



Australian Capital Territory

# **Magistrates Court Act 1930    No 21**

**Republication No 19**

**Effective: 19 December 2003 - 21 March 2004**

Republication date: 19 December 2003

Last amendment made by A2003-56

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* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 19 December 2003. It also includes any amendment, repeal or expiry affecting the republished law to 19 December 2003.

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

### Kinds of republications

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- 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 does not include 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 is—

- (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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Australian Capital Territory

## Magistrates Court Act 1930

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

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Magistrates Court Act 1930*.

### 5 Interpretation for Act

(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 that 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) is 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, includes, if 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 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) If 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 when their appointments took effect or, if 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) If—
  - (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) If—
- (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) If 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 given to or imposed on the Chief Magistrate by this Act or by any other Territory law.
- (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) If a person is acting as Chief Magistrate under 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 when 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) for a person acting under 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 *Superannuation Act 1976* (Cwlth); or
- (b) a member of the Superannuation Scheme for 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 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 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 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 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 any of the powers, functions or duties given to or imposed on a magistrate by any Territory law unless he or she has made an oath or affirmation in accordance with the form in schedule 1.
- (2) An oath or affirmation for subsection (1) shall be made before the Chief Justice of the Supreme Court.

### **10Q    Acts done beyond 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 any Territory law.
- (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 any Territory law.

### **11     Authentication of acts of magistrate or registrar**

- (1) Every summons, warrant, writ, conviction, and order (other than one 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), if 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 instead of mandamus**

- (1) If 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, on affidavit of the facts, for an order calling on 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 on being served with an order absolute shall obey the order, and do the act required by it to be done.

- (3) If, 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**

If 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 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 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 court if defendant absent from Territory**

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

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

If, for an information with respect to an offence that is punishable either summarily or on indictment it appears to the court, on 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) If 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) If, 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 when he or she was required by the summons to appear before the court; or
  - (b) the court, if 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, on 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) If, 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) If, under this section, the court has set aside a conviction or order, the court may, on service of such reasonable notice on the parties as the court directs, proceed to hear and determine the matter, or may adjourn the hearing to the time and place the court thinks fit.
- (9) If 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), if 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

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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) If 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) If, 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 that is necessary 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* includes 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 is a reference to the magistrate who convicted the defendant or made the order against the defendant; and
  - (c) a reference to a *business day* is a reference to a day other than a Saturday, a Sunday or a public holiday.

- (2) Subject to subsection (3), if 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 end of 28 days after the day when 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 end of 28 days after the day when 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 when 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) If, under subsection (2), the court reopens proceedings and, in the absence of a party to those proceedings, amends a conviction or an



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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) If 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) If 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 when the original conviction was entered or when the original order was made, as the case requires.
- (13) For part 11, if 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 when 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 that 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 if 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) If 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) If 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**

If 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 on 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.
- (2) 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.
- (3) 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 (2) cannot be effected, the court or magistrate or the registrar may extend the time for hearing.
- (4) 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 4.5 Warrants of arrest**

#### **42 Issue of warrant and summons**

- (1) If 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 the 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.

- (2) 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.
- (3) Subject to subsection (4), 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.
- (4) Subsection (3) 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 indictment**

- (1) If 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 the court if the person so indicted has not already appeared and pleaded to the indictment, on application by or on behalf of the prosecutor, grant to the prosecutor or person applying on his or her behalf a certificate that the indictment has been filed.
- (2) On production of the certificate to a magistrate, the magistrate shall—
  - (a) if 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—on proof on 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 where the person is so confined, commanding him or her to detain the 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 on 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 on proof on oath that the person is the person charged and named in the 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 on 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) If 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 If 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.

#### **U 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 if, 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) If 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 end of 7 years after the date of completion of the proceedings in which the record was made.
- (6) 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 under 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.

- (7) 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 the accused person shall be competent, but not compellable, to give evidence in the 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.

### 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) If 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) If—
  - (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) If—
  - (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) If 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**

If 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 on 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) If 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 that he or she would not be bound to produce on 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) If, 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.
- (2) 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.
- (3) 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 (2) at the time the order was served on him or her.



- (4) The taking of depositions before a magistrate under subsection (1) is a proceeding for 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**

On 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 that 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 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) If 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) If 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 the period (not exceeding 15 days at any one time) that 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 end 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.

### **U** 72A Hearing of bail applications

- (1) Unless the court otherwise directs, if—
- (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 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**

If the court commits a defendant by way of remand or on 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) If 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) If 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 on recognisance.

