Court as follows:

“Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so but whatever you say may be given in evidence against you upon your trial. You are clearly to understand that you have nothing to hope from any promise or favour and nothing to fear from any threat which may have been held out to you to induce you to make any admission or confession of your guilt; but whatever you now say may be given in evidence against you upon your trial, notwithstanding any such promise or threat.”

Whereupon the said A.B. says as follows: [*Here state whatever the prisoner may say, and in her or his very words as nearly as possible; get her or him to sign it if she or he will.*]

A.B.

Taken before the said Court at Canberra, in the said Territory, the day and year first above-mentioned.

J.S.,
Magistrate.

THE FIRST SCHEDULE—continued

MINUTES

FORM 35A

MEMORANDUM ADDED TO MINUTE OF CONVICTION UNDER SECTION 139B
(2) OF THE MOTOR TRAFFIC ACT

The Court is satisfied that, at the time of the above-mentioned offence under section 139B (2) of the *Motor Traffic Act 1936-1972* the defendant had a concentration of alcohol in her or his blood equal to not less than eighty milligrammes but less than one hundred and fifty milligrammes [*or equal to one hundred and fifty milligrammes or more, as the case may be*] of alcohol per one hundred millilitres of blood.

Dated this _____ day of _____, 19 ____ .

J.S.,
Magistrate.

CONVICTIONS

FORM 36

Conviction for a penalty to be levied by execution

Australian Capital Territory, }
to wit.

BE it remembered that on the _____ day of _____, 19 ____, at Canberra, in the said Territory, A.B. of _____, in the said Territory [_____], is convicted before the Magistrates Court at Canberra, that [she or he], the said A.B. [*&c., stating the offence and the time and place when and where it was committed*], and the said A.B. was adjudged for [her or his] said offence to forfeit and pay the sum of _____ [*stating the penalty and the compensation, if any*] to be paid and applied according to law, and also to pay to the said C.D. the sum of _____ for [her or his] costs, and if the said several sums are not paid forthwith [*or on or before next*] then it is hereby ordered that the sums be levied by execution against the goods and chattels of the said A.B.

Given under my hand, at Canberra, in the said Territory, the day and year first above-mentioned.

J.S.
Magistrate.

THE FIRST SCHEDULE—continued

FORM 38

Conviction when the punishment is imprisonment, and costs are awarded to be levied by execution

Australian Capital Territory, }
to wit.

BE it remembered that on the _____ day of _____, 19____, in the said Territory, A.B. of _____, in the said Territory, _____, is convicted before the Magistrates Court at Canberra, that [she or he], the said A.B. [*&c., stating the offence and the time and place when and where it was committed*], and the said A.B. was adjudged for [her or his] said offence to be imprisoned in the gaol at _____, in the _____, [there to be kept to hard labour] for the space of _____, and the said A.B. was also adjudged to pay to the said C.D. the sum of _____ for [her or his] costs; and if the said sum for costs is not paid forthwith [*or on or before* _____ next] then it is hereby ordered that the said sum be levied by execution against the goods and chattels of the said A.B.

Given under my hand, at Canberra, in the said Territory, the day and year first above-mentioned.

J.S.,
Magistrate.

 CONVICTION FOR INDICTABLE OFFENCE

FORM 39

Summary conviction

Australian Capital Territory, }
to wit.

BE it remembered that on the _____ day of _____, 19____, at Canberra, in the said Territory, A.B., being charged before the Magistrates Court, at Canberra, that [she or he] the said A.B. [*&c., stating the offence and the time and place when and where committed*], and the age of the said A.B. on the [*date of offence*] having in the opinion of the said Court not exceeded sixteen [*or twelve*] years [*or and the value of the said goods not exceeding \$4 (or as the case may be)*] and the said A.B. [*or C.D., the parent (or guardian) of the said A.B.*] consenting to the said Court deciding upon the charge summarily, the said A.B. is therefore convicted before the said Court of the said offence, and the said A.B. is adjudged for [her or his] said offence to be imprisoned in the gaol at _____, in the _____, [there to be kept to hard labour] for the term of _____.

Given under my hand at Canberra, in the said Territory, the day and year first above-mentioned.

J.S.,
Magistrate.

THE FIRST SCHEDULE—continued

FORM 40

Summary conviction on confession

Australian Capital Territory, }
to wit.

BE it remembered that on the day of , 19 , at Canberra, in the said Territory, A.B. being charged before the Magistrates Court, at Canberra, that [she or he] the said A.B. [*&c.*, *stating the offence and the time and place when and where committed*] and [she or he] the said A.B., pleading guilty to such charge [she or he] is thereupon convicted before the said Court of the said offence, and the said A.B. is adjudged for [her or his] said offence to be imprisoned in the gaol at , in the [there to be kept to hard labour] for the term of .

Given under my hand at Canberra, in the said Territory, the day and year first above-mentioned.

J.S.,
Magistrate.

ORDER AND CERTIFICATES OF DISMISSAL

FORM 41

Order of Dismissal of an information

In the Magistrates Court at Canberra.

A.B., informant.

C.D., defendant.

Date of information 19 .

Nature of information [*state shortly*].

BE it remembered that on the day of in the year of our Lord One thousand nine hundred and the above-mentioned information was laid before the said Court for that [*&c.*, *as in the summons to the defendant*] and now at this day, to wit, on the day of at in the Australian Capital Territory, both the said parties having appeared in order that the said information should be heard and determined [*or* the said C.D. having appeared before the said Court, but the said A.B., although duly called not having appeared] whereupon the matter of the said information being duly considered it appears to this Court that the said information is not proved and the same is hereby dismissed and it is adjudged that the said A.B. do pay to the said C.D. the sum of for [his *or* her] costs incurred by [him *or* her] in [his *or* her] defence in this behalf, and if the said sum for costs is not paid [*forthwith or on or before*] it is ordered that the same be levied by distress and the sale of the goods and chattels, money, Australian notes, bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or securities of money of the said A.B.

Dated at Canberra the day of , 19 .

J.S.,
Magistrate.

THE FIRST SCHEDULE—continued

FORM 42

Certificate of dismissal

Australian Capital Territory, }
to wit.

I, the undersigned, a magistrate of the said Territory, hereby certify that on the day of , 19 , at , in the said Territory, A.B. was charged before the Magistrates Court, at Canberra, that [she or he] the said A.B., [*&c., stating the offences and the time and place when and where alleged to have been committed*] and that the said Court thereupon dismissed the said information.

Given under my hand, at Canberra, in the said Territory, this day of ,
19 .

J.S.,
Magistrate.

FORM 43

Certificate of dismissal on summary hearing of indictable offence

Australian Capital Territory, }
to wit.

I, the undersigned, a magistrate of the said Territory, hereby certify that on the day of , 19 , at Canberra, in the said Territory, A.B., charged before the Magistrates Court, at Canberra, that [*stating the offence charged, and the time and place when and where committed, &c., as in Form 39 to the asterisk**], the said information is thereupon dismissed.

Given under my hand, at Canberra, in the said Territory, this day of ,
19 .

J.S.,
Magistrate.

THE FIRST SCHEDULE—continued

ORDERS

FORM 45

Order for payment of money to be levied by execution

Australian Capital Territory, }
to wit.

BE it remembered that on the _____ day of _____, 19____, information was laid before the _____ that [stating the facts entitling the complainant to the order, with the time and place when and where they occurred], and on the _____ day of _____, 19____, at Canberra, in the said Territory, having heard the said complaint the said Court adjudged the said A.B. to pay to the said C.D. the sum of _____ forthwith [or as the case may be], and also to pay to the said C.D. forthwith [or as the case may be], the sum of _____ for costs, and if those sums are not paid in accordance with the adjudgment, it is ordered that the sums be levied by execution against the goods and chattels of the said A.B.

Given under my hand, at Canberra, in the said Territory, this _____ day of _____, 19____.

J.S.,
Magistrate.

FORM 47

Order for any matter where the disobeying of it is punishable with imprisonment

Australian Capital Territory, }
to wit.

BE it remembered that on the _____ day of _____, 19____, information was laid before the Magistrates Court, at Canberra, that [stating the facts entitling the complainant to the order, with the time and place when they occurred], and on the _____ day of _____, at Canberra, in the said Territory, having heard the information, the said Court adjudged the said A.B. to [here state the matter required to be done], and if upon a copy of the minute of this order being served upon the said A.B., either personally or by leaving the same for [her or him] at [her or his] last known or usual place of abode [she or he] shall neglect or refuse to obey the same it is adjudged that the said A.B. be imprisoned in the gaol at _____, in the _____ [there to be kept to hard labour] for the term of _____ [unless the said order is sooner obeyed, if the Act authorize this], and it is also adjudged that the said A.B. pay to the said C.D. the sum of _____ for costs, and if the said sum is not paid forthwith [or on or before _____ next], it is ordered that the same be levied by execution against the goods and chattels of the said A.B.

Given under my hand, at Canberra, in the said Territory, this _____ day of _____, 19____.

J.S.,
Magistrate.

THE FIRST SCHEDULE—continued

FORM 48

Order for payment of compensation and costs where information brought or made in the wrong Court

In the Magistrates Court, at Canberra.

A.B., informant.

C.D., defendant.

Date of information 19 .

Nature of information [*state shortly*].

BE it remembered that the said A.B. has now here vexatiously and oppressively brought C.D. before this Court to answer a certain information of the said A.B. there now being a place at which a Magistrates Court is held more easy of access than this place, not only from the place of abode of the said C.D. but also from the place where the subject-matter of the said information arose, and now at this day [conclude as in ordinary cases].

J.S.,
Magistrate.

FORM 51

Summons for oral examination of debtors

In the Magistrates Court, at Canberra.

A.B., informant (*or plaintiff*).

C.D., defendant.

Date of information (*or claim*)

To:

WHEREAS by an order made or a judgment given herein by the Court, or a judgment entered, on the day of , 19 , was ordered to pay to the sum of :

You are hereby commanded to attend before the Magistrates Court at Canberra on the day of , 19 , at o'clock in the noon, to be orally examined before the Court for the purpose of ascertaining—

- (a) whether any and what debts are owing to the said ; and
- (b) whether the said has any other property or means of satisfying the said order or judgment.

You are also commanded to produce to the Court for the purposes of the examination all books of account and other documents in your possession or custody in any way relating to those debts, property or means.

Dated this day of , 19 .

Registrar of the Magistrates Court.

THE FIRST SCHEDULE—continued

FORM 52

Order ex parte for attachment of debt

In the Magistrates Court, at Canberra.

A.B., informant [*or* plaintiff].

C.D., defendant.

Date of information [*or* claim] 19 .

Nature of information [*or* claim] [*state shortly*].

[*add*] M.P., garnishee.

UPON hearing and upon reading the affidavit of filed the
day of 19 .

It is ordered that all debts owing or accruing due from the above-named garnishee to the above-named C.D. be attached to answer the order or judgment herein for the sum of on which order or judgment the sum of remains due and unpaid.

It is further ordered that the said garnishee attend before the Magistrates Court at Canberra on the day of [next *or* instant] at o'clock in the noon on an application by the said A.B. that the said garnishee pay to the said A.B. the debt due from her or him to the said C.D. or so much thereof as may be sufficient to satisfy the order or judgment herein.

And that the costs of this application be .

[*If any order for special service is made add* “and it is further ordered that service of this order may be made by (*as directed by the Court*).”]

Dated at Canberra the day of , 19 .

J.S.,

Magistrate *or* Registrar of the Magistrates Court.

THE FIRST SCHEDULE—continued

FORM 53

Order for payment by garnishee to person obtaining order where garnishee does not dispute her or his liability

In the Magistrates Court, at Canberra.

A.B., informant [*or* plaintiff].

C.D., defendant.

Date of information [*or* claim] 19 .

Nature of information [*or* claim] [*state shortly*].

[*add*] M.P., garnishee.

UPON hearing [all the said parties] and upon reading the order for attachment of debt dated it is ordered that the said garnishee do forthwith pay the said A.B. the amount of the debt due from her or him to the said C.D. namely [*or* part thereof] and that in default a warrant of execution may issue for the same and that the costs of this application be

Dated at Canberra the day of , 19 .

