



AUSTRALIAN CAPITAL TERRITORY

Magistrates Court (Appeals Against Sentence) Ordinance 1990

No. 9 of 1990

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 26 June 1990.

BILL HAYDEN
Governor-General

By His Excellency's Command,

MICHAEL TATE
Minister of State for Justice and Consumer Affairs
for and on behalf of the Attorney-General

An Ordinance to amend certain Ordinances to make provision for appeals against sentences imposed by the Magistrates Court and for related purposes

PART I—PRELIMINARY**Short title**

1. This Ordinance may be cited as the *Magistrates Court (Appeals Against Sentence) Ordinance 1990*.¹

PART II—MAGISTRATES COURT ORDINANCE 1930**Principal Ordinance**

2. In this Part, “Principal Ordinance” means the *Magistrates Court Ordinance 1930*.

Appeals by way of orders to review

3. Section 219B of the Principal Ordinance is amended by adding at the end the following paragraph and subsection:

“(g) a sentence or penalty imposed by the Magistrates Court for an offence dealt with by that Court under section 90A, Part VII or VIIA or section 255 of this Ordinance or section 477 of the Crimes Act.

“(2) For the purposes of paragraph (1) (g), a reference to a sentence or penalty shall be read as including a reference to a decision or order made under subsection 556A (1) or (3), 556B (1), 556C (4) or (7) or 556D (1) or (3) of the Crimes Act, whether or not the person is convicted of the offence.”.

Grant of order *nisi* to review

4. Section 219C of the Principal Ordinