



Australian Capital Territory

Magistrates Court Act 1930 No 21

Republication No 8

Republication date: 12 September 2001

Last amendment made by Act 2001 No 90

Amendments incorporated to 12 September 2001

Not all amendments are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Magistrates Court Act 1930* as in force on 12 September 2001. It includes any amendment, repeal or expiry affecting the republished law to 12 September 2001 and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

Magistrates Court Act 1930

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Amendments incorporated to
12 September 2001



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 1 Preliminary

1 Short title

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

5 Interpretation

(1) In this Act:

Note A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

administrator—see the *Remand Centres Act 1976*.

approved form means a form approved under section 256 (Forms).

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 therefore.

claim means a claim under the *Magistrates Court (Civil Jurisdiction) Act 1982*.

court means Magistrates Court.

Crimes Act means the *Crimes Act 1900*.

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.

escort means an escort under the *Custodial Escorts Act 1998*.

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 authorised officer to a court having jurisdiction to try the accused person.

information includes a complaint on which an order may be made for the payment of money under a Territory law.

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.

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'.

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—see the *Remand Centres Act 1976*.

the Territory includes the Territory accepted by the Commonwealth under the *Jervis Bay Territory Acceptance Act 1915* (Cwlth).

- (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 section 92 (1) shall be read as a reference to—

- (a) if a record of the depositions or statement was made in accordance with section 54A (2)—a transcript of the record certified in accordance with section 255B (2); or
 - (b) if the depositions were or the statement was taken down in writing and signed in accordance with section 54A (3)—the depositions or statement as so taken down and signed.
- (3) A reference in this Act to appearance in proceedings, whether by a party or any other person, shall be taken to include, where section 254B applies, appearance in accordance with that section.

6 Application to Jervis Bay Territory

This Act extends to the Territory accepted by the Commonwealth under the *Jervis Bay Territory Acceptance Act 1915* (Cwlth).

Part 2 **Appointment and jurisdiction of magistrates**

Division 2.1 **Appointment of Chief Magistrate and magistrates**

6A **Meaning of *magistrate* in div 2.1**

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.

7 **Chief Magistrate and other magistrates**

- (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.

8 **Eligibility for appointment as magistrate**

A person is not eligible for appointment under section 7 (2) unless he or she is a legal practitioner and has been for not less than 5 years.

9 Seniority of magistrates

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.

10 Terms and conditions of appointment

A magistrate holds office on such terms and conditions as the Executive, from time to time, determines.

10A Tenure of office

- (1) Subject to this Act, a magistrate holds office until he or she attains the age of 65 years.
- (2) A person who has attained the age of 65 years shall not be appointed under section 7.

10B Resignation

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

10C Acting Chief Magistrate

- (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 his or her 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 his or her 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 under 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 him or her and delivered to the Executive.
- (8) The validity of anything done by a person acting as Chief Magistrate under this section shall not be called in question—

- (a) on the ground that the occasion for his or her 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 connection with, that appointment.

10D Retirement

The Executive may, with the consent of a magistrate who is—

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

retire the magistrate from office on the ground of invalidity.

10E Magistrates not to undertake other work

- (1) A magistrate shall not engage in practice as a legal practitioner.
- (2) A magistrate is not, without the written consent of the Attorney-General, entitled to—
 - (a) engage in remunerative employment otherwise than in connection with the duties of office as a magistrate; or
 - (b) accept appointment to another office under a law of the Territory, the Commonwealth, a State or another Territory.
- (3) The Attorney-General shall consult with the Chief Magistrate before giving consent.

10F Rights of public servants

Where a magistrate was, immediately before his or her appointment—

- (a) an officer of the public service;
- (b) an officer of the Australian Public Service; or

- (c) a person to whom the *Officers' Rights Declaration Act 1928* (Cwlth) applied;

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

10G Arrangement of business of courts

- (1) The Chief Magistrate is responsible for ensuring the orderly and prompt discharge of the business of the Magistrates Court and accordingly may, subject 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 that court in particular matters or classes of matters.

Division 2.2 Special magistrates

10H Appointment of special magistrates

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

10J Tenure of office

- (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.
- (3) A person shall not be appointed under section 10H for a period that extends beyond the person's 70th birthday.

10K Resignation

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

10L Terms and conditions of appointment

A special magistrate holds office on such terms and conditions as the Executive, from time to time, determines.

Division 2.3 Registrar and other officers of the Magistrates Court

10M Appointment of registrar etc

- (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.

10MA Staff assisting the registrar

- (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.

10N Duties of the registrar

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

Division 2.4 Jurisdiction of magistrates

10P Oath etc of office

- (1) A person appointed under section 7 (2) or 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 he or she has made an oath or affirmation in accordance with the form in schedule 1.

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

10Q Acts done beyond the Territory

- (1) An act done by a magistrate, by virtue of his or her 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 his or her 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.

11 Authentication of acts of magistrate or registrar

- (1) Every summons, warrant, writ, conviction, and order (not being by law authorised to be made by word of mouth only) shall be in writing signed by the magistrate or registrar issuing or making it and sealed with the court's seal.
- (2) Documents relating to court process shall not be signed in blank.

12 Acts by magistrate or registrar

- (1) Any magistrate out of court or the registrar may receive an information and grant a summons or warrant thereon and may issue his or her 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 subsection (1), 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, a 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.

13 Issue of warrant of commitment or writ of execution

After a case has been heard and determined, any magistrate or a registrar may issue any warrant of commitment or writ of execution thereon.

15 Process not avoided by death of magistrate or registrar

A summons, warrant or writ issued by a magistrate or registrar shall not be avoided by reason of the magistrate or registrar dying or ceasing to hold office.

16 Order in lieu of mandamus

- (1) Where a magistrate or registrar refuses to do any act relating to the duties of his or her 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 28 March 1977, a magistrate or the registrar had refused to do an act relating to the duties of his or her 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.

17 Powers and functions of magistrates

Where under 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 3 Magistrates Court

Division 3.1 Establishment of Magistrates Court

18 Constitution of the court

- (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 determined, in writing, by the Minister.
- (2) The jurisdiction of the court may be exercised by a magistrate (other than a special magistrate) or by 1 or more special magistrates.
- (3) When 2 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 3.2 Jurisdiction of Magistrates Court

19 Jurisdiction of the court

- (1) If, 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.

21 Jurisdiction of the court where defendant absent from the Territory

The court shall have jurisdiction notwithstanding that the defendant is not within the Territory.

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

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.

23 Ex parte order may be set aside

- (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 his or her plea.
- (3) Where, in his or her 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; or
 - (b) the court, in a case in which it has previously, in the absence of that person, adjourned the hearing under section 116E (3), is

satisfied that a notice under that subsection did not come to his or her 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 his or her 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, under 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.
- (8) Where, under 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.

23AA Ex parte conviction may be set aside on application by informant

- (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 his or her 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, under 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.

23A Requests under conventions regarding legal proceedings in civil and commercial matters

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.

23B Rectification of certain orders etc

- (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; and
 - (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, reopen 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 reopen 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; or
- (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 reopen proceedings of its own motion under subsection (2) at least 3 business days before the proceedings are reopened; 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 reopens 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 reopened under subsection (2) in respect of a conviction or order that is the subject of an appeal.
- (10) Where proceedings reopened under this section have not been determined in respect of a conviction or order that, after the proceedings have been reopened but before they are determined, becomes the subject of an appeal, the reopened proceedings shall be stayed until the appeal is determined.
- (11) Where the court reopens 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 reopened 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 11, where the court, in determining proceedings that have been reopened 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 4 Commencement of proceedings

Division 4.1 General

25 Informations

Proceedings may be commenced in the court by information laid by the informant or by a legal practitioner or other person representing the informant.

Division 4.2 Informations

26 Laying of informations

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.

27 Description of persons and property and of offences

- (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.

28 Power of court to amend information

- (1) 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.

- (2) The court shall not make any such amendment where it considers that the amendment cannot be made without injustice to the defendant.

29 Court may adjourn hearing where amendment made

If in any case where an amendment in an information or summons has been made under section 28 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.

30 Form of information

- (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.

Division 4.4 Summonses

37 When magistrate may issue summons

Where an information is laid before a magistrate, the magistrate may issue a summons.

38 Form of summons

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 him or her 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.

41 Service of summons

- (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 16 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 subsections (1) and (1A) 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

42 Issue of warrant and summons

- (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 his or her warrant in the first instance for the arrest of that person, and for bringing him or her before the court to answer to the information, and to be further dealt with according to law.

- (1A) The magistrate, if he or she thinks fit, instead of issuing his or her warrant in the first instance for the arrest of the person charged, may proceed by summons and issue a summons against him or her accordingly.
- (2) Subject to subsection (3), a magistrate may, notwithstanding the issue of a summons, issue his or her warrant at any time before or after the time mentioned in the summons for the appearance of the defendant.
- (3) Subsection (2) does not authorise 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.

43 Procedure on filing of indictment

- (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 his or her behalf a certificate that such indictment has been filed.
- (2) Upon production of such certificate to a magistrate, the magistrate shall—
 - (a) where the person indicted is, at the time of both the application for and the production of the certificate, 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 his or her warrant directed to the gaoler of the prison in which the person is so confined, commanding him or her to detain such person in his or her custody until, by a writ of habeas corpus, he or she is removed from custody for the purpose of being tried upon the

indictment, or until he or she is otherwise removed or discharged out of custody by due course of law; and

- (b) in any other case—issue his or her warrant to apprehend the person so indicted and to cause him or her 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 him or her for trial or admit him or her to bail in accordance with the provisions of the *Bail Act 1992*.

44 Direction of warrant

A warrant to apprehend a defendant that he or she 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.

45 Any police officer may execute warrant

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

47 Form of arrest warrant

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 cause him or her to be brought before the court to answer to the information and to be further dealt with according to law.

48 Warrant to be in force till executed

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

49 Sunday warrants

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 5 Hearing

Division 5.1 General

51 Hearings to be in public except in special circumstances

- (1) Subject to subsection (2), the hearing of a proceeding before the court shall be in public.
- (2) Where the magistrate presiding at a hearing is of the opinion that it is desirable in the public interest or in the interests of justice to do so, the magistrate may, by order—
 - (a) direct that the hearing or part of the hearing shall take place in private and give directions as to the persons who may be present; and
 - (b) give directions prohibiting or restricting the publication of evidence given at the hearing, whether in public or in private, or of matters contained in documents lodged with the court or received in evidence by the court for the purposes of the proceeding; and
 - (c) give directions prohibiting or restricting the disclosure to some or all of the parties to the proceeding of evidence given at the hearing, or of a matter contained in a document lodged with the court or received in evidence by the court for the purposes of the proceeding.
- (3) A person who, without reasonable excuse, contravenes an order under subsection (2) commits an offence.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

53 Conduct of case

- (1) The informant may himself or herself or by a legal practitioner representing the informant conduct his or her case and may examine

and cross-examine the witnesses giving evidence for or against him or her 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 himself or herself or by a legal practitioner representing the defendant make full answer and defence and may give evidence himself or herself and may examine and cross-examine the witnesses giving evidence for or against him or her respectively.

54 Where both parties present in court to hear case

If both parties appear either personally or by legal practitioners or other persons appearing for them, the court shall proceed to hear and determine the information.

54A Recording of proceedings

- (1) In this section:

deposition includes a statement made by an accused person in reply to the question referred to in section 92 (1), but does not include a written statement admitted under section 90AA or 110 (2).

- (2) Subject to subsection (3), a record of the depositions of a witness in any proceedings shall be made—
 - (a) in proceedings concerning bail and where, in relation to proceedings or a part of proceedings, the court has given a direction under the *Evidence (Miscellaneous Provisions) Act 1991*, section 18 (1) or 30 (1) that evidence be taken or a submission be made by audiovisual link—by means of audiovisual recording apparatus or sound-recording apparatus; and
 - (b) in any other case—
 - (i) by means of sound-recording apparatus; or

- (ii) 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 him or her 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 recording apparatus and the record of any other part of a proceeding made by means of 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—
 - (ii) in which a person charged with an indictable offence is committed to take his or her trial before the Supreme Court; or
 - (iii) in which evidence is taken in pursuance of a request referred to in section 23A; or
 - (iv) under the *Safety, Rehabilitation and Compensation Act 1988* (Cwlth); 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 5.2 Evidence

55 Examination to be on oath

- (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.
- (3) It shall not be necessary to administer an oath to any person who appears solely for the purpose of producing documents.

58 Defendant and husband or wife, when competent in criminal proceedings

- (1) 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.
- (2) 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 his or her previous character or antecedents.

U 59 Proof of negative etc

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 his or her defence.

60 Record of proceedings and transcript

- (1) Where a record made by means of 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 section 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 recording is produced out of the custody of the registrar; and
 - (b) the recording contains a record of comments that purport—
 - (i) to have been made at the same time as a recording made in accordance with section 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 lastmentioned recording or any other matter or thing so recorded;

the firstmentioned 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 section 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 section 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 section 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 section 255C (6);

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

(5) In this section:

recording apparatus means the recording apparatus, whether audiovisual or sound, by means of which a record of depositions of witnesses has been made under section 54A (2).

60A Informant may request witnesses to attend

- (1) The informant may, by letter sent by a form of post that requires a signature on receipt, request a person to appear as a witness at the hearing of an information.
- (2) The letter shall—
 - (a) set out the time and place for the hearing; and
 - (b) be accompanied by an undertaking to appear for the signature of the person and return to the informant by the date specified in the undertaking; and
 - (c) be accompanied by a form to be completed by the person to claim his or her reasonable costs and expenses of attendance at the hearing.

61 Power of magistrate to summon witnesses

- (1) If it appears to a magistrate that a person who is likely to give material evidence at the hearing of an information will not voluntarily appear at the hearing, the magistrate shall issue a summons requiring the person to appear before the court at the time and place specified in the summons to give that evidence.
- (2) In considering whether a person will voluntarily appear at a hearing or not, a magistrate may take into account any response by the person to any request made of the person to appear.

62 Service of summons on witness

- (1) A summons may be served on a witness—
 - (a) personally; or
 - (b) by sending it to the witness's last-known place of residence or employment by a form of post that requires a signature on receipt; or
 - (c) by leaving it with a responsible adult at the witness's last-known place of residence or employment.
- (2) The summons shall be accompanied by—
 - (a) an undertaking to appear for the signature of the person and return to the court by the date specified in the undertaking; and
 - (b) a form to be completed by the person to claim his or her reasonable costs and expenses of attendance at the hearing.
- (3) Service of a summons on a witness may be proved by the oath of the person who served it or by affidavit.

62A Witnesses entitled to claim expenses

- (1) Any notice (however described and whether written or oral) requiring a person to appear as a witness at a hearing shall be accompanied by a form to be completed by the person to claim his or her reasonable costs and expenses of attendance at the hearing.
- (2) A person is not entitled to refuse to comply with such a notice because it was not accompanied by that form.

63 Warrant to bring witness to court

Where a witness—

- (a) has been informed of the time and place for the hearing; and
- (b) has been requested, has given an undertaking, or has been served with a summons, to appear at the hearing to give evidence; and

- (c) the witness does not appear in accordance with that request, undertaking or summons and does not provide to the court a reasonable explanation for his or her non-appearance;

the court may issue a warrant requiring the witness to be brought before the court at the time and place specified in the warrant to give evidence.

64 Warrant in the first instance

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, he or she may issue a warrant in the first instance.

66 Production of documents before magistrate

- (1) Where a magistrate has authority to summon any person as a witness, he or she shall have the like authority to require and compel him or her to bring and produce, for the purposes of evidence, all documents and writings in his or her possession or power, and to proceed against him or her, 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.
- (2) A person shall not be bound to produce any document or writing not specified or otherwise sufficiently described in the summons, or which he or she would not be bound to produce upon a subpoena duces tecum in the Supreme Court.

66A Setting aside summons

- (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.

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

- (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 him or her, 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.
- (1A) When an order under subsection (1) is served on a person, it shall be accompanied by a form to be completed by the person to claim his or her reasonable costs and expenses of attending the examination or production.
- (1B) A person is not entitled to refuse to comply with an order under subsection (1) because the person was not given the form mentioned in subsection (1A) at the time the order was served on him or her.
- (2) The taking of depositions before a magistrate under subsection (1) is a proceeding for the purposes of section 54A.

67A Examination of witnesses—application of Magistrates Court (Civil Jurisdiction) Act

The *Magistrates Court (Civil Jurisdiction) Act 1982*, section 202 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.

67B Affidavits—application of Magistrates Court (Civil Jurisdiction) Act

The *Magistrates Court (Civil Jurisdiction) Act 1982*, sections 203, 204, 205, 210, 211, 212, 213 and 214 apply in relation to affidavits for use in proceedings under this Act.

68 Witnesses' rights and liabilities

Upon service on any person of an order made under section 67, that person shall attend at the time and place thereby appointed, and shall have all the rights and liabilities which he or she would have if he or she was duly summoned to appear to give evidence or to produce documents on the hearing.

69 Depositions to be delivered to the registrar

- (1) Where depositions are taken before a magistrate under section 67 there shall be delivered to the registrar—
 - (a) the record of the depositions made in accordance with section 54A (2) or the document containing the depositions as taken down in writing and signed in accordance with section 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, his or her 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 5.3 Remand

70 Remand of defendant

- (1) If—
- (a) because of the absence of witnesses; or
 - (b) for any other reasonable cause;
- it becomes necessary or advisable to defer the hearing of proceedings for an indictable offence, the court may adjourn the hearing and may by warrant or, if the period of remand is not to exceed 3 days, by order made orally, remand the defendant into the custody of the administrator for such period (not exceeding 15 days at any one time) as the court considers reasonable.
- (2) A warrant or order under subsection (1) shall direct the administrator to—
- (a) keep the defendant in custody for the specified period; and
 - (b) bring the defendant before the court at the specified time and place for the hearing.
- (3) A warrant or order under subsection (1) in which a transfer direction is given to all police officers or all escorts—
- (a) shall be taken in that respect to be directed to each police officer, or each escort, respectively; and
 - (b) may be executed in that respect by any police officer, or any escort, respectively.
- (4) In this section:

transfer direction means a direction to the effect that the remandee is to be taken, safely conveyed and delivered into the custody of the administrator.

72 Bringing up during remand

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

72A Hearing of bail applications

- (1) Unless the court otherwise directs, where—
 - (a) a person who is in custody is required or entitled to appear, or is required to be brought, before the court for the hearing of an application in relation to bail; and
 - (b) an audiovisual link is available between the place where the court is sitting and a place where the person is in custody;

the proceeding shall be conducted by the audiovisual link.

- (2) The court may at any time vary or revoke a direction made under subsection (1), either on its own motion or on the application of a party to the proceeding.
- (3) In this section:

audiovisual link—see the *Evidence (Miscellaneous Provisions) Act 1991*, section 14.

72B Defendant's appearance in proceedings other than bail proceedings

For the purposes of sections 70 and 72, a person who is directed by warrant or order to bring a person before the court shall ensure that, where section 254B applies, the person appears before the court in accordance with that section.

73 Bail of defendant during examination

Instead of detaining the defendant in custody during the period for which he or she is remanded, the magistrate before whom he or she

appears or is brought may admit the defendant to bail in accordance with the provisions of the *Bail Act 1992*.

Division 5.4 Committal and recognisance

73A Application of div 5.4

This division applies in relation to a person in respect of whom a warrant has been issued under the *Magistrates Court (Civil Jurisdiction) Act 1982*, section 187 (8).

74 Committal or detention before decision

Where the court commits a defendant by way of remand or upon adjournment, or at any time before the decision, it may remand the defendant into the custody of the administrator.

75 Committal of witness or of defendant after decision

- (1) Where the court commits a witness, or a person sought to be made a witness, it shall remand him or her into the custody of the administrator.
- (2) Where the court commits a defendant after the decision, it shall remand the defendant into the custody of the administrator.

76 Witnesses may be discharged on recognisance

A witness, other than a witness committed under section 255AB, or person sought to be made a witness may be discharged upon recognisance.

77 Recognisances

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

78 Issue of warrant for non-appearance

If the witness, or person sought to be made a witness does not appear at the time and place mentioned in the recognisance the court may adjourn the hearing, and may issue a warrant for his or her apprehension in accordance with the provisions of division 4.5.

79 Recognisances taken out of court

Notwithstanding anything in this or any other Act, a recognisance 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 recognisances taken before the courts shall apply, as if the recognisance had been entered into before the court in accordance with section 77.

80 Forfeited recognisances—how enforced

Where the conditions, or any of them, in a recognisance 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 recognisance 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 recognisances, and that certificate shall be deemed sufficient prima facie evidence of the recognisance having been forfeited.

82 Conveying persons to custody

- (1) The person to whom a warrant of remand or commitment is directed shall convey and deliver the person named in the warrant into the custody of the administrator, and shall also deliver the warrant to the administrator.

- (2) Where a person is delivered to the administrator in accordance with subsection (1), the administrator shall give a written acknowledgment of the delivery stating the condition of the person at the time.

