



AUSTRALIAN CAPITAL TERRITORY

Magistrates Court (Amendment) Act 1998

No. 25 of 1998

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Magistrates Court (Amendment) Act 1998

No. 25 of 1998

An Act to amend the *Magistrates Court Act 1930*

[Notified in ACT Gazette S190: 10 July 1998]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I - PRELIMINARY

1. Short title

This Act may be cited as the *Magistrates Court (Amendment) Act 1998*.

2. Commencement

(1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.

3. Principal Act

In this Act, “Principal Act” means the *Magistrates Court Act 1930*.¹

PART II—FINE DEFAULT

4. Ex parte order may be set aside

Section 23 of the Principal Act is amended by omitting subsection (7A).

5. Restricted penalties under this Part

Section 116H of the Principal Act is amended by omitting subsection (2).

6. Minute of decision and notice to defendant

Section 141 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (b) all the words after “order”; and
- (b) by omitting from subsection (1A) “, or a notice under paragraph (1) (b),”.

7. Heading—Division 2, Part IX

The heading to Division 2 of Part IX of the Principal Act is amended by omitting “, *penalties and other sums*”.

8. Interpretation

Section 146 of the Principal Act is amended—

- (a) by omitting the definitions of “parking offence” and “traffic offence”; and
- (b) by inserting the following definitions:
 - “ ‘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;
 - (b) a fee or charge payable to the Territory that is imposed by a court in proceedings for an offence;
 - (c) costs payable to the Territory under a court order in proceedings for an offence;
 - (d) a levy imposed under the *Criminal Injuries Compensation Act 1983*; or

- (e) an amount payable to the Territory by virtue of an order for reparation under section 437 of the *Crimes Act 1900*;

‘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;
- (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’ has the same meaning as in the *Auditor-General Act 1996*.”.

9. Substitution

Sections 146A, 147 and 147A of the Principal Act are repealed and the following sections substituted:

“147. Payment of fine

A fine is payable in accordance with this Division to the Registrar.

“147A. Notice of address etc.

“(1) A person on whom a fine is imposed shall not, without reasonable excuse, fail to give to the Registrar particulars of his or her address within 7 days after the day on which the fine is imposed.

“(2) A person who is liable to pay a fine and who changes address before the fine and any relevant administrative fee are paid shall not, without reasonable excuse, fail to give to the Registrar particulars of the new address within 7 days after changing address.

“(3) A person who is liable to pay a fine, and any relevant administrative fee, shall not, without reasonable excuse, fail to give the Registrar evidence of his or her address when required to do so by the Registrar.

Penalty:

- (a) if the offender is a natural person—5 penalty units;
- (b) if the offender is a body corporate—25 penalty units.

“147B. Access to particulars of address

“(1) For the purposes of this Division, the Registrar may, in writing, require—

- (a) the Commissioner for Housing;
- (b) the Chief Police Officer; or
- (c) the chief executive (however described) of a government agency;

to give the Registrar any particulars held by that person concerning an address of a specified person who is liable to pay a fine.

“(2) A person to whom such a requirement is given shall comply with it as far as practicable.

“147C. Doubtful service

“(1) This section applies where—

- (a) a document has been served on a person for the purposes of this Division, other than by personal service; and
- (b) the Registrar is satisfied that—
 - (i) the document has not come to the knowledge of the person; or
 - (ii) doubt exists whether the document has come to the knowledge of the person.

“(2) Where this section applies, the Registrar shall not take any further action under this Division in relation to the person unless—

- (a) the document has been served again on the person in such manner as the Registrar thinks fit; and
- (b) the Registrar is satisfied that the document has come to the knowledge of the person.”.

10. Court may allow time to pay

Section 148 of the Principal Act is amended—

- (a) by omitting from subsection (1) “, by a conviction or order, imposes a fine or penalty, or orders that a sum of money or costs be paid” and substituting “imposes a fine on a person”;

- (b) by omitting subsection (1B) and substituting the following subsection:

“(1B) In addition to allowing time for the payment of an amount, the Court may direct that the person liable to pay the amount give security, to the satisfaction of such person as is specified by the Court, with or without sureties, for the payment of the amount.”;

- (c) by omitting from subsection (1C) “paragraph (1B) (b)” and substituting “subsection (1B)”; and
- (d) by omitting subsections (2) and (3).

11. Substitution

Sections 150, 150A, 150B and 150C of the Principal Act are repealed and the following sections substituted:

“149. Penalty notice

“(1) Where the Registrar of the Supreme Court gives to the Registrar a certificate of conviction which indicates that a person is liable to pay a fine as a result of a conviction or order made by the Supreme Court, the Registrar shall give the person a penalty notice concerning the fine.