J.S.,
Magistrate.

FORM 54

Order where garnishee disputes her or his liability and issue is ordered

In the Magistrates Court, at Canberra.

A.B., informant [*or* plaintiff].

C.D., defendant.

Date of information [*or* claim] 19 .

Nature of information [*or* claim] [*state shortly*].

[*add*] M.P., garnishee.

UPON hearing [all] the parties above-named and upon reading the order for attachment of debt dated it is ordered that the said A.B. and the said M.P. do proceed to the trial of an issue in the Magistrates Court at Canberra wherein the said A.B. shall be [informant *or* plaintiff] and the said M.P. shall be defendant; the question to be tried therein shall be whether the said M.P. was indebted to the said C.D. at the time the said order for attachment was made, viz., on the , and, if so, whether she or he was so indebted to the amount of and that the cost of this application follow the event of such issue.

And it is further ordered that this order be filed in the said Magistrates Court at Canberra within days of the making of this order.

Dated at Canberra the day of , 19 .

J.S.,
Magistrate.

THE FIRST SCHEDULE—continued

FORM 55

Order where the garnishee suggests that a third person claims a lien or charge on debt due from garnishee to debtor

In the Magistrates Court, at Canberra.

A.B., informant [*or* plaintiff].

C.D., defendant.

Date of information [*or* claim] 19 .

Nature of information [*or* claim] [*state shortly*].

[*add*] M.P., garnishee.

S.T., claimant.

UPON hearing the above-named A.B., C.D., and M.P., it is ordered that all the above-named parties A.B., C.D., M.P., and S.T., attend before the Magistrates Court at Canberra at o'clock in the noon on the day of [next *or* instant] and state the nature and particulars of their respective claims to such debts and maintain or relinquish the same and abide such order as may be made herein. And it is further ordered that the above-named A.B. do serve a true copy of the order in the said information [*or* claim] made the day of last [*or* instant] upon the above-named S.T.

Dated at Canberra the day of , 19 .

J.S.,
Magistrate.

WARRANTS OF EXECUTION, ETC.

 FORM 56

Warrant of execution upon a conviction for a penalty

To the Commissioner of Police at Canberra, in the Australian Capital Territory, and all other Police Officers in the said Territory.

WHEREAS A.B., late of , in the said Territory of , was on the day of , 19 , at , convicted before the Magistrates Court of an offence against the provisions of the section of the [*or as the case may be, describing the Act or By-law under which the offence is created*], and it was thereby adjudged that the said A.B. should for such [her or his] offence forfeit and pay [*&c., as in the conviction*], and should also pay to the said C.D. the sum of [her or his] costs, and it was thereby ordered that if the said several sums should not be paid [*forthwith*] the same should be levied by execution against the goods and chattels of the said A.B.: And whereas the said A.B. being [*now*] required to pay the said sums, has not paid the same [or any part thereof]: These are therefore to command you, in His Majesty's name, forthwith to take the goods and chattels of the said A.B., and if within the space of days after taking them the said sums, together with the reasonable charges of taking and keeping the goods and chattels are not paid, that then you sell the said goods and chattels and pay the money arising by such sale to the Registrar of the Magistrates Court, at Canberra, in the said Territory, and if no goods and chattels can be found, that you certify the same to me.

Given under my hand, at Canberra, in the said Territory, this day of , 19 .

J.S.,
Magistrate.

THE FIRST SCHEDULE—continued

THE FIRST SCHEDULE—continued

FORM 57

Warrant of execution upon an order for the payment of money

To the Commissioner of Police at Canberra, in the Australian Capital Territory, and all other Police Officers in the said Territory.

or

To _____, a bailiff of the Magistrates Court of the Australian Capital Territory.

WHEREAS on the _____ day of _____, 19____, at Canberra, upon the hearing of a claim made by C.D. of _____, against A.B., of _____ E.F. [and others] the Magistrates Court at Canberra adjudged that the said A.B. should pay to the said C.D. the sum of _____ on or before the _____ then next [*or as the case may be*], and also should pay to the said C.D. the sum of _____ for costs, and it was thereby ordered that if the said several sums were not paid on or before the said _____ day _____ of _____ then next, the same should be levied by execution against the goods and chattels of the said A.B.: And whereas the said A.B. has not paid the said several sums of _____, [or any part thereof]: These are therefore to command you, in His Majesty's name, forthwith to take the goods and chattels of the said A.B., and if within the space of _____ days after taking them the said last-mentioned sums, together with the reasonable charges of taking and keeping the said goods and chattels are not paid, that then you sell the said goods and chattels, and pay the money arising from such sale to the Registrar of the said Court; and if no goods and chattels can be found, that you certify the same to me.

Given under my hand, at Canberra, in the said Territory, this _____ day of _____, 19____.

J.S.,
Magistrate.

FORM 58

Warrant of execution for costs upon an order for dismissal of an information or a claim

To the Commissioner of Police at Canberra, in the Australian Capital Territory, and all other Police Officers in the said Territory.

or

To _____, a bailiff of the Magistrates Court of the Australian Capital Territory.

WHEREAS on the _____ day of _____, 19____, at Canberra, upon the hearing of an information laid [*or a claim made*] by C.D. against A.B. before the Magistrates Court at Canberra, dismissed the information or claim, and adjudged that the said C.D. should pay to the said A.B. the sum of _____ for costs, and that if the said sum were not paid [*forthwith*] the same would be levied by execution against the goods and chattels of the said C.D.: And whereas the said C.D. being [*now*] required to pay to the said A.B. the said sum for costs, has not paid the same or any part thereof: These are therefore to command you, in His Majesty's name, forthwith to take the goods and chattels of the said C.D., and if within the space of _____ days next after taking them the said sum, together with the reasonable charges of taking and keeping the goods and chattels, are not paid, that then you sell the said goods and chattels, and pay the money arising from such sale to the Registrar of the said Court; and if no goods and chattels can be found, that you certify the same to me.

Given under my hand, at Canberra, in the said Territory, this _____ day of _____, 19____.

J.S.,
Magistrate.

THE FIRST SCHEDULE—continued

FORM 59

Warrant of execution for costs upon a conviction where the offence is punishable by imprisonment

To the Commissioner of Police at Canberra, in the Australian Capital Territory, and all other Police Officers in the said Territory.

WHEREAS A.B., of _____, in the Australian Capital Territory, was on the _____ day of _____, 19____, at _____, convicted before the Magistrates Court at _____, of an offence against the provisions of the _____ section of the _____ [or as the case may be, describing the Act or By-law under which the offence is created], and it was also adjudged that the said A.B. should be imprisoned in the gaol at _____, in the _____ [there to be kept to hard labour] for the term of _____, and it was also adjudged that the said A.B. should pay to the said C.D. the sum of _____ for costs, and it was thereby ordered that if the said sum of _____ for costs should not be paid [forthwith] the same should be levied by execution against the goods and chattels of the said A.B.: And whereas the said A.B. being required to pay the said sum of _____ has not paid the same [or any part thereof]: These are therefore to command you, in His Majesty's name, forthwith to take the goods and chattels of the said A.B., and if within the space of _____ days next after taking them, the said last-mentioned sum, together with the reasonable charges of taking and keeping the goods and chattels, are not paid, that then you sell the said goods and chattels, and pay the money arising from such sale to the Registrar of the said court; and if no goods and chattels can be found, that you certify the same to me.

Given under my hand, at Canberra, in the said Territory, this _____ day of _____, 19____.

J.S.,
Magistrate.

FORM 60

Warrant of execution for costs upon an order where the disobeying of the order is punishable with imprisonment

To the Commissioner of Police at Canberra, in the Australian Capital Territory, and all other Police Officers in the said Territory.

WHEREAS on the _____ day of _____, 19____, at Canberra, upon an information laid by C.D., of _____, against A.B., of _____ the Magistrates Court, at Canberra adjudged that the said A.B. should [&c., as in the order], and it was thereby also adjudged that the said A.B. should pay to the said C.D. the sum of _____ for costs, and it was ordered that if the said sum should not be paid [forthwith] the same should be levied by execution against the goods and chattels of the said A.B.:

And whereas a copy of the minute of the said order was served upon the said A.B., but the said A.B. has not paid the said sum for costs, or any part thereof: these are therefore to command you, in His Majesty's name, forthwith to take the goods and chattels of the said A.B., and if within the space of _____ days after taking them, the said last-mentioned sum, together with the reasonable charges of taking and keeping the goods and chattels, are not paid, that then you sell the said goods and chattels, and pay the money arising from such sale to the Registrar of the said Court; and if no goods and chattels can be found, that you certify the same to me.

Given under my hand, at Canberra, in the said Territory, this _____ day of _____, 19____.

J.S.,
Magistrate.

THE FIRST SCHEDULE—continued

FORM 61

Warrant of distress for costs of an appeal against a conviction or order

To _____ a member of the Police Force of the Australian Capital Territory.

or

To _____, a bailiff of the Magistrates Court of the Australian Capital Territory.

WHEREAS [*&c.*, *as in warrant of execution Form 58, 59 or 60 to the end of the statement of the conviction or order and then thus*]: And whereas the said (C.D. *or* A.B., *as the case may be*) appealed to the Supreme Court held at Canberra against the said [conviction *or* order] and the said Supreme Court thereupon ordered that the said [appellant] should pay to the said [respondent] the sum of _____ [his *or* her] costs: And whereas the Registrar of the said Supreme Court hath on the _____ day of _____ [instant *or* last past] duly certified that the said sum for costs had not then been paid: These are therefore to command you in His Majesty's name forthwith to make distress of the goods and chattels, money, Australian notes, bank notes, cheques, bills of exchange, promissory notes, bonds, specialties or securities of money of the said (C.D. *or* A.B. *as the case may be*) and if within the space of _____ days next after the making of such distress of the said last-mentioned sum, together with the reasonable charges of taking and keeping the said distress shall not be paid that then you do sell the said goods and chattels so by you distrained and do pay the money arising from such sale and such money and bank notes so distrained to the Registrar of the Magistrates Court at _____ in the said Territory and that you do as by law empowered hold and realize and if occasion requires sue on the said cheques, bills of exchange, promissory notes, specialties or securities of money, and do pay the money realized or recovered on the same unto the said Registrar that he may pay and apply the same as by law directed and if no such distress can be found then that you certify the same unto me or some other magistrate to the end that such proceedings may be had therein as to the law doth appertain.

Dated at Canberra the _____ day of _____, 19 _____.

J.S.,
Magistrate.

FORM 62

Return to a warrant of execution

I, W.T., Police Officer (*or* bailiff), of Canberra, in the Australian Capital Territory, hereby certify to J.S., Esquire, a magistrate of the said Territory, that by virtue of this warrant I have made diligent search for the goods and chattels of the within-mentioned A.B., and that I can find no sufficient goods or chattels of the said A.B. whereon to levy the sums within-mentioned.

Witness my hand, this _____ day of _____, 19 _____.

W.T.

THE FIRST SCHEDULE—continued

WARRANT OF COMMITTAL, ETC.

FORM 63

Warrant of commitment for trial or for sentence

To all Police Officers in the Australian Capital Territory and to the *Keeper of the Gaol/Superintendent of the Remand Centre at _____, in the _____.

WHEREAS A.B. was this day charged before the Magistrates Court at Canberra on the oath of C.D., of _____, in the said Territory, and others that [*&c., stating shortly the indictable offence*] [and the said A.B. being asked, admitted that she or he is guilty of the said offence], and thereupon it was ordered that the said A.B. should be committed to take her or his trial [*or to be sentenced*] for the said offence at the Sittings of the Supreme Court, to be holden at, &c.: These are therefore to command you, the said Police Officers, to convey the said A.B. to the *gaol/remand centre at _____ aforesaid, and deliver [her or him] to the *keeper/Superintendent thereof together with this warrant; and [*I*] hereby command you, the said *keeper of the said gaol/Superintendent of the said remand centre, to receive the said A.B. into your custody in the said *gaol/remand centre, and [her or him] there keep until the said sittings of the said Court, or until [she or he] shall be thence delivered by due course of law.

Given under my hand, at Canberra, in the said Territory, this _____ day of _____, 19 _____.

J.S.,
Magistrate.

**Strike out whichever is inapplicable.*

FORM 64

Warrant of commitment of a person indicted

To all Police Officers in the Australian Capital Territory, and to the *Keeper of the Gaol/Superintendent of the Remand Centre at _____, in the _____.

WHEREAS by warrant under [my] hand, dated the _____ day of _____, 19 _____, after reciting that it has been certified by J.D. [*&c., as in the certificate*], [*I*] command the Commissioner of Police at Canberra, in the said Territory, and all other police officers of the said Territory, in His Majesty's name, forthwith to apprehend the said A.B., and to bring [her or him] before the Magistrates Court at Canberra in the said Territory. And whereas the said A.B. having been apprehended and brought before the said Court at _____, it is proved to the said Court upon oath that the said A.B. is the same person who is charged in the said information: These are therefore to command you in His Majesty's name forthwith to convey the said A.B. to the *gaol/remand centre at _____, in the _____, and deliver [her or him] to the *keeper/Superintendent thereof, together with this warrant, and to command you, the said *keeper/Superintendent to receive the said A.B. into your custody in the said *gaol/remand centre and to keep [her or him] there until [she or he] shall be thence delivered by due course of law.

Given under my hand, at Canberra, in the said Territory, this _____ day of _____, 19 _____.

J.S.,
Magistrate.

**Strike out whichever is inapplicable.*

THE FIRST SCHEDULE—continued**FORM 65***Warrant to detain a person indicted who is already in custody for another offence*

To the Keeper of the Gaol at _____, in the _____.

WHEREAS it has been duly certified by the Registrar of the Magistrates Court that [*&c.*, *stating the certificate Form 41*]: And whereas [*I*] am informed that the said A.B. is in your custody in the said gaol at _____, in the _____, charged with some offence or other matter, and it is now proved upon oath before [*me*] that the said A.B. so indicted as aforesaid, and the said A.B. in your custody as aforesaid, are one and the same person: These are therefore to command you, in His Majesty's name, to detain the said A.B. in your custody in the gaol aforesaid until [she or he] shall be lawfully removed therefrom for the purpose of being tried upon the said information, or until [she or he] shall otherwise be removed or discharged out of your custody by due course of law.

Given under my hand, at Canberra, in the said Territory, this _____ day of _____, 19 _____.

J.S.,
Magistrate.

FORM 66*Warrant of commitment of a witness for refusing to be sworn or to give evidence*

To all Police Officers in the Australian Capital Territory, and to the *Keeper of the Gaol/Superintendent of the Remand Centre at _____, in the _____.

WHEREAS on the _____ day of _____, 19 _____, upon the hearing of a charge before the Magistrates Court at _____, that [*&c.*, *as in the summons or warrant*] [*or a complaint by A.B. against C.D.*] E.F., of _____, in the said Territory [_____,] being required to make oath [*or affirmation*] as a witness to testify what [she or he] knew concerning the said charge [*or the matter of the said complaint*] refused so to do [*or being duly sworn as a witness, refused to answer certain questions concerning the premises which were put to her or him*] without offering any just excuse for such refusal: These are therefore to command you, the said police officers, to convey the said E.F. to the *gaol/remand centre at _____, in the said Territory, and deliver [her or him] to the *keeper/Superintendent thereof, together with this warrant, and [*I*] hereby command you, the said *keeper of the said gaol/Superintendent of the said remand centre, to receive the said E.F. into your custody in the said *gaol/remand centre and keep [her or him] there for the space of _____ days for [her or his] contempt, unless in the meantime she or he consents to be examined, and to answer concerning the premises.

Given under my hand, at Canberra, in the said Territory, this _____ day of _____, 19 _____.

J.S.,
Magistrate.

*Strike out whichever is inapplicable.

THE FIRST SCHEDULE—continued

FORM 68

Commitment of witness for refusing to enter into recognizance

To all Police Officers in the Australian Capital Territory, and to the *Keeper of the Gaol/Superintendent of the Remand Centre at _____, in _____.

WHEREAS A.B., of _____, in the said Territory [_____], was on the day of _____, 19____, charged before the Magistrates Court at _____

that [*&c., as in the summons or warrant*] E.F., of _____, in the said Territory [_____], having been examined as a witness touching the premises, and being required to enter into a recognizance conditioned to give evidence against the said A.B., refuses so to do: These are therefore to command you, the said police officers, to convey the said E.F. to the *gaol/remand centre _____, in the _____, and deliver [her or him] to the *keeper/Superintendent thereof, together with this warrant, and to command you, the said *keeper of the said gaol/Superintendent of the said remand centre, to receive the said E.F. into your custody in the said *gaol/remand centre, there to keep [her or him] until after the trial of the said A.B. for the offence aforesaid, unless in the meantime the said E.F. duly enters into such recognizance as aforesaid in the sum of _____ before _____ for the said Territory, conditioned to appear at the next Sittings of the Supreme Court to be held at _____, in _____, and there to give evidence upon any information which may be then and there preferred against the said A.B. for the offence aforesaid, and also to give evidence upon the trial of the said A.B. for the said offence.

Given under my hand, at Canberra, in the said Territory, this _____ day of _____, 19____.

J.S.,
Magistrate.

**Strike out whichever is inapplicable.*

FORM 71

Warrant of commitment on an order where the disobeying of it is punishable by imprisonment

To all Police Officers in the Australian Capital Territory, and to the Keeper of the Gaol at _____, in the _____.

WHEREAS on the _____ day of _____, 19____, upon the hearing of an information before the Magistrates Court at Canberra, that [*&c., as in the order*], it was adjudged that the said A.B. [*&c., as in the order*], and ordered that if upon a copy of the minute of that order being served upon the said A.B., either personally or by leaving the same for [her or him] at [her or his] last known or usual place of abode [she or he] should refuse or neglect to obey the same, the said A.B. should be imprisoned in the gaol at _____, in the _____ [there to be kept to hard labour] for the term of _____, unless the said order should be obeyed: And whereas it is now proved to [me] that after the making of the said order a copy of the minute thereof was duly served upon the said A.B., but [she or he] then refused [*or neglected*] to obey the same, and has not as yet obeyed the said order: These are therefore to command you, the said police officers, to apprehend the said A.B., and convey [her or him] to the gaol at _____ aforesaid, and deliver [her or him] to the keeper thereof, together with this warrant, and to command you, the said keeper of the said gaol, to receive the said A.B. into your custody in the said gaol, there to imprison [her or him] and keep [her or him] to hard labour for the term of _____.

Given under my hand, at Canberra, in the said Territory, this _____ day of _____, 19____.

J.S.,
Magistrate.

THE FIRST SCHEDULE—continued

FORM 72

Warrant of commitment on a conviction where the punishment is by imprisonment

To all Police Officers in the Australian Capital Territory, and to the Keeper of the Gaol at _____, in the _____.

WHEREAS A.B. of _____, [labourer], was this day duly convicted before the Magistrates Court at _____, that [stating the offence as in the conviction as in Forms 37, 38 and 39], and it was adjudged that the said A.B. should be imprisoned in the gaol at _____, in the _____ [there to be kept to hard labour] for a term of _____.

: These are therefore to command you, the said police officers, to convey the said A.B. to the gaol at _____ aforesaid, and deliver [her or him] to the keeper thereof, together with this warrant, and to command you, the said keeper of the said gaol, to receive the said A.B. into your custody in the said gaol, there to imprison [her or him] and keep [her or him] to hard labour for the term of _____.

Given under my hand, at Canberra, in the said Territory, this _____ day of _____, 19 _____.

J.S.,
Magistrate.

EXECUTION AND IMPRISONMENT

GAOLER'S RECEIPT

FORM 76

**Gaoler's/Superintendent's receipt for the prisoner*

I HEREBY certify that I have received from W.T., police officer, of Canberra, in the Australian Capital Territory, the body of A.B. in good health [or as the case may be], together with a warrant under the hand of J.S., Esquire, a magistrate of the said Territory.

P.K.,
*Keeper of the Gaol/
Superintendent of the Remand Centre.

**Strike out whichever is inapplicable*

THE FIRST SCHEDULE—continued

DELIVERANCE

FORM 79

Order to discharge a witness upon a prisoner not being committed for trial

To the *Keeper of the Gaol/Superintendent of the Remand Centre at _____, _____ in the _____

WHEREAS by a warrant dated the _____ day of _____, under the hand of L.M., a magistrate of the said Territory, reciting that upon the hearing of a charge against one A.B. for a certain offence therein mentioned, E.F., having been examined as a witness, refused to enter into a recognizance to give evidence against the said A.B., the said L.M. committed the said E.F. to your custody and required you to keep [her or him] until after the trial of the said A.B. for the offence aforesaid unless in the meantime the said E.F. should enter into such recognizance as aforesaid: And whereas the said A.B. has not been committed for trial or held to bail for the said offence, but has been discharged: These are therefore to direct you to discharge the said E.F. out of your custody and suffer [her or him] to go at large as to the said commitment.

Given under my hand, at Canberra, in the said Territory, this _____ day of _____, 19 _____.

J.S.,
Magistrate.

**Strike out whichever is inapplicable*

IMPRISONMENT OF FRAUDULENT DEBTORS

FORM 80

Summons to Debtor

In the Magistrates Court at Canberra.

To A.B. of _____

WHEREAS the said Court did on the _____ day of _____ order that you should pay to C.D. the sum of _____ and costs which by the said order were fixed at the sum of _____ (or the sum of _____ for costs) and the said sums (or sum) (or part of, &c., as the case may be) are still wholly due and unpaid:

These are therefore to command you to appear personally before the Magistrates Court at Canberra on the _____ day of _____ at _____ o'clock in the _____ noon to be examined by the said Court touching your estate and effects and as to the property and means you have or have had of paying and discharging the said sums (or sum) and as to the disposal you have made of your property and as to your intention to leave the Australian Capital Territory without paying the said sums (or sum) or to depart elsewhere within the said Territory with intent to evade payment thereof and as to the mode in which you incurred the liability (and as to your neglect or refusal to comply with an order for the deliver of goods detained without just cause after due notice and to pay the value thereof to the complainant).

Dated at _____ the _____ day of _____.

Registrar of Magistrates Court

NOTE—When the original order has been made by a magistrate out of session this and the following forms should be modified accordingly.

THE FIRST SCHEDULE—continued

FORM 81

Order for Commitment in Default of Payment

In the Magistrates Court at Canberra.

To A.B. of

WHEREAS the said Court did on the day of order that you should pay to C.D. the sum of and costs which by the said order were fixed at the sum of (or the sum of for costs) and the said sums (or sum) (or part of, &c., as the case may be) are still wholly due and unpaid, and it has been proved against you that having been duly summoned (or summoned and examined) [*here set out the specific offence found, ex. gr.* “it has been proved to the satisfaction of the Court that you contracted the liability under false pretences or by means of fraud or breach of trust” or “it has been proved to the satisfaction of the Court that you have or have had since the date of the order against you sufficient means and ability to pay the sum in respect of which you have made default and have refused or neglected (or refuse or neglect) to pay the same” or “it has been proved to the satisfaction of the Court that you have neglected or refused to comply with an order under the *Magistrates Court Act 1930* for the deliver of goods detained without just cause after due notice and have not paid the value thereof to the complainant]:

It is adjudged that unless you pay into the said Court immediately (or within days or by the following instalments upon the following days (that is to say): [*here set out dates and sums*] the said sum together with the sum of for the costs of the summons (or summons and examination) you be committed to prison for the term of (or until you shall have paid or satisfied the said order and the sums hereinbefore ordered to be paid for costs, or until you shall be otherwise discharged by due course of law).

Dated at this day of .

J.S.,
Magistrate.

FORM 82

Warrant of commitment

In the Magistrates Court at Canberra.