Division 5.5 Adjournment of proceedings

83 Magistrate may adjourn court generally

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 he or she thinks fit.

84 Particular cases may be adjourned

- (1) Where, before or during the hearing or further hearing of any information, it appears advisable, the magistrate may, in his or her 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 the legal practitioners or other persons appearing for them.
- (2) The magistrate may, in the meantime, suffer the defendant to go at large or commit him or her 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*.

85 Proceedings when either party is not present at adjourned hearing

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 legal practitioners or other persons appearing for them, 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.

86 Proceedings when both parties are present at adjourned hearing

If, at the time and place to which the hearing or further hearing is so adjourned, the parties appear personally or by legal practitioners or other persons appearing for them, the court may, subject to the provisions of this Act, proceed with the further hearing.

87 Witnesses to attend adjourned sittings

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.

88 Postponement of hearing

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 6 Proceedings in case of indictable offences

Division 6.1A Preliminary

88A Meaning of *jury* in pt 6

In this part:

jury means a reasonable jury properly instructed.

Division 6.1 Institution of proceedings

89 Disobedience of summons

- (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 him or her 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 him or her 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 section 89A (1).

89A Accused person may be excused from attendance before court

- (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 connection 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; and
 - (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 connection 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 a legal practitioner 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 him or her 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 him or her 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 him or her or by leaving a copy of the notice at his or her 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 him or her before the court at the time and place specified in the warrant.

90 Procedure where informant proposes to tender written statements to court

- (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 him or her of the time and place of the preliminary examination; and
 - (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; and
 - (b) a list of persons who have made written statements which the informant proposes to tender to the court at the preliminary examination; and
 - (c) a copy of each of those statements; and
 - (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; and
 - (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), he or she 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 a legal practitioner representing the accused person shall, before the taking of the preliminary examination, permit the accused person or his or her legal practitioner to inspect the documents and things referred to

in the list (if any) given to the accused person under subsection (2) (d).

90AA Written statements may be admitted in evidence

- (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; and
 - (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 he or she signed it, the person who made it read the statement or had it read to him or her.
- (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 he or she 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), he or she shall file a copy of that notice with the registrar.

- (5) Where an accused person has given notice under subsection (3), he or she may, at any time before the preliminary examination, notify the informant in writing that he or she 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), he or she 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 a legal practitioner representing the informant, 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 a legal practitioner representing the accused person; and
 - (b) may be cross-examined by the accused person or his or her legal practitioner.

90AB Preliminary examination where written statements not tendered

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 a legal practitioner representing the accused person, 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 his or her legal practitioner may cross-examine those persons.

90ABA Attendance not required under s 90AA or s 90AB where order made under s 89 (1)

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

90A Plea of guilty in committal proceedings

- (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 the Crimes Act, section 477 applies.
- (1B) A person (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 under 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; or
 - (b) the offence is one that may be dealt with summarily without the consent of the accused person; or
 - (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; or
 - (b) the offence is one that is punishable only on indictment; or
 - (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; or
 - (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 the Crimes Act, section 477;

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 subsections (6) to (10).

- (6) A committal under subsection (5) 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 a legal practitioner representing either the accused person or the informant 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 under subsection (7), 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) 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) 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 5.3 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 5.3 apply to and in respect of the accused person.

91 Court may discharge accused

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.

92 Proceedings where evidence sufficient to put accused on trial

- (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 him or her if he or she desires to give evidence himself or herself or to call any witnesses on his or her 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.

92A Committal for sentence for indictable offence tried summarily

- (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 him or her by the Supreme Court, commit him or her for sentence to such sittings of the Supreme Court as the court directs.
- (2) Where the court commits a person for sentence under subsection (1), the court shall deal with him or her in the same way as a person who is committed for trial under section 94 (b).
- (3) The Supreme Court has the same powers of sentencing or otherwise dealing with a person committed for sentence under this section as it would have had if that person had been convicted in that court.

92B Depositions as evidence

Where—

- (a) a person is charged with an indictable offence; and
- (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.

93 Admissions and confessions

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 6.2 Proceedings subsequent to hearing of evidence

94 Discharge or committal for trial

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 he or she 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 him or her to take his or her trial for the offence

before the Supreme Court, and in the meantime either shall by warrant commit him or her to gaol, a lockup or a remand centre, to be there safely kept until the sittings of the court before which he or she is to be tried, or until he or she is delivered by due course of law or admitted to bail in accordance with the *Bail Act 1992*.

95 Depositions of dead or absent persons

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; and
- (b) that the depositions of the witness were taken in the presence of the accused person; and
- (c) that the accused person or a legal practitioner representing the accused person had a full opportunity of cross-examining the witness;

the depositions are admissible as evidence—

- (d) if taken in the manner specified in section 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 1 of the means specified in section 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.

96 Evidence for defence

Where a person is charged with an indictable offence as such, the court shall be bound to hear any evidence tendered on his or her behalf tending to show that the defendant is not guilty of the offence with which he or she is charged.

Division 6.2A Costs

97 Discontinued proceedings

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 6.3 Recognisances of witnesses

103 Recognition of witnesses etc

- (1) The court may bind by recognisance every person whose written statement was admitted in evidence under 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 recognisance shall particularly specify the profession, trade, or calling of every person who enters into it, together with his or her full name and place of residence.

104 Signature of magistrate—notice to witnesses

Every such recognisance 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.

105 Court may commit refractory witness

- (1) If a witness refuses to enter into the recognisance, the court may by warrant commit him or her 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 recognisance before a magistrate.
- (2) If afterwards, the defendant is not committed for trial for the offence with which he or she 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 his or her 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 him or her from custody, and the keeper or superintendent shall thereupon forthwith discharge him or her accordingly, as to that warrant.

Division 6.4 Miscellaneous

106 Transmission of depositions etc to director of public prosecutions

- (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 authorised 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 subsection (1) 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 section 92 (1).

107 Delivery of documents to proper officer of court

- (1) After the transmission of the documents and before the day of trial, the director of public prosecutions or a person authorised 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 him or her, or upon a rule or order directed to him or her 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 authorised by the director of public prosecutions, the person representing the director of public prosecutions or the person representing the informant, shall, at any time after the opening of the Supreme 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 Supreme Court, if the presiding judge so directs.

108 Copies of depositions may be obtained by accused

- (1) Where any person charged with any indictable offence is directed by the Magistrates Court to be tried, if that person, at any time after the examinations in his or her case have been concluded and before the first sitting of the Supreme Court at which he or she 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 he or she 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 or her custody shall convey or cause to be conveyed any such application to the officer having the custody of the depositions and evidence.

Part 7

Proceedings in case of offences punishable summarily

108A Indictable offences dealt with summarily

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.

109 Dismissal or adjournment in absence of informant

(1) If—

- (a) the defendant appears (whether voluntarily, in accordance with a summons or by virtue of a warrant) at the time and place for the hearing of an information in respect of an offence punishable summarily; and
- (b) the informant, having been notified of the time and place for the hearing, does not appear either personally or by a legal practitioner appearing for him or her;

the court shall, subject to subsection (2), dismiss the information.

- (2) The court may, if it thinks it is appropriate to do so, adjourn to another day the hearing of an information that would otherwise be dismissed under subsection (1).

110 Ex parte hearing in absence of defendant

- (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 him or her before the court to answer to the information and be further dealt with according to law.
- (2) Where the court proceeds pursuant to subsection (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 legal practitioner; or
 - (b) a justice of the peace; or
 - (c) the registrar; or
 - (d) a prescribed person.
- (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.

111 Magistrate may adjourn the case

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 he or she shall be detained in safe custody until he or she can be brought up before the court at a convenient time and place of which the informant shall have due notice.

112 Both parties appearing

If both parties appear either personally or by legal practitioners appearing for them, the court shall proceed to hear and determine the information.

113 Proceedings at the hearing on defendant's confession

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

114 Where defendant does not admit the case

If the defendant does not admit the truth of the information, the court shall proceed to hear the informant and his or her witnesses and also the defendant and his or her witnesses and also such witnesses as the informant may examine in reply, if the defendant has given any evidence other than as to his or her 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.

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

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 legal practitioners appearing for them, 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.

116 Conduct of summary proceedings regulated

The defendant or a legal practitioner representing the defendant 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 a legal practitioner representing the informant shall have a closing address.

Part 7A Service and pleading by post with respect to certain offences

116A Interpretation

(1) In this part:

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

(2) A reference in this part, other than in section 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.

(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.

U 116AA Meaning of *prescribed offence* for pt 7A

(1) For this part, an offence against a law in force in the Territory is a *prescribed offence* in relation to a person if—

- (a) for an offence against the road transport legislation—the maximum fine that can be imposed on the person for the offence is 30 penalty units; or
- (b) for any other offence—the maximum fine that can be imposed on the person for the offence is 10 penalty units.

(2) In subsection (1):

road transport legislation means the following:

- (a) the *Road Transport (Dimensions and Mass) Act 1990*;
- (b) the *Road Transport (Driver Licensing) Act 1990*;
- (c) the *Road Transport (General) Act 1990*;
- (d) the *Road Transport (Safety and Traffic Management) Act 1999*;
- (e) the *Road Transport (Vehicle Registration) Act 1999*;
- (f) any other Act or any regulations (or provision of an Act or regulations) prescribed under the regulations;
- (g) any regulations made under an Act mentioned in paragraphs (a) to (f) or any provisions of such an Act.

116B Service of summons

- (1) Without prejudice to the methods of service provided for by section 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 him or her personally; or
 - (b) by sending 2 copies of the summons by post addressed to him or her at his or her last-known place of residence or business; or
 - (c) by leaving 2 copies of the summons at his or her 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.

116BA Giving of notice

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.

116C Proof of service

- (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 legal practitioner;
- (c) a justice of the peace;
- (d) a prescribed person.

116D Pleas

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 his or her intention to defend by completing the notice of intention to defend form and returning the form, whether by post or otherwise, to the registrar.

116E Procedure where plea of guilty entered

(1) Where—

- (a) a defendant enters a plea of guilty in accordance with section 116D; and
- (b) the defendant—
 - (i) does not appear at the hearing; or
 - (ii) appears but does not withdraw his or her 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 under 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.

116F Procedure where notice of intention to defend given

Where a defendant returns the notice of intention to defend form to the registrar before the day on which he or she 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.

116FA Procedure where defendant pleads not guilty

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.

116G Procedure where defendant does not plead

Where—

- (a) a summons has been served in accordance with section 116B; and
- (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 he or she 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 him or her 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 him or her; 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.

116H Restricted penalties under pt 7A

- (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 section 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 a legal practitioner;

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

- (3) Where—
- (a) the court convicts a defendant of an offence against a law referred to in a paragraph of section 116A (3); and

- (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 a legal practitioner;
- 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 section 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.

116I Consequences of conviction ex parte

Where a defendant is, in his or her absence, convicted of an offence, the registrar shall give to the defendant notice in writing of—

- (a) the conviction and order of the court; and
- (b) the penalty (if any) imposed by the court, and the means by which and the time by which the penalty is required to be discharged; and
- (c) except where the proceedings are determined in accordance with section 116E (1), the defendant's right to apply for the setting aside of the conviction or order in accordance with section 23.

U **Part 8** **Infringement notices for certain offences**

Part 9 **Enforcement of decisions**

Division 9.1 **General**

141 **Minute of decision and notice to defendant**

- (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.
- (1A) A minute or memorandum under subsection (1) (a) shall specify the amount of any levy imposed under the *Victims of Crime (Financial Assistance) Act 1983*, part 5.
- (1AA) Failure to comply with subsection (1) does not invalidate a conviction or order or the enforcement of a conviction or order.
- (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.

142 **Formal convictions and orders**

- (1) 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 him or her filed among the records of the court.
- (2) 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.

143 Proceedings in case of dismissal

- (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.

144 Copies of informations and other documents

- (1) Upon application, the registrar shall give the applicant a copy of—
 - (a) an information; or
 - (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.

145 Imprisonment in first instance

Where the court upon a conviction sentences the defendant to a term of imprisonment, it shall issue its warrant of commitment accordingly.

Division 9.2 Enforcement of fines

146 Definitions for div 9.2

In this division:

chief police officer means the police officer who is responsible for the day-to-day administration and control of police services in the Territory.

default notice means a notice in force under section 151 including any variation under section 152.

fine means—

- (a) a pecuniary penalty imposed by a court in respect of an offence; or
- (b) a fee or charge payable to the Territory that is imposed by a court in proceedings for an offence; or
- (c) costs payable to the Territory under a court order in proceedings for an offence; or
- (d) a levy imposed under the *Victims of Crime (Financial Assistance) Act 1983*; or
- (e) an amount payable to the Territory by virtue of an order for reparation under the *Crimes Act 1900*, section 437.

fine defaulter means a person to whom a default notice has been given who subsequently defaults in payment of the relevant outstanding fine.

government agency means—

- (a) an administrative unit; or
- (b) ACTEW Corporation Limited; or
- (c) a prescribed Territory entity.

outstanding fine means the sum of—

- (a) the whole or any part of a fine; and
 - (b) the whole or any part of an administrative fee payable in relation to the fine;
- that a person is liable to pay.

penalty notice means a notice in force under section 149 including any variation under section 152.

Territory entity—see the *Auditor-General Act 1996*.

147 Payment of fine

A fine is payable in accordance with this division to the registrar.

147A Notice of address etc

- (1) A person on whom a fine is imposed shall not, without reasonable excuse, fail to give to the registrar particulars of his or her address within 7 days after the day on which the fine is imposed.
- (2) A person who is liable to pay a fine and who changes address before the fine and any relevant administrative fee are paid shall not, without reasonable excuse, fail to give to the registrar particulars of the new address within 7 days after changing address.
- (3) A person who is liable to pay a fine, and any relevant administrative fee, shall not, without reasonable excuse, fail to give the registrar evidence of his or her address when required to do so by the registrar.

Maximum penalty: 5 penalty units.

147B Access to particulars of address

- (1) For the purposes of this division, the registrar may, in writing, require—
 - (a) the commissioner for housing; or
 - (b) the chief police officer; or

- (c) the chief executive (however described) of a government agency;
- to give the registrar any particulars held by that person concerning an address of a specified person who is liable to pay a fine.
- (2) A person to whom such a requirement is given shall comply with it as far as practicable.

147C Doubtful service

- (1) This section applies where—
- (a) a document has been served on a person for the purposes of this division, other than by personal service; and
- (b) the registrar is satisfied that—
- (i) the document has not come to the knowledge of the person; or
- (ii) doubt exists whether the document has come to the knowledge of the person.
- (2) Where this section applies, the registrar shall not take any further action under this division in relation to the person unless—
- (a) the document has been served again on the person in such manner as the registrar thinks fit; and
- (b) the registrar is satisfied that the document has come to the knowledge of the person.

148 Court may allow time to pay

- (1) Where the court imposes a fine on a person—
- (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 subsection (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 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.
- (1C) The security referred to in subsection (1B) shall be given, and may be enforced, in the manner provided by this Act.

149 Penalty notice

- (1) Where the registrar of the Supreme Court gives to the registrar a certificate of conviction which indicates that a person is liable to pay a fine as a result of a conviction or order made by the Supreme Court, the registrar shall give the person a penalty notice concerning the fine.
- (2) Where a person is liable to pay a fine as a result of a conviction or order by the court, the notice of the conviction or order required by section 116I or 141 (1) (b) shall contain a penalty notice concerning the fine.
- (3) A penalty notice concerning a fine shall—
- (a) specify the amount of the fine and the due date for payment; and
 - (b) if the fine is payable by instalments—specify the amount of each instalment and the due date for payment; and
 - (c) contain a statement to the effect that if the fine or any instalment is not paid by the due date the person shall be liable for the administrative fee under section 150 in addition to the fine; and

- (d) contain a statement to the effect that, under section 152, the registrar may, on application, approve an arrangement concerning the payment of the fine; and
 - (e) indicate the obligation to notify the registrar of any change of address under section 147A.
- (4) Where a penalty notice is varied under section 152 the notice shall specify particulars of the approved arrangement for payment as so varied.

150 Default

- (1) Where a person defaults in payment of a fine to which a penalty notice relates—
- (a) the person is liable to pay to the Territory, in addition to the amount of the fine that remains unpaid, the administrative fee determined under section 248A (1) for the purposes of this paragraph; and
 - (b) the registrar shall give a default notice to the person.
- (2) If a person to whom a default notice has been given subsequently defaults in payment of the fine, the registrar must give notice of the default to the road transport authority under section 153.
- (3) For the purposes of this division, a person defaults in payment of a fine or any relevant administrative fee if the person fails to pay any part of the amount payable by—
- (a) the due date specified in the relevant penalty notice; or
 - (b) if a default notice has been issued in relation to the amount— the due date specified in the default notice.

151 Default notice

- (1) A default notice under section 150 shall—
- (a) specify the default to which the notice relates; and

- (b) indicate that, subject to section 152, the amount of the fine remaining unpaid and the relevant administrative fee are due on the date or dates specified in the notice; and
 - (c) contain a statement indicating the consequences under section 150 (2) of a default in payment of an amount to which the notice relates; and
 - (d) contain a statement to the effect that, under section 152, the registrar may, on application, approve an arrangement concerning the payment of the fine; and
 - (e) indicate the obligation to notify the registrar of any change of address under section 147A.
- (2) The registrar may specify in a default notice matters concerning a person's property or financial circumstances which are to be set out in any application by the person for approval of a special arrangement under section 152.
- (3) Where a default notice is varied under section 152, the notice shall specify particulars of the approved arrangement for payment as so varied.

152 Special arrangements

- (1) The registrar may, on application, approve in writing an arrangement for—
- (a) further time for the payment of all or any part of a fine or administrative fee, or an instalment of such an amount; or
 - (b) payment of all or any part of a fine or administrative fee by instalments.
- (2) An arrangement under subsection (1) (a) may also be made in respect of an amount that is overdue for payment under a previous approved arrangement.

- (3) To the extent to which an approval for time to pay all or any part of a fine or instalment is inconsistent with an order of a court, the order has no effect.
- (4) An application for an approval shall—
 - (a) be made in writing; and
 - (b) specify the grounds on which it is made; and
 - (c) be lodged with the registrar by the date, or within the period, ascertained in accordance with the current penalty notice, or current default notice, concerning the fine; and
 - (d) in the case of an applicant to whom a default notice has been given—contain any particulars requested by the registrar in the notice.
- (5) A person committed to prison under section 154D is not entitled to make an application.
- (6) Where an approval concerns a fine for which a penalty notice or a default notice has been given to a person, the registrar shall vary the notice by—
 - (a) altering the notice in accordance with the approval; or
 - (b) reissuing the notice, revised in accordance with the approval.

153 Notice for suspension of driver licence etc

- (1) The registrar must notify the road transport authority of the name, address and date of birth of each person who, after being given a default notice for a fine, defaults in payment of the outstanding fine.
- (2) If notice is given under subsection (1) and the registrar subsequently approves an arrangement under section 152, the registrar must notify the road transport authority of the approval.
- (3) If notice has been given under subsection (1) and no later notice has been given under subsection (2), the registrar must notify the road transport authority if—

- (a) the outstanding fine is paid; or
- (b) the outstanding fine is remitted under section 159; or
- (c) the person has completed serving a period of imprisonment under a committal under section 154D; or
- (d) the conviction or order that gave rise to the liability to pay the fine is quashed or set aside.

154 Access to personal information

- (1) For the purpose of ensuring the payment of an outstanding fine, the registrar may, in writing, require any of the following persons to give the registrar specified particulars of personal information held by that person concerning the relevant fine defaulter:
 - (a) the commissioner for housing;
 - (b) the chief police officer;
 - (c) the chief executive (however described) of a government agency.
- (2) A person to whom such a requirement is given shall comply with it as far as practicable.
- (3) In this section:

personal information means particulars concerning the financial circumstances or criminal record of a fine defaulter.

154A Ascertainment of capacity to pay fine

- (1) The registrar may orally examine a person who is liable to pay a fine—
 - (a) as to the person's property or other means of satisfying the fine; and
 - (b) generally as to the person's financial circumstances.
- (2) An examination—

- (a) shall be taken on oath administered by the registrar; and
 - (b) may be conducted in open court or in chambers, as the registrar directs.
- (3) If at the time set down (whether originally or on an adjournment) for the examination of a person to whom an examination summons is directed—
- (a) the person fails to attend before the registrar; and
 - (b) the registrar is satisfied that—
 - (i) the person has been served with the summons in accordance with the *Magistrates Court (Civil Jurisdiction) Act 1982*, section 297 as applied by section 154C; or
 - (ii) if the examination has been adjourned—the person has been notified of the date, time and place fixed for the examination;

the registrar shall issue a warrant in accordance with the *Magistrates Court (Civil Jurisdiction) Act 1982*, section 303 as applied by section 154C for the apprehension of the person to whom the summons was directed.

- (4) A person apprehended under such a warrant shall be brought before the registrar for the purposes of examination under subsection (1).