**77 Recognisances**

If the court is authorised to discharge the witness, or person sought to be made a witness, on recognisance, it may order his or her discharge on 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 that 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, if 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**

If 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 on the back of the recognisance in what respect the conditions have not been observed, and transmit it to the proper officer, to be proceeded on 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) If 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**

If 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 the other time he or she thinks fit.

### **84 Particular cases may be adjourned**

- (1) If, 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 any other safe custody the magistrate thinks fit, or may admit the defendant to bail in accordance with the provisions of the *Bail Act 1992*.

**85 Proceedings if either party 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 if both parties 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 that 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 when 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), if 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 on him or her a reasonable time before the time therein appointed for appearing to it, the court, on 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) If—
  - (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) written notice requiring him or her to attend before the court, for the purposes of those proceedings, at the time and place specified by the court.
- (5) If—
- (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 written notice requiring him or her to attend, at the time and place 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 if informant proposes to tender written statements to court**

- (1) If 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 written notice—
  - (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 that 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 that the informant proposes to tender to the court at the preliminary examination; and
  - (e) if a thing, other than 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) If a notice has been given to an accused person under this section, the informant, not later than 7 days, or any shorter period 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) If 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, if 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) If a person has made a written statement that, 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 written notice to the informant that he or she requires the attendance at the preliminary examination of the person who made the statement.
- (4) If the accused person gives written notice to the informant under subsection (3), he or she shall file a copy of that notice with the registrar.

- (5) If 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) If, 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) If 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, if the statement is otherwise admissible under this section, admit that statement, but, if 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) If 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, other than 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 if written statements not tendered**

If 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 if 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 if 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.
- (2) Subsections (3), (4), (5) and (6) do not apply in relation to a person charged with an offence in relation to which the Crimes Act, section 375 applies.
- (3) 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.
- (4) 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.

- (5) If the court rejects the plea, the proceedings before the court shall continue as if the plea had not been made.
- (6) If 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, on 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.

- (7) If 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, on 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 under the Crimes Act, section 375;



the court shall commit the accused person to the sittings of the Supreme Court that the court directs and the Supreme Court shall deal with the accused person in accordance with subsections (8) to (12).

- (8) A committal under subsection (7) 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.
- (9) The Supreme Court shall, if 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 if 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, if for any other reason it sees fit so to do, order that the proceedings before the court where the accused pleaded guilty be continued at a time or place specified in the order.
- (10) Except where an order is made under subsection (9), 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.
- (11) The procedure relating to committal for trial applies, as nearly as may be, to a committal under subsection (7) 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.
- (12) If an order is made by the Supreme Court under subsection (9) that proceedings before a court where 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 on 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 if evidence sufficient to put accused on trial**

- (1) If 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 the 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 on 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 that 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 on your trial, notwithstanding any such promise or threat.’.

- (2) 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 under a law in force in the Territory.
- (3) If 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 on the trial of the accused person, admissible as evidence.
- (4) 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) On the summary conviction of a person charged with an indictable offence, the court may, if 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) If 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**

If—

- (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 under 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**

If, on 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 Australia; 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**

If 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**

If—

- (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 the costs the court thinks just.

## **Division 6.3 Recognisances of witnesses**

### **103 Recognisance 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, on 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) If 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 is a reference to a certified copy of depositions and the reference in that subsection to statements includes 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 on a certiorari directed to him or her, or on a rule or order directed to him or her instead of that writ, as the court would have had and been subject to on 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) If 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 for offences punishable summarily

### 108A Indictable offences dealt with summarily

If—

- (a) a person is charged with an indictable offence; and
- (b) the court has decided to dispose of the case summarily under 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 under 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) If 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) on 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) If the court proceeds under 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) If 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 case**

If the court on 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 hearing on defendant’s confession**

If the defendant is present at the hearing, the substance of the information shall be stated to the defendant, and the defendant 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 the defendant has no cause to show, the court may convict the defendant, or make an order against the defendant accordingly.

### **114 If 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 on 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 for certain offences

### 116A Interpretation for pt 7A

(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 is 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) if that statute is repealed and remade—the remade statute as amended and in force from time to time.

### 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 (Public Passenger Services) Act 2001*;
- (e) the *Road Transport (Safety and Traffic Management) Act 1999*;
- (f) the *Road Transport (Vehicle Registration) Act 1999*;
- (g) any other Act or any regulations (or provision of an Act or regulations) prescribed under the regulations;
- (h) any regulations made under an Act mentioned in paragraphs (a) to (g) 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 on 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 when the person to whom it is directed is required by the summons to appear before the court.
- (4) If a summons with respect to a prescribed offence is served in accordance with this section in the manner referred to in subsection (1) (b), the 2 copies of the summons shall be sent by post not less than 21 days before the day when the person to whom it is directed is required by the summons to appear before the court.