To a member of the Police Force of the Australian Capital Territory, and to the Keeper of the Gaol at .

The Court having ordered that A.B. against whom C.D. had in the said Court obtained an order for (as in Form 81) should be committed to prison for [*state time*] unless she or he did [*as in order*] and the said A.B. having made default by not [*state shortly the default*]:

You the said member of the police force are commanded to take the said A.B. and convey her or him to the said gaol and deliver her or him to the keeper thereof and you the said keeper are hereby required to receive her or him into your custody in the said gaol and her or him there safely to keep for the space of or until you shall receive a certificate (signed by the Registrar of the Court) that the said A.B. has paid or satisfied the said sums or until the said A.B. shall be otherwise discharged by due course of law.

Dated at Canberra this day of .

Registrar of Magistrates Court.

THE FIRST SCHEDULE—continued

FORM 83

Warrant of Commitment on Ex parte Application

In the Magistrates Court at

To _____ a member of the Police Force of the Australian Capital Territory, and to the Keeper of the Gaol at _____

The Court having in the special circumstances of the case on the _____ day of _____ ordered that A.B. against whom C.D. had in the said Court obtained an order for (as in Form 81) should be committed to prison for [state time] unless she or he did (as in order) and the said A.B. having made default by not [state shortly the default]:

You the said member of the police force are commanded to take the said A.B. and convey her or him to the said gaol and deliver her or him to the keeper thereof and you the said keeper are hereby required to receive her or him into your custody in the said gaol and her or him there safely to keep for the space of _____ or until you shall receive a certificate (signed by the Registrar of the Court) that the said A.B. has paid or satisfied the said sums or until the said A.B. shall be otherwise discharged by due course of law.

Dated at Canberra this _____ day of _____

Registrar of Magistrates Court.

FORM 88

Warrant of Commitment to Remand Centre

To all Police Officers in the Australian Capital Territory, and to the keeper of the lock-up at _____ in the Australian Capital Territory and to the Superintendent of the Remand Centre at _____ in the Australian Capital Territory.

WHEREAS a warrant has been issued for the commitment of _____ A. B. of _____, under section _____ of the *Magistrates Courts Act 1930*; And whereas the said _____ A. B. has been taken into custody by virtue of the said warrant; And whereas a warrant under section 5 of the *Removal of Prisoners (Australian Capital Territory) Act 1968* is not in force in respect of the said A. B.

These are therefore to command you, the said police officers, to take the said A.B. _____ and convey her or him to the said remand centre, and deliver her or him to the Superintendent thereof, together with this warrant, and to command you, the said keeper of the said lock-up, to deliver her or him to the said police officer, and to command you, the said Superintendent of the said remand centre, to receive the said A.B. _____ into your custody in the said remand centre, there to detain her or him until she or he shall be removed or discharged out of your custody by due course of law.

Given under my hand, at Canberra, in the said Territory, this _____ day of _____, 19 _____.

J.S.,
Magistrate

SECOND SCHEDULE

Section 10P

OATH

I, A.B., do swear that I will be faithful and bear true allegiance to Her Majesty, Queen Elizabeth the Second, Her heirs and successors, according to law, that I will well and truly serve in the office of _____ and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will. So help me God!

AFFIRMATION

I, A.B., do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty, Queen Elizabeth the Second, Her heirs and successors, according to law, that I will well and truly serve in the office of _____ and that I will do right to all manner of people, according to law, without fear or favour, affection or ill-will.

THE THIRD SCHEDULE

Account of Registrar of Magistrates Court, Keeper of the Gaol and Superintendent of the Remand Centre

RETURN to Magistrates Court assembled at _____, in the Australian Capital Territory, on the _____ day of _____, 19____, of all fines, penalties, and sums of money received by the *Registrar of the said Court/Keeper of the said Gaol/Superintendent of the said Remand Centre at _____, in the said Territory, from the _____ day of _____, 19____, to the _____ day of _____, 19____, and how applied.

Name of person *convicted / detained	Date	Offence	Costs	Amount thereof paid	Fine	Amount thereof paid	Amount of fine, how applied	Punishment when fine not paid	Name of convicting magistrate	Reasons of non- payment or other observation s

(Signed _____)

*Registrar of Magistrates Court/Keeper of the above-named Gaol/Superintendent of the above-named Remand Centre

*Strike out whichever is inapplicable.

NOTES

1. The *Magistrates Court Act 1930* as shown in this reprint comprises Act No. 21, 1930 amended as indicated in the Tables below.

The Australian Capital Territory received Self-Government on 11 May 1989.

For details regarding the application of the *Magistrates Court Act 1930* from 11 May 1989 to 1 July 1990 see the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth (No. 106, 1988) and the *A.C.T. Self-Government (Consequential Provisions) Act 1988* of the Commonwealth (No. 109, 1988), in particular sections 3, 34 and Schedules 3 and 5 and section 12 respectively. The *Self-Government (Citation of Laws) Act 1989* (No. 21, 1989) and the *Reserved Laws (Interpretation) Ordinance 1989* (No. 25, 1989) effect the citation change of Ordinance to Act and affect references to Commonwealth legislation.

Table of Laws

Law	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Court of Petty Sessions Ordinance (No. 2) 1930</i>	21, 1930	21 Nov 1930	21 Nov 1930	
<i>Court of Petty Sessions Ordinance 1932</i>	21, 1932	17 Nov 1932	17 Nov 1932	—
<i>Court of Petty Sessions Ordinance 1934</i>	17, 1934	19 July 1934	19 July 1934	—
<i>Money Lenders Ordinance 1936</i>	13, 1936	9 Apr 1936	1 May 1936	S. 5 (2)
<i>Court of Petty Sessions Ordinance 1937</i>	5, 1937	27 May 1937	27 May 1937	S. 2 (2)
<i>Court of Petty Sessions Ordinance (No. 2) 1937</i>	28, 1937	23 Dec 1937	23 Dec 1937	—
<i>Seat of Government (Designation) Ordinance 1938</i> as amended by <i>Ordinances Revision Ordinance 1938</i>	25, 1938	8 Sept 1938	8 Sept 1938	S. 3
<i>Ordinances Revision Ordinance 1938</i>	35, 1938	15 Dec 1938	15 Dec 1938	—
<i>Ordinances Revision Ordinance 1938</i>	35, 1938	15 Dec 1938	15 Dec 1938	—
<i>Court of Petty Sessions Ordinance 1940</i>	20, 1940	7 Nov 1940	7 Nov 1940	—
<i>Court of Petty Sessions Ordinance (No. 2) 1940</i>	22, 1940	12 Dec 1940	12 Dec 1940	—
<i>Court of Petty Sessions Ordinance 1949</i>	13, 1949	1 Dec 1949	1 Dec 1949	S. 4
<i>Court of Petty Sessions Ordinance 1951</i>	7, 1951	26 July 1951	26 July 1951	S. 4
<i>Court of Petty Sessions Ordinance (No. 2) 1951</i>	12, 1951	14 Dec 1951	14 Dec 1951	—
<i>Court of Petty Sessions Ordinance 1953</i>	14, 1953	12 Nov 1953	3 Dec 1953	—
<i>Court of Petty Sessions Ordinance 1958</i>	12, 1958	24 July 1958	24 July 1958	—

NOTES—continued

Table of Laws—continued

Law	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Court of Petty Sessions Ordinance 1961</i>	2, 1961	29 Mar 1961	29 Mar 1961	—
<i>Court of Petty Sessions Ordinance 1966</i>	2, 1966	10 Feb 1966	14 Feb 1966	—
<i>Court of Petty Sessions Ordinance 1967</i>	1, 1967	9 Feb 1967	9 Feb 1967	S. 23
<i>Court of Petty Sessions Ordinance 1968</i>	25, 1968	19 Dec 1968	1 Jan 1969 (see <i>Gazette</i> 1968, p. 7565)	Ss. 4 (2), 6 (2) and 13
<i>Court of Petty Sessions Ordinance 1969</i>	12, 1969	20 June 1969	20 June 1969	S. 5
<i>Court of Petty Sessions Ordinance 1970</i>	15, 1970	19 Mar 1970	19 Mar 1970	—
<i>Court of Petty Sessions Ordinance 1972</i>	37, 1972	16 Nov 1972	Ss. 1, 2, 6 and 14: 16 Nov 1972 Remainder: 1 Feb 1973 (see <i>Gazette</i> 1972, No. 118, p. 2)	S. 3
<i>Court of Petty Sessions Ordinance 1973</i>	48, 1973	17 Dec 1973	17 Dec 1973	—
<i>Court of Petty Sessions Ordinance 1974</i>	14, 1974	17 Apr 1974	17 Apr 1974	—
<i>Ordinances Revision (Age of Majority) Ordinance 1974</i>	47, 1974	24 Oct 1974	1 Nov 1974	—
<i>Court of Petty Sessions (Amendment) Ordinance 1976</i>	42, 1976	13 Sept 1976	13 Sept 1976	—
<i>Court of Petty Sessions (Amendment) Ordinance 1977</i>	4, 1977	24 Mar 1977	Ss. 1-3 and 10: 24 Mar 1977 Remainder: 28 Mar 1977 (see <i>Gazette</i> 1977, No. S52)	Ss. 10-12
<i>Court of Petty Sessions (Amendment) Ordinance (No. 2) 1977</i>	34, 1977	28 July 1977	28 July 1977	S. 24
<i>Court of Petty Sessions (Amendment) Ordinance (No. 3) 1977 (a)</i>	56, 1977	6 Oct 1977	6 Oct 1977 (a)	—
<i>Court of Petty Sessions (Amendment) Ordinance (No. 4) 1977</i>	61, 1977	21 Nov 1977	21 Nov 1977	S. 12
<i>Ordinances Revision Ordinance 1978</i>	46, 1978	28 Dec 1978	28 Dec 1978	—
<i>Court of Petty Sessions (Amendment) Ordinance 1979</i>	33, 1979	14 Nov 1979	14 Nov 1979	S. 13
<i>Court of Petty Sessions (Amendment) Ordinance (No. 2) 1979</i>	41, 1979	18 Dec 1979	18 Dec 1979	S. 6

NOTES—continued

Table of Laws—continued

Law	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Court of Petty Sessions (Amendment) Ordinance 1980</i>	4, 1980	20 Mar 1980	1 Apr 1980 (see <i>Gazette</i> 1980, No. S66)	Ss. 11 and 12
<i>Court of Petty Sessions (Amendment) Ordinance (No. 2) 1980</i>	10, 1980	26 Mar 1980	26 Mar 1980	—
<i>Court of Petty Sessions (Amendment) Ordinance 1982</i>	2, 1982	26 Feb 1982	1 Sept 1982 (see <i>Gazette</i> 1982, No. S178)	—
<i>Court of Petty Sessions (Amendment) Ordinance (No. 2) 1982</i>	3, 1982	26 Feb 1982	26 Feb 1982	—
<i>Court of Petty Sessions (Amendment) Ordinance 1984</i>	9, 1984	11 Apr 1984	11 Apr 1984	—
<i>Court of Petty Sessions (Amendment) Ordinance (No. 2) 1984</i>	10, 1984	11 Apr 1984	11 Apr 1984	—
<i>Court of Petty Sessions (Amendment) Ordinance (No. 3) 1984</i>	16, 1984	1 June 1984	1 June 1984	—
<i>Court of Petty Sessions (Amendment) Ordinance (No. 4) 1984</i>	61, 1984	2 Nov 1984	2 Nov 1984	S. 7
<i>Court of Petty Sessions (Amendment) Ordinance (No. 5) 1984</i>	62, 1984	2 Nov 1984	2 Nov 1984	—
<i>Court of Petty Sessions (Amendment) Ordinance 1985</i>	17, 1985	17 Apr 1985	17 Apr 1985	—
<i>Court of Petty Sessions (Amendment) Ordinance (No. 2) 1985</i>	18, 1985	17 Apr 1985	17 Apr 1985	—
<i>Court of Petty Sessions (Amendment) Ordinance (No. 3) 1985</i>	41, 1985	5 Sept 1985	5 Sept 1985	—
<i>Limitation Ordinance 1985</i>	66, 1985	19 Dec 1985	19 Dec 1985	—
<i>Magistrates Court Ordinance 1985</i>	67, 1985	19 Dec 1985	1 Feb 1986 (see <i>Gazette</i> 1986, No. G3, p. 265)	Ss. 36 and 37
<i>Magistrates Court (Amendment) Ordinance 1986</i>	33, 1986	7 Aug 1986	7 Aug 1986	—
<i>Domestic Violence (Miscellaneous Amendments) Ordinance 1986</i>	53, 1986	4 Sept 1986	1 Oct 1986 (see <i>Gazette</i> 1986, No. S484)	—
<i>Crimes (Amendment) Ordinance (No. 4) 1986</i>	57, 1986	3 Oct 1986	3 Oct 1986	S. 15
<i>Magistrates Court (Amendment) Ordinance (No. 2) 1986</i>	71, 1986	30 Oct 1986	1 Apr 1987 (see <i>Gazette</i> 1987, No. S52)	—