154B Garnishee orders and writs of execution

- (1) Where the registrar is satisfied that a fine defaulter has the capacity to pay an outstanding fine, the registrar may—
- (a) make a garnishee order in accordance with the *Magistrates Court (Civil Jurisdiction) Act 1982*, section 319 as applied by section 154C in respect of the outstanding fine; or
 - (b) issue a writ of execution in accordance with the *Magistrates Court (Civil Jurisdiction) Act 1982*, section 343 (2) and (3) as

applied by section 154C against goods of the fine defaulter to enforce the outstanding fine.

- (2) Where the registrar issues a writ of execution in respect of 2 or more outstanding fines payable by a person, the writ operates in respect of the amount of each outstanding fine separately.

154C Application of Magistrates Court (Civil Jurisdiction) Act, pt 19

- (1) The purpose of this section is to ensure, as far as practicable, that—
- (a) a fine defaulter may be examined under section 154A and dealt with in the same manner as a judgment debtor in respect of whom an examination summons has been issued; and
 - (b) a garnishee order under section 154B has the same effect as a garnishee order in respect of a judgment debtor; and
 - (c) a writ of execution under section 154B has the same effect as a writ of execution against goods of a judgment debtor.
- (2) For the purposes of subsection (1) (a), the *Magistrates Court (Civil Jurisdiction) Act 1982*, division 19.3, other than sections 294, 298, 300, 302, 305 and 306, applies so far as applicable, with the necessary changes.
- (3) For the purposes of subsection (1) (b), the *Magistrates Court (Civil Jurisdiction) Act 1982*, division 19.5, other than sections 317, 321 and 331, applies so far as applicable, with the necessary changes, and in particular, as if—
- (a) sections 319 (1) (c) (i) and (e) (i) and 340 (2) (a) were omitted; and
 - (b) a reference in sections 320 and 329 (1) to the judgment creditor were a reference to the registrar; and
 - (c) the words ‘may order the registrar to repay’ were omitted from section 325 (8) and ‘shall repay’ were substituted; and

- (d) the reference in section 330 to an application in accordance with section 123 were a reference to an application to the registrar; and
 - (e) sections 332 and 334 (1) did not refer to the judgment creditor.
- (4) For the purposes of subsection (1) (c), the *Magistrates Court (Civil Jurisdiction) Act 1982*, division 19.6, other than sections 344, 355, 357, 358, 359, 377 and 378, applies so far as applicable, with the necessary changes, and in particular, as if—
- (a) section 343 (1) were omitted; and
 - (b) the reference in section 346 (3) to a writ which issues out of the Magistrates Court included a reference to a writ issued by the registrar; and
 - (c) section 363 (2) (a) and 363 (3) were omitted; and
 - (d) section 376 (2) were omitted.
- (5) The provisions applied by subsection (2), (3) and (4) have effect as if, in addition to any other necessary changes—
- (a) a reference in such a provision to an examination summons were a reference to an examination summons under applied section 295; and
 - (b) a reference in such a provision to a garnishee order were a reference to a garnishee order under section 154B (1) (a); and
 - (c) a reference in such a provision to a writ of execution were a reference to a writ of execution under section 154B (1) (b) or applied section 333; and
 - (d) a reference in such a provision to a bailiff included a reference to the sheriff or a deputy sheriff under the *Supreme Court Act 1933*; and
 - (e) a reference in such a provision to a judgment debt were a reference to an outstanding fine; and

- (f) a reference in such a provision to a judgment debtor were a reference to a fine defaulter; and
 - (g) a reference in such a provision to a judgment creditor, other than in applied section 320 or 329 (1), were a reference to the Territory; and
 - (h) a reference to the court in such a provision, other than in applied section 349, were a reference to the registrar.
- (6) Where, but for this subsection, a power of the registrar under a provision applied by subsection (2), (3) or (4) would be dependent on action being taken by the judgment creditor, the registrar may act on his or her own initiative in the exercise of the power.
- (7) The registrar shall not make an order under a provision applied by subsection (2), (3) or (4) for the payment of a fine or administrative fee by instalments.
- (8) Where—
- (a) a provision of the *Magistrates Court (Civil Jurisdiction) Act 1982* applies in relation to a matter; and
 - (b) a regulation or determination under this Act or that Act also applies in relation to that matter; and
 - (c) the provision of the *Magistrates Court (Civil Jurisdiction) Act 1982* is applied in relation to a corresponding matter by subsection (2), (3) or (4);
- a reference in this section to the applied provision referred to in paragraph (c) shall be read as including a reference to the relevant regulation or determination.
- (9) A reference in this section to an applied provision by number shall be read as a reference to the provision so numbered of the *Magistrates Court (Civil Jurisdiction) Act 1982*, as applied by subsection (2), (3) or (4).

154D Committal to prison—fine defaulters

- (1) The registrar shall, by warrant, commit a fine defaulter to prison if—
 - (a) the registrar is satisfied that all reasonable action has been taken under this division to secure payment and there is no reasonable likelihood of the outstanding fine being paid; and
 - (b) the outstanding fine has not been remitted under section 159.
- (2) The period for which the fine defaulter is to be committed to prison shall be the lesser of—
 - (a) a period calculated at the rate of 1 day for each \$100, or part of \$100, of the outstanding fine; and
 - (b) 6 months.
- (3) Subsection (1) does not apply to a person whose liability to pay the fine is derived from an order under the *Crimes Act 1900*, section 437.

155 Moneys to be paid to registrar

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.

156 Execution to cease on payment of amount due

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.

157 Payment of amount to keeper or superintendent

- (1) Where a person is imprisoned for nonpayment of an outstanding fine, 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 he or she is in custody for some other matter; or
 - (b) any sum in part satisfaction of the outstanding fine 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 he or she was committed as the sum so paid bears to the sum for which he or she is so liable and the keeper or superintendent shall on the expiration of the term so reduced discharge the person unless he or she is in custody for some other matter.
- (2) The keeper or superintendent shall forthwith pay all sums received by him or her under the subsection (1) to the registrar.

158 Fine satisfied by imprisonment

A person who is committed to prison by virtue of a warrant issued under section 154D discharges his or her liability to pay the outstanding fine—

- (a) at the rate of \$100 for each day or part thereof for which the person is so imprisoned; or
- (b) if the person is so committed to prison for 6 months—on the completion of the 6 months.

159 Remission

The Executive may, in writing, remit all or any part of a fine.

160 Conviction or order quashed or set aside

Where the conviction or order which gave rise to a person's liability to pay a fine is quashed or set aside, the registrar shall, in addition to notifying the road transport authority under section 153 (3) (d)—

- (a) refund to the person any amount paid in respect of the fine; and
- (b) refund to the person any amount paid in respect of a relevant administrative fee.

161 Other enforcement provisions not affected

This division shall not be taken to affect the operation of any other law in force in the Territory which provides for the recovery or enforcement of a fine.

**Division 9.2A Reciprocal enforcement of fines
against bodies corporate**

166A Definitions for div 9.2A

In this division:

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.

166B Declarations relating to reciprocating courts

- (1) If a State has laws providing for enforcement in the State of a Territory fine against a body corporate, the Attorney-General may, in writing—
 - (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.
- (2) A declaration is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

166C Enforcement of fine

- (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 subsection (1) (b); and
 - (b) the registrar shall issue a writ of execution for the purpose of recovering the amount referred to in paragraph (a); and
 - (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.
- (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 writ 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 writ and, upon its return, he or she shall—
- (c) if the amount of the fine has been paid in full—withdraw the writ; or

- (d) if part of the amount of the fine remains unpaid—amend the writ to show the amount still unpaid.
- (5) Where a writ is amended under subsection (4), the writ shall be enforced in respect of the amount of the fine for the time being shown in the writ 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.

166D Effect of enforcement by reciprocating court

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 him or her by the body corporate by which the fine was payable in satisfaction in whole or in part of the fine.

166E Registrar to notify payment of Territory fine

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 9.6 Miscellaneous

184 Enforcement of costs against informant

Where a court orders an informant in criminal proceedings to pay costs to a defendant, the order operates as a judgment given or entered in respect of a claim for the payment of money and is enforceable as such.

185 Committal to prison—orders not involving payment of money

(1) Where—

- (a) a conviction does not order the payment of any fine or penalty but orders that the defendant be imprisoned for his or her offence; or
- (b) an order is not for the payment of money but for the doing of some other act and directs that, if he or she neglects or refuses to do the act, the defendant be imprisoned 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.

(2) A reference in subsection (1) (b) to an *order* shall be read as not including a reference to an order under the *Crimes Act 1900*, section 437.

186 Warrant of commitment to prison

(1) A warrant of commitment—

- (a) shall require the police officer or escort to whom it is directed to take the person named in the warrant to a prison mentioned in the warrant; and

- (b) shall require the person in charge of the prison to which the person is taken to imprison the person in accordance with the warrant.
- (1A) A warrant of commitment in which the direction referred to in subsection (1) (a) is given to all police officers or all escorts—
 - (a) shall be taken in that respect to be directed to each police officer, or each escort, respectively; and
 - (b) may be executed in that respect by any police officer, or any escort, respectively.
- (2) On the arrival at the prison of the person named in the warrant, the person in charge of the prison or a person authorised by him or her—
 - (a) shall sign the receipt on the warrant for the person; and
 - (b) shall complete the report on the warrant about the person's apparent physical condition and state of health.

187 Warrant of commitment where defendant already in prison

- (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.

188 Mitigation of payment by court

- (1) Where in a case when either imprisonment or fine is imposed there is prescribed a requirement for the defendant to enter into his or her recognisance 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 50 penalty units, 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 he or she is liable under the law authorising the imprisonment.

191 Accounts to be kept in approved form

Every registrar, keeper of a gaol and superintendent of a remand centre shall keep a true and exact account of all moneys received by him or her 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 approved form.

Maximum penalty: 1 penalty unit.

193 Forfeited goods may be sold

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.

194 Warrant of commitment or writ of execution not void for form only

A warrant of commitment or writ 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.

195 Convictions etc to be transmitted to registrar of Supreme Court

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 recognisances, 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 10 Restraining orders

196 Definitions for pt 10

In this part:

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.

employer means a person who engages an individual under—

- (a) a contract of service; or
- (b) a contract for services; or
- (c) an apprenticeship; or
- (d) a training agreement under the *Vocational Education and Training Act 1995*.

interim restraining order means an order under section 206C.

relative, in relation to an aggrieved person, means—

- (a) a parent of the person; or
- (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.

197 Power to make

- (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; or
 - (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.

198 Entitlement to apply

- (1) An application may be made by—
- (a) the aggrieved person; or
 - (b) a relative of the aggrieved person; or
 - (ba) an employer of the aggrieved person; or
 - (c) where the aggrieved person is a child—

- (i) a person with whom the child normally resides; or
 - (ii) a parent or guardian of the child; or
 - (iii) the community advocate; or
- (ca) where the aggrieved person is a person under a disability within the meaning of the *Magistrates Court (Civil Jurisdiction) Act 1982*—the community advocate; 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*.
- (4) This section does not affect any right that a person would have, apart from this section, to make an application on behalf of an aggrieved person.
- (5) In this section:
- community advocate* means the Community Advocate appointed under the *Community Advocate Act 1991*.

198A Powers exercisable in care and protection proceedings

The court's power to make an order under this part may be exercised on an application for a care and protection order under the *Children and Young People Act 1999*, chapter 7, (Children and young people in need of care and protection) as if—

- (a) the applicant for the care and protection order were an applicant for the order under this part; and
- (b) the applicant had properly applied for that order under this part.

198B Special requirements—applications by community advocate or employer

- (1) The court may proceed with an application by the community advocate only if satisfied that the community advocate is an appropriate person to make the application in the circumstances.
- (2) The court may proceed with an application by an employer of an aggrieved person only if satisfied that the aggrieved person consents to the making of the application.
- (3) Despite the *Magistrates Court (Civil Jurisdiction) Act 1982*, section 206 (1) (b) (which is about service of affidavits on parties), an affidavit is not to be served on another party to a proceeding under this part if the only matter sworn is an aggrieved person's consent to the making of the application by the person's employer.
- (4) Subsection (3) is not to be taken to limit the ways in which the court may be satisfied that the aggrieved person consents to the making of the application.

199 Hearing dates

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.

200 Parties—applications by persons other than aggrieved persons

- (1) Where the applicant is—
 - (a) a relative; or
 - (aa) an employer of the aggrieved person; or
 - (b) a police officer; or
 - (c) the community advocate;the aggrieved person shall be a party to the proceedings.
- (2) Subsection (1) does not apply where the aggrieved person is a child.

201 Parties—applications involving children

- (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.

202 Representation of children

- (1) Where—
 - (a) an application has been made by a child; and
 - (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.).

203 Hearing of applications

- (1) The *Magistrates Court (Civil Jurisdiction) Act 1982* applies (under section 4 of that Act) to a proceeding under this part subject to—
 - (a) this section; and
 - (b) any other provision of this part if, and to the extent that, the provision is inconsistent with that Act; and

- (c) any modification of that Act, in its application to such a proceeding, prescribed by the regulations.
- (2) The *Magistrates Court (Civil Jurisdiction) Act 1982*, sections 22 (4) (a), 22 (5) and 199 do not apply in relation to proceedings under this part.
- (3) Notwithstanding the provisions of the *Magistrates Court (Civil Jurisdiction) Act 1982*, sections 206 and 207—
 - (a) an affidavit; and
 - (b) a notice referred to in section 207 (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.

204 Matters to be taken into account

- (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 subsection (1) (a) and (b) as being of primary importance.

205 Restrictions in orders

A restraining order may—

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

206 Consent orders

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

206AA Jurisdiction under s 206

- (1) Jurisdiction under section 206 may be exercised for making an order under any provision of this part that confers power to make an order.

- (2) Jurisdiction under section 206 may be exercised—
 - (a) in court or by a magistrate in chambers; and
 - (b) whether or not the parties have attended, or any of the parties has attended, in court or before the magistrate in chambers.
- (3) For the exercise of jurisdiction under section 206, it is not necessary for the court or magistrate to be satisfied about anything mentioned in section 197 (1).
- (4) An order under section 206 may be made without proof or admission of guilt.

206A Service of applications

- (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 the approved form, to be served personally on the respondent; and
 - (b) where the applicant is a relative, employer 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.

206B Procedure in absence of respondent

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.

206C Interim restraining orders

- (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; and
 - (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.

206D Seizure of firearms

- (1) Where a restraining order is made in respect of a person who is the holder of a licence under the *Firearms Act 1996*, 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) If the court makes such a restraining order, the court may also order—
 - (a) the seizure of any firearm and any ammunition for a firearm in the respondent's possession; and
 - (b) the seizure of the licence.
- (3) Where an interim restraining order is made in respect of a person who is the holder of a licence under the *Firearms Act 1996*, the licence is by force of this section suspended until the order is confirmed or revoked unless, on application made at the time of the making of the order, the court is satisfied that the licence should not be suspended.
- (4) Where a licence is suspended under subsection (3), the court may order—
 - (a) the seizure of the licence for the period specified in the order; and
 - (b) the seizure and detention for that period of any firearm and any ammunition for a firearm in the respondent's possession.
- (5) In determining an application under subsection (1) or (3), the court shall have regard to the matters specified in section 204.

- (6) An expression used in this section that is defined in the *Firearms Act 1996* has, in this section, the same meaning as in that Act.

206E Explaining proposed orders

- (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; and
- (d) the consequences that may follow if the respondent fails to comply with the terms of the proposed order; and
- (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 subsection (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.

206F Counselling

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.

206G Power of court to make orders where person charged

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.

206H Duration of orders

- (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; or
 - (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.

206I Exercise of certain powers by registrar

- (1) This section applies if—
- (a) an application has been made; and
 - (b) the application has not been served on the respondent as required under this part.
- (2) The registrar may exercise the power of the court to adjourn the hearing of the application and, if an interim restraining order is in force in relation to the application, extend the period for which the interim restraining order remains in force.
- (3) This section is additional to, and does not limit, the powers of the registrar under another provision of this Act or under the *Magistrates Court (Civil Jurisdiction) Act 1982*.

206J Variation and revocation of orders

- (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 must cause a copy of the application to be served personally on—
- (a) each other party to the proceedings; and

- (b) if section 198A applies—the chief executive for the *Children and Young People Act 1999*, chapter 7 (Children and young people in need of care and protection).
- (2A) The court must, on application by the chief executive served under subsection (2) (b), make the chief executive a party to the proceedings.
- (3) When determining an application, the court shall have regard to the matters specified in section 204 (1).

206K Service etc of orders

- (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; and
 - (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; and
 - (ii) the registrar of firearms; 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 the approved form; and
 - (b) in the case of the varying of a restraining order or interim restraining order—an order in accordance with the approved form.

- (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 firearms.

206L Offence

- (1) Where—
- (a) a restraining order or interim restraining order is in force; and
 - (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 commits an offence.

Maximum penalty:

- (a) for a first offence—50 penalty units, imprisonment for 2 years or both; or
 - (b) in any other case—50 penalty units, imprisonment for 5 years or both.
- (2) In subsection (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.

206M Service other than personal service

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.

206N Service by police officers

- (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.

206P Restriction on publication of reports of proceedings

- (1) Subject to this part, a person shall not disseminate to the public or to a section of the public, by any means, an account of any proceedings, or of a part of any proceedings, under this part that identifies—
 - (a) a party to the proceedings; or
 - (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 to the proceedings.
- (2) A person who contravenes subsection (1) commits an offence.

Maximum penalty: 50 penalty units, imprisonment for 6 months 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.

206PA Limits of restriction on publication

- (1) Section 206P does not prevent a party to proceedings under this Act from informing another person of the contents of an order made in those proceedings.
- (2) Section 206P does not prevent—

- (a) any information from being disseminated with the permission of the court in writing, in accordance with any conditions imposed by the court; or
 - (b) any information from being communicated to a court or tribunal under the *Family Law Act 1975* (Cwlth), section 68J (1) or (2); or
 - (c) any pleading, transcript of evidence or other document from being communicated to—
 - (i) persons concerned with other proceedings in a court or tribunal, for use in connection with those proceedings; or
 - (ii) persons concerned with disciplinary proceedings of a legal practitioner, for use in connection with those proceedings; or
 - (iii) a body that grants legal aid, for the purpose of deciding whether to provide legal aid in a particular case; or
 - (d) any matter from being published in law reports or other technical or professional publications; or
 - (e) any matter from being disseminated to a person in connection with the person's professional practice.
- (3) The court shall not give permission to disseminate information that would identify a person referred to in section 206P (1) unless it is satisfied that—
- (a) it is in the public interest; or
 - (b) it will promote compliance with the order; or
 - (c) it is necessary or desirable for the proper functioning of the Act.
- (4) In subsection (2):
- court*** includes an officer of the court acting in the proceedings.

206PB Application not invalid only because made under wrong Act

- (1) This section applies where—
 - (a) a person applied in good faith for an order under this part; and
 - (b) the person was entitled to apply for an order under the *Domestic Violence Act 1986* in respect of the alleged conduct of the respondent, so that section 198 (2) applied to the person; and
 - (c) proceedings have commenced on the basis of the application.
- (2) If the proceedings have not concluded at the time when it becomes apparent that this section applies, the court shall direct either—
 - (a) that the proceedings be continued under this part; or
 - (b) that the proceedings be continued under the *Domestic Violence Act 1986*.
- (3) If the proceedings have concluded before it becomes apparent that this section applies, any order purportedly made under this part is as valid as if section 198 (2) had not applied.
- (4) Where the court makes a direction under subsection (2) (a), the application shall be treated as if section 198 (2) did not apply.
- (5) Where the court makes a direction under subsection (2) (b), the application and proceedings shall be treated as if the application had been made under the *Domestic Violence Act 1986*.

206Q Appeals

- (1) The *Magistrates Court (Civil Jurisdiction) Act 1982*, part 21 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 section 387 (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.

206R Application of Crimes Act

Nothing in this part shall be taken to affect the operation of the Crimes Act, section 547 (1).

Part 11 Appeals to the Supreme Court

Division 11.1 The appellate jurisdiction of the Supreme Court

207 Jurisdiction of Supreme Court

- (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 10) extends to the hearing and determination of the following appeals and to no others:
 - (a) appeals to which division 11.2 applies;
 - (b) appeals from decisions of the Magistrates Court by way of orders to review made in accordance with division 11.3.
- (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 11.2 Appeals

208 Appeals to which div 11.2 applies

- (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 7, part 7A or section 255 of this Act or under the Crimes Act, section 477;
 - (b) an appeal, by the person against whom the order is made, from an order made under section 113 or 114 of this Act in proceedings dealt with by the Magistrates Court under part 7 of this Act or under the Crimes Act, section 477;

- (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 7 or 7A, of this Act, or under the Crimes Act, section 477, 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 under—
 - (i) the Crimes Act, section 556A (1); or
 - (ii) section 556A (3) of that Act; or
 - (iii) section 556B (1) of that Act; or
 - (iv) section 556C (7) (b) of that Act;
 - (e) an appeal, by a person who has given a recognisance under the Crimes Act, section 556A or 556B or by his or her surety, from a decision of the Magistrates Court on an application made under section 556D of that Act to that court.
- (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.

209 Institution of appeal

- (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.

210 Substituted service of notice of appeal

- (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 section 209 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 subsection (2) may be made subject to such conditions (if any) as the Supreme Court thinks fit.

214 Appeals in cases other than civil cases

- (1) This section applies to an appeal referred to in section 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; and
 - (ii) order any person who was, or would have been if he or she 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.

216 Stay of execution pending appeal in certain cases

- (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, he or she may, if not detained for any other cause, be granted bail in accordance with the provisions of the *Bail Act 1992*.
- (2) If the appellant in custody in respect of whom the enforcement or execution of a conviction is stayed—
 - (a) is not granted bail under the *Bail Act 1992*; or
 - (b) is not detained for any other cause;

the court or a magistrate may, by warrant, commit the person to a remand centre.

218 Orders by Supreme Court on appeals

- (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; or
 - (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 subsection (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.

219 Barring of right of appeal under div 11.2 if order to review is granted

- (1) Where an order nisi to review a decision of the Magistrates Court has been granted under division 11.3 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 11.3 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 11.3 Orders to review

219B Appeals by way of orders to review

- (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 7 or 7A of this Act or under the Crimes Act, section 477;

- (b) a conviction by the Magistrates Court for an offence dealt with by that court under part 7 or 7A of this Act or under the Crimes Act, section 477;
 - (c) an order made under section 113 or 114 of this Act in proceedings dealt with by the Magistrates Court under part 7 of this Act or under the Crimes Act, section 477;
 - (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 the Crimes Act, section 477 (6) or (7);
 - (g) a sentence or penalty imposed by the Magistrates Court for an offence dealt with by that court under section 90A, part 7 or 7A or section 255 of this Act or the Crimes Act, section 477.
- (2) For the purposes of subsection (1) (g), a reference to a *sentence or penalty* shall be read as including a reference to a decision order made under section 556A (1) or (3), 556B (1), 556C (4) or (7) or the Crimes Act, 556D (1) or (3), whether or not the person is convicted of the offence.

219C Grant of order nisi to review

- (1) Where—
- (a) within 21 days of the making of an order of a kind referred to in section 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; or
 - (aa) within 21 days of the making of a decision of a kind referred to in section 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 section 219B (1) (b); or

(ii) the making of an order of a kind referred to in section 219B (1) (c);

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 1 or more of the following grounds:

- (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 section 219B (1) (e) or (f) should not have been made;
 - (g) that a sentence or penalty of a kind referred to in section 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.

219D Security for costs and stay of execution

- (1) The Supreme Court, in granting an order nisi under section 219C (1)—
 - (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 section 219B (1) (e) or (f) where, after making that decision, the Magistrates Court has, pursuant to the Crimes Act, section 477, 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 section 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.

219E Non-appearance of applicant

If the person on whose application the order nisi has been granted under section 219C (1) 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.

219F Powers of Supreme Court

- (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 subsection (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 section 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; or
 - (b) in the case of a decision specified in section 219B (1) (f)—order that the Magistrates Court continue the preliminary examination of the person to whom the decision relates in accordance with part 6; or
 - (ba) in the case of a decision specified in section 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 subsections (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 section 219B (1) (g), the Supreme Court—

- (a) varies a sentence or penalty under subsection (1) (b); or
- (b) imposes a sentence or penalty or makes an order under subsection (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 section 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 11.4 General Provisions

222 Control of Supreme Court over summary convictions

- (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.

223 Amendment

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 his or her former custody.

224 In cases of certiorari

The like proceedings as mentioned in sections 223 and 224 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.

225 Notice dispensed with

- (1) The notice prescribed by section 222 may be given either before or after the issue of the writ of habeas corpus, or certiorari.
- (2) 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 authorised by the director of public prosecutions;
the Supreme Court or the judge may dispense with the notice.

226 Power of court or judge to admit to bail

- (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 him or her to his or her former custody, there to serve the rest of the term for which he or she was committed.

227 Respecting the amendment of convictions etc

- (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 223 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.

228 Want of summons or information

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 he or she objected at the hearing that there was no information or summons or amendment thereof.

229 Distribution of penalty

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.

230 Provisions applicable in relation to security given for costs of appeal

- (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 12

Protection of magistrates In the execution of their office

231 Magistrate sued for act not within jurisdiction

- (1) Any person injured by an act done by a magistrate in a matter in which by law he or she has no jurisdiction or in which he or she has exceeded his or her jurisdiction, or by an act done under any conviction or order made or warrant or writ issued by a magistrate in any such matter, may maintain in the Supreme Court an action against the magistrate without alleging in his or her statement of claim or plaint that the act complained of was done maliciously and without reasonable and probable cause.
- (2) 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.
- (3) 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.
- (4) If the lastmentioned 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 him or her with some person at his or her last-known or usual place of abode or business, and he or she 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.

232 No action against magistrate after order nisi to quash conviction has been granted

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.

233 Warrant or writ by magistrate on order of court

Where a conviction or order is made by the court and a warrant of commitment or writ of execution 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.

234 No action for acts done under order of Supreme Court

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 him or her for obeying the order and doing the act thereby required.

235 No action where proceedings confirmed on appeal

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

236 Actions in cases prohibited

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.

239 Payment of money into court

- (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 him or her, 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 his or her damages in the action, he or she may apply to the judge for an order for the payment of the money out of court to him or her, 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.

240 No action against magistrate for judicial acts in Magistrates Court

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

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

In an action against a magistrate for any act done by him or her in the execution of his or her duty as a magistrate with respect to any matter within his or her 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.

242 Verdict for defendant

If the plaintiff in an action against a magistrate does not prove the cause of action at the trial, judgment shall be given for the defendant.

243 Damages

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.

Part 13 Costs

244 Award of costs

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 recovered under the *Magistrates Court (Civil Jurisdiction) Act 1982*, part 19;
- (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;
- (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.

247 Witnesses expenses

The amount of costs that may be awarded under section 244 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.

Part 13A Court and tribunal fees

U 248 Definitions for pt 13A

In this part:

court means—

- (a) the Coroner's Court; or
- (b) the Magistrates Court.

determined fee means a fee determined under this part.

fee includes a charge and a tax.

relevant legislation means any of the following:

- (a) the *Administrative Appeals Tribunal Act 1989*;
- (b) the *Consumer Credit (Administration) Act 1996*;
- (c) the *Coroners Act 1997*;
- (d) the *Discrimination Act 1991*;
- (e) this Act;
- (f) the *Magistrates Court (Civil Jurisdiction) Act 1982*;
- (g) the *Residential Tenancies Act 1997*;
- (h) the *Tenancy Tribunal Act 1994*;
- (i) regulations or other subordinate legislation made or in force under an Act mentioned in paragraphs (a) to (h);
- (j) the code within the meaning of the *Tenancy Tribunal Act 1994*.

tribunal means any of the following:

- (a) the administrative appeals tribunal;
- (b) the credit tribunal;

- (c) the discrimination tribunal;
- (d) the residential tenancies tribunal;
- (e) the tenancy tribunal.

248A Determination of fees

- (1) The Minister may, in writing, determine fees for any of the following purposes:
 - (a) proceedings in a court or tribunal, and matters incidental to such proceedings, including—
 - (i) the service and execution of the process of a court or tribunal; and
 - (ii) the taxation of costs by the registrar or other officers of a court or tribunal;
 - (b) facilities and services provided by a court or tribunal, including the service and execution of the process of a court of the Commonwealth, a State, another Territory or a foreign country;
 - (c) the general purposes of relevant legislation.
- (2) A determination under subsection (1) may make provision for or with respect to—
 - (a) exempting persons, in whole or part, from liability to pay determined fees in all or particular circumstances; or
 - (b) remitting, refunding or waiving determined fees, in whole or part, by the registrar of a court or tribunal in particular circumstances; or
 - (c) deferring by the registrar of a court or tribunal of liability, in whole or part, to pay determined fees in particular circumstances.
- (3) A determination under subsection (1) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

248B Payment of fees

- (1) A determined fee is payable, in advance, in accordance with the determination that determined the fee, but subject to this section.
- (2) A determined fee is payable on notice from the registrar of the court or tribunal 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 is payable.

248C Remission, refund, deferral, waiver and exemption of fees

- (1) A determined fee may be remitted or refunded, or liability for its payment deferred, in accordance with the determination that determined the fee.
- (2) A determined fee is not payable—
 - (a) if the person otherwise liable to pay the fee is—
 - (i) exempt from liability to pay the fee under the determination that determined the fee; or
 - (ii) exempt from paying the fee under the *Legal Aid Act 1977*, section 93 (1); or
 - (iii) legally assisted under a scheme or service provided or approved by the Attorney-General; or
 - (b) if the registrar of the court or tribunal waives payment by a person of the fee in whole or part because the registrar considers that payment of the fee would impose hardship on the person—to the extent of the waiver; or
 - (c) for the laying of an information—
 - (i) by the director of public prosecutions acting in the performance of an official function under a Territory law; or
 - (ii) by a police officer acting in the performance of an official function under a Territory law; or

- (iii) for an offence against section 255 (1) (which is about contempt in the face of the court).

248D Recovery of fees in non-criminal proceedings if fees otherwise not payable

- (1) This section applies in relation to a civil proceeding in the Magistrates Court, or a proceeding in a tribunal, between at least 2 parties (the *first party* and the *second party*) if—
- (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 part because of the exemption of the first party under this part; or
- (ii) remitted, refunded or waived in whole or part under this part; and
- (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) If this section applies, the second party must pay to the registrar of the court or tribunal the amount of the exemption, remission, refund or waiver.

248E Recovery of fees in criminal proceedings if fees not otherwise payable

- (1) This section applies in relation to a criminal proceeding in the Magistrates Court if—
- (a) the fee (the *information fee*) that would otherwise be payable by the informant for the laying of the information in the proceeding is not payable in whole or part under this part; and
- (b) the defendant is convicted of the offence alleged in the information and ordered to pay a fine.

- (2) If this section applies, the defendant must pay to the registrar of the Magistrates Court, in addition to the fine—
 - (a) if payment of the fee is waived in part under this part—the amount of the waiver; or
 - (b) in any other case—the information fee.

248F Review of decisions

- (1) This section applies to any of the following decisions made under this part by the registrar of a court or tribunal in relation to a person (the *eligible person*):
 - (a) a decision refusing to remit, in whole or part, a determined fee payable by the person;
 - (b) a decision refusing to refund, in whole or part, a determined fee paid by the person;
 - (c) a decision refusing to defer, in whole or part, the person's liability to pay a determined fee;
 - (d) a decision refusing to waive, in whole or part, payment of a determined fee by the person;
 - (e) a decision refusing to allow the person the benefit of an exemption to pay a determined fee.
- (2) If the registrar makes a decision to which this section applies, the registrar must give written notice of the decision to the eligible person.
- (3) The notice must tell the eligible person that the person may—
 - (a) apply to the registrar for a statement of reasons for the decision; and
 - (b) apply for review of the decision under this section.
- (4) The eligible person may apply to the registrar for a statement of reasons for the decision within 28 days after the day when the person is given notice of the decision by the registrar.

- (5) The eligible person may apply to the court or tribunal for review of the decision within—
- (a) 28 days after the day when the person is given notice of the decision by the registrar; or
 - (b) if the person applies within that 28 days for a statement of reasons for the decision—28 days after the day when the person is given the statement of reasons.
- (6) On the review, the court or tribunal—
- (a) must be constituted by—
 - (i) for a court—a magistrate; or
 - (ii) for a tribunal—a member of the tribunal; and
 - (b) may make the orders the court or tribunal considers appropriate.
- (7) A fee is not payable for an application under this section.

Part 14 Securities

249 Securities taken under Act

- (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, he or she 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.

250 Recovery of sum due under security

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 authorised by the court.

252 Sums paid by surety may be recovered from principal

Any sum paid by a surety on behalf of his or her 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 him or her from the principal, and may be recovered on a claim by the surety.

253 Payment enforced by security

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.

254 Enforcement of recognisance

(1) Where—

- (a) a witness or a person sought to be made a witness has entered into a recognisance 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 recognisance;

the court may declare the recognisance 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 recognisance.

(2) Where—

- (a) the court has declared a recognisance to be forfeited under subsection (1); and
- (b) a person is bound by the recognisance 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 he or she is bound under the recognisance.

(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 the *Bail Act 1992*, section 36 (1)—

- (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), revoke the declaration that the recognisance is forfeited.

(5) Where—

- (a) the court has made an order under subsection (1) or (2); and
 - (b) a writ of execution has been issued; and
 - (c) property has been sold under the writ;
- 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.

254A Directions as to procedure

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 15 Miscellaneous

254B Appearance by audiovisual or audio links

- (1) This section applies where, in relation to a proceeding or a part of a proceeding (the *relevant proceeding*), the court has given a direction under the *Evidence (Miscellaneous Provisions) Act 1991*, section 18 (1) or 30 (1).
- (2) Where this section applies a person who, in a relevant proceeding—
 - (a) is required or entitled to appear personally, whether as a party or as a witness; or
 - (b) is entitled to appear for another person;may appear in the relevant proceeding and participate or give evidence, as the case requires, in accordance with the direction.
- (3) A person who appears in a relevant proceeding in accordance with this section shall be taken to be before the court.
- (4) In this section, a reference to a *proceeding* does not include a reference to a proceeding concerning bail.

255 Contempt in the face of the court

- (1) A person shall not—
 - (a) wilfully threaten, disturb or insult the court; or
 - (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.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) Subsection (1) only applies to acts in the face, or within the hearing, of the court.

- (2A) For the purposes of this section, where a person appears in proceedings in accordance with section 254B, the acts of that person and of any other person who is visible or audible to the Court by means of audiovisual or audio link (as the case requires) shall be taken to be in the face 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; and
 - (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; or
 - (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; or
 - (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; or
 - (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 Refusal or failure to give evidence—offence

- (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 the *Magistrates Court (Civil Jurisdiction) Act 1982*, section 154A or section 298.
- (2) A person shall not, without reasonable excuse—
- (a) refuse or fail to take an oath; or
 - (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.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

255AB Refusal or failure to give evidence—committal

(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 the *Magistrates Court (Civil Jurisdiction) Act 1982*, section 306, 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, lockup or remand centre until—
 - (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; and
- (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 subsection (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.

255A Commitment to remand centre

- (1) Where—
 - (a) a warrant has been issued for the commitment of a person to prison under section 145, 154D or 185 of this Act or the *Crimes Act 1900*, section 547 (2); and
 - (b) a warrant under the *Removal of Prisoners Act 1968*, section 5 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 subsection (1) (a) ceases, by virtue of this section, to have any effect.

255B Registrar to give directions for preparation of transcript

- (1) Where an application has been made for a copy of a transcript of depositions of which a record was made in accordance with section 54A (2), the registrar shall give such directions as he or she 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 his or her hand, that

the transcript is a true transcript of a record produced out of the custody of the registrar.

255C Applications for transcripts

(1) Subject to this section, where a record of any proceedings is constituted by—

- (a) an audiovisual or a sound recording made in accordance with section 54A (2); or
- (b) a shorthand or similar record made in accordance with section 54A (2); or
- (c) writing taken down in accordance with section 54A (3); or
- (d) a written statement or statements in accordance with section 90AA or 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 section 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) he or she shall, in the case of an application relating to depositions; and

- (b) he or she 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 subsection (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 an audiovisual or a sound recording made in accordance with section 54A (2); and
 - (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 his or her custody.
- (8) If an amount deposited by a person under subsection (4) exceeds the fee determined under section 248A (1) for the preparation of the transcript, there is payable to the person an amount equal to the amount of the excess.

256 Forms

- (1) A form approved under subsection (5), or a form to the like effect, may be used for the purposes to which it applies, and an instrument in such a form is sufficient in law.
- (2) However, a form approved under subsection (5) (other than the notice to defendant form, the notice of intention to defend form or the plea of guilty form) may be adapted to suit the purposes for which the form is to be used.

- (3) Substantial compliance is required with the notice to defendant form, the notice of intention to defend form or the plea of guilty form.
- (4) 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.
- (5) The Minister may, in writing, approve forms for this Act.
- (6) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.
- (7) An approved form is a notifiable instrument.
Note A notifiable instrument must be notified under the *Legislation Act 2001*.
- (8) A form in schedule 1 or 2 or the rules that had not been superseded by an approved form immediately before the commencement of this subsection is, after the commencement, taken to be an approved form.
- (9) However, a form mentioned in subsection (8) need not be notified under the *Legislation Act 2001*.
- (10) Subsections (8) and (9) are laws to which the *Legislation Act 2001*, section 88 (Repeal does not end transitional or validating effect etc) applies.
- (11) Subsections (8) to (10) and this subsection expire 1 year after this section commences.

258 Power to make rules or regulations

- (1) The Executive may make rules or regulations for this Act.

Note Rules and regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The rules or regulations may make provision in relation to—

- (a) the practice and procedure before magistrates and in the court;
and
- (b) the giving of security under this Act; and
- (c) 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; and
- (d) 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.

Part 16 Transitional

259 Application of s 203 (as amended) and s 206AA

- (1) Section 203 as amended by the *Magistrates Court (Amendment) Act 1999* is taken to apply in relation to any proceeding under part 10 of this Act begun on or after 24 December 1990.
- (2) Section 206AA is taken to apply in relation to—
 - (a) any order made (or purportedly made) under section 206 on or after 24 December 1990; and
 - (b) any proceeding (a contravention proceeding) begun, on or after that date, for the contravention of any such order.

Note Pt 10 commenced on 24 December 1990.

- (3) However, subsection (2) (b) does not affect a judgment or decision given before the commencement of this section in any contravention proceeding.
- (4) This section does not affect the validity of any order, proceeding, step or action that, apart from this section, is valid.
- (5) This section lapses at the end of 5 years after the date it commences.

Schedule 1

(see s 10P)

Oath

I, [*name*], do swear 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, [*name*], do solemnly and sincerely affirm and declare 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.

Endnotes

1 About the endnotes

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnotes.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

2 Abbreviation key

| | |
|--|--|
| am = amended | ord = ordinance |
| amdt = amendment | orig = original |
| ch = chapter | p = page |
| cl = clause | par = paragraph |
| def = definition | pres = present |
| dict = dictionary | prev = previous |
| disallowed = disallowed by the Legislative Assembly | (prev...) = previously |
| div = division | prov = provision |
| exp = expires/expired | pt = part |
| Gaz = Gazette | r = rule/subrule |
| hdg = heading | reg = regulation/subregulation |
| ins = inserted/added | renum = renumbered |
| LA = Legislation Act 2001 | reloc = relocated |
| LR = legislation register | R[X] = Republication No |
| LRA = Legislation (Republication) Act 1996 | s = section/subsection |
| mod = modified / modification | sch = schedule |
| No = number | sdiv = subdivision |
| o = order | sub = substituted |
| om = omitted/repealed | SL = Subordinate Law |
| | <u>underlining</u> = whole or part not commenced |

3 Legislation history

The *Magistrates Court Act 1930* was originally the *Court of Petty Sessions Ordinance (No 2) 1930*. It was renamed by the *Magistrates Court (Amendment) Ordinance (No 4) 1986* (see s 3). It became an ACT Act on self-government (11 May 1989).