**116BA Giving of notice**

If 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 this part may be proved by the oath of the person who served it, by affidavit or otherwise.
- (2) For this part, if—
  - (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 if plea of guilty entered**

- (1) If—
- (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 the weight that to the court seems proper.
- (3) If 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) If 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 if notice of intention to defend given**

If a defendant returns the notice of intention to defend form to the registrar before the day when 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 if defendant pleads not guilty**

If 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 if defendant does not plead**

If—

- (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 when 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 (3), if—

Section 116I

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- (a) a defendant is convicted under this part of an offence against a law referred to in a paragraph of section 116AA (1); 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.

(2) If—

- (a) the court convicts a defendant of an offence against a law referred to in a paragraph of section 116AA (1); 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.

(3) If a defendant convicted of an offence against a law referred to in a paragraph of section 116AA (1) does not appear at the time and place fixed under subsection (2), 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**

If a defendant is, in his or her absence, convicted of an offence, the registrar shall give to the defendant written notice 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.

## 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***, for part 8 (Infringement notices for certain offences)—see section 134A (3).

***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 for the definition of *infringement notice offence* in section 117 by—
  - (a) stating the offence; or
  - (b) referring to the provision creating the offence; or

- (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—
  - (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
  - (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

- (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—
- (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**

- (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
  - (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—
  - (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
- (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.

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- (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
  - (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**

### **134A Authorised people for infringement notice offences**

- (1) The administering authority for an infringement notice offence may appoint a person to be an authorised person to serve infringement notices or reminder notices.

*Note 1* For the making of appointments (including acting appointments), see *Legislation Act 2001*, pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see *Legislation Act 2001*, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

(2) The regulations may prescribe a person to be an authorised person for the service of infringement notices or reminder notices.

(3) In this part:

*authorised person* means—

(a) for an infringement notice for an infringement notice offence—

- (i) the administering authority; or
- (ii) a person who is appointed under this section 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 appointed under this section 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.

### **135 Delegation of administering authority's functions**

(1) The administering authority for an infringement notice offence may delegate 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 the functions delegated to the person under that subsection to anyone else.

*Note* For the making of delegations and the exercise of delegated functions, see *Legislation Act 2001*, pt 19.4.

### **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.
- (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.

## **Part 9 Enforcement of decisions**

### **Division 9.1 General**

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

- (1) If 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.
- (2) 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.
- (3) Failure to comply with subsection (1) does not invalidate a conviction or order or the enforcement of a conviction or order.
- (4) The minute shall not form any part of the warrant of commitment or of execution.
- (5) 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) On 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**

If the court on 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 under an order for reparation under the Crimes Act, section 350.

*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 when the fine is imposed.

Maximum penalty: 5 penalty units.

- (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.

Maximum penalty: 5 penalty units.

- (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 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 if—

- (a) a document has been served on a person for 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) If 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 the manner 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) If the court imposes a fine on a person—
- (a) the court shall, for 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.
- (2) For 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.
- (3) 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 the person specified by the court, with or without sureties, for the payment of the amount.
- (4) The security referred to in subsection (3) shall be given, and may be enforced, in the manner provided by this Act.

## **149 Penalty notice**

- (1) If the registrar of the Supreme Court gives to the registrar a certificate of conviction that 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) If 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) If 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) If 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 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 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 that are to be set out in any application by the person for approval of a special arrangement under section 152.
- (3) If 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) for 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) If 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) If 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) If 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 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 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 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 that 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 subsections (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) If, 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) If—
- (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) includes a reference to the relevant regulation or determination.

- (9) A reference in this section to an applied provision by number is 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, section 350.

### **155 Money 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, the 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 in it, the police officer shall cease to execute the warrant.

### **157 Payment of amount to keeper or superintendent**

- (1) If 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, for 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 at the end 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 under 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 of a day 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**

If the conviction or order that 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 that 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) If a fine is payable by a body corporate under a conviction of a reciprocating court and the registrar receives a written request 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 signed by 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.



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- (2) On the registration of a conviction under subsection (1)—
- (a) the conviction shall, for 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) If 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, if—
- (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, on 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) If 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, if 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 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**

If—

- (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**

If 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) If—
- (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 the 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* does not include a reference to an order under the Crimes Act, section 350.

### **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.
- (2) 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.

- (3) 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 if defendant already in prison**

- (1) If by any conviction or order it is adjudged that the defendant be imprisoned and the defendant is then undergoing imprisonment on 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 that the defendant is then undergoing.