“(2) Where a person is liable to pay a fine as a result of a conviction or order by the Court, the notice of the conviction or order required by section 116I or paragraph 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;
- (b) if the fine is payable by instalments—specify the amount of each instalment and the due date for payment;
- (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;
- (d) contain a statement to the effect that, under section 152, the Registrar may, on application, approve an arrangement concerning the payment of the fine; and
- (e) indicate the obligation to notify the Registrar of any change of address under section 147A.

“(4) Where a penalty notice is varied under section 152 the notice shall specify particulars of the approved arrangement for payment as so varied.

“150. Default

“(1) Where a person defaults in payment of a fine to which a penalty notice relates—

- (a) the person is liable to pay to the Territory, in addition to the amount of the fine that remains unpaid, the administrative fee determined under subsection 248A (1) for the purposes of this paragraph; and
- (b) the Registrar shall give a default notice to the person.

“(2) Where a person to whom a default notice has been given subsequently defaults in payment of the fine, the Registrar shall give notice of the default to the Registrar of Motor Vehicles under section 153.

“(3) For the purposes of this Division, a person defaults in payment of a fine or any relevant administrative fee if the person fails to pay any part of the amount payable by—

- (a) the due date specified in the relevant penalty notice; or
- (b) if a default notice has been issued in relation to the amount—the due date specified in the default notice.

“151. Default notice

“(1) A default notice under section 150 shall—

- (a) specify the default to which the notice relates;
- (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;
- (c) contain a statement indicating the consequences under subsection 150 (2) of a default in payment of an amount to which the notice relates;
- (d) contain a statement to the effect that, under section 152, the Registrar may, on application, approve an arrangement concerning the payment of the fine; and
- (e) indicate the obligation to notify the Registrar of any change of address under section 147A.

“(2) The Registrar may specify in a default notice matters concerning a person’s property or financial circumstances which are to be set out in any application by the person for approval of a special arrangement under section 152.

“(3) Where a default notice is varied under section 152 the notice shall specify particulars of the approved arrangement for payment as so varied.

“152. Special arrangements

“(1) The Registrar may, on application, approve in writing an arrangement for—

- (a) further time for the payment of all or any part of a fine or administrative fee, or an instalment of such an amount; or
- (b) payment of all or any part of a fine or administrative fee by instalments.

“(2) An arrangement under paragraph (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;
- (b) specify the grounds on which it is made;
- (c) be lodged with the Registrar by the date, or within the period, ascertained in accordance with the current penalty notice, or current default notice, concerning the fine; and
- (d) in the case of an applicant to whom a default notice has been given, contain any particulars requested by the Registrar in the notice.

“(5) A person committed to prison under section 154D is not entitled to make an application.

“(6) Where an approval concerns a fine for which a penalty notice or a default notice has been given to a person, the Registrar shall vary the notice by—

- (a) altering the notice in accordance with the approval; or
- (b) re-issuing the notice, revised in accordance with the approval.

“153. Notice for suspension of driving licence etc.

“(1) The Registrar shall notify the Registrar of Motor Vehicles of the name, address and date of birth of each person who, after being given a default notice in respect of a fine, defaults in payment of the outstanding fine.

“(2) Where notice is given under subsection (1) and the Registrar subsequently approves an arrangement under section 152, the Registrar shall give the Registrar of Motor Vehicles notice of the approval.

“(3) Where notice has been given under subsection (1) and no later notice has been given under subsection (2), the Registrar shall notify the Registrar of Motor Vehicles in writing if—

- (a) the outstanding fine is paid;
- (b) the outstanding fine is remitted under section 159;
- (c) the person has completed serving a period of imprisonment pursuant to a committal under section 154D; or
- (d) the conviction or order which 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 section 297 of the *Magistrates Court (Civil Jurisdiction) Act 1982* 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 section 303 of the *Magistrates Court (Civil Jurisdiction) Act 1982* as applied by section 154C for the apprehension of the person to whom the summons was directed.

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

“154B. Garnishee orders and writs of execution

“(1) Where the Registrar is satisfied that a fine defaulter has the capacity to pay an outstanding fine, the Registrar may—

- (a) make a garnishee order in accordance with section 319 of the *Magistrates Court (Civil Jurisdiction) Act 1982* as applied by section 154C in respect of the outstanding fine; or
- (b) issue a writ of execution in accordance with subsections 343 (2) and (3) of the *Magistrates Court (Civil Jurisdiction) Act 1982* as applied by section 154C against goods of the fine defaulter to enforce the outstanding fine.

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

“154C. Application of Part XVIII, Magistrates Court (Civil Jurisdiction) Act

“(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;
- (b) a garnishee order under section 154B has the same effect as a garnishee order in respect of a judgment debtor; and
- (c) a writ of execution under section 154B has the same effect as a writ of execution against goods of a judgment debtor.