Legislation before self-government

Magistrates Court Act 1930 No 21

notified 21 November 1930
commenced 21 November 1930

as amended by

Court of Petty Sessions Ordinance 1932 No 21

notified 17 November 1932
commenced 17 November 1932

Court of Petty Sessions Ordinance 1934 No 17

notified 19 July 1934
commenced 19 July 1934

Money Lenders Ordinance 1936 No 13

notified 9 April 1936
commenced 1 May 1936

Court of Petty Sessions Ordinance 1937 No 5

notified 27 May 1937
commenced 27 May 1937

Court of Petty Sessions Ordinance (No 2) 1937 No 28

notified 23 December 1937
commenced 23 December 1937

Seat of Government (Designation) Ordinance 1938 No 25 (as amd by ord 1938 No 35)

notified 8 September 1938
commenced 8 September 1938

Ordinances Revision Ordinance 1938 No 35

notified 15 December 1938
commenced 15 December 1938

Endnotes

3 Legislation history

Court of Petty Sessions Ordinance 1940 No 20

notified 7 November 1940
commenced 7 November 1940

Court of Petty Sessions Ordinance (No 2) 1940 No 22

notified 12 December 1940
commenced 12 December 1940

Court of Petty Sessions Ordinance 1949 No 13

notified 1 December 1949
commenced 1 December 1949

Court of Petty Sessions Ordinance 1951 No 7

notified 26 July 1951
commenced 26 July 1951

Court of Petty Sessions Ordinance (No 2) 1951 No 12

notified 14 December 1951
commenced 14 December 1951

Court of Petty Sessions Ordinance 1953 No 14

notified 12 November 1953
commenced 3 December 1953

Court of Petty Sessions Ordinance 1958 No 12

notified 24 July 1958
commenced 24 July 1958

Court of Petty Sessions Ordinance 1961 No 2

notified 29 March 1961
commenced 29 March 1961

Court of Petty Sessions Ordinance 1966 No 2

notified 10 February 1966
commenced 14 February 1966

Court of Petty Sessions Ordinance 1967 No 1

notified 9 February 1967
commenced 9 February 1967

Court of Petty Sessions Ordinance 1968 No 25

notified 19 December 1968
commenced 1 January 1969 (Gaz 1968 p 7565)

Court of Petty Sessions Ordinance 1969 No 12

notified 20 June 1969
commenced 20 June 1969

Court of Petty Sessions Ordinance 1970 No 15

notified 19 March 1970
commenced 19 March 1970

Court of Petty Sessions Ordinance 1972 No 37

notified 16 November 1972
s 1, s 2, s 6, s 14, commenced 16 November 1972
remainder commenced 1 February 1973 (Gaz 1972 No 118)

Court of Petty Sessions Ordinance 1973 No 48

notified 17 December 1973
commenced 17 December 1973

Court of Petty Sessions Ordinance 1974 No 14

notified 17 April 1974
commenced 17 April 1974

Ordinances Revision (Age of Majority) Ordinance 1974 No 47

notified 24 October 1974
commenced 1 November 1974

Court of Petty Sessions (Amendment) Ordinance 1976 No 42

notified 13 September 1976
commenced 13 September 1976

Court of Petty Sessions (Amendment) Ordinance 1977 No 4

notified 24 March 1977
ss 1-3, 10 commenced 24 March 1977
remainder commenced 28 March 1977 (Gaz 1977 No S52)

Court of Petty Sessions (Amendment) Ordinance (No 2) 1977 No 34

notified 28 July 1977
commenced 28 July 1977

Court of Petty Sessions (Amendment) Ordinance (No 3) 1977 No 56

notified 6 October 1977
ceased to have effect because not tabled

Endnotes

3 Legislation history

Court of Petty Sessions (Amendment) Ordinance (No 4) 1977 No 61

notified 21 November 1977
commenced 21 November 1977

Ordinances Revision Ordinance 1978 No 46

notified 28 December 1978
commenced 28 December 1978

Court of Petty Sessions (Amendment) Ordinance 1979 No 33

notified 14 November 1979
commenced 14 November 1979

Court of Petty Sessions (Amendment) Ordinance (No 2) 1979 No 41

notified 18 December 1979
commenced 18 December 1979

Court of Petty Sessions (Amendment) Ordinance 1980 No 4

notified 20 March 1980
commenced 1 April 1980 (Gaz 1980 No S66)

Court of Petty Sessions (Amendment) Ordinance (No 2) 1980 No 10

notified 26 March 1980
commenced 26 March 1980

Court of Petty Sessions (Amendment) Ordinance 1982 No 2

notified 26 February 1982
commenced 1 September 1982 (Gaz 1982 No S178)

Court of Petty Sessions (Amendment) Ordinance (No 2) 1982 No 3

notified 26 February 1982
commenced 26 February 1982

Court of Petty Sessions (Amendment) Ordinance 1984 No 9

notified 11 April 1984
commenced 11 April 1984

Court of Petty Sessions (Amendment) Ordinance (No 2) 1984 No 10

notified 11 April 1984
commenced 11 April 1984

Court of Petty Sessions (Amendment) Ordinance (No 3) 1984 No 16

notified 1 June 1984
commenced 1 June 1984

Court of Petty Sessions (Amendment) Ordinance (No 4) 1984 No 61

notified 2 November 1984
commenced 2 November 1984

Court of Petty Sessions (Amendment) Ordinance (No 5) 1984 No 62

notified 2 November 1984
commenced 2 November 1984

Court of Petty Sessions (Amendment) Ordinance 1985 No 17

notified 17 April 1985
commenced 17 April 1985

Court of Petty Sessions (Amendment) Ordinance (No 2) 1985 No 18

notified 17 April 1985
commenced 17 April 1985

Court of Petty Sessions (Amendment) Ordinance (No 3) 1985 No 41

notified 5 September 1985
commenced 5 September 1985

Limitation Ordinance 1985 No 66

notified 19 December 1985
commenced 19 December 1985

Magistrates Court Ordinance 1985 No 67

notified 19 December 1985
commenced 1 February 1986 (Gaz 1986 No G3)

Magistrates Court (Amendment) Ordinance 1986 No 33

notified 7 August 1986
commenced 7 August 1986

Domestic Violence (Miscellaneous Amendments) Ordinance 1986 No 53

notified 4 September 1986
commenced 1 October 1986 (Gaz 1986 No S484)

Crimes (Amendment) Ordinance (No 4) 1986 No 57

notified 3 October 1986
commenced 3 October 1986

Magistrates Court (Amendment) Ordinance (No 2) 1986 No 71

notified 30 October 1986
commenced 1 April 1987 (Gaz 1987 No S52)

Endnotes

3 Legislation history

Magistrates Court (Amendment) Ordinance (No 3) 1986 No 74

notified 14 November 1986
commenced 14 November 1986

Magistrates Court (Amendment) Ordinance (No 4) 1986 No 83

notified 22 December 1986
commenced 22 December 1986

Magistrates Court (Amendment) Ordinance 1987 No 56

notified 21 October 1987
commenced 21 October 1987

Magistrates Court (Amendment) Ordinance 1988 No 45

notified 27 July 1988
commenced 27 July 1988

Magistrates Court (Amendment) Ordinance 1989 No 55

notified 30 June 1989
commenced 1 July 1989

Magistrates Court (Amendment) Ordinance (No 2) 1989 No 59

notified 25 October 1989
s 11, s 12, s 14 commenced 27 June 1990 (Gaz 1990 No GN25)
remainder commenced 25 October 1989

Magistrates Court (Amendment) Ordinance (No 3) 1989 No 60

notified 20 December 1989
commenced 14 February 1990 (Gaz 1990 No GN5)

Legislation after self-government

Crimes (Amendment) Ordinance 1990 No 1

notified 23 May 1990
commenced 23 May 1990

Self-Government (Consequential Amendments) Ordinance 1990 No 5

notified 27 June 1990
s 1, s 2 commenced 27 June 1990
remainder commenced 1 July 1990

Magistrates Court (Appeals Against Sentence) Ordinance 1990 No 9

notified 29 June 1990
commenced 29 June 1990

Magistrates Court (Amendment) Act 1990 No 65

notified 24 December 1990
commenced 24 December 1990

Weapons (Consequential Amendments) Act 1991 No 9

notified 3 April 1991
s 1, s 2 commenced 3 April 1991
remainder commenced 3 October 1991 (s 2 (2))

Magistrates Court (Amendment) Act 1991 No 38

notified 20 September 1991
ss 1-3 commenced 20 September 1991
remainder commenced 25 September 1991 (Gaz 1991 No S103)

Magistrates and Coroner's Courts (Registrar) Act 1991 No 44

notified 20 September 1991
s 1, s 2 commenced 20 September 1991
remainder commenced 25 September 1991 (Gaz 1991 No S103)

Magistrates Court (Amendment) Act (No 2) 1991 No 79

notified 11 December 1991
ss 1-3 commenced 11 December 1991
remainder commenced 11 June 1992

Workers' Compensation (Consequential Amendments) Act 1991 No 106

notified 15 January 1991
s 1, s 2 commenced 15 January 1992
remainder commenced 22 January 1992 (s 2 (2) and Gaz 1992 No S9)

Magistrates Court (Amendment) Act (No 3) 1991 No 112

notified 10 January 1992
s 1, s 2 commenced 10 January 1992
remainder commenced 18 May 1992 (Gaz 1992 No S57)

Bail (Consequential Amendments) Act 1992 No 9

notified 28 May 1992
s 1, s 2 commenced 28 May 1992
remainder commenced 28 November 1992

Statute Law Revision (Miscellaneous Provisions) Act 1992 No 23

notified 4 June 1992
commenced 4 June 1992

Endnotes

3 Legislation history

Protection Orders (Reciprocal Arrangements) (Consequential Amendments) Act 1992 No 37

notified 8 July 1992

s 7, s 12 commenced 3 August 1992 (Gaz 1992 No S130)

remainder commenced 8 July 1992

Evidence (Amendment) Act 1993 No 2

notified 1 March 1993

commenced 1 March 1993

Magistrates Court (Amendment) Act 1993 No 4

notified 1 March 1993

ss 1-3 commenced 1 March 1993

ss 4-19, 21-24, 26-32 commenced 8 March 1993 (Gaz 1993 No 32)

remainder commenced 1 September 1993

Magistrates Court (Amendment) Act (No 2) 1993 No 48

notified 27 August 1993

ss 1-3 commenced 27 August 1993

remainder commenced 27 September 1993 (s 2 (2) and Gaz 1993 No S201)

Supreme Court (Amendment) Act (No 2) 1993 No 91

notified 17 December 1993

commenced 17 December 1993

Magistrates Court (Amendment) Act 1994 No 4

notified 14 March 1994

ss 1-4, s 10, s 12, s 13 commenced 14 March 1994

remainder commenced 1 July 1994 (s 2 (2))

Judicial Commissions (Consequential Amendments) Act 1994 No 10

notified 14 March 1994

commenced 14 March 1994

Public Sector Management (Consequential and Transitional Provisions) Act 1994 No 38

notified 30 June 1994

s 1, s 2 commenced 30 June 1994

remainder commenced 1 July 1994 (Gaz 1994 No S142)

Mental Health (Consequential Provisions) Act 1994 No 45

notified 7 September 1994

s 1, s 2 commenced 7 September 1994

remainder commenced 6 February 1995 (Gaz 1995 No S33)

Magistrates Court (Enforcement of Judgments) Act 1994 No 61

notified 11 October 1994

s 1, s 2 commenced 11 October 1994

remainder commenced 10 April 1995 (Gaz 1995 No S75)

Coroners (Amendment) Act (No 2) 1994 No 66

notified 11 October 1994

commenced 11 October 1994

Statute Law Revision (Penalties) Act 1994 No 81

notified 29 November 1994

s 1, s 2 commenced 29 November 1994

remainder commenced 29 November 1994 (Gaz 1994 No S269)

Magistrates Court (Amendment) Act 1995 No 41

notified 7 November 1995

s 1, s 2 commenced 7 November 1995

remainder commenced 7 May 1996

Statute Law Revision Act 1995 No 46

notified 18 December 1995

commenced 18 December 1995

Magistrates Court (Amendment) Act 1996 No 6

notified 12 March 1996

ss 1-3 commenced 12 March 1996

s 7 commenced 25 September 1991

remainder commenced 12 September 1996

Criminal Injuries Compensation (Amendment) Act 1996 No 68

notified 20 December 1996

ss 1-3 commenced 20 December 1996

remainder commenced 1 January 1997 (Gaz 1996 No S352)

Firearms Act 1996 No 74

notified 20 December 1996

s 1, s 2 commenced 20 December 1996

remainder commenced 17 May 1997 (Gaz 1997 No S135)

Endnotes

3 Legislation history

Magistrates Court (Amendment) Act (No 2) 1996 No 82

notified 20 December 1996

ss 1-3 commenced 20 December 1996

remainder commenced 1 January 1997 (Gaz 1996 No S353)

Magistrates Court (Amendment) Act 1997 No 25

notified 29 May 1997

ss 1-3 commenced 29 May 1997

remainder commenced 30 May 1997 (s 2 (2) and Gaz 1997 No S149)

Remuneration Tribunal (Consequential Amendments) Act 1997 No 41

notified 19 September 1997

s 1, s 2 commenced 19 September 1997

remainder commenced 23 September 1997 (Gaz 1997 No S280)

Magistrates Court (Civil Jurisdiction) (Amendment) Act 1997 No 94

notified 1 December 1997

ss 1-3 commenced 1 December 1997

remainder commenced 25 May 1998 (Gaz 1998 No S140)

Legal Practitioners (Consequential Amendments) Act 1997 No 96

notified 1 December 1997

s 1, s 2 commenced 1 December 1997

remainder commenced 1 June 1998 (s 2 (2))

Magistrates Court (Amendment) Act 1998 No 25

notified 10 July 1998

s 1, s 2 commenced 10 July 1998

remainder commenced 1 January 1999 (Gaz 1998 No 50)

Magistrates Court (Amendment) Act (No 2) 1998 No 38

notified 14 October 1998

ss 1-3 commenced 14 October 1998

remainder commenced 19 October 1998 (Gaz 1998 No 41)

Statute Law Revision (Penalties) Act 1998 No 54

notified 27 November 1998

s 1, s 2 commenced 27 November 1998

remainder commenced 9 December 1998 (Gaz 1998 No 49)

Custodial Escorts (Consequential Provisions) Act 1998 No 67

notified 23 December 1998

s 1, s 2 commenced 23 December 1998

remainder commenced 23 December 1998 (Gaz 1998 No 51)

Children's Services (Amendment) Act 1999 No 12

notified 23 March 1999
commenced 1 May 1999

Courts and Tribunals (Audio Visual and Audio Linking) Act 1999 No 22

notified 14 April 1999
s 1, s 2 commenced 14 April 1999
remainder commenced 1 September 1999 (Gaz 1999 No 35)

Magistrates Court (Amendment) Act 1999 No 34

notified 2 July 1999
commenced 2 July 1999

Magistrates Court Amendment Act (No 2) 1999 No 59

notified 10 November 1999 (Gaz 1999 No 45 and 1999 No 47)
commenced 10 November 1999

Children's Services Amendment Act (No 2) 1999 No 61

notified 10 November 1999
s 1, s 2 commenced 10 November 1999
remainder commenced 1 December 1999

Children and Young People (Consequential Amendments) Act 1999 No 64

notified 10 November 1999
s 1, s 2 commenced 10 November 1999 (IA s 10B)
remainder commenced 10 May 2000 (s 2 (2))

Law Reform (Miscellaneous Provisions) Act 1999 No 66

notified 10 November 1999
commenced 10 November 1999

Road Transport Legislation Amendment Act 1999 No 79

notified 23 December 1999
s 1, s 2 commenced 23 December 1999 (IA s 10B)
remainder commenced 1 March 2000 (Gaz 2000 No S5)

Endnotes

3 Legislation history

Victims of Crime (Financial Assistance) (Amendment) Act 1999 No 91

notified 23 December 1999

s 1, s 2 commenced 23 December 1999 (IA s 10B)

remainder commenced 24 December (Gaz 1999 No S69)

Justice and Community Safety Legislation Amendment Act 2000 No 1 sch

notified 9 March 2000 (Gaz 2000 No 10)

s 1, s 2 commenced 9 March 2000 (IA s 10B)

sch commenced 9 September 2000 (IA s 10E)

Justice and Community Safety Legislation Amendment Act 2000 (No 3) No 17 sch 1

notified 1 June 2000 (Gaz 2000 No 22)

commenced 1 June 2000 (s 2)

Magistrates Court Amendment Act 2000 No 60

notified 5 October 2000 (Gaz 2000 No 40)

commenced 5 October 2000 (s 2)

Leases (Commercial and Retail) Act 2001 No 18 s 174

notified 19 April 2001 (Gaz 2001 No 16)

s 1, s 2 commenced 19 April 2001 (IA s 10B)

s 174 commences 1 July 2002 (s 2)

Legislation (Consequential Amendments) Act 2001 No 44 pt 237

notified 26 July 2001 (Gaz 2001 No 30)

s 1, s 2 commenced 26 July 2001 (IA s 10B)

pt 237 commenced 12 September 2001 (s 2 and Gaz 2001 No S65)

Statute Law Amendment Act 2001 (No 2) 2001 No 56 pt 3.37

notified 5 September 2001 (Gaz 2001 No S65)

commenced 5 September 2001 (s 2 (1))

Road Transport (Public Passenger Services) Act 2001 No 62 pt 1.1

notified 10 September 2001 (Gaz 2001 No S66)

s 1, s 2 commenced 10 September 2001 (IA s 10B)

pt 1.1 commences 1 December 2001 (s 2 and CN 2001 No 2)

Crimes Legislation Amendment Act 2001 No 63 pt 8

notified 10 September 2001 (Gaz 2001 No S66)

s 1, s 2 commenced 10 September 2001 (IA s 10B)

pt 8 commenced 27 September 2001 (s 2 (2) and CN 2001 No 3)

Criminal Code 2001 No 64 sch 1

notified 10 September 2001 (Gaz 2001 No S66)
 s 1, s 2 commenced 10 September 2001 (IA s 10B)
sch 1 awaiting commencement (s 2)

Justice and Community Safety Legislation Amendment Act 2001 No 70 sch 1

notified LR 14 September 2001
 amdt commenced 14 September 2001 (s 2 (5))

Fair Trading Legislation Amendment Act 2001 No 77 pt 4

notified LR 14 September 2001
 s 1, s 2 commenced 14 September 2001 (LA s 75)
pt 4 awaiting commencement (s 2)

Protection Orders (Consequential Amendments) Act 2001 No 90 sch 1 pt 8

notified LR 27 September 2001
 s 1, s 2 commenced 27 September 2001 (LA s 75)
sch 1 pt 8 commences when Protection Orders Act 2001, s 3 commences (s 2)

4 Amendment history**Title**

title am 1985 No 67

Short title

s 1 am 1986 No 83

Administration

s 2 om 1978 No 46

Repeal

s 3 om 1994 No 61

Parts

s 4 am 1937 No 28; 1953 No 14
 sub 1958 No 12
 am 1968 No 25; 1972 No 37
 om 1974 No 14

Interpretation

s 5 am 1937 No 28; 1938 No 35; 1951 No 7; 1951 No 12; 1953 No 14; 1958 No 12; 1967 No 1; 1968 No 25; 1973 No 48; 1976 No 42; 1980 No 4; 1984 No 62; 1985 No 17; 1985 No 41; 1985 No 67; 1986 No 74; 1989 No 59; 1989 No 60;

Endnotes

4 Amendment history

1990 No 5; 1991 No 38; 1991 No 44; 1992 No 9; 1993 No 4;
1993 No 91; 1994 No 4; 1996 No 6; 1996 No 82; 1997 No 96;
1998 No 67; 1999 No 22 s 18; 1999 No 66 sch 3; 1999 No 79
s 5 sch 3; 2001 No 44 amdt 1.2748

Application to Jervis Bay Territory

s 6 sub 1951 No 12
am 1990 No 5

Appointment of Chief Magistrate and magistrates

div 2.1 hdg (prev pt 2 div 1 hdg) ins 1977 No 4
am 1985 No 67
renum R8 LA

Meaning of *magistrate* in div 2.1

s 6A ins 1977 No 4
am 1985 No 67

Chief Magistrate and other magistrates

s 7 sub 1949 No 13
am 1951 No 7; 1951 No 12; 1973 No 48
sub 1977 No 4; 1985 No 67
am 1990 No 5

Eligibility for appointment as Magistrate

s 8 am 1949 No 13
sub 1977 No 4
am 1997 No 96

Functions of the Chief Magistrate

s 8A ins 1983 No 48
om 1977 No 4

Duties of the Clerk

s 8B ins 1983 No 48
om 1977 No 4

Seniority of magistrates

s 9 sub 1977 No 4
am 1985 No 67

Terms and conditions of appointment

s 10 am 1938 No 35; 1973 No 48
sub 1977 No 4
am 1990 No 5
sub 1997 No 41

Tenure of office

s 10A ins 1977 No 4

Resignation

s 10B ins 1977 No 4
am 1990 No 5

Acting Chief Magistrate

s 10C ins 1977 No 4
am 1985 No 67; 1990 No 5

Retirement

s 10D ins 1977 No 4
sub 1994 No 10

Magistrates not to undertake other work

s 10E ins 1977 No 4
am 1993 No 4; 1996 No 6

Rights of public servants

s 10F ins 1977 No 4
sub 1994 No 38

Arrangement of business of courts

s 10G ins 1977 No 4
am 1985 No 67; 1986 No 74; 1994 No 66
sub 1999 No 12
am 1999 No 61 s 6; 1999 No 64 s 4 sch 2

Special magistrates

div 2.2 hdg (prev pt 2 div 2 hdg) ins 1977 No 4
renum R8 LA

Appointment of special magistrates

s 10H ins 1977 No 4
am 1990 No 5

Tenure of office

s 10J ins 1977 No 4
sub 1994 No 10
am 1996 No 6

Resignation

s 10K ins 1977 No 4
am 1990 No 5

Terms and conditions of appointment

s 10L ins 1977 No 4
am 1990 No 5
sub 1997 No 41

Registrar and other officers of the Magistrates Court

div 2.3 hdg (prev pt 2 div 3 hdg) ins 1977 No 4
am 1985 No 67; 1991 No 44
renum R8 LA