### **188 Mitigation of payment by court**

- (1) If in a case when either imprisonment or a 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 the requirement or any part thereof.
- (2) If 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 money 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, that are incurred in respect of an offence triable by the court or that 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 in it if there is a conviction or order that is good and valid or that 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**

If 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 11**                      **Appeals to Supreme Court**

### **Division 11.1**              **Appellate jurisdiction of 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 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 this Act, part 7, part 7A or section 255 or under the Crimes Act, section 375;
  - (b) an appeal, by the person against whom the order is made, from an order made under this Act, section 113 or 114 in proceedings dealt with by the Magistrates Court under this Act, part 7 or under the Crimes Act, section 375;

- (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 this Act, section 90A or 255, or part 7 or 7A, or under the Crimes Act, section 375, 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 402 (1); or
    - (ii) the Crimes Act, section 402 (3); or
    - (iii) the Crimes Act, section 403 (1); or
    - (iv) the Crimes Act, section 407 (7) (b);
  - (e) an appeal, by a person who has given a recognisance under the Crimes Act, section 402 or 403 or by his or her surety, from a decision of the Magistrates Court on an application made under that Act, section 405 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) If 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 the order for substituted or other service that 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 the conditions (if any) 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) If 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) If 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 the directions 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 granted**

- (1) If 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) If 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 this Act, part 7 or 7A or under the Crimes Act, section 375;
  - (b) a conviction by the Magistrates Court for an offence dealt with by that court under this Act, part 7 or 7A or under the Crimes Act, section 375;
  - (c) an order made under this Act, section 113 or 114 in proceedings dealt with by the Magistrates Court under this Act, part 7 or under the Crimes Act, section 375;
  - (d) a decision of the Magistrates Court not to commit a person to the Supreme Court for sentence under section 92A;
  - (e) a decision of the Magistrates Court to dispose of a case summarily under the Crimes Act, section 375 (6) or (7);
  - (f) a sentence or penalty imposed by the Magistrates Court for an offence dealt with by that court under this Act, section 90A or part 7 or 7A or section 255 or under the Crimes Act, section 375.
- (2) For subsection (1) (f), a reference to a *sentence or penalty* includes a reference to a decision order made under the Crimes Act, section 402 (1) or (3), 403 (1), 404 (4) or (7) or 405 (1) or (3), whether or not the person is convicted of the offence.

### **219C Grant of order nisi to review**

- (1) If—
- (a) within 21 days of the making of an order of a kind referred to in section 219B (1) (a) or within any further time the Supreme Court allows, an application is made by the informant in the proceedings before the Magistrates Court; or
  - (b) within 21 days of the making of a decision of a kind referred to in section 219B (1) (d), (e) or (f), an application is made by the informant in the proceedings before the Magistrates Court; or
  - (c) 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:

- (d) that there was a prima facie case of error or mistake on the part of the Magistrates Court;
- (e) that the Magistrates Court did not have jurisdiction or authority to make the decision;
- (f) that the decision of the Magistrates Court should not in law have been made;

- (g) that, in the circumstances of the case, a decision of a kind referred to in section 219B (1) (d) or (e) should not have been made;
  - (h) that a sentence or penalty of a kind referred to in section 219B (1) (f) 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 give to the Supreme Court a report setting out the reasons for the decision of the Magistrates Court and any facts or matters that 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 the time specified in the order or within any further time the Supreme Court allows, security in the amount 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) if the order nisi is made in respect of a decision of a kind referred to in section 219B (1) (d) or (e) and, after making that decision, the Magistrates Court has, under the Crimes Act, section 375, 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.

- (2) If 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) (d) or (e), the proceedings in the Magistrates Court shall be stayed until the appeal is concluded, abandoned or discontinued.
- (3) 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.
- (2) If, under 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) for a decision specified in section 219B (1) (d)—order that the Magistrates Court commit the person to whom the decision relates to the Supreme Court for sentence under section 92A; or
  - (b) for a decision specified in section 219B (1) (e)—order that the Magistrates Court continue the preliminary examination of the person to whom the decision relates in accordance with part 6; or
  - (c) in the case of a decision specified in section 219B (1) (f)—
    - (i) impose the sentence or penalty the Supreme Court thinks fit; or
    - (ii) by order, exercise any power that the Magistrates Court might have exercised; or
  - (d) 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 any further order, including an order granting any relief that the Supreme Court is empowered to grant on certiorari, mandamus, prohibition or habeas corpus, the Supreme Court thinks necessary to determine the matter finally.
- (3) 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 on the merits;
- the Supreme Court may make the amendments of the proceedings in the Magistrates Court it thinks appropriate.
- (4) For subsections (1) (b) and (2) (c), 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 that could not have been imposed by the Magistrates Court.
- (5) 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.
- (6) 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.
- (7) If, in respect of a sentence or penalty referred to in section 219B (1) (f), 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 (2) (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.
- (8) On an appeal under this division from an order, decision, sentence or penalty referred to in section 219B (1) (a), (d), (e) or (f), the Supreme Court shall order that the costs of and incidental to the appeal shall be paid by the appellant.
- (9) Subsection (8) 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 to admit to bail**

- (1) If any person committed to gaol under 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 under the adjudication, the powers of amendment given by section 223 may be exercised, and if in a conviction there is some excess that 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 the order as to costs and otherwise the Supreme Court or the judge thinks fit.