“(2) For the purposes of paragraph (1) (a), Division 3 of Part XVIII A of the *Magistrates Court (Civil Jurisdiction) Act 1982*, other than sections 294, 298, 300, 302, 305 and 306, applies so far as applicable, with the necessary changes.

“(3) For the purposes of paragraph (1) (b), Division 5 of Part XVIII A of the *Magistrates Court (Civil Jurisdiction) Act 1982*, other than sections 317, 321 and 331, applies so far as applicable, with the necessary changes, and in particular, as if—

- (a) subparagraphs 319 (1) (c) (i) and (e) (i) and paragraph 340 (2) (a) were omitted;
- (b) a reference in section 320 and subsection 329 (1) to the judgment creditor were a reference to the Registrar;
- (c) the words ‘may order the Registrar to repay’ were omitted from subsection 325 (8) and ‘shall repay’ were substituted;
- (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) section 332 and subsection 334 (1) did not refer to the judgment creditor.

“(4) For the purposes of paragraph (1) (c), Division 6 of Part XVIII A of the *Magistrates Court (Civil Jurisdiction) Act 1982*, 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) subsection 343 (1) were omitted;
- (b) the reference in paragraph 346 (3) to a writ which issues out of the Magistrates Court included a reference to a writ issued by the Registrar;
- (c) paragraph 363 (2) (a) and subsection 363 (3) were omitted; and
- (d) subsection 376 (2) were omitted.

“(5) The provisions applied by subsection (2), (3) and (4) have effect as if, in addition to any other necessary changes—

- (a) a reference in such a provision to an examination summons were a reference to an examination summons under applied section 295;
- (b) a reference in such a provision to a garnishee order were a reference to a garnishee order under paragraph 154B (1) (a);

- (c) a reference in such a provision to a writ of execution were a reference to a writ of execution under paragraph 154B (1) (b) or applied section 333;
- (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*;
- (e) a reference in such a provision to a judgment debt were a reference to an outstanding fine;
- (f) a reference in such a provision to a judgment debtor were a reference to a fine defaulter;
- (g) a reference in such a provision to a judgment creditor, other than in applied section 320 or applied subsection 329 (1), were a reference to the Territory; and
- (h) a reference to the Court in such a provision, other than in applied section 349, were a reference to the Registrar.

“(6) Where, but for this subsection, a power of the Registrar under a provision applied by subsection (2), (3) or (4) would be dependent on action being taken by the judgment creditor, the Registrar may act on his or her own initiative in the exercise of the power.

“(7) The Registrar shall not make an order under a provision applied by subsection (2), (3) or (4) for the payment of a fine or administrative fee by instalments.

“(8) Where—

- (a) a provision of the *Magistrates Court (Civil Jurisdiction) Act 1982* applies in relation to a matter;
- (b) a regulation or determination under this Act or that Act also applies in relation to that matter; and
- (c) the provision of the *Magistrates Court (Civil Jurisdiction) Act 1982* is applied in relation to a corresponding matter by subsection (2), (3) or (4);

a reference in this section to the applied provision referred to in paragraph (c) shall be read as including a reference to the relevant regulation or determination.

“(9) A reference in this section to an applied provision by number shall be read as a reference to the provision so numbered of the *Magistrates Court (Civil Jurisdiction) Act 1982*, as applied by subsection (2), (3) or (4).

“154D. Committal to prison—fine defaulters

“(1) The Registrar shall, by warrant, commit a fine defaulter to prison if—

- (a) the Registrar is satisfied that all reasonable action has been taken under this Division to secure payment and there is no reasonable likelihood of the outstanding fine being paid; and
- (b) the outstanding fine has not been remitted under section 159.

“(2) The period for which the fine defaulter is to be committed to prison shall be the lesser of—

- (a) a period calculated at the rate of 1 day for each \$100, or part of \$100, of the outstanding fine; and
- (b) 6 months.

“(3) Subsection (1) does not apply to a person whose liability to pay the fine is derived from an order under section 437 of the *Crimes Act 1900*.”.

12. Committal to prison—orders not involving payment of money

Section 151 of the Principal Act is amended by adding at the end the following subsection:

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

13. Relocation etc.—ss. 151, 152 and 154

(1) Sections 151, 152 and 154 of the Principal Act are relocated so that they appear in Division 6 of Part IX before section 188 of the Principal Act, and are renumbered as sections 185, 186 and 187, respectively.

(2) A reference in this Act to a section of the Principal Act that is renumbered by this section (other than in text inserted by this Act into the Principal Act or another Act) is to be taken to be a reference to that section as numbered in the Principal Act immediately before the commencement of this section.