Appointment of registrar etc

s 10M hdg am 1991 No 44
s 10M ins 1977 No 4
am 1985 No 67; 1991 No 44

Endnotes

4 Amendment history

sub 1993 No 4

Staff assisting the registrar

s 10MA ins 1994 No 38

Duties of the registrar

s 10N hdg am 1991 No 44

s 10N ins 1977 No 4
am 1991 No 44

Jurisdiction of magistrates

div 2.4 hdg (prev pt 2 div 4 hdg) ins 1977 No 4
renum R8 LA

Oath etc of office

s 10P ins 1977 No 4
am 1990 No 5; 2001 No 44 amdt 1.2749

Acts done beyond the Territory

s 10Q ins 1977 No 4

Authentication of acts of magistrate or registrar

s 11 hdg am 1991 No 44

s 11 am 1991 No 44; 1994 No 61; 1996 No 6

Acts by magistrate or registrar

s 12 hdg am 1991 No 44

s 12 am 1937 No 28; 1986 No 74; 1991 No 44; 1996 No 6

Issue of warrant of commitment or writ of execution

s 13 am 1991 No 44; 1994 No 61

Warrants of execution after appeal

s 14 om 1972 No 37

Process not avoided by death of magistrate or registrar

s 15 hdg am 1991 No 44

s 15 am 1991 No 44; 1994 No 61

Order in lieu of mandamus

s 16 am 1937 No 28; 1977 No 4; 1991 No 44; 1996 No 6

Powers and functions of magistrates

s 17 am 1937 No 28; 1990 No 5

Magistrates Court

pt 3 hdg sub 1985 No 67

Establishment of Magistrates Court

div 3.1 hdg (prev pt 3 div 1 hdg) am 1985 No 67
renum R8 LA

Constitution of the court

s 18 am 1940 No 20; 1985 No 67; 1990 No 5; 2001 No 44
amdt 1.2750

Jurisdiction of Magistrates Court

div 3.2 hdg (prev pt 3 div 2 hdg) am 1985 No 67
renum R8 LA

Jurisdiction of the court

s 19 am 1937 No 28; 1985 No 67; 1986 No 74; 1990 No 5; 1999 No
66 sch 3; 2001 No 44 amdt 1.2751; 2001 No 56 amdt 3.447,
amdt 3.448

Civil jurisdiction of the Court

s 20 am 1936 No 13; 1967 No 1; 1969 No 12; 1977 No 4
om 1986 No 74

Civil jurisdiction of Court in action for nuisance

s 20A ins 1961 No 2
am 1967 No 1
om 1986 No 74

Jurisdiction of the court where defendant absent from the Territory

s 21 am 1937 No 28; 1958 No 12; 1986 No 74; 1996 No 6

Ex parte order may be set aside

s 23 am 1970 No 15
sub 1974 No 14
am 1979 No 33; 1986 No 74; 1989 No 60; 1991 Nos 44 and
112; 1993 Nos 4 and 48; 1998 No 25

Ex parte conviction may be set aside on application by informant

s 23AA ins 1982 No 3

Requests under conventions regarding legal proceedings in civil and commercial matters

s 23A ins 1932 No 21

Rectification of certain orders etc

s 23B ins 1985 No 18
am 1991 No 44

Cases excepted from Court's jurisdiction

s 24 om 1986 No 74

Removal of civil cases to the Supreme Court

s 24A ins 1937 No 28
om 1986 No 74

Procedure after removal of cases

s 24B ins 1937 No 28
am 1953 No 14; 1980 No 10; 1985 No 67
om 1986 No 74

General

div 4.1 hdg (prev pt 4 div 1 hdg) renum R8 LA

Endnotes

4 Amendment history

Informations

div 4.2 hdg (prev pt 4 div 2 hdg) renum R8 LA

Informations

s 25 sub 1974 No 14
am 1986 No 74; 1996 No 6

Laying of informations

s 26 am 1991 No 38; 1993 No 4; 1994 No 4

Description of persons and property and of offences

s 27 am 1990 No 5

Authority to appear etc in place of informant

s 27A ins 1974 No 14
om 1985 No 17

Limitation of proceedings

s 31 am 1989 No 59; 1990 No 5; 1996 No 6; 1999 No 59 s 3
om 2001 No 63 s 58

Complaints

pt 4 div 3 hdg om 1986 No 74

Commencement of action by entry of complaint

s 32 am 1961 No 2
om 1986 No 74

Complaint may be for 1 or more matters

s 33 am 1967 No 1; 1969 No 12; 1977 No 4
om 1986 No 74

Demands not to be divided into 2 suits or complaints

s 34 om 1986 No 74

Infant may sue

s 35 am 1974 No 47
om 1986 No 74

Copy of information or complaint

s 36 om 1986 No 74

Summonses

div 4.4 hdg (prev pt 4 div 4 hdg) renum R8 LA

When magistrate may issue summons

s 37 am 1986 No 74; 1989 No 55; 1990 No 5; 1991 No 38; 1993
No 4; 1996 No 6

Form of summons

s 38 am 1937 No 28; 1979 No 33; 1986 No 74; 1996 No 6

Ex parte proceedings

s 39 om 1986 No 74

Signature and contents of summons

s 40 am 1979 No 33
om 1996 No 6

Service of summons

s 41 sub 1937 No 28
am 1953 No 14; 1986 No 74; 1991 No 44

Warrants of arrest

div 4.5 hdg (prev pt 4 div 5 hdg) renum R8 LA

Issue of warrant and summons

s 42 am 1974 No 14, 1979 No 33

Procedure on filing of indictment

s 43 am 1937 No 28; 1990 No 5; 1992 No 9; 1996 No 6

Warrants to be signed and, where so required, sealed

s 46 om 1996 No 6

Form of arrest warrant

s 47 am 1998 No 67

Bail of persons arrested without a warrant

s 50 am 1991 No 44
om 1992 No 9

General

div 5.1 hdg (prev pt 5 div 1 hdg) renum R8 LA

Hearings to be in public except in special circumstances

s 51 am 1986 No 74
sub 1996 No 6

Exclusion of strangers

s 52 om 1996 No 6

Conduct of case

s 53 am 1986 No 74; 1996 No 6

Where both parties present in court to hear case

s 54 am 1986 No 74; 1991 No 79; 1993 No 2; 1996 No 6

Interpreter

s 54AA ins 1991 No 79
om 1993 No 2

Recording of proceedings

s 54A ins 1980 No 4
am 1985 No 41; 1986 Nos 71, 74 and 83; 1990 No 5; 1991 Nos
44 and 106; 1999 No 22 s 19; 1999 No 66 sch 3; 2000 No 17
s 3 sch 1

Evidence

div 5.2 hdg (prev pt 5 div 2 hdg) renum R8 LA

Endnotes

4 Amendment history

Power to order witnesses out of Court

s 56 am 1986 No 74
om 1996 No 6

Husband or wife of complainant or defendant to be competent witness

s 57 om 1986 No 74

Proof of negative etc

s 59 am 1990 No 5
om 2001 No 64 amdt 1.2

Record of proceedings and transcript

s 60 sub 1958 No 12; 1967 No 1
am 1972 No 37
sub 1974 No 14; 1980 No 4
am 1991 No 44; 1999 No 22 s 20

Informant may request witnesses to attend

s 60A ins 1996 No 6

Power of magistrate to summon witnesses

s 61 am 1986 No 74
sub 1996 No 6

Service of summons on witness

s 62 sub 1937 No 28; 1996 No 6

Witnesses entitled to claim expenses

s 62A ins 1996 No 6

Warrant to bring witness to court

s 63 am 1967 No 1
sub 1996 No 6

Refusal of witness to be examined

s 65 am 1976 No 42; 1986 No 74
om 1994 No 61

Production of documents before magistrate

s 66 am 1937 No 28

Setting aside summons

s 66A ins 1987 No 56

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

s 67 am 1980 No 4; 1986 No 74; 1996 No 6

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

s 67A ins 1986 No 74
am 1990 No 5; 1995 No 46

Affidavits—application of Magistrates Court (Civil Jurisdiction) Act

s 67B ins 1986 No 74
am 1990 No 5; 1995 No 46

Witnesses' rights and liabilities

s 68 am 1996 No 6

Depositions to be delivered to the registrar

s 69 hdg am 1991 No 44
s 69 am 1958 No 12; 1967 No 1; 1980 No 4; 1991 No 44

Remand

div 5.3 hdg (prev pt 5 div 3 hdg) renum R8 LA

Remand of defendant

s 70 am 1977 No 61; 1996 No 6
sub 1996 No 82
am 1998 No 67

Verbal remand

s 71 am 1996 No 6
om 1996 No 82

Hearing of bail applications

s 72A ins 1999 No 22 s 21
am 2000 No 17 s 3 sch 1

Defendant's appearance in proceedings other than bail proceedings

s 72B ins 1999 No 22 s 21

Bail of defendant during examination

s 73 am 1992 No 9

Committal and recognisance

div 5.4 hdg (prev pt 5 div 4 hdg) renum R8 LA

Application of div 5.4

s 73A ins 1986 No 74
am 1995 No 46

Committal or detention before decision

s 74 am 1996 Nos 6 and 82

Committal of witness or of defendant after decision

s 75 sub 1976 No 42
am 1996 No 82

Witnesses may be discharged on recognisance

s 76 am 1986 No 74; 1994 No 61

Recognisances

s 77 am 1970 No 15; 1992 No 9

Issue of warrant for non-appearance

s 78 am 1992 No 9

Endnotes

4 Amendment history

Recognisances taken out of court

s 79 am 1974 No 14; 1976 No 42; 1991 No 44; 1992 No 9; 1996 No 6

Forfeited recognisances—how enforced

s 80 am 1974 No 14; 1984 No 62; 1986 No 53; 1990 No 5; 1992 No 9; 1996 No 6

Arrest of principal by sureties

s 81 am 1937 No 28; 1976 No 42
om 1992 No 9

Conveying persons to custody

s 82 am 1976 No 42; 1996 No 82

Adjournment of proceedings

div 5.5 hdg (prev pt 5 div 5 hdg) renum R8 LA

Particular cases may be adjourned

s 84 am 1986 No 74; 1992 No 9; 1996 No 6

Proceedings when either party is not present at adjourned hearing

s 85 am 1986 No 74; 1996 No 6

Proceedings when both parties are present at adjourned hearing

s 86 am 1996 No 6

Witnesses to attend adjourned sittings

s 87 am 1977 No 61

Postponement of hearing

s 88 am 1986 No 74; 1991 No 44

Preliminary

div 6.1A hdg (prev pt 6 div 1A hdg) ins 1987 No 56
renum R8 LA

Meaning of *jury* in pt 6

s 88A ins 1987 No 56

Institution of proceedings

div 6.1 hdg (prev pt 6 div 1 hdg) renum R8 LA

Disobedience of summons

s 89 am 1977 No 61

Accused person may be excused from attendance before court

s 89A ins 1977 No 61
am 1987 No 56; 1992 No 9; 1996 No 6

Procedure where informant proposes to tender written statements to court

s 90 sub 1958 No 12
am 1967 No 1
sub 1974 No 14
am 1977 No 61; 1991 No 44; 1996 No 6

Written statements may be admitted in evidence

s 90AA ins 1974 No 14
am 1991 No 44; 1996 No 6

Preliminary examination where written statements not tendered

s 90AB ins 1974 No 14
am 1977 No 61; 1996 No 6

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

s 90ABA ins 1977 No 61

Plea of guilty in committal proceedings

s 90A ins 1958 No 12
am 1985 No 41; 1990 No 5; 1996 No 6

Court may discharge accused

s 91 am 1974 No 14; 1987 No 56

Proceedings where evidence sufficient to put accused on trial

s 92 am 1951 No 12; 1958 No 12; 1967 No 1; 1974 No 14; 1977
No 61; 1985 No 41; 1986 No 74; 1987 No 56

Committal for sentence for indictable offence tried summarily

s 92A ins 1974 No 14

Depositions as evidence

s 92B ins 1985 No 41

Admissions and confessions

s 93 am 1958 No 12; 1967 No 1; 1996 No 6

Proceedings subsequent to hearing of evidence

div 6.2 hdg (prev pt 6 div 2 hdg) renum R8 LA

Discharge or committal for trial

s 94 am 1937 No 28; 1976 No 42; 1987 No 56; 1996 No 6

Depositions of dead or absent persons

s 95 sub 1958 No 12
am 1967 No 1; 1989 No 59; 1996 No 6

Costs

div 6.2A hdg (prev pt 6 div 2A hdg) ins 1984 No 9
renum R8 LA

Discontinued proceedings

s 97 am 1937 No 28
om 1958 No 12
ins 1984 No 9
am 1987 No 56

Recognisances of witnesses

div 6.3 hdg (prev pt 6 div 3 hdg) am 1992 No 9

Endnotes

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renum R8 LA

Bail in capital offences

s 98 am 1937 No 28
om 1989 No 59

Admission of persons committed for trial to bail

s 99 am 1937 No 28; 1976 No 42; 1989 No 59
om 1992 No 9

Admission of persons committed for trial and are in prison awaiting trial to bail

s 100 am 1937 No 28; 1976 No 42; 1989 No 59
om 1992 No 9

Recognisances to be transmitted to Crown Solicitor

s 101 am 1967 No 1; 1976 No 42; 1985 No 17
om 1992 No 9

Warrant of deliverance

s 102 am 1976 No 42
om 1992 No 9

Recognisances of witnesses

div 6.3 hdg (prev pt 6 div 3 hdg) renum R8 LA

Recognisance of witnesses etc

s 103 am 1974 No 14; 1996 No 6

Court may commit refractory witness

s 105 am 1976 No 42

Miscellaneous

div 6.4 hdg (prev pt 6 div 4 hdg) renum R8 LA

Transmission of depositions etc to director of public prosecutions

s 106 am 1967 No 1; 1985 Nos 17 and 41; 1992 No 9

Delivery of documents to proper officer of court

s 107 am 1967 No 1; 1985 No 17; 1996 No 6; 1999 No 66 sch 3

Copies of depositions may be obtained by accused

s 108 am 1967 No 1; 1999 No 66 sch 3

Indictable offences dealt with summarily

s 108A ins 1985 No 41

Dismissal or adjournment in absence of informant

s 109 sub 1996 No 6

Ex parte hearing in absence of defendant

s 110 am 1974 No 14; 1986 No 83; 1989 No 59; 1996 No 6

Both parties appearing

s 112 am 1996 No 6

Where defendant does not admit the case

s 114 am 1937 No 28

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

s 115 am 1996 No 6

Conduct of summary proceedings regulated

s 116 am 1996 No 6

Service and pleading by post with respect to certain offencespt 7A hdg ins 1974 No 14
sub 1979 No 33**Interpretation**s 116A ins 1974 No 14
sub 1979 No 33
am 1984 No 10; 1990 No 5; 1993 No 4; 1996 No 6; 1998 No 54;
1999 No 79 s 5 sch 3**Meaning of *prescribed offence* for pt 7A**s 116AA ins 1999 No 79 s 5 sch 3
am 2001 No 62 amdts 1.1-1.3**Service of summons**s 116B ins 1974 No 14
sub 1979 No 33
am 1993 No 4**Giving of notice**

s 116BA ins 1993 No 4

Proof of services 116C ins 1974 No 14
sub 1979 No 33
am 1991 No 44; 1993 No 4; 1996 No 6**Pleas**s 116D ins 1974 No 14
sub 1979 No 33
am 1991 No 44; 1993 No 4**Procedure where plea of guilty entered**s 116E ins 1974 No 14
sub 1979 No 33
am 1991 No 44; 1993 No 4**Procedure where notice of intention to defend given**s 116F ins 1974 No 14
sub 1979 No 33
am 1991 No 44; 1993 No 4**Procedure where defendant pleads not guilty**

s 116FA ins 1989 No 59

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Procedure where defendant does not plead

s 116G ins 1974 No 14
sub 1979 No 33
am 1989 No 59; 1991 No 44; 1993 No 4

Restricted penalties under pt 7A

s 116H ins 1974 No 14
sub 1979 No 33; 1993 No 4
am 1996 No 6; 1998 No 25

Consequences of conviction ex parte

s 116I ins 1974 No 14
sub 1979 No 33
am 1991 No 44; 1993 No 4; 1996 No 6

Date of conviction

s 116J ins 1974 No 14
om 1979 No 33

Infringement notices for certain offences

pt 8 hdg om 1986 No 74
ins 2001 No 77 s 21

Preliminary

div 8.1 hdg ins 2001 No 77 s 21

Definitions for pt 8

s 117 om 1986 No 74
ins 2001 No 77 s 21

Purpose and effect of pt 8

s 118 om 1986 No 74
ins 2001 No 77 s 21

Regulations about infringement notice offences

s 119 om 1986 No 74
ins 2001 No 77 s 21

Infringement and reminder notices

div 8.2 hdg ins 2001 No 77 s 21

Service of infringement notices

s 120 om 1986 No 74
ins 2001 No 77 s 21

Contents of infringement notices

s 121 om 1986 No 74
ins 2001 No 77 s 21

Additional information in infringement notices

s 122 om 1986 No 74
ins 2001 No 77 s 21

Time for payment of infringement notice penalty

s 123 sub 1937 No 28
om 1986 No 74
ins 2001 No 77 s 21

Extension of time to pay penalty

s 124 om 1986 No 74
ins 2001 No 77 s 21

Effect of payment of infringement notice penalty

s 125 am 1937 No 28
om 1986 No 74
ins 2001 No 77 s 21

Application for withdrawal of infringement notice

s 126 om 1986 No 74
ins 2001 No 77 s 21

Withdrawal of infringement notice

s 127 sub 1937 No 28
om 1986 No 74
ins 2001 No 77 s 21

Guidelines about withdrawal of infringement notices

s 128 am 1937 No 28
om 1986 No 74
ins 2001 No 77 s 21

Reminder notices

s 129 sub 1967 No 1
am 1980 No 4
om 1986 No 74
ins 2001 No 77 s 21

Contents of reminder notices

s 130 om 1986 No 74
ins 2001 No 77 s 21

Additional information in reminder notices

s 131 om 1986 No 74
ins 2001 No 77 s 21

Disputing liability

div 8.3 hdg ins 2001 No 77 s 21

Disputing liability for infringement notice offence

s 132 am 1967 No 1; 1969 No 12; 1977 No 4
om 1986 No 74
ins 2001 No 77 s 21

Extension of time to dispute liability

s 133 am 1937 No 28
om 1986 No 74

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ins 2001 No 77 s 21

Procedure if liability disputed

s 134 ins 2001 No 77 s 21

Approval of settlement of action by infant or person of unsound mind

s 134A ins 1968 No 25
om 1986 No 74

Money recovered by infant or person of unsound mind

s 134B ins 1968 No 25
am 1978 No 46
om 1986 No 74

Miscellaneous

div 8.4 hdg ins 2001 No 77 s 21

Delegation of administering authority's functions

s 135 am 1937 No 28
om 1986 No 74
ins 2001 No 77 s 21

Evidentiary certificates

s 136 om 1986 No 74
ins 2001 No 77 s 21

Default summons

s 137 om 1986 No 74

Service of default summons

s 138 om 1986 No 74

Ground of defence to be in writing lodged with the Clerk

s 139 am 1937 No 28; 1958 No 12; 1970 No 15
om 1986 No 74

Trial

s 140 am 1958 No 12; 1970 No 15
om 1986 No 74

General

div 9.1 hdg (prev pt 9 div 1 hdg) renum R8 LA

Minute of decision and notice to defendant

s 141 am 1972 No 37; 1990 No 5; 1991 No 44; 1993 No 4; 1996 Nos
6 and 68; 1998 No 25; 1999 No 91 s 13 sch 2

Formal convictions and orders

s 142 am 1937 No 28; 1991 No 44

Proceedings in case of dismissal

s 143 am 1986 No 74; 1991 No 44

Copies of informations and other documents

s 144 sub 1967 No 1

am 1980 No 10; 1986 No 74; 1991 Nos 38 and 44; 1994 No 4

Imprisonment in first instance

s 145 am 1996 No 6

Enforcement of fines

div 9.2 hdg (prev pt 9 div 2 hdg) sub 1994 No 61
am 1998 No 25
renum R8 LA

Definitions for div 9.2

s 146 om 1986 No 57
ins 1989 No 60
sub 1991 No 112
am 1993 No 4; 1998 No 25; 1999 No 91 s 13 sch 2

No imprisonment for breach of reparation order

s 146A ins 1990 No 1
am 1996 No 6
om 1998 No 25

Payment of fine

s 147 am 1968 No 25; 1977 No 34; 1986 No 74; 1989 No 60; 1990 No
5; 1991 No 112; 1992 No 23; 1993 No 4; 1994 Nos 4, 45 and
61; 1995 No 46
sub 1998 No 25

Notice of address etc

s 147A ins 1989 No 60
am 1991 Nos 44 and 112; 1993 No 48
sub 1998 No 25

Access to particulars of address

s 147B ins 1998 No 25

Doubtful service

s 147C ins 1998 No 25

Court may allow time to pay

s 148 am 1974 No 14; 1979 No 33; 1991 No 44; 1998 No 25

Penalty notice

s 149 om 1986 No 74
ins 1998 No 25

Default

s 150 am 1974 No 14; 1977 No 34; 1979 No 33; 1986 No 74; 1989 No
60; 1991 No 112; 1993 No 4; 1999 No 79 s 5 sch 3
sub 1998 No 25