## **228 Want of summons or information**

If 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) If security is given, in accordance with an order made under section 219D, by deposit of money with the registrar, the registrar shall—

- (a) if, on 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, on 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) If 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 on appeal.
- (3) No such action shall be maintainable for anything done under any such warrant that was issued by the magistrate to procure the appearance of the person charged, and that 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 on an information of an alleged indictable offence, and if a summons was issued previously to the warrant being issued, and the summons was served on 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**

If 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**

If a conviction or order is made by the court and a warrant of commitment or writ of execution is granted on it 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 that made the conviction or order.

**234 No action for acts done under order of Supreme Court**

If 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**

If a warrant of commitment or writ of execution is granted by a magistrate on a conviction or order that, either before or after the granting of the warrant or writ, is confirmed on 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, on application of the

defendant, and on 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 the sum of money 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 it 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**

If—

- (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, for 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, for 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) if 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 the costs it thinks just and reasonable;
- (b) if 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 the costs 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) if 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 the amount 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

### 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 *Leases (Commercial and Retail) Act 2001*;
- (i) regulations or other subordinate legislation made or in force under an Act mentioned in paragraphs (a) to (h).

***tribunal*** means any of the following:

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

- (c) the discrimination tribunal;
- (d) the residential tenancies 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).
- (3) If the administrative appeals tribunal is satisfied that a proceeding ends in a way that is favourable to an applicant for a review by the tribunal of a decision, it may order another party to the proceeding to pay the amount of the application fee to the applicant.

**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 of it 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 under 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

If 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) If—
- (a) a witness or a person sought to be made a witness has entered into a recognisance for 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) If—
- (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) If—
- (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**

If 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

### **U** 254B Appearance by audiovisual or audio links

- (1) This section applies if, 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) If 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 face of 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.
- (3) For this section, if 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.
- (4) Without limiting the operation of any other provision of this Act, if 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.
- (5) If—
- (a) a person has been charged under subsection (4) 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.
- (6) An order under subsection (5) 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.
- (7) Failure to comply with subsection (6) does not invalidate an order.
- (8) If 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 (9).
- (9) An order under this subsection may provide for—
- (a) the exclusion of the person from any building where 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.
- (10) In this section:  
*court* includes—
- (a) a magistrate when exercising the jurisdiction of the court; or
  - (b) the registrar in the exercise 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) If—
- (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) If—



- (a) the court has adjourned proceedings or a hearing, and committed a person, under 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) If—
  - (a) a warrant has been issued for the commitment of a person to prison under this Act, section 145, 154D or 185 or the Crimes Act, section 397 (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 when the person is taken into custody under the warrant referred to in paragraph (a);the court or a magistrate may, by warrant, commit the person to a remand centre.
- (2) If 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) If 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 the directions 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) If 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 signed writing, 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 if—
  - (a) the applicant is a party to the proceedings; or
  - (b) for an applicant who is not a party to the proceedings—the registrar or a magistrate is satisfied that he or she has good reason for applying.

- (4) If 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 that 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), if the registrar receives an application in accordance with this section—
- (a) he or she shall, for an application relating to depositions; and
  - (b) he or she may, in any other case;
- give 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 give a copy of the record or a copy of a transcript under subsection (5) (a) unless there is written on the copy a certificate signed by 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 give 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 end 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 in it, 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*.

**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 other law 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, under 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.



## 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 and expiries 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 endnote.

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
IA = Interpretation Act 1967	renum = renumbered
ins = inserted/added	reloc = relocated
LA = Legislation Act 2001	R[X] = Republication No
LR = legislation register	RI = reissue
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
num = numbered	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

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### 3 Legislation history

This Act was originally a Commonwealth ordinance—the *Magistrates Court Act 1930* No 21 (Cwlth).

The *ACT Self-Government (Consequential Provisions) Act 1988* No 109 (Cwlth), s 12) converted some former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 1 July 1990.

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989* No 21, s 5 on its conversion to an ACT enactment on 1 July 1990.

Before 11 May 1989, ordinances commenced on their notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

After 11 May 1989 and before 10 November 1999, Acts commenced on their notification day unless otherwise stated (see *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) s 25).