NOTES—continued

Table of Laws—continued

Law	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Magistrates Court (Amendment) Ordinance (No. 3) 1986</i>	74, 1986	14 Nov 1986	14 Nov 1986	S. 66
<i>Magistrates Court (Amendment) Ordinance (No. 4) 1986</i>	83, 1986	22 Dec 1986	22 Dec 1986	—
<i>Magistrates Court (Amendment) Ordinance 1987</i>	56, 1987	21 Oct 1987	21 Oct 1987	—
<i>Magistrates Court (Amendment) Ordinance 1988</i>	45, 1988	27 July 1988	27 July 1988	—
<i>Magistrates Court (Amendment) Ordinance 1989</i>	55, 1989	30 June 1989	1 July 1989	—
<i>Magistrates Court (Amendment) Ordinance (No. 2) 1989</i>	59, 1989	25 Oct 1989	Ss. 11, 12 and 14: 27 June 1990 (see <i>Gazette</i> 1990, No. GN25, p. 1687) Remainder: 25 Oct 1989	S. 2 (2)
<i>Magistrates Court (Amendment) Ordinance (No. 3) 1989</i>	60, 1989	20 Dec 1989	14 Feb 1990 (see <i>Gazette</i> 1990, No. GN5, p. 216)	—
<i>Crimes (Amendment) Ordinance 1990</i>	1, 1990	23 May 1990	23 May 1990	S. 6
<i>Self-Government (Consequential Amendments) Ordinance 1990 (b)</i>	5, 1990	27 June 1990	Ss. 1 and 2: 27 June 1990 Remainder: 1 July 1990	S. 6 (2)
<i>Magistrates Court (Appeals Against Sentence) Ordinance 1990</i>	9, 1990	29 June 1990	29 June 1990	S. 11
<i>Magistrates Court (Amendment) Act 1990</i>	65, 1990	24 Dec 1990	24 Dec 1990	—
<i>Weapons (Consequential Amendments) Act 1991</i>	9, 1991	3 Apr 1991	Ss. 1 and 2: 3 Apr 1991 Remainder: 3 Oct 1991 (see s. 2 (2))	—
<i>Magistrates Court (Amendment) Act 1991</i>	38, 1991	20 Sept 1991	Ss. 1-3: 20 Sept 1991 Remainder: 25 Sept 1991 (see <i>Gazette</i> 1991, No. S103, p. 3)	—

NOTES—continued

Table of Laws—continued

Law	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Magistrates and Coroner's Courts (Registrar) Act 1991</i>	44, 1991	20 Sept 1991	Ss. 1 and 2: 20 Sept 1991 Remainder: 25 Sept 1991 (see <i>Gazette</i> 1991, No. S103, p. 2)	Ss. 3 and 4
<i>Magistrates Court (Amendment) Act (No. 2) 1991</i>	79, 1991	11 Dec 1991	Ss. 1-3: 11 Dec 1991 Remainder: 11 June 1992	—
<i>Workers' Compensation (Consequential Amendments) Act 1991</i>	106, 1991	15 Jan 1991	Ss. 1 and 2: 15 Jan 1992 Remainder: 22 Jan 1992 (see s. 2 (2) and <i>Gazette</i> 1992, No. S9)	—
<i>Magistrates Court (Amendment) Act (No. 3) 1991</i>	112, 1991	10 Jan 1992	Ss. 1 and 2: 10 Jan 1992 Remainder: 18 May 1992 (see <i>Gazette</i> 1992, No. S57, p. 2)	—
<i>Bail (Consequential Amendments) Act 1992</i>	9, 1992	28 May 1992	Ss. 1 and 2: 28 May 1992 Remainder: 28 Nov 1992	S. 3
<i>Statute Law Revision (Miscellaneous Provisions) Act 1992</i>	23, 1992	4 June 1992	4 June 1992	—
<i>Protection Orders (Reciprocal Arrangements) (Consequential Amendments) Act 1992</i>	37, 1992	8 July 1992	Ss. 7 and 12: 3 Aug 1992 (see <i>Gazette</i> 1992, No. S130) Remainder: 8 July 1992	—
<i>Evidence (Amendment) Act 1993</i>	2, 1993	1 Mar 1993	1 Mar 1993	—
<i>Magistrates Court (Amendment) Act 1993</i>	4, 1993	1 Mar 1993	Ss. 1-3: 1 Mar 1993 Ss. 4-19, 21-24 and 26-32: 8 Mar 1993 (see <i>Gazette</i> 1993, No. 32) Remainder: 1 Sept 1993	Ss. 31 and 32

NOTES—continued

Table of Laws—continued

Law	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Magistrates Court (Amendment) Act (No. 2) 1993</i>	48, 1993	27 Aug 1993	Ss. 1-3: 27 Aug 1993 Remainder: 27 Sept 1993 (see s. 2 (2) and <i>Gazette</i> 1993, No. S201, p. 2)	—
<i>Supreme Court (Amendment) Act (No. 2) 1993</i>	91, 1993	17 Dec 1993	17 Dec 1993	—
<i>Magistrates Court (Amendment) Act 1994</i>	4, 1994	14 Mar 1994	Ss. 1-4, 10, 12 and 13: 14 Mar 1994 Remainder: (c)	S. 13
<i>Judicial Commissions (Consequential Amendments) Act 1994</i>	10, 1994	14 Mar 1994	14 Mar 1994	—
<i>Public Sector Management (Consequential and Transitional Provisions) Act 1994</i>	38, 1994	30 June 1994	Ss. 1 and 2: 30 June 1994 Remainder: 1 July 1994 (see <i>Gazette</i> 1994, No. S142, p. 2)	Ss. 3, 5-12, 15 and 19
<i>Mental Health (Consequential Provisions) Act 1994</i>	45, 1994	7 Sept 1994	Ss. 1 and 2: 7 Sept 1994 Remainder (ss. 3-38): (see Note 2)	—
<i>Magistrates Court (Enforcement of Judgments) Act 1994</i>	61, 1994	11 Oct 1994	Ss. 1 and 2: 11 Oct 1994 Remainder (ss. 3-97): (see Note 3) (d)	Part VIII (ss. 88-97)
<i>Coroners (Amendment) Act (No. 2) 1994</i>	66, 1994	11 Oct 1994	11 Oct 1994	—

NOTES—continued

Table of Laws—continued

Law	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
includes retrospective amendments by				
<i>Magistrates Court (Amendment) Act 1996</i>	1996 No 6	12 Mar 1996	ss 1-3: 12 Mar 1996 s 7: 25 Sept 1991 remainder: 12 Sept 1996	s 5 (2)

(a) The *Court of Petty Sessions (Amendment) Ordinance (No. 3) 1977* was not laid before each House of the Parliament within 15 sitting days after the day on which it was made and by virtue of subsection 12 (3) of the *Seat of Government (Administration) Act 1910* of the Commonwealth, is void and of no effect. The amendments made by that Ordinance are not incorporated in this reprint.

(b) Subsection 6 (1) of the *Self-Government (Consequential Amendments) Ordinance 1990* provides as follows:

“6. (1) The Ordinances specified in Schedule 1 (except the *Legal Practitioners Ordinance 1970*), the Crimes Act, 1900 of the State of New South Wales in its application in the Territory and the rules specified in Schedule 3 are amended—

- (a) by inserting ‘she or’ before ‘he’ (wherever occurring);
- (b) by inserting ‘her or’ before ‘him’ (wherever occurring);
- (c) by inserting ‘her or’ before ‘his’ (wherever occurring); and
- (d) by inserting ‘herself or’ before ‘himself’ (wherever occurring).”

The amendments have been incorporated in this reprint but do not appear in the Table of Amendments.

(c) Subsection 2 (2) of the *Magistrates Court (Amendment) Act 1994* provides as follows:

“(2) The remaining provisions commence on the day on which the first determination under subsection 248A (1) of the Principal Act as amended by this Act comes into effect.”

The date fixed in pursuance of subsection 2 (2) was 1 July 1994.

(d) Subsection 53 (5) of the *Magistrates Court (Enforcement of Judgments) Act 1994* provides as follows:

“(5) The Principal Act is amended—

- (a) by omitting ‘her or him’ (wherever occurring) and substituting ‘him or her’;
- (b) by omitting ‘herself or himself’ (wherever occurring) and substituting ‘himself or herself’;
- (c) by omitting ‘her or his’ (wherever occurring) and substituting ‘his or her’; and
- (d) by omitting ‘she or he’ (wherever occurring) and substituting ‘he or she’.”

NOTES—continued

The amendments have not been incorporated in this reprint (see Note 3) and will not appear in the Table of Amendments.

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
Title	am. No. 67, 1985
S. 1	am. No. 83, 1986
S. 2	rep. No. 46, 1978
S. 4	am. No. 28, 1937; No. 14, 1953 rs. No. 12, 1958 am. No. 25, 1968; No. 37, 1972 rep. No. 14, 1974
S. 5	am. No. 28, 1937; No. 35, 1938; Nos. 7 and 12, 1951; No. 14, 1953; No. 12, 1958; No. 1, 1967; No. 25, 1968; No. 48, 1973; No. 42, 1976; No. 4, 1980; No. 62, 1984; Nos. 17, 41 and 67, 1985; No. 74, 1986; Nos. 59 and 60, 1989; No. 5, 1990; Acts Nos. 38 and 44, 1991; No. 9, 1992; Nos. 4 and 91, 1993; No. 4, 1994
S. 6	rs. No. 12, 1951 am. No. 5, 1990
Heading to Div. 1 of Part II	ad. No. 4, 1977 am. No. 67, 1985
S. 6A	ad. No. 4, 1977 am. No. 67, 1985
S. 7	rs. No. 13, 1949 am. Nos. 7 and 12, 1951; No. 48, 1973 rs. No. 4, 1977; No. 67, 1985 am. No. 5, 1990
S. 8	am. No. 13, 1949 rs. No. 4, 1977
Ss. 8A, 8B	ad. No. 48, 1983 rep. No. 4, 1977
S. 9	rs. No. 4, 1977 am. No. 67, 1985
S. 10	am. No. 35, 1938; No. 48, 1973 rs. No. 4, 1977 am. No. 5, 1990
S. 10A	ad. No. 4, 1977
S. 10B	ad. No. 4, 1977 am. No. 5, 1990
S. 10C	ad. No. 4, 1977 am. No. 67, 1985; No. 5, 1990
S. 10D	ad. No. 4, 1977 rs. Act No. 10, 1994
S. 10E	ad. No. 4, 1977 am. Act No. 4, 1993