Parking offences—further orders in respect of natural persons

s 150A ins 1989 No 60
am 1991 Nos 44 and 112; 1993 No 48

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om 1998 No 25

Parking offences—further orders in respect of bodies corporate

s 150B ins 1989 No 60
am 1991 Nos 44 and 112; 1993 No 48; 1994 No 61
om 1998 No 25

Further orders—service

s 150C ins 1989 No 60
am 1991 No 44
om 1998 No 25

Default notice

s 151 orig s 151 renum as s 185
ins 1998 No 25

Special arrangements

s 152 orig s 152 renum as s 186
ins 1998 No 25

Notice for suspension of driver licence etc

s 153 am 1937 No 28; 1940 No 22; 1989 No 60; 1991 No 44
om 1998 No 25
sub 1999 No 79 s 5 sch 3

Parking offences—instalment payments

s 153A ins 1989 No 60
am 1991 No 44
om 1998 No 25

Consequence of non-compliance with certain orders

s 153B ins 1989 No 60
am 1991 No 44
om 1998 No 25

Part payments

s 153C ins 1989 No 60
am 1991 No 44
om 1998 No 25

Access to personal information

s 154 orig s 154 renum as s 187
ins 1998 No 25

Ascertainment of capacity to pay fine

s 154A ins 1998 No 25

Garnishee orders and writs of execution

s 154B ins 1998 No 25

Application of Magistrates Court (Civil Jurisdiction) Act, pt 19

s 154C ins 1998 No 25

Committal to prison—fine defaulters

s 154D ins 1998 No 25

Moneys to be paid to registrar

s 155 hdg am 1991 No 44

s 155 am 1991 No 44

Costs to be paid to Clerk by Registrar of Motor Vehicles

s 155A hdg am 1991 No 44

s 155A ins 1989 No 60
am 1991 Nos 44 and 112
om 1998 No 25

Execution to cease on payment of amount due

s 156 am 1977 No 34

Payment of amount to keeper or superintendent

s 157 am 1976 No 42; 1977 No 34; 1991 No 44; 1998 No 25

Fine satisfied by imprisonment

s 158 am 1986 No 74; 1991 No 44
om 1994 No 61
ins 1998 No 25

Remission

s 159 hdg am 1991 No 44

s 159 am 1991 No 44
om 1994 No 61
ins 1998 No 25

Conviction or order quashed or set aside

s 160 om 1994 No 61
ins 1998 No 25
am 1999 No 79 s 5 sch 3

Other enforcement provisions not affected

s 161 am 1986 No 74
om 1994 No 61
ins 1998 No 25

Procedure on execution

s 162 am 1953 No 14; 1967 No 1; 1991 No 44; 1994 No 81
om 1994 No 61

Warrant of distress after appeal

s 163 om 1972 No 37

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

s 164 am 1990 No 5
om 1994 No 61

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Time of application to be recorded

s 165 am 1953 No 14; 1991 No 44
om 1994 No 61

Warrant of execution, when to be executed

s 166 am 1967 No 1; 1994 No 81
om 1994 No 61

Reciprocal enforcement of fines against bodies corporate

div 9.2A hdg (prev pt 9 div 2A hdg) ins 1982 No 2
renum R8 LA

Definitions for div 9.2A

s 166A ins 1982 No 2
am 1991 No 44

Declarations relating to reciprocating courts

s 166B ins 1982 No 2
am 2001 No 44 amdts 1.2752-1.2754

Enforcement of fine

s 166C ins 1982 No 2
am 1991 No 44; 1994 No 61

Effect of enforcement by reciprocating court

s 166D ins 1982 No 2
am 1991 No 44

Registrar to notify payment of Territory fine

s 166E hdg am 1991 No 44
s 166E ins 1982 No 2
am 1991 No 44

Adverse claims

pt 9 div 3 hdg om 1986 No 74

Adverse claim to goods seized

s 167 am 1953 No 14
om 1986 No 74

Rules in Interpleader summons

s 168 om 1986 No 74

Right of landlord not affected

s 169 om 1986 No 74

Attachment of debts

pt 9 div 4 hdg om 1994 No 61

Oral examination of debtor as to debts owing to him

s 170 am 1968 No 25; 1991 No 44
om 1994 No 61

Order nisi for attachment of debt

s 171 am 1937 No 28; 1991 No 44
om 1994 No 61

Service of order nisi to bind debts

s 172 am 1993 No 4
om 1994 No 61

Where garnishee does not dispute debt

s 173 sub 1968 No 25
am 1970 No 15; 1991 No 44
om 1994 No 61

Where garnishee disputes debt

s 174 am 1986 No 74
om 1994 No 61

Issue may be filed

s 175 om 1994 No 61

Where third party claims lien or charge on debt

s 176 om 1994 No 61

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

s 177 om 1994 No 61

Payment by debtor under order to be valid discharge

s 178 am 1937 No 28
om 1994 No 61

Debt attachment book

s 179 am 1991 No 44
om 1994 No 61

Costs of attachment

s 180 om 1994 No 61

Imprisonment of fraudulent debtors

pt 9 div 5 hdg om 1994 No 61

Defendants in civil cases not to be imprisoned except under certain circumstances

s 181 am 1937 No 28; 1991 No 44
om 1994 No 61

Warrant in default of compliance

s 182 am 1991 No 44
om 1994 No 61

Ex parte order of commitment

s 183 am 1991 No 44
om 1994 No 61

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Miscellaneous

div 9.6 hdg (prev pt 9 div 6 hdg) renum R8 LA

Enforcement of costs against informant

s 184 orig s 184 am 1991 No 44
om 1994 No 61
ins 1998 No 25 s 17

Committal to prison—orders not involving payment of money

s 185 orig s 185 sub 1967 No 1
om 1972 No 37
(prev s 151) am 1977 No 34; 1996 No 6
renum 1998 No 25

Warrant of commitment to prison

s 186 orig s 186 om 1994 No 61
(prev s 152) sub 1996 No 6
renum 1998 No 25
am 1998 No 67

Warrant of commitment where defendant already in prison

s 187 orig s 187 om 1994 No 61
(prev s 154) renum 1998 No 25

Mitigation of payment by court

s 188 am 1967 No 1; 1982 No 3; 1985 No 41; 1990 No 5; 1994 No 81

Scale of imprisonment for non-payment of money

s 189 am 1967 No 1; 1977 No 34; 1978 No 46
sub 1993 No 4
am 1994 No 61
om 1998 No 25

Proceeds of warrants of execution

s 190 sub 1986 No 74
am 1990 No 5; 1991 No 44
om 1994 No 61

Accounts to be kept in approved form

s 191 hdg am 2001 No 44 amdt 1.2755
s 191 am 1967 No 1; 1979 No 33; 1991 No 44; 1994 No 81; 2001 No
44 amdt 1.2756

Executors and administrators may enforce orders in civil matters

s 192 am 1991 No 44
om 1994 No 61

Forfeited goods may be sold

s 193 am 1990 No 5

Warrant of commitment or writ of execution not void for form only

s 194 am 1994 No 61

Convictions etc to be transmitted to registrar of Supreme Court

s 195 am 1937 No 28; 1992 No 23

Restraining orders

pt 10 hdg sub 1990 No 65
om 2001 No 90 amdt 1.79

Definitions for pt 10

s 196 am 1937 No 28
sub 1990 No 65
am 1992 No 37; 2000 No 60 s 4
om 2001 No 90 amdt 1.79

Power to make

s 197 sub 1990 No 65
om 2001 No 90 amdt 1.79

Entitlement to apply

s 198 sub 1990 No 65
am 1998 No 38; 2000 No 60 s 5
om 2001 No 90 amdt 1.79

Powers exercisable in care and protection proceedings

s 198A ins 1999 No 64 s 4 sch 2
om 2001 No 90 amdt 1.79

Special requirements—applications by community advocate or employer

s 198B ins 2000 No 60 s 6
om 2001 No 90 amdt 1.79

Hearing dates

s 199 am 1937 No 28
sub 1990 No 65
am 1991 No 44
om 2001 No 90 amdt 1.79

Parties—applications by persons other than aggrieved persons

s 200 am 1937 No 28
sub 1990 No 65
am 1998 No 38; 2000 No 60 s 7
om 2001 No 90 amdt 1.79

Parties—applications involving children

s 201 sub 1990 No 65
am 1991 No 44
om 2001 No 90 amdt 1.79

Representation of children

s 202 sub 1990 No 65
om 2001 No 90 amdt 1.79

Hearing of applications

s 203 sub 1990 No 65

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am 1995 No 46; 1999 No 34
om 2001 No 90 amdt 1.79

Matters to be taken into account

s 204 sub 1990 No 65
om 2001 No 90 amdt 1.79

Restrictions in orders

s 205 am 1986 No 74
sub 1990 No 65
om 2001 No 90 amdt 1.79

Consent orders

s 206 sub 1990 No 65
om 2001 No 90 amdt 1.79

Jurisdiction under s 206

s 206AA ins 1999 No 34
om 2001 No 90 amdt 1.79

Service of applications

s 206A ins 1990 No 65
am 1991 No 44; 2000 No 60 s 8; 2001 No 44 amdt 1.2757
om 2001 No 90 amdt 1.79

Procedure in absence of respondent

s 206B ins 1990 No 65
om 2001 No 90 amdt 1.79

Interim restraining orders

s 206C ins 1990 No 65
om 2001 No 90 amdt 1.79

Seizure of firearms

s 206D ins 1990 No 65
am 1991 No 9; 1996 No 74; 1997 No 25
om 2001 No 90 amdt 1.79

Explaining proposed orders

s 206E ins 1990 No 65
am 1992 No 37
om 2001 No 90 amdt 1.79

Counselling

s 206F ins 1990 No 65
om 2001 No 90 amdt 1.79

Power of court to make orders where person charged

s 206G ins 1990 No 65
om 2001 No 90 amdt 1.79

Duration of orders

s 206H ins 1990 No 65

om 2001 No 90 amdt 1.79

Exercise of certain powers by registrar

s 206I ins 2001 No 70 amdt 1.67
om 2001 No 90 amdt 1.79

Variation and revocation of orders

s 206J ins 1990 No 65
am 1991 No 44; 1999 No 64 s 4 sch 2
om 2001 No 90 amdt 1.79

Service etc of orders

s 206K ins 1990 No 65
am 1991 No 44; 1996 No 51; 2001 No 44 amdt 1.2758, amdt
1.2759
om 2001 No 90 amdt 1.79

Offence

s 206L ins 1990 No 65
am 1992 No 37; 1994 No 81; 1997 No 25
om 2001 No 90 amdt 1.79

Service other than personal service

s 206M ins 1990 No 65
om 2001 No 90 amdt 1.79

Service by police officers

s 206N ins 1990 No 65
am 1991 No 44
om 2001 No 90 amdt 1.79

Restriction on publication of reports of proceedings

s 206P ins 1990 No 65
am 1994 No 81; 1998 No 38
om 2001 No 90 amdt 1.79

Limits of restriction on publication

s 206PA ins 1998 No 38
om 2001 No 90 amdt 1.79

Application not invalid only because made under wrong Act

s 206PB ins 1998 No 38
om 2001 No 90 amdt 1.79

Appeals

s 206Q ins 1990 No 65
am 1995 No 46
om 2001 No 90 amdt 1.79

Application of Crimes Act

s 206R ins 1990 No 65
om 2001 No 90 amdt 1.79

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Appeals to the Supreme Court

pt 11 hdg sub 1972 No 37

The appellate jurisdiction of the Supreme Court

div 11.1 hdg (prev pt 11 div 1 hdg) ins 1972 No 37
renum R8 LA

Jurisdiction of Supreme Court

s 207 sub 1937 No 28
am 1967 No 1; 1968 No 25
sub 1972 No 37
am 1985 No 67; 1990 No 65; 2001 No 90 amdt 1.80

Appeals

div 11.2 hdg (prev pt 11 div 2 hdg) ins 1972 No 37
renum R8 LA

Appeals to which div 11.2 applies

s 208 sub 1937 No 28
am 1953 No 14; 1958 No 12; 1968 No 25
sub 1972 No 37
am 1984 No 16; 1985 Nos 41 and 67; 1986 Nos 33 and 74;
1990 No 65; 1992 No 9; 1994 No 61; 1996 No 6

Appeals in other cases

s 208A ins 1958 No 12
am 1967 No 1; 1968 No 25
om 1972 No 37

Substituted service of notice of appeal

s 208B ins 1958 No 12
om 1972 No 37

Institution of appeal

s 209 am 1934 No 17
sub 1937 No 28
am 1967 No 1
sub 1972 No 37
am 1984 No 61; 1985 No 67
sub 1986 No 74

Substituted service of notice of appeal

s 210 am 1934 No 17
sub 1937 No 28; 1972 No 37

When appeal deemed to be duly instituted

s 211 sub 1937 No 28; 1972 No 37; 1985 No 18
om 1986 No 74

When appeal deemed to be duly instituted

s 212 sub 1937 No 28; 1958 No 12
am 1967 No 1
sub 1972 No 37

om 1985 No 18

Increase in amount of security

s 213 sub 1937 No 28; 1972 No 37
om 1985 No 18

Appeals in cases other than civil cases

s 214 sub 1937 No 28
am 1967 No 1
sub 1972 No 37
am 1984 No 61; 1990 No 65

Appeals in relation to grant of bail

s 214A ins 1986 No 33
om 1992 No 9

Appeals in civil cases

s 215 om 1937 No 28
ins 1972 No 37
am 1985 No 67
om 1986 No 74

Stay of execution pending appeal in certain cases

s 216 om 1937 No 28
ins 1972 No 37
am 1984 No 62; 1986 No 74; 1992 No 9; 1995 No 41

Execution not to be stayed in other cases except by order of Supreme Court

s 217 om 1937 No 28
ins 1972 No 37
om 1986 No 74

Orders by Supreme Court on appeals

s 218 om 1937 No 28
ins 1972 No 37
sub 1984 No 61
am 1985 No 67

Barring of right of appeal under div 11.2 if order to review is granted

s 219 om 1937 No 28
ins 1972 No 37
am 1985 No 67; 1986 No 74

Orders to review

div 11.3 hdg (prev pt 11 div 3 hdg) ins 1972 No 37
renum R8 LA

Interpretation

s 219A ins 1972 No 37
om 1994 No 61

Appeals by way of orders to review

s 219B ins 1972 No 37

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am 1974 No 14; 1979 No 41; 1984 No 16; 1985 Nos 41 and 67;
1990 No 9; 1994 No 61; 1996 No 6

Grant of order nisi to review

s 219C ins 1972 No 37
am 1974 No 14; 1979 No 41; 1984 No 61; 1985 Nos 41 and 67;
1990 No 9; 1996 No 6

Security for costs and stay of execution

s 219D ins 1972 No 37
am 1985 Nos 41 and 67; 1990 No 9; 1992 No 9; 1996 No 6

Non-appearance of applicant

s 219E ins 1972 No 37
am 1996 No 6

Powers of Supreme Court

s 219F ins 1972 No 37
am 1974 No 14; 1979 No 41; 1985 Nos 41 and 67; 1990 No 9

Absconding appellants

pt 11 div 3A hdg ins 1984 No 62
om 1992 No 9

Interpretation

s 219G ins 1984 No 62
am 1986 No 74
om 1992 No 9

Warrant of apprehension of appellant

s 219H ins 1984 No 62
om 1992 No 9

Power of Court where person apprehended

s 219J ins 1984 No 62
om 1992 No 9

Effect of apprehension of appellant

s 219K ins 1984 No 62
om 1992 No 9

Stay of execution not affected

s 219L ins 1984 No 62
om 1992 No 9

General Provisions

div 11.4 hdg (prev pt 11 div 4 hdg) ins 1972 No 37
renum R8 LA

Forfeiture of recognizance

s 220 am 1937 No 28; 1972 No 37
sub 1984 No 62
om 1992 No 9

Magistrate may order appellant to be liberated

s 221 om 1937 No 28

Control of Supreme Court over summary convictions

s 222 am 1937 No 28; 1985 No 67; 1986 No 74

Amendment

s 223 am 1937 No 28; 1985 No 67; 1986 No 74

In cases of certiorari

s 224 am 1937 No 28

Notice dispensed with

s 225 am 1937 No 28; 1967 No 1; 1985 No 17

Power of court or judge to admit to bail

s 226 am 1937 No 28; 1992 No 9

Respecting the amendment of convictions etc

s 227 am 1937 No 28; 1985 No 67; 1996 No 6

Want of summons or information

s 228 am 1986 No 74

Provisions applicable in relation to security given for costs of appeals 230 am 1937 No 28
sub 1972 No 37
am 1985 No 18; 1991 No 44**Magistrate sued for act not within jurisdiction**

s 231 am 1937 No 28; 1953 No 14; 1994 No 61

Warrant or writ by magistrate on order of court

s 233 am 1994 No 61

No action for acts done under order of Supreme Court

s 234 am 1937 No 28

No action where proceedings confirmed on appeal

s 235 am 1994 No 61

Actions in cases prohibited

s 236 am 1937 No 28

Limitation of actions

s 237 om 1985 No 66

Notice of actions

s 238 om 1985 No 66

Payment of money into court

s 239 am 1937 No 28; 1986 No 74

No action against magistrate for judicial acts in Magistrates Court

s 240 am 1985 No 67

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Verdict for defendant

s 242 am 1937 No 28; 1986 No 74
sub 1996 No 6

Damages

s 243 am 1966 No 2
sub 1994 No 61

Costs

pt 13 hdg sub 1953 No 14
am 1994 No 4

Award of costs

s 244 am 1937 No 28; 1953 No 14; 1986 No 74; 1994 No 61

Court fees

s 245 sub 1953 No 14; 1980 No 10
am 1991 Nos 38 and 44
om 1994 No 4

Remission of fees

s 245A ins 1937 No 28
sub 1986 No 83
am 1989 No 55; 1990 No 5; 1991 No 44; 1993 No 4
om 1994 No 4

Solicitor's costs

s 246 sub 1937 No 28
om 1986 No 74

Witnesses expenses

s 247 sub 1953 No 14; 1967 No 1
am 1996 No 6

Court and tribunal fees

pt 13A hdg orig pt 13A hdg ins 1974 No 14
om 1992 No 9
ins 1994 No 4
sub 2000 No 1 s 3 sch

Definitions for pt 13A

s 248 om 1994 No 61
am 2001 No 18 s 174

Determination of fees

s 248A ins 1974 No 14
am 1986 No 53; 1990 No 5
om 1992 No 9
ins 1994 No 4
am 1997 No 94; 1998 No 25
sub 2000 No 1 s 3 sch
am 2001 No 44 amdt 1.2760

Payment of fees

s 248B ins 1974 No 14
am 1986 No 53; 1990 No 5
om 1992 No 9
ins 1994 No 4
sub 2000 No 1 s 3 sch
am 2001 No 44 amdt 1.2761

Remission, refund, deferral, waiver and exemption of fees

s 248C ins 1974 No 14
om 1992 No 9
ins 1994 No 4
am 1994 No 45; No. 1995 No 46; 1997 No 96; 1999 No 66
sch 3; 1999 No 64 s 4 sch 2
sub 2000 No 1 s 3 sch

Recovery of fees in non-criminal proceedings if fees otherwise not payable

s 248D ins 1974 No 14
am 1986 No 53
om 1992 No 9
ins 1994 No 4
sub 2000 No 1 s 3 sch

Recovery of fees in criminal proceedings if fees not otherwise payable

s 248E ins 1994 No 4
sub 2000 No 1 s 3 sch

Review of decisions

s 248F ins 1994 No 4
am 1996 No 6
sub 2000 No 1 s 3 sch

Securities taken under Act

s 249 am 1991 No 44

Recovery of sum due under security

s 250 ins 1937 No 28
am 1986 No 74; 1991 No 44; 1992 No 9

Enforcement of payment of sum due by principal

s 251 om 1937 No 28

Sums paid by surety may be recovered from principal

s 252 am 1937 No 28; 1986 No 74; 1992 No 9

Payment enforced by security

s 253 am 1992 No 9

Enforcement of recognisance

s 254 sub 1974 No 14
am 1986 Nos 53 and 74; 1990 No 5; 1991 No 44; 1992 No 9;
1994 No 61

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Directions as to procedure

s 254A ins 1989 No 59

Appearance by audiovisual or audio links

s 254B ins 1999 No 22 s 22
am 2000 No 17 s 3 sch 1

Contempt in the face of the court

s 255 am 1967 No 1; 1972 No 37; 1990 No 5
sub 1993 No 4
am 1994 Nos 66 and 81; 1999 No 22 s 23

Refusal or failure to give evidence—offence

s 255AA ins 1994 No 61
am 1995 No 46; 1996 No 6; 1998 Nos 25 and 54

Refusal or failure to give evidence—committal

s 255AB ins 1994 No 61
am 1995 No 46

Commitment to remand centre

s 255A ins 1976 No 42
am 1995 No 41; 1996 No 6; 1998 No 25

Registrar to give directions for preparation of transcript

s 255B hdg am 1991 No 44
s 255B ins 1980 No 4
am 1986 No 71; 1991 No 44

Applications for transcripts

s 255C ins 1980 No 4
am 1986 Nos 71 and 83; 1988 No 45; 1991 Nos 38 and 44;
1993 No 4; 1994 No 4; 1999 No 22 s 24