#### Legislation before becoming Territory enactment

##### **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

**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

## Endnotes

3 Legislation history

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**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 (Cwlth 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 (Cwlth 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 (Cwlth 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

**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 (Cwlth Gaz 1980 No S66)

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

notified 26 March 1980  
commenced 26 March 1980

## Endnotes

3 Legislation history

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

notified 26 February 1982

commenced 1 September 1982 (Cwlth 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 (Cwlth 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 (Cwlth 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 (Cwlth Gaz 1987 No S52)

**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

## Endnotes

3 Legislation history

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

notified 25 October 1989

s 11, s 12, s 14 commenced 27 June 1990 (Cwlth 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 (Cwlth Gaz 1990 No GN5)

**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

### Legislation after becoming Territory enactment

**Magistrates Court (Amendment) Act 1990 No 65**

notified 24 December 1990

commenced 24 December 1990

**Weapons (Consequential Amendments) Act 1991 No 9 sch**

notified 3 April 1991 (Gaz 1991 No S19)

s 1, s 2 commenced 3 April 1991 (s 2 (1))

sch 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 (Gaz 1991 No S95)  
s 1, s 2 commenced 20 September 1991 (s 2 (1))  
remainder commenced 25 September 1991 (s 2 (2) and 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 sch**

notified 15 January 1991 (Gaz 1992 No S3)  
s 1, s 2 commenced 15 January 1992 (s 2 (1))  
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 (Gaz 1992 No S59)  
s 1, s 2 commenced 28 May 1992 (s 2 (1))  
remainder commenced 28 November 1992 (s 2 (3))

**Statute Law Revision (Miscellaneous Provisions) Act 1992 No 23 sch 1**

notified 4 June 1992 (Gaz 1992 No S71)  
commenced 4 June 1992

**Protection Orders (Reciprocal Arrangements) (Consequential Amendments) Act 1992 No 37 pt 3**

notified 8 July 1992 (Gaz 1992 No S103)  
ss 1-6 and 8-11 commenced 8 July 1992 (s 2 (1))  
s 7, s 12 commenced 3 August 1992 (s 2 (2) and Gaz 1992 No S130)

**Evidence (Amendment) Act 1993 No 2**

notified 1 March 1993  
commenced 1 March 1993

## Endnotes

3 Legislation history

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### **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 (Gaz 1994 No S44)

commenced 14 March 1994 (s 2)

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

notified 30 June 1994 (Gaz 1994 No S121)

s 1, s 2 commenced 30 June 1994 (s 2 (1))

remainder commenced 1 July 1994 (s 2 (2) and Gaz 1994 No S142)

### **Mental Health (Consequential Provisions) Act 1994 No 45**

notified 7 September 1994 (Gaz 1994 No S177)

s 1, s 2 commenced 7 September 1994 (s 2 (1))

remainder commenced 6 February 1995 (s 2 (2) and 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 sch**

notified 29 November 1994 (Gaz 1994 No S253)  
s 1, s 2 commenced 29 November 1994 (s 2 (1))  
remainder commenced 29 November 1994 (s 2 (2) and 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 sch**

notified 18 December 1995 (Gaz 1995 No S306)  
amnds commenced 18 December 1995 (s 2)

**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)

**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)

## Endnotes

3 Legislation history

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### **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 sch 1 (as am by Act 2002 No 49 amdt 3.222)**

notified 19 September 1997 (Gaz 1997 No S264)

commenced 24 September 1997 (s 2 as am by Act 2002 No 49 amdt 3.222)

### **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 sch 1**

notified 1 December 1997 (Gaz 1997 No S380)

s 1, s 2 commenced 1 December 1997 (s 2 (1))

sch 1 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 sch**

notified 27 November 1998 (Gaz 1998 No S207)

s 1, s 2 commenced 27 November 1998 (s 2 (1))

remainder commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

### **Custodial Escorts (Consequential Provisions) Act 1998 No 67**

notified 23 December 1998 (Gaz 1998 No S212)

s 1, s 2 commenced 23 December 1998 (s 2 (1))

remainder commenced 23 December 1998 (s 2 (2) and 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 (Gaz 1999 No S16)  
s 1, s 2 commenced 14 April 1999 (s 2 (1))  
remainder commenced 1 September 1999 (s 2 (2) and 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 sch 2**

notified 10 November 1999 (Gaz 1999 No 45)  
s 1, s 2 commenced 10 November 1999 (s 2 (1))  
remainder commenced 10 May 2000 (s 2 (2))

**Law Reform (Miscellaneous Provisions) Act 1999 No 66 sch 3**

notified 10 November 1999 (Gaz 1999 No 45)  
commenced 10 November 1999 (s 2)