NOTES—continued**Table of Amendments**—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
S. 10F	ad. No. 4, 1977 rs. Act No. 38, 1994
S. 10G.....	ad. No. 4, 1977 am. No. 67, 1985; No. 74, 1986; Act No. 66, 1994
Div. 2 of Part II (ss. 10H -10L)	ad. No. 4, 1977
S. 10H.....	ad. No. 4, 1977 am. No. 5, 1990
S. 10J.....	ad. No. 4, 1977 rs. Act No. 10, 1994
Ss. 10K, 10L	ad. No. 4, 1977 am. No. 5, 1990
Heading to Div. 3 of Part II	ad. No. 4, 1977 am. No. 67, 1985; Act No. 44, 1991
Div. 3 of Part II (ss. 10M, 10N)	ad. No. 4, 1977
S. 10M	ad. No. 4, 1977 am. No. 67, 1985; Act No. 44, 1991 rs. No. 4, 1993
S. 10MA.....	ad. Act No. 38, 1994
S. 10N.....	ad. No. 4, 1977 am. Act No. 44, 1991
Div. 4 of Part II (ss. 10P, 10Q)	ad. No. 4, 1977
S. 10P	ad. No. 4, 1977 am. No. 5, 1990
S. 10Q.....	ad. No. 4, 1977
S. 11	am. Act No. 44, 1991
S. 12	am. No. 28, 1937; No. 74, 1986; Act No. 44, 1991; No 6, 1996 s 7
S. 13	am. Act No. 44, 1991
S. 14	rep. No. 37, 1972
S. 15	am. Act No. 44, 1991
S. 16	am. No. 28, 1937; No. 4, 1977; Act No. 44, 1991
S. 17	am. No. 28, 1937; No. 5, 1990
Heading to Part III.....	rs. No. 67, 1985
Heading to Div. 1 of Part III	am. No. 67, 1985
S. 18	am No. 20, 1940; No. 67, 1985; No. 5, 1990
Heading to Div. 2 of Part III	am. No. 67, 1985
S. 19	am. No. 28, 1937; No. 67, 1985; No. 74, 1986; No. 5, 1990
S. 20	am. No. 13, 1936; No. 1, 1967; No. 12, 1969; No. 4, 1977 rep. No. 74, 1986
S. 20A.....	ad. No. 2, 1961

NOTES—continued

Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
	am. No. 1, 1967 rep. No. 74, 1986
S. 21	am. No. 28, 1937; No. 12, 1958; No. 74, 1986
S. 23	am. No. 15, 1970 rs. No. 14, 1974 am. No. 33, 1979; No. 74, 1986; No. 60, 1989; Acts Nos. 44 and 112, 1991; Nos. 4 and 48, 1993
S. 23AA.....	ad. No. 3, 1982
S. 23A.....	ad. No. 21, 1932
S. 23B.....	ad. No. 18, 1985 am. Act No. 44, 1991
S. 24	rep. No. 74, 1986
S. 24A.....	ad. No. 28, 1937 rep. No. 74, 1986
S. 24B.....	ad. No. 28, 1937 am. No. 14, 1953; No. 10, 1980; No. 67, 1985 rep. No. 74, 1986
S. 25	rs. No. 14, 1974 am. No. 74, 1986
S. 26	am. Act No. 38, 1991; No. 4, 1993; No. 4, 1994
S. 27	am. No. 5, 1990
S. 27A.....	ad. No. 14, 1974 rep. No. 17, 1985
S. 31	am. No. 59, 1989; No. 5, 1990
Div. 3 of Part IV (ss. 32 -36)	rep. No. 74, 1986
S. 32	am. No. 2, 1961 rep. No. 74, 1986
S. 33	am. No. 1, 1967; No. 12, 1969; No. 4, 1977 rep. No. 74, 1986
S. 34	rep. No. 74, 1986
S. 35	am. No. 47, 1974 rep. No. 74, 1986
S. 36	rep. No. 74, 1986
S. 37	am. No. 74, 1986; No. 55, 1989; No. 5, 1990; Act No. 38, 1991; No. 4, 1993
S. 38	am. No. 28, 1937; No. 33, 1979; No. 74, 1986
S. 39	rep. No. 74, 1986
S. 40	am. No. 33, 1979
S. 41	rs. No. 28, 1937 am. No. 14, 1953; No. 74, 1986; Act No. 44, 1991
S. 42	am. No. 14, 1974, No. 33, 1979
S. 43	am. No. 28, 1937; No. 5, 1990; Act No. 9, 1992
S. 50	am. Act No. 44, 1991

NOTES—continued**Table of Amendments**—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
	rep. No. 9, 1992
S. 51	am. No. 74, 1986
S. 53	am. No. 74, 1986
S. 54	am. No. 74, 1986; Act No. 79, 1991; No. 2, 1993
S. 54AA.....	ad. Act No. 79, 1991
	rep. No. 2, 1993
S. 54A.....	ad. No. 4, 1980
	am. No. 41, 1985; Nos. 71, 74 and 83, 1986; No. 5, 1990; Acts Nos. 44 and 106, 1991
S. 56	am. No. 74, 1986
S. 57	rep. No. 74, 1986
S. 59	am. No. 5, 1990
S. 60	rs. No. 12, 1958; No. 1, 1967
	am. No. 37, 1972
	rs. No. 14, 1974; No. 4, 1980
	am. Act No. 44, 1991
S. 61	am. No. 74, 1986
S. 62	rs. No. 28, 1937
S. 63	am. No. 1, 1967
S. 65	am. No. 42, 1976; No. 74, 1986
S. 66	am. No. 28, 1937
S. 66A.....	ad. No. 56, 1987
S. 67	am. No. 4, 1980; No. 74, 1986
Ss. 67A, 67B.....	ad. No. 74, 1986
	am. No. 5, 1990
S. 69	am. No. 12, 1958; No. 1, 1967; No. 4, 1980; Act No. 44, 1991
S. 70	am. No. 61, 1977
S. 73	am. Act No. 9, 1992
S. 73A.....	ad. No. 74, 1986
S. 75	rs. No. 42, 1976
S. 76	am. No. 74, 1986
S. 77	am. No. 15, 1970; Act No. 9, 1992
S. 78	am. Act No. 9, 1992
S. 79	am. No. 14, 1974; No. 42, 1976; Act No. 44, 1991; No. 9, 1992
S. 80	am. No. 14, 1974; No. 62, 1984; No. 53, 1986; No. 5, 1990; Act No. 9, 1992
S. 81	am. No. 28, 1937; No. 42, 1976
	rep. Act No. 9, 1992
S. 82	am. No. 42, 1976
S. 84	am. No. 74, 1986; Act No. 9, 1992
S. 85	am. No. 74, 1986
S. 87	am. No. 61, 1977
S. 88	am. No. 74, 1986; Act No. 44, 1991
Div. 1A of Part VI (s. 88A).....	ad. No. 56, 1987

NOTES—continued**Table of Amendments**—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
S. 88A	ad. No. 56, 1987
S. 89	am. No. 61, 1977
S. 89A	ad. No. 61, 1977 am. No. 56, 1987; Act No. 9, 1992
S. 90	rs. No. 12, 1958 am. No. 1, 1967 rs. No. 14, 1974 am. No. 61, 1977; Act No. 44, 1991
S. 90AA	ad. No. 14, 1974 am. Act No. 44, 1991
S. 90AB	ad. No. 14, 1974 am. No. 61, 1977
S. 90ABA	ad. No. 61, 1977
S. 90A	ad. No. 12, 1958 am. No. 41, 1985; No. 5, 1990
S. 91	am. No. 14, 1974; No. 56, 1987
S. 92	am. No. 12, 1951; No. 12, 1958; No. 1, 1967; No. 14, 1974; No. 61, 1977; No. 41, 1985; No. 74, 1986; No. 56, 1987
S. 92A	ad. No. 14, 1974
S. 92B	ad. No. 41, 1985
S. 93	am. No. 12, 1958; No. 1, 1967
S. 94	am. No. 28, 1937; No. 42, 1976; No. 56, 1987
S. 95	rs. No. 12, 1958 am. No. 1, 1967; No. 59, 1989
S. 97	am. No. 28, 1937 rep. No. 12, 1958
Div. 2A of Part VI (s. 97)	ad. No. 9, 1984
S. 97	ad. No. 9, 1984 am. No. 56, 1987
Heading to Div. 3 of Part VI	am. Act No. 9, 1992
S. 98	am. No. 28, 1937 rep. No. 59, 1989
Ss. 99, 100	am. No. 28, 1937; No. 42, 1976; No. 59, 1989 rep. Act No. 9, 1992
S. 101	am. No. 1, 1967; No. 42, 1976; No. 17, 1985 rep. Act No. 9, 1992
S. 102	am. No. 42, 1976 rep. Act No. 9, 1992
S. 103	am. No. 14, 1974
S. 105	am. No. 42, 1976
S. 106	am. No. 1, 1967; Nos. 17 and 41, 1985; Act No. 9, 1992
S. 107	am. No. 1, 1967; No. 17, 1985
S. 108	am. No. 1, 1967
S. 108A	ad. No. 41, 1985

NOTES—continued**Table of Amendments—continued**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
S. 110	am. No. 14, 1974; No. 83, 1986; No. 59, 1989
S. 114	am. No. 28, 1937
Part VIIA (ss. 116A-116J) ..	ad. No. 14, 1974 rep. No. 33, 1979
Part VIIA (ss. 116A-116I) ...	ad. No. 33, 1979
S. 116A	ad. No. 14, 1974 rs. No. 33, 1979 am. No. 10, 1984; No. 5, 1990; Act No. 4, 1993
S. 116B	ad. No. 14, 1974 rs. No. 33, 1979 am. Act No. 4, 1993
S. 116BA	ad. Act No. 4, 1993
Ss. 116C-116F	ad. No. 14, 1974 rs. No. 33, 1979 am. Act No. 44, 1991; No. 4, 1993
S. 116FA	ad. No. 59, 1989
S. 116G	ad. No. 14, 1974 rs. No. 33, 1979 am. No. 59, 1989; Act No. 44, 1991; No. 4, 1993
S. 116H	ad. No. 14, 1974 rs. No. 33, 1979; Act No. 4, 1993
S. 116I	ad. No. 14, 1974 rs. No. 33, 1979 am. Act No. 44, 1991; No. 4, 1993
S. 116J	ad. No. 14, 1974 rep. No. 33, 1979
Part VIII (ss. 117-134, 134A, 134B, 135-140)	rep. No. 74, 1986
Ss. 117-122	rep. No. 74, 1986
S. 123	rs. No. 28, 1937 rep. No. 74, 1986
S. 124	rep. No. 74, 1986
S. 125	am. No. 28, 1937 rep. No. 74, 1986
S. 126	rep. No. 74, 1986
S. 127	rs. No. 28, 1937 rep. No. 74, 1986
S. 128	am. No. 28, 1937 rep. No. 74, 1986
S. 129	rs. No. 1, 1967 am. No. 4, 1980 rep. No. 74, 1986
Ss. 130, 131	rep. No. 74, 1986
S. 132	am. No. 1, 1967; No. 12, 1969; No. 4, 1977

NOTES—continued

Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
	rep. No. 74, 1986
S. 133	am. No. 28, 1937 rep. No. 74, 1986
S. 134A	ad. No. 25, 1968 rep. No. 74, 1986
S. 134B	ad. No. 25, 1968 am. No. 46, 1978 rep. No. 74, 1986
S. 135	am. No. 28, 1937 rep. No. 74, 1986
Ss. 136-138	rep. No. 74, 1986
S. 139	am. No. 28, 1937; No. 12, 1958; No. 15, 1970 rep. No. 74, 1986
S. 140	am. No. 12, 1958; No. 15, 1970 rep. No. 74, 1986
S. 141	am. No. 37, 1972; No. 5, 1990; Act No. 44, 1991; No. 4, 1993
S. 142	am. No. 28, 1937; Act No. 44, 1991
S. 143	am. No. 74, 1986; Act No. 44, 1991
S. 144	rs. No. 1, 1967 am. No. 10, 1980; No. 74, 1986; Acts Nos. 38 and 44, 1991; No. 4, 1994
S. 146	rep. No. 57, 1986 ad. No. 60, 1989 rs. Act No. 112, 1991 am. No. 4, 1993
S. 146A	ad. No. 1, 1990
S. 147	am. No. 25, 1968; No. 34, 1977; No. 74, 1986; No. 60, 1989; No. 5, 1990; Act No. 112, 1991; No. 23, 1992; No. 4, 1993; No. 4, 1994
S. 147A	ad. No. 60, 1989 am. Acts Nos. 44 and 112, 1991; No. 48, 1993
S. 148	am. No. 14, 1974; No. 33, 1979; Act No. 44, 1991
S. 149	rep. No. 74, 1986
S. 150	am. No. 14, 1974; No. 34, 1977; No. 33, 1979; No. 74, 1986; No. 60, 1989; Act No. 112, 1991; No. 4, 1993
Ss. 150A, 150B	ad. No. 60, 1989 am. Acts Nos. 44 and 112, 1991; No. 48, 1993
S. 150C	ad. No. 60, 1989 am. Act No. 44, 1991
S. 151	am. No. 34, 1977
S. 153	am. No. 28, 1937; No. 22, 1940; No. 60, 1989; Act No. 44, 1991
Ss. 153A-153C	ad. No. 60, 1989 am. Act No. 44, 1991
S. 155	am. Act No. 44, 1991
S. 155A	ad. No. 60, 1989 am. Acts Nos. 44 and 112, 1991