(3) A reference to a section of the Principal Act that has been renumbered by this section, being a reference—

- (a) in a provision of the Principal Act as in force immediately before the commencement of this section, whether or not that provision has commenced;
- (b) in a provision of another law of the Territory made before the commencement of this section, whether or not that provision has commenced; or

(c) in any instrument or document;

shall (except as regards the operation of the section before it was so renumbered) be construed as a reference to that section as so renumbered.

14. Repeal

Sections 153, 153A, 153B, 153C and 155A of the Principal Act are repealed.

15. Payment of amount to keeper or superintendent

Section 157 of the Principal Act is amended—

- (a) by omitting from subsection (1) “amount adjudged to be paid by a conviction or order of the Court or a Magistrate” and substituting “outstanding fine”; and
- (b) by omitting from paragraph (1) (b) “sum so adjudged to be paid” and substituting “outstanding fine”.

16. Insertion

After section 157 of the Principal Act the following sections are inserted in Division 2 of Part IX:

“158. Fine satisfied by imprisonment

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

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

“159. Remission

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

“160. Conviction or order quashed or set aside

Where the conviction or order which gave rise to a person’s liability to pay a fine is quashed or set aside, the Registrar shall, in addition to notifying the Registrar of Motor Vehicles under paragraph 153 (3) (d)—

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

“161. Other enforcement provisions not affected

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

17. Insertion

After section 166E of the Principal Act the following section is inserted in Division 6 of Part IX:

“184. Enforcement of costs against informant

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

18. Repeal

Section 189 of the Principal Act is repealed.

19. Determination of fees and charges

Section 248A of the Principal Act is amended by inserting after subsection (2) the following subsection:

“(2A) Paragraphs (2) (c) and (d) do not apply in relation to an administrative fee determined for the purposes of subparagraph 150 (1) (a) (i).”.

20. Refusal or failure to give evidence—offence

Section 255AA of the Principal Act is amended by inserting in paragraph (1) (b) “section 154A or” after “examination under”.

21. Commitment to remand centre

Section 255A of the Principal Act is amended by omitting from paragraph (1) (a) “150, 151, 206L or 206P” and substituting “154D or 185”.

PART III—TRANSITIONAL

22. Interpretation

In this Part, unless the contrary intention appears—

“amended Act” means the Principal Act as amended by this Act;

“commencement day” means the day fixed under subsection 2 (2);

“existing fine” means so much of a fine imposed before the commencement day as remains unpaid on or after that day;

“fine” has the same meaning as in Division 2 of Part IX of the amended Act.

23. Application to existing fines

Subject to this Part, the amended Act also applies in relation to an existing fine on and after the commencement day.

24. Existing fines—not in default

(1) Within 21 days after the commencement day, the Registrar shall take all reasonable steps to give a penalty notice in accordance with section 149 of the amended Act to each person who is liable to pay an existing fine but who is not in default in respect of payment of any part of the fine.

(2) Subject to section 152 of the amended Act, the penalty notice shall specify the relevant date, fixed before the commencement day, for payment of the fine or each instalment by which it is payable.

25. Existing fines—in default

(1) This section applies to a person who is in default in payment of an existing fine.

(2) If a warrant of commitment in respect of the person had not been issued under section 150 of the Principal Act before the commencement day, the Registrar shall give the person a default notice in accordance with section 151 of the amended Act as soon as practicable.

(3) A warrant of commitment issued under section 150 of the Principal Act before the commencement day, has effect on and after that day as if it were a warrant of commitment under section 154D of the amended Act.

(4) A warrant of commitment issued under section 150 of the Principal Act before the commencement day shall not be executed on or after that day unless the Registrar has examined the person's capacity to pay the fine and is satisfied that there is no reasonable likelihood of the fine being recovered.

(5) A person imprisoned under a warrant of commitment issued under section 150 of the Principal Act before the commencement day, remains liable to imprisonment, subject to the amended Act, in accordance with the order or sentence to which the warrant relates.

(6) Nothing in subsection (3), (4) or (5) shall be taken to limit the Registrar's power under the amended Act to revoke a warrant or issue a default notice to a person in respect of an existing fine.

26. Old parking and traffic offences

Part IX of the amended Act does not apply in relation to—

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- (a) a parking offence committed before 14 February 1990, being a parking offence within the meaning of Division 2 of Part IX of the Principal Act; or
- (b) a traffic offence committed before 18 May 1992, being a traffic offence within the meaning of Division 2 of Part IX of the Principal Act.

NOTES

Principal Act

1. Reprinted as at 30 May 1997. See also Acts Nos. 41, 94 and 96, 1997.

Penalty units

See section 33AA of the *Interpretation Act 1967*.

[Presentation speech made in Assembly on 30 April 1998]

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