**Road Transport Legislation Amendment Act 1999 No 79 sch 3**

notified 23 December 1999 (Gaz 1999 No S65)  
s 1, s 2 commenced 23 December 1999 (IA s 10B)  
remainder commenced 1 March 2000 (s 2 (2) and Gaz 2000 No S5)

## Endnotes

3 Legislation history

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### **Victims of Crime (Financial Assistance) (Amendment) Act 1999 No 91 sch 2**

notified 23 December 1999 (Gaz 1999 No S65)  
s 1, s 2 commenced 23 December 1999 (IA s 10B)  
remainder commenced 24 December (s 2 (2) and 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 (s 2 (1))  
amnds commenced 9 September 2000 (s 2 (3))

### **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 commenced 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 see 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 Act No 64 sch 1 (as am by Criminal Code Amendment Act 2002 No 2)**

notified 10 September 2001 (Gaz 2001 No S66)  
repealed before commencement by Criminal Code 2002 No 51 s 126

**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 commenced 14 March 2002 (LA s 79)

**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 commenced 27 March 2002 (s 2 and LA s 79)

**Criminal Code Amendment Act 2002 No 2 s 4**

notified LR 7 March 2002  
s 1, s 2 commenced 7 March 2002 (LA s 75)  
remainder commenced 9 March 2002 (s 2)

*Note* This Act only amends the Criminal Code 2001 Act No 64. The Criminal Code 2001 was repealed before it commenced (see Act 2002 No 51 s 126)

**Statute Law Amendment Act 2002 No 30 pt 3.46**

notified LR 16 September 2002  
s 1, s 2 taken to have commenced 19 May 1997 (LA s 75 (2))  
pt 3.46 commenced 17 September 2002 (s 2 (1))

## Endnotes

4 Amendment history

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### **Magistrates Court (Refund of Fees) Amendment Act 2002 No 36**

notified LR 10 October 2002

s 1, s 2 commenced 10 October 2002 (LA s 75 (1))

remainder commenced 11 October 2002 (s 2)

### **Statute Law Amendment Act 2002 (No 2) No 49 amdt 3.222**

notified LR 20 December 2002

s 1, s 2 taken to have commenced 7 October 1994 (LA s 75 (2))

amdt 3.222 taken to have commenced 24 September 1997 (s 2 (3))

*Note* This Act only amends the Remuneration Tribunal  
(Consequential Amendments) Act 1997 No 41.

### **Justice and Community Safety Legislation Amendment Act 2003**

#### **A2003-2 pt 14**

notified LR 3 March 2003

s 1, s 2 commenced 3 March 2003 (LA s 75 (1))

pt 14 commenced 31 March 2003 (s 2 (2))

### **Evidence (Miscellaneous Provisions) Amendment Act 2003 A2003-48 sch 2 pt 2.8**

notified LR 31 October 2003

s 1, s 2 commenced 31 October 2003 (LA s 75 (1))

sch 2 pt 2.8 awaiting commencement (s 2)

*Note* default commencement under LA s 79: 30 April 2004

### **Statute Law Amendment Act 2003 (No 2) A2003-56 sch 3 pt 3.14**

notified LR 5 December 2003

s 1, s 2 commenced 5 December 2003 (LA s 75 (1))

sch 3 pt 3.14 commenced 19 December 2003 (s 2)

## **4 Amendment history**

The *Magistrates Court (Enforcement of Judgments) Act 1994* No 61 s 28 amended the Act by reversing the order of masculine and feminine pronouns. The amendments have been incorporated in the republication but have not been noted in the amendment history.

#### **Title**

title am 1985 No 67

#### **Name of Act**

s 1 sub A2003-56 amdt 3.161

**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 for Act**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;  
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

## Endnotes

### 4 Amendment history

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#### **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 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  
sub 1993 No 4

**Staff assisting registrar**

s 10MA ins 1994 No 38

**Duties of 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 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

## Endnotes

4 Amendment history

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### **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 instead 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 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 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 court if defendant absent from 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

**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

## Endnotes

4 Amendment history

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### **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; ss renum R10 LA

### **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; ss renum R10 LA

### **Procedure on filing 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

**If 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; ss renum R10 LA; A2003-48 amdt 2.9

**Evidence**

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

**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

**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

## Endnotes

4 Amendment history

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### **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; ss renum R10 LA

### **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 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; [A2003-48 amdt 2.10](#)

**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

**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

## Endnotes

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### **Proceedings if either party not present at adjourned hearing**

s 85 am 1986 No 74; 1996 No 6

### **Proceedings if both parties 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 if 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 if 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 if 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; ss renum R10 LA