NOTES—continued**Table of Amendments—continued**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
S. 156	am. No. 34, 1977
S. 157	am. No. 42, 1976; No. 34, 1977; Act No. 44, 1991
S. 158	am. No. 74, 1986; Act No. 44, 1991
S. 159	am. Act No. 44, 1991
S. 161	am. No. 74, 1986
S. 162	am. No. 14, 1953; No. 1, 1967; Act No. 44, 1991
S. 163	rep. No. 37, 1972
S. 164	am. No. 5, 1990
S. 165	am. No. 14, 1953; Act No. 44, 1991
S. 166	am. No. 1, 1967
Div. 2A of Part IX (ss. 166A-166E)	ad. No. 2, 1982
S. 166A	ad. No. 2, 1982 am. Act No. 44, 1991
S. 166B	ad. No. 2, 1982
Ss. 166C-166E	ad. No. 2, 1982 am. Act No. 44, 1991
Div. 3 of Part IX (ss. 167 -169)	rep. No. 74, 1986
S. 167	am. No. 14, 1953 rep. No. 74, 1986
Ss. 168, 169	rep. No. 74, 1986
S. 170	am. No. 25, 1968; Act No. 44, 1991
S. 171	am. No. 28, 1937; Act No. 44, 1991
S. 172	am. Act No. 4, 1993
S. 173	rs. No. 25, 1968 am. No. 15, 1970; Act No. 44, 1991
S. 174	am. No. 74, 1986
S. 178	am. No. 28, 1937
S. 179	am. Act No. 44, 1991
S. 181	am. No. 28, 1937; Act No. 44, 1991
Ss. 182-184	am. Act No. 44, 1991
S. 185	rs. No. 1, 1967 rep. No. 37, 1972
S. 188	am. No. 1, 1967; No. 3, 1982; No. 41, 1985; No. 5, 1990
S. 189	am. No. 1, 1967; No. 34, 1977; No. 46, 1978 rs. Act No. 4, 1993
S. 190	rs. No. 74, 1986 am. No. 5, 1990; Act No. 44, 1991
S. 191	am. No. 1, 1967; No. 33, 1979; Act No. 44, 1991
S. 192	am. Act No. 44, 1991
S. 193	am. No. 5, 1990
S. 195	am. No. 28, 1937; Act No. 23, 1992
Part X (ss. 196-206).....	rep. Act No. 65, 1990

NOTES—continued**Table of Amendments—continued**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
Part X (ss. 196-206, 206A-206R)	ad. Act No. 65, 1990
S. 196	am. No. 28, 1937 rs. Act No. 65, 1990 am. No. 37, 1992
Ss. 197, 198	rs. Act No. 65, 1990
S. 199	am. No. 28, 1937 rs. Act No. 65, 1990 am. No. 44, 1991
S. 200	am. No. 28, 1937 rs. Act No. 65, 1990
S. 201	rs. Act No. 65, 1990 am. No. 44, 1991
Ss. 202-204	rs. Act No. 65, 1990
S. 205	am. No. 74, 1986 rs. Act No. 65, 1990
S. 206	rs. Act No. 65, 1990
S. 206A	ad. Act No. 65, 1990 am. No. 44, 1991
Ss. 206B, 206C	ad. Act No. 65, 1990
S. 206D	ad. Act No. 65, 1990 am. No. 9, 1991
S. 206E	ad. Act No. 65, 1990 am. No. 37, 1992
Ss. 206F-206I	ad. Act No. 65, 1990
Ss. 206J, 206K	ad. Act No. 65, 1990 am. No. 44, 1991
S. 206L	ad. Act No. 65, 1990 am. No. 37, 1992
S. 206M	ad. Act No. 65, 1990
S. 206N	ad. Act No. 65, 1990 am. No. 44, 1991
Ss. 206P-206R	ad. Act No. 65, 1990
Heading to Part XI	rs. No. 37, 1972
Div. 1 of Part XI (s. 207)	ad. No. 37, 1972
S. 207	rs. No. 28, 1937 am. No. 1, 1967; No. 25, 1968 rs. No. 37, 1972 am. No. 67, 1985; Act No. 65, 1990
Div. 2 of Part XI (ss. 208-219)	ad. No. 37, 1972
S. 208	rs. No. 28, 1937 am. No. 14, 1953; No. 12, 1958; No. 25, 1968 rs. No. 37, 1972

NOTES—continued**Table of Amendments**—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
	am. No. 16, 1984; Nos. 41 and 67, 1985; Nos. 33 and 74, 1986; Act No. 65, 1990; No. 9, 1992
S. 208A	ad. No. 12, 1958 am. No. 1, 1967; No. 25, 1968 rep. No. 37, 1972
S. 208B	ad. No. 12, 1958 rep. No. 37, 1972
S. 209	am. No. 17, 1934 rs. No. 28, 1937 am. No. 1, 1967 rs. No. 37, 1972 am. No. 61, 1984; No. 67, 1985 rs. No. 74, 1986
S. 210	am. No. 17, 1934 rs. No. 28, 1937; No. 37, 1972
S. 211	rs. No. 28, 1937; No. 37, 1972; No. 18, 1985 rep. No. 74, 1986
S. 212	rs. No. 28, 1937; No. 12, 1958 am. No. 1, 1967 rs. No. 37, 1972 rep. No. 18, 1985
S. 213	rs. No. 28, 1937; No. 37, 1972 rep. No. 18, 1985
S. 214	rs. No. 28, 1937 am. No. 1, 1967 rs. No. 37, 1972 am. No. 61, 1984; Act No. 65, 1990
S. 214A	ad. No. 33, 1986 rep. Act No. 9, 1992
S. 215	rep. No. 28, 1937 ad. No. 37, 1972 am. No. 67, 1985 rep. No. 74, 1986
S. 216	rep. No. 28, 1937 ad. No. 37, 1972 am. No. 62, 1984; No. 74, 1986; Act No. 9, 1992
S. 217	rep. No. 28, 1937 ad. No. 37, 1972 rep. No. 74, 1986
S. 218	rep. No. 28, 1937 ad. No. 37, 1972 rs. No. 61, 1984 am. No. 67, 1985
S. 219	rep. No. 28, 1937

NOTES—continued**Table of Amendments—continued**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
	ad. No. 37, 1972
	am. No. 67, 1985; No. 74, 1986
Div. 3 of Part XI (ss. 219A-219F)	ad. No. 37, 1972
S. 219A	ad. No. 37, 1972
S. 219B	ad. No. 37, 1972
	am. No. 14, 1974; No. 41, 1979; No. 16, 1984; Nos. 41 and 67, 1985; No. 9, 1990
S. 219C	ad. No. 37, 1972
	am. No. 14, 1974; No. 41, 1979; No. 61, 1984; Nos. 41 and 67, 1985; No. 9, 1990
S. 219D	ad. No. 37, 1972
	am. Nos. 41 and 67, 1985; No. 9, 1990; Act No. 9, 1992
S. 219E	ad. No. 37, 1972
S. 219F	ad. No. 37, 1972
	am. No. 14, 1974; No. 41, 1979; Nos. 41 and 67, 1985; No. 9, 1990
Div. 3A of Part XI (ss. 219G-219L)	ad. No. 62, 1984
	rep. Act No. 9, 1992
S. 219G	ad. No. 62, 1984
	am. No. 74, 1986
	rep. Act No. 9, 1992
Ss. 219H-219L	ad. No. 62, 1984
	rep. Act No. 9, 1992
Heading to Div. 4 of Part XI	ad. No. 37, 1972
S. 220	am. No. 28, 1937; No. 37, 1972
	rs. No. 62, 1984
	rep. Act No. 9, 1992
S. 221	rep. No. 28, 1937
Ss. 222, 223	am. No. 28, 1937; No. 67, 1985; No. 74, 1986
S. 224	am. No. 28, 1937
S. 225	am. No. 28, 1937; No. 1, 1967; No. 17, 1985
S. 226	am. No. 28, 1937; Act No. 9, 1992
S. 227	am. No. 28, 1937; No. 67, 1985
S. 228	am. No. 74, 1986
S. 230	am. No. 28, 1937
	rs. No. 37, 1972
	am. No. 18, 1985; Act No. 44, 1991
S. 231	am. No. 28, 1937; No. 14, 1953
S. 234	am. No. 28, 1937
S. 236	am. No. 28, 1937
Ss. 237, 238	rep. No. 66, 1985
S. 239	am. No. 28, 1937; No. 74, 1986
S. 240	am. No. 67, 1985

NOTES—continued**Table of Amendments**—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
S. 242	am. No. 28, 1937; No. 74, 1986
S. 243	am. No. 2, 1966
Heading to Part XIII	rs. No. 14, 1953
	am. Act No. 4, 1994
S. 244	am. No. 28, 1937; No. 14, 1953; No. 74, 1986
S. 245	rs. No. 14, 1953; No. 10, 1980
	am. Acts Nos. 38 and 44, 1991
	rep. No. 4, 1994
S. 245A	ad. No. 28, 1937
	rs. No. 83, 1986
	am. No. 55, 1989; No. 5, 1990; Act No. 44, 1991; No. 4, 1993
	rep. No. 4, 1994
S. 246	rs. No. 28, 1937
	rep. No. 74, 1986
S. 247	rs. No. 14, 1953; No. 1, 1967
Part XIII A (ss. 248A	ad. No. 14, 1974
-248D)	rep. Act No. 9, 1992
Part XIII A (ss. 248A	ad. Act No. 4, 1994
-248F)	
Ss. 248A, 248B	ad. No. 14, 1974
	am. No. 53, 1986; No. 5, 1990
	rep. Act No. 9, 1992
	ad. No. 4, 1994
S. 248C	ad. No. 14, 1974
	rep. Act No. 9, 1992
	ad. No. 4, 1994
S. 248D	ad. No. 14, 1974
	am. No. 53, 1986
	rep. Act No. 9, 1992
	ad. No. 4, 1994
S. 248E, 248F	ad. Act No. 4, 1994
S. 249	am. Act No. 44, 1991
S. 250	ad. No. 28, 1937
	am. No. 74, 1986; Act No. 44, 1991; No. 9, 1992
S. 251	rep. No. 28, 1937
S. 252	am. No. 28, 1937; No. 74, 1986; Act No. 9, 1992
S. 253	am. Act No. 9, 1992
S. 254	rs. No. 14, 1974
	am. Nos. 53 and 74, 1986; No. 5, 1990; Act No. 44, 1991; No. 9, 1992
S. 254A	ad. No. 59, 1989
S. 255	am. No. 1, 1967; No. 37, 1972; No. 5, 1990
	rs. Act No. 4, 1993
	am. No. 66, 1994
S. 255A	ad. No. 42, 1976

NOTES—continued

Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
S. 255B	ad. No. 4, 1980 am. No. 71, 1986; Act No. 44, 1991
S. 255C	ad. No. 4, 1980 am. Nos. 71 and 83, 1986; No. 45, 1988; Acts Nos. 38 and 44, 1991; No. 4, 1993; No. 4, 1994
S. 256	am. No. 1, 1967; No. 15, 1970; No. 14, 1974; No. 33, 1979; Act No. 4, 1993
S. 257	am. No. 28, 1937 rep. No. 74, 1986 ad. Act No. 38, 1991 rep. No. 4, 1994
S. 258	am. No. 21, 1932; No. 28, 1937; No. 14, 1953; No. 74, 1986; No. 5, 1990; Act No. 44, 1991
The First Schedule.....	am. No. 28, 1937; No. 25, 1938 (as am. by No. 35, 1938); No. 35, 1938; No. 14, 1953; No. 12, 1958; No. 2, 1966; No. 1, 1967; No. 25, 1968; No. 37, 1972; No. 14, 1974; No. 42, 1976; Nos. 34 and 61, 1977; No. 46, 1978; No. 33, 1979; No. 62, 1984; No. 67, 1985; No. 74, 1986; No. 59, 1989; Act No. 65, 1990; No. 44, 1991; Nos. 9 and 37, 1992; No. 4, 1993
The Second Schedule	am. No. 25, 1938 (as am. by No. 35, 1938) rep. No. 4, 1977
Second Schedule.....	ad. No. 4, 1977
The Third Schedule	am. No. 25, 1938 (as am. by No. 35, 1938); No. 42, 1976; No. 67, 1985; Act No. 44, 1991
The Fourth Schedule	am. Nos. 5 and 28, 1937 rep. No. 14, 1953
The Fifth, Sixth Schedules	rep. No. 14, 1953

2. Sections 147 and 248C of the *Magistrates Court Act 1930* are amended by section 35 and the Schedule to the *Mental Health (Consequential Provisions) Act 1994*. The amending provisions provide as follows:

“Subsection 147 (2B)—

Omit all the words after ‘1968’.