Forms

s 256 am 1967 No 1; 1970 No 15; 1974 No 14; 1979 No 33; 1993 No
4; 2001 No 44 amdts 1.2762-1.2764
(8)-(11) exp 12 September 2002 (s 256 (11))

Power of Minister to determine fees

s 257 am 1937 No 28
om 1986 No 74
ins 1991 No 38
om 1994 No 4

Power to make rules or regulations

s 258 am 1932 No 21; 1937 No 28; 1953 No 14; 1986 No 74; 1990 No
5; 1991 No 44; 2001 No 44 amdts 1.2765-1.2768

Transitional

pt 16 hdg ins 1999 No 34
om 2001 No 90 amdt 1.81

Application of s 203 (as amended) and s 206AA

s 259 ins 1999 No 34
om 2001 No 90 amdt 1.81
exp 2 July 2004 (s 259 (5))

Oath

sch 1 orig sch 1 am 1937 No 28; 1938 No 25 (as am 1938 No 35);
 1938 No 35; 1953 No 14; 1958 No 12; 1966 No 2; 1967 No 1;
 1968 No 25; 1972 No 37; 1974 No 14; 1976 No 42; 1977 Nos
 34 and 61; 1978 No 46; 1979 No 33; 1984 No 62; 1985 No
 67; 1986 No 74; 1989 No 59; 1990 No 65; 1991 No 44; 1992
 Nos 9 and 37; 1993 No 4; 1994 No 61; 1996 Nos 6 and 82;
 1998 No 67
 om 2001 No 44 amdt 1.2769
 (prev sch 2) am 1938 No 25 (as am 1938 No 35)
 om 1977 No 4
 ins 1977 No 4
 am 1997 No 94
 renum 2001 No 44 amdt 1.2770

Oath

sch 2 renum as sch 1

sch 3 am 1938 No 25 (as am 1938 No 35); 1976 No 42; 1985 No 67;
 1991 No 44
 om 2001 No 44 amdt 1.2771

Fees

sch 4 am 1937 Nos 5 and 28
 om 1953 No 14

sch 5 om 1953 No 14

Witnesses' expenses

sch 6 om 1953 No 14

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

| Republication No | Amendments to | Republication date |
|------------------|----------------|--------------------|
| 1 | Act 1992 No 37 | 3 August 1992 |
| 2 | Act 1993 No 91 | 31 December 1993 |
| 3 | Act 1994 No 81 | 10 April 1995 |

Endnotes

6 Uncommenced amendments

| | | |
|---|----------------|------------------|
| 4 | Act 1997 No 25 | 30 May 1997 |
| 5 | Act 1997 No 96 | 1 June 1998 |
| 6 | Act 1999 No 12 | 31 March 1999 |
| 7 | Act 2000 No 60 | 20 November 2000 |

6 Uncommenced amendments

The following amendments have not been included in this republication because they were uncommenced at the republication date:

1 **Leases (Commercial and Retail) Act 2001 No 18 s 174**

174 Amendment of Magistrates Court Act

Section 248 of the *Magistrates Court Act 1930* is amended—

(a) by omitting paragraph (h) of the definition of *relevant legislation* and substituting the following paragraph:

“(h) the *Leases (Commercial and Retail) Act 2001*;” and

(b) by omitting paragraph (j) of the definition *relevant legislation*; and

(c) by omitting paragraph (e) of the definition *tribunal*.

2 **Road Transport (Public Passenger Services) Act 2001 No 62 pt 1.1**

Part 1.1 Magistrates Court Act 1930

[1.1] Section 116AA (2), definition of *road transport legislation*, paragraphs (d) to (g)

renumber as paragraphs (e) to (h)

[1.2] Section 116AA (2), definition of *road transport legislation*, new paragraph (d)

insert

(d) the *Road Transport (Public Passenger Services) Act 2001*;

[1.3] Section 116AA (2), definition of *road transport legislation*, paragraph (g)

omit

(f)

substitute

(g)

3 Criminal Code 2001 No 64 sch 1

[1.2] Section 59

omit

4 Fair Trading Legislation Amendment Act 2001 No 77 pt 4

21 New part 8

insert

Part 8 Infringement notices for certain offences

Division 8.1 Preliminary

117 Definitions for pt 8

In this part:

administering authority, for an infringement notice offence, means the entity that, under the regulations, is the administering authority for the offence.

authorised person means—

- (a) for an infringement notice for an infringement notice offence—
 - (i) the administering authority; or

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- (ii) a person who is authorised, in writing, by the administering authority to serve an infringement notice for the offence; or
 - (iii) anyone else who, under the regulations, may serve an infringement notice for the offence; or
- (b) for a reminder notice for an infringement notice offence—
- (i) the administering authority; or
 - (ii) a person who is authorised, in writing, by the administering authority to serve a reminder notice for the offence; or
 - (iii) anyone else who, under the regulations, may serve a reminder notice for the offence.

date of service, of an infringement notice or reminder notice that has been, or is to be, served on a person, means the date the notice is served on the person.

infringement notice means a notice under section 120 (Service of infringement notices).

infringement notice offence means an offence declared under the regulations to be an offence to which this part applies.

infringement notice penalty, for a person for an infringement notice offence, means—

- (a) the amount prescribed under the regulations as the penalty payable by the person for the offence under an infringement notice for the offence; or
- (b) if a reminder notice has also been served on the person for the offence—the total of the amount mentioned in paragraph (a) and the amount prescribed under the regulations as the amount payable by the person for the cost of serving the reminder notice.

reminder notice means a notice under section 129 (Reminder notices).

118 Purpose and effect of pt 8

- (1) The purpose of this part is to create a system of infringement notices for certain offences as an alternative to prosecution.
- (2) This part does not—
 - (a) require an infringement or reminder notice to be served on a person; or
 - (b) affect the liability of a person to be prosecuted for an offence if—
 - (i) an infringement or reminder notice is not served on the person for the offence; or
 - (ii) the person does not comply with an infringement or reminder notice served on the person for the offence; or
 - (iii) an infringement notice served on the person for the offence is withdrawn; or
 - (c) prevent the service of 2 or more infringement notices on a person for an offence; or
 - (d) limit or otherwise affect the penalty that may be imposed by a court on a person for an offence.

119 Regulations about infringement notice offences

- (1) The regulations may prescribe an offence, other than an offence for which a penalty of imprisonment may be imposed, for the definition of infringement notice offence in section 117 (Definitions for pt 8) by—
 - (a) stating the offence; or
 - (b) referring to the provision creating the offence; or

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- (c) providing that all offences, or all offences except for stated offences, against an Act or subordinate law are infringement notice offences.
- (2) Subsection (1) does not limit the ways that the regulations may prescribe an offence for that definition.
- (3) The regulations may, for the definition of infringement notice penalty in section 117, prescribe—
 - (a) an amount as the penalty payable by anyone for an offence if it is dealt with under this part; or
 - (b) different amounts as the penalties payable for different offences if they are dealt with under this part; or
 - (c) different amounts as the penalties payable for the same kind of offence committed by different people or in different circumstances if the offence is dealt with under this part.
- (4) However, an infringement notice penalty prescribed for a person for an offence must not exceed the maximum fine that could be imposed by a court on the person for the offence.
- (5) Subsection (3) does not limit the ways that the regulations may prescribe an amount for that definition.

Division 8.2 Infringement and reminder notices

120 Service of infringement notices

If an authorised person believes, on reasonable grounds, that a person has committed an infringement notice offence, the authorised person may serve a notice (an *infringement notice*) on the person for the offence.

121 Contents of infringement notices

- (1) An infringement notice served on a person by an authorised person for an infringement notice offence must—

-
- (a) be identified by a unique number; and
 - (b) state the date of service of the notice; and
 - (c) state—
 - (i) the full name, or surname and initials, and address of the person on whom the notice is served; or
 - (ii) the particulars that are, under the regulations, identifying particulars for the person; and
 - (d) give brief details of the offence, including the Act or subordinate law, and the provision of it, contravened by the person, and—
 - (i) if the offence took place over a period—the period, or approximate period, when the offence was committed; or
 - (ii) in any other case—the place where the offence was committed and the date and approximate time of the offence; and
 - (e) state the infringement notice penalty payable by the person for the offence; and
 - (f) contain the information required by section 122 (Additional information in infringement notices); and
 - (g) identify the authorised person in accordance with the regulations; and
 - (h) include any other information required under the regulations and any additional information that the administering authority considers appropriate.
- (2) The regulations may provide that subsection (1) (c) does not apply to an infringement notice.

122 Additional information in infringement notices

- (1) The infringement notice must also tell the person on whom it is served that—

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- (a) the person may pay the infringement notice penalty for the offence or dispute liability for the offence within 28 days after the day when the notice is served on the person (the *date of service* of the notice); and
 - (b) the person may apply to the administering authority for additional time in which to pay the penalty or dispute liability for the offence; and
 - (c) the notice may be withdrawn before or after the penalty is paid; and
 - (d) if the person pays the penalty within the 28 days (or any additional time allowed by the administering authority), then, unless the infringement notice is withdrawn and any penalty refunded—
 - (i) any liability of the person for the offence is discharged; and
 - (ii) the person will not be prosecuted in court for the offence; and
 - (iii) the person will not be taken to have been convicted of the offence; and
 - (e) if the person wishes to dispute liability for the offence, the issue may be referred to the Magistrates Court; and
 - (f) if the Magistrates Court finds against the person or the person is prosecuted in court for the offence, the person may be convicted of the offence and ordered to pay a penalty and costs, and be subject to other court orders; and
- 7 (g) if the person does not pay the infringement notice penalty, or disputes liability for the offence, within the 28 days (or any additional time allowed by the administering authority), a reminder notice may be served on the person for the offence or the person may be prosecuted in court for the offence; and

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- (h) if a reminder notice is served on the person, the infringement notice penalty is increased by the amount payable by the person for the cost of serving the reminder notice.
 - (2) In addition, the infringement notice must—
 - (a) explain how the person may pay the infringement notice penalty or dispute liability for the offence; and
 - (b) explain how the person may apply for additional time to pay the infringement notice penalty or dispute liability for the offence.

123 Time for payment of infringement notice penalty

The infringement notice penalty payable by a person under an infringement notice or reminder notice is payable—

- (a) within 28 days after the date of service of the notice; or
- (b) if the person applies to the administering authority within the 28 days for additional time to pay and the additional time is allowed—within the additional time allowed by the administering authority; or
- (c) if the person applies to the administering authority within the 28 days for additional time to pay and the application is refused—within 7 days after the day the person is told of the refusal or 28 days after the date of service of the notice, whichever is later.

124 Extension of time to pay penalty

- (1) The person on whom an infringement notice or reminder notice is served may apply, in writing, to the administering authority, within 28 days after the date of service of the notice, for a stated additional time (of not longer than 6 months) in which to pay the infringement notice penalty.
- (2) The administering authority must—

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- (a) allow or refuse to allow the additional time; and
- (b) tell the person in writing of the decision and, if the decision is a refusal, the reasons for it.

125 Effect of payment of infringement notice penalty

- (1) This section applies if—
 - (a) an infringement notice has been served on a person for an infringement notice offence; and
 - (b) the person pays the infringement notice penalty for the offence in accordance with this part; and
 - (c) when the payment is made, the infringement notice had not been withdrawn and an information had not been laid in the Magistrates Court against the person for the offence.

Note Section 127 (Withdrawal of infringement notice) provides for the withdrawal at any time of an infringement notice that has been served on a person. If s 125 applied to the infringement notice offence, it ceases to apply, and is taken never to have applied, on the withdrawal of the notice (see s 127 (4)).

- (2) If this section applies—
 - (a) any liability of the person for the offence is discharged; and
 - (b) the person must not be prosecuted in a court for the offence; and
 - (c) the person is not taken to have been convicted of the offence.
- (3) If 2 or more infringement notices were served on the person for the offence, then, unless all the infringement notices have been withdrawn, subsection (2) applies to the person in relation to the offence if the person pays, in accordance with this part, the infringement notice penalty in relation to any of the notices (together with any costs and disbursements payable under this part in relation to the notice).

126 Application for withdrawal of infringement notice

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- (1) The person on whom an infringement notice for an infringement notice offence is served may apply to the administering authority, in writing, for the withdrawal of the notice within 28 days after the day when the infringement notice, or a reminder notice for the offence, is served on the person (or any additional time allowed by the administering authority).
 - (2) The administering authority must—
 - (a) withdraw the notice or refuse to withdraw the notice; and
 - (b) tell the person in writing of the decision and, if the decision is a refusal, the reasons for it.

127 Withdrawal of infringement notice

- (1) This section applies to an infringement notice that has been served on a person for an infringement notice offence.
- (2) The administering authority may, by notice served on the person, withdraw the infringement notice, whether or not—
 - (a) the person has made an application for the withdrawal of the infringement notice; or
 - (b) the infringement notice penalty (or part of it) has been paid for the offence; or
 - (c) the person has disputed liability for the infringement notice offence.
- (3) The notice must—
 - (a) include the number of the infringement notice and the date of service of the infringement notice; and
 - (b) tell the person that the infringement notice is withdrawn and, in general terms, about subsection (4).
- (4) On service of the notice—
 - (a) this part ceases to apply to the infringement notice; and

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- (b) if the infringement notice penalty (or part of it) has been paid—the amount paid must be repaid by the administering authority; and
- (c) if section 125 (Effect of payment of infringement notice penalty) applies to the offence—the section ceases to apply, and is taken never to have applied, to the offence; and
- (d) a proceeding for the offence may be taken in a court against anyone (including the person) as if the infringement notice had not been served on the person.

128 Guidelines about withdrawal of infringement notices

- (1) The Minister may, in writing, issue guidelines about the exercise of an administering authority's functions under section 126 (Application for withdrawal of infringement notice), section 127 (Withdrawal of infringement notice) or section 133 (Extension of time to dispute liability).
- (2) The administering authority for an infringement notice offence must comply with any guidelines applying to the offence.
- (3) Guidelines are a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

129 Reminder notices

An authorised person may serve a notice (a *reminder notice*) on a person if—

- (a) an infringement notice has been served on the person for an infringement notice offence; and
- (b) the infringement notice has not been withdrawn; and
- (c) the infringement notice penalty has not been paid to the administering authority within the time for payment under this part; and

- (d) written notice disputing liability has not been given to the administering authority in accordance with this part; and
- (e) a reminder notice has not previously been served on the person for the offence.

130 Contents of reminder notices

A reminder notice served on a person by an authorised person for an infringement notice offence must—

- (a) be identified by a unique number; and
- (b) include the following information:
 - (i) the Act or subordinate law, and the provision of it, contravened by the person;
 - (ii) the number of the infringement notice served on the person for the offence;
 - (iii) the date of service of the infringement notice; and
- (c) state the date of service of the reminder notice; and
- (d) state the infringement notice penalty that is now payable by the person for the offence; and
- (e) contain the information required by section 131 (Additional information in reminder notices); and
- (f) identify the authorised person in accordance with the regulations; and
- (g) include any other information required under the regulations and any additional information that the administering authority considers appropriate.

131 Additional information in reminder notices

- (1) The reminder notice must also tell the person on whom it is served that—

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- (a) the infringement notice penalty for the offence has not been paid; and
- (b) the infringement notice has not been withdrawn; and
- (c) written notice disputing liability has not been received by the administering authority from the person for the offence; and
- (d) the infringement notice penalty for the offence has been increased by the amount payable by the person for the cost of serving the reminder notice; and
- (e) the person may pay the infringement notice penalty that is now payable by the person for the offence or dispute liability for the offence within 28 days after the day when the reminder notice is served on the person (the *date of service* of the notice); and
- (f) the person may apply to the administering authority for additional time in which to pay the penalty or dispute liability for the offence; and
- (g) the infringement notice may be withdrawn before or after the penalty is paid; and
- (h) if the person pays the penalty within the 28 days (or any additional time allowed by the administering authority), then, unless the infringement notice is withdrawn and any penalty refunded—
 - (i) any liability of the person for the offence is discharged; and
 - (ii) the person will not be prosecuted in court for the offence; and
 - (iii) the person will not be taken to have been convicted of the offence; and
- (i) if the person wishes to dispute liability for the offence, the issue may be referred to the Magistrates Court; and

-
- (j) if the Magistrates Court finds against the person or the person is prosecuted in court for the offence, the person may be convicted of the offence and ordered to pay a penalty and costs, and be subject to other court orders; and
 - (k) if the person does not pay the infringement notice penalty, or dispute liability for the offence, within the 28 days (or any additional time allowed by the administering authority), the person may be prosecuted in court for the offence.
- (2) In addition, the reminder notice must—
- (a) explain how the person may pay the infringement notice penalty or dispute liability for the offence; and
 - (b) explain how the person may apply for additional time to pay the infringement notice penalty or dispute liability for the offence.

Division 8.3 Disputing liability

132 Disputing liability for infringement notice offence

- (1) A person on whom an infringement notice or reminder notice has been served for an infringement notice offence may dispute liability for the offence by written notice given to the administering authority.
- (2) The notice must set out the grounds on which the person relies.
- (3) The notice must be given to the administering authority—
 - (a) within 28 days after the date of service of the infringement notice or reminder notice; or
 - (b) if the person applies to the administering authority within the 28 days for additional time to dispute liability for the offence and the additional time is allowed—within the additional time allowed by the administering authority; or

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- (c) if the person applies to the administering authority within the 28 days for additional time to dispute liability for the offence and the application is refused—within 7 days after the day the person is told of the refusal or 28 days after the date of service of the infringement notice or reminder notice, whichever is later.

133 Extension of time to dispute liability

- (1) The person on whom an infringement notice or reminder notice is served may apply, in writing, to the administering authority, within 28 days after the date of service of the notice, for a stated additional time in which to dispute liability for the offence.
- (2) The administering authority must—
 - (a) allow or refuse to allow the additional time; and
 - (b) tell the person in writing of the decision and, if the decision is a refusal, the reasons for it.

134 Procedure if liability disputed

- (1) This section applies if a person disputes liability for an infringement notice offence by giving the administering authority a notice in accordance with section 132 (Disputing liability for infringement notice offence).
- (2) The administering authority may lay an information in the Magistrates Court against the person for the offence within 60 days after being given the notice.
- (3) The administering authority must discontinue a proceeding brought against the person for the offence if, before the hearing of the proceeding, the person pays the total of—
 - (a) the infringement notice penalty; and
 - (b) the costs (if any) prescribed under the regulations for beginning the proceeding; and

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- (c) the disbursements (if any) incurred by the administering authority up to the day payment is made.
 - (4) If subsection (3) applies, section 125 (Effect of payment of infringement notice penalty) also applies to the person in relation to the offence, even though the person paid the infringement notice penalty for the offence after an information had been laid in the Magistrates Court against the person for the offence.
 - (5) If the administering authority does not lay an information in the Magistrates Court against the person for the offence within 60 days after being given the notice, the administering authority must—
 - (a) tell the person, in writing, that no further action will be taken against the person for the offence; and
 - (b) take no further action against the person for the offence.

Division 8.4 Miscellaneous

135 Delegation of administering authority's functions

- (1) The administering authority for an infringement notice offence may delegate, in writing, all or any of the administering authority's functions under this part to an authorised person or a person prescribed under the regulations.
- (2) A person prescribed under the regulations for subsection (1) may delegate, in writing, all or any of the functions delegated to the person under that subsection to anyone else.

136 Evidentiary certificates

- (1) This section applies to a proceeding for an infringement notice offence.
- (2) A certificate that appears to be signed by or on behalf of the administering authority, and states any matter relevant to anything done or not done under this part in relation to the offence, is evidence of the matter.

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- (3) Without limiting subsection (2), a certificate given under that subsection may state any of the following:
- (a) a stated infringement notice or reminder notice was served by a stated authorised person in a stated way on a stated person on a stated date for a stated infringement notice offence;
 - (b) the administering authority did not allow additional time, or allowed stated additional time, for payment of the infringement notice penalty or to dispute liability for the offence;
 - (c) the infringement notice penalty was not paid within the time in which it was required to be paid under this part;
 - (d) the infringement notice has not been withdrawn or was withdrawn on a stated date;
 - (e) a stated address was, on a stated date, the latest business, home or email address, or fax number, of a stated person recorded in a register or other record kept by the administering authority;
 - (f) an infringement notice penalty has not been paid by, or a penalty has not been imposed on, a stated person or anyone for the offence.
- (4) A court must accept a certificate given under this section as proof of the matters stated in it if there is no evidence to the contrary.

5 **Protection Orders (Consequential Amendments) Act 2001 No 90 sch 1 pt 8**

[1.79] Part 10

omit

[1.80] Section 207

omit

(other than a decision under part 10)

[1.81] Part 16

omit

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