### **Court may discharge accused**

s 91 am 1974 No 14; 1987 No 56



**Proceedings if 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  
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

## Endnotes

### 4 Amendment history

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#### **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

#### **If 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 for certain offences**

pt 7A hdg ins 1974 No 14  
sub 1979 No 33

**Interpretation for pt 7A**

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 service**

s 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 if plea of guilty entered**

s 116E ins 1974 No 14  
sub 1979 No 33  
am 1991 No 44; 1993 No 4

**Procedure if notice of intention to defend given**

s 116F ins 1974 No 14  
sub 1979 No 33  
am 1991 No 44; 1993 No 4

**Procedure if defendant pleads not guilty**

s 116FA ins 1989 No 59

**Procedure if 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; A2003-56 amdt 3.162

## Endnotes

### 4 Amendment history

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#### **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  
def *authorised person* sub 2002 No 30 amdt 3.587

#### **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  
am A2003-2 s 70

#### **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  
ins 2001 No 77 s 21

**Procedure if liability disputed**

s 134 ins 2001 No 77 s 21

## Endnotes

### 4 Amendment history

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#### **Miscellaneous**

div 8.4 hdg ins 2001 No 77 s 21

#### **Authorised people for infringement notice offences**

s 134A ins 1968 No 25  
om 1986 No 74  
ins 2002 No 30 amdt 3.588

#### **Money recovered by infant or person of unsound mind**

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

#### **Delegation of administering authority's functions**

s 135 am 1937 No 28  
om 1986 No 74  
ins 2001 No 77 s 21  
sub 2002 No 30 amdt 3.589

#### **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 sch 2; ss renum  
R10 LA

#### **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; ss  
renum R10 LA

**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

## Endnotes

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### **Parking offences—further orders in respect of natural persons**

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

**Money 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

## Endnotes

4 Amendment history

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### **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

### **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

## Endnotes

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#### **Ex parte order of commitment**

s 183 am 1991 No 44  
om 1994 No 61

#### **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; ss renum R10 LA

#### **Warrant of commitment if 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 nonpayment 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

## Endnotes

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#### **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  
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

## Endnotes

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### 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

### Appeals to Supreme Court

pt 11 hdg sub 1972 No 37

### Appellate jurisdiction of 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

## Endnotes

4 Amendment history

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### **Barring of right of appeal under div 11.2 if order to review 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  
am 1974 No 14; 1979 No 41; 1984 No 16; 1985 Nos 41 and 67;  
1990 No 9; 1994 No 61; 1996 No 6; pars renum R10 LA

### **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; pars renum R10 LA

### **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; ss  
renum R10 LA

### **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;  
ss and pars renum R10 LA

### **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 recognisance**

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 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 appeal**

s 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

## Endnotes

4 Amendment history

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### **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

### **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 s 49  
ins 2001 No 1 s 3 sch  
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  
am 2002 No 36 s 4  
(4), (5) exp 11 October 2003 (s 248C (5))

**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

## Endnotes

4 Amendment history

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### **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

### **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; [A2003-48 amdt 2.11](#)

### **Contempt in face of 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; ss renum R10 LA

### **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

**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

## Endnotes

### 5 Earlier republications

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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.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

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
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
8	<u>Act 2001 No 90</u>	12 September 2001
9	<u>Act 2001 No 90</u>	3 December 2001
10	Act 2002 No 2	14 March 2002
11*	Act 2002 No 2	27 March 2002
12	Act 2002 No 2	1 July 2002
13	Act 2002 No 2	13 September 2002
14	Act 2002 No 30	17 September 2002
15	Act 2002 No 36	11 October 2002



Republication No	Amendments to	Republication date
16	Act 2002 No 36	1 January 2003
16 (RI)	Act 2002 No 49 ‡	12 February 2003
17	A2003-2	31 March 2003
18	A2003-2	12 October 2003

‡ includes retrospective amendments by Act 2002 No 49

## 6 Uncommenced amendments

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

**Evidence (Miscellaneous Provisions) Amendment Act 2003 A2003-48 sch 2 pt 2.8**

## Part 2.8 Magistrates Court Act 1930

### [2.9] Section 54A (2) (a)

*omit*

section 18 (1) or 30 (1)

*substitute*

section 20 (1) (Territory courts may take evidence and submissions from outside ACT) or section 32 (1) (Use of link in proceedings)

### [2.10] Section 72A (3)

*substitute*

(3) In this section:

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

## Endnotes

6 Uncommenced amendments

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### **[2.11] Section 254B (1)**

*omit*

section 18 (1) or 30 (1)

*substitute*

section 20 (1) (Territory courts may take evidence and submissions from outside ACT) or section 32 (1) (Use of link in proceedings)

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