“Subparagraph 248C (2) (c) (vii)—

Omit the subparagraph, substitute the following subparagraph:

‘(vii) under the *Mental Health (Treatment and Care) Act 1994*; or’.

Subsection 2 (2) of the *Mental Health (Consequential Provisions) Act 1994* provides as follows:

“(2) The remaining provisions commence on the day on which section 4 of the *Mental Health (Treatment and Care) Act 1994* commences.”

NOTES—continued

As at 11 October 1994 no date had been fixed for the commencement of section 4 and the amendments are not incorporated in this reprint.

3. Sections 3, 11, 13, 15, 65, 76, the heading to Division 2 of Part IX, sections 147, 150B, 158-166, 166C, Divisions 4 and 5 of Part IX (sections 170-187), sections 189, 190, 192, 194, 208, 219A, 219B, 231, 233, 235, 243, 244, 248, 254, 255AA, 255AB and Schedule 1 to the *Magistrates Court Act 1930* are amended by Part III (sections 30-53) of the *Magistrates Court (Enforcement of Judgments) Act 1994*, subsections 2 (2) and (3) of which provide as follows:

“(2) The remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.

“(3) If the provisions referred to in subsection (2) have not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, those provisions, by force of this subsection, commence on the first day after the end of that period.”

As at 11 October 1994 no date had been fixed for the commencement of Part III and the amendments are not incorporated in this reprint. They are set out below under the heading “EXTRACT FROM MAGISTRATES COURT (ENFORCEMENT OF JUDGMENTS) ACT 1994”.

**EXTRACT FROM MAGISTRATES COURT (ENFORCEMENT OF JUDGMENTS) ACT
1994**

PART III—MAGISTRATES COURT ACT 1930

Principal Act

30. In this Part, “Principal Act” means the *Magistrates Court Act 1930*.

Repeal

31. Section 3 of the Principal Act is repealed.

Authentication of acts of Magistrate or Registrar

32. Section 11 of the Principal Act is amended by inserting “writ,” after “warrant,”.

Issue of warrant of commitment or writ of execution

33. Section 13 of the Principal Act is amended by omitting “warrant of execution or commitment” and substituting “warrant of commitment or writ of execution”.

Process not avoided by death of Magistrate or Registrar

34. Section 15 of the Principal Act is amended by omitting “warrant or summons” and substituting “summons, warrant or writ”.

Repeal

35. Section 65 of the Principal Act is repealed.

Witnesses may be discharged on recognisance

36. Section 76 of the Principal Act is amended by omitting “65 or under section 196 of the *Magistrates Court (Civil Jurisdiction) Act 1982*” and substituting “255AB”.

NOTES—continued

**EXTRACT FROM MAGISTRATES COURT (ENFORCEMENT OF JUDGMENTS) ACT
1994—continued**

Heading to Division 2, Part IX

37. The heading to Division 2 of Part IX of the Principal Act is omitted and the following heading substituted:

“Division 2—Enforcement of fines, penalties and other sums”.

Enforcing convictions and orders

38. Section 147 of the Principal Act is amended—

- (a) by omitting subsection (1);
- (b) by omitting from subsection (3A) “warrant of execution is issued under section 158” and substituting “writ of execution is issued”;
- (c) by omitting from subsection (3A) “warrant” (second occurring) and substituting “writ”; and
- (d) by omitting from paragraphs (3A) (a) and (b) “warrant” and substituting “writ”.

Parking and traffic offences—further orders in respect of bodies corporate

39. Section 150B of the Principal Act is amended by omitting from subsections (1) and (3) “warrant” and substituting “writ”.

Repeal

40. Sections 158 to 166 (inclusive) of the Principal Act are repealed.

Enforcement of fine

41. Section 166C of the Principal Act is amended—

- (a) by omitting from paragraph (2) (b) “warrant” and substituting “writ”;
- (b) by omitting paragraph (2) (c) and substituting the following paragraph:
 - “(c) subject to this section, this Act and the *Magistrates Court (Civil Jurisdiction) Act 1982* apply in relation to a writ issued under paragraph (b) as if the writ had been issued in connection with a conviction of the Court.”;
- (c) by omitting from paragraph (4) (a) “warrant” and substituting “writ”;
- (d) by omitting from subsection (4) “warrant” (second occurring) and substituting “writ”;
- (e) by omitting from paragraphs (4) (c) and (d) “warrant” and substituting “writ”; and
- (f) by omitting from subsection (5) “warrant” (wherever occurring) and substituting “writ”.

Repeal

42. The following provisions of the Principal Act are repealed:

NOTES—continued**EXTRACT FROM MAGISTRATES COURT (ENFORCEMENT OF JUDGMENTS) ACT
1994**—continued

- (a) Divisions 4 and 5 of Part IX;
- (b) sections 190 and 192.

Warrant of commitment or writ of execution not void for form only

43. Section 194 of the Principal Act is amended by inserting “writ” before “of execution”.

Magistrate sued for act not within jurisdiction

44. Section 231 of the Principal Act is amended by inserting “or writ” after “warrant” (first occurring).

Warrant or writ by Magistrate on order of Court

45. Section 233 of the Principal Act is amended by omitting “warrant of execution or of commitment” and substituting “warrant of commitment or writ of execution”.

No action where proceedings confirmed on appeal

46. Section 235 of the Principal Act is amended—

- (a) by omitting “warrant of execution or of commitment” and substituting “warrant of commitment or writ of execution”; and
- (b) by inserting after “warrant” (second and last occurring) “or writ”.

Substitution

47. Section 243 of the Principal Act is repealed and the following section substituted:

Damages

“243. Where—

- (a) the plaintiff in an action against a Magistrate is entitled to recover, and seeks to recover a penalty or other sum paid or raised as a result of a conviction, judgment or order or to recover damages for imprisonment; and
- (b) it is proved that the plaintiff was guilty of the offence or liable to pay the sum or, in the case of imprisonment, did not undergo any greater punishment than could have been imposed for the offence of which he or she was convicted;

the plaintiff is not entitled to recover the penalty or other sum paid or raised or, in the case of imprisonment, damages greater than 1 cent, or any costs in the action.”.

Award of costs

48. Section 244 of the Principal Act is amended—

- (a) by omitting “(1)”; and
- (b) by omitting from paragraph (d) “raised and levied by distress under the provisions of this Act” and substituting “recovered under Part XVIII A of the *Magistrates Court (Civil Jurisdiction) Act 1982*”.

NOTES—continued

**EXTRACT FROM MAGISTRATES COURT (ENFORCEMENT OF JUDGMENTS) ACT
1994**—continued

Repeal

49. Section 248 of the Principal Act is repealed.

Enforcement of recognisance

50. Section 254 of the Principal Act is amended by omitting paragraphs (5) (b) and (c) and substituting the following paragraphs:

- “(b) a writ of execution has been issued; and
- (c) property has been sold under the writ;”.

Insertion

51. After section 255 of the Principal Act the following sections are inserted:

Refusal or failure to give evidence—offence

“255AA. (1) This section applies to a person who—

- (a) appears as a witness in proceedings in the Court; or
- (b) attends, or is brought, before the Registrar for examination under section 278J of the *Magistrates Court (Civil Jurisdiction) Act 1982*.

“(2) A person shall not, without reasonable excuse—

- (a) refuse or fail to take an oath;
- (b) refuse or fail to answer a question that he or she is required to answer by the Court or Registrar; or
- (c) refuse or fail to produce a document required by the Court or Registrar, or by a summons or warrant, to be produced.

“(3) A person shall not give false information.

Penalty: \$5,000 or imprisonment for 6 months, or both.

Refusal or failure to give evidence—committal

“255AB. (1) Where—

- (a) a person appearing as a witness in a proceeding in the Court contravenes section 255AA; or
- (b) on hearing a matter referred to it under section 278R of the *Magistrates Court (Civil Jurisdiction) Act 1982*, the Court is satisfied that the person who is the subject of the referral has contravened section 255AA;

the Court may, subject to subsection (4)—

- (c) adjourn the proceedings or hearing for a period not exceeding 8 days; and
- (d) issue a warrant for the committal of that person to a gaol, lock-up or remand centre until—

NOTES—continued**EXTRACT FROM MAGISTRATES COURT (ENFORCEMENT OF JUDGMENTS) ACT
1994**—continued

- (i) the date to which the proceedings or hearing is adjourned; or
- (ii) the person consents to comply with section 255AA;

whichever occurs first.

“(2) Where—

- (a) the Court has adjourned proceedings or a hearing, and committed a person, pursuant to subsection (1) or this subsection;
- (b) the person who was committed is brought before the Court; and
- (c) the person does not consent to comply with section 255AA;

the Court may, subject to subsection (4), exercise the powers referred to in paragraphs (1) (c) and (d) in respect of that person.

“(3) The periods for which a person is committed under this section shall not, in the aggregate, exceed 1 month.

“(4) The Court shall not commit a person pursuant to subsection (1) or (2) if the person is punished for an offence against section 255AA.”.

The First Schedule

52. The First Schedule to the Principal Act is amended by omitting Forms 45, 51 to 62 (inclusive) and 80 to 83 (inclusive).

Formal amendments

53. (1) Section 189 of the Principal Act is amended by omitting “Division 5 of this Part and to”.

(2) Section 208 of the Principal Act is amended—

- (a)** by omitting from paragraph (1) (e) “and” (last occurring); and
- (b)** by omitting paragraph (1) (g).

(3) Section 219A of the Principal Act is repealed.

(4) Section 219B of the Principal Act is amended by omitting paragraph (1) (d).

(5) The Principal Act is amended—

- (a)** by omitting “her or him” (wherever occurring) and substituting “him or her”;
- (b)** by omitting “herself or himself” (wherever occurring) and substituting “himself or herself”;
- (c)** by omitting “her or his” (wherever occurring) and substituting “his or her”; and
- (d)** by omitting “she or he” (wherever occurring) and substituting “he or she”.

NOTES—continued

**EXTRACT FROM MAGISTRATES COURT (ENFORCEMENT OF JUDGMENTS) ACT
1994—continued**

NOTE ABOUT SECTION HEADING

On the day on which section 21 of this Act commences, the heading to section 255 of the *Magistrates Court Act 1930* is altered by adding at the end "**in the face of the Court**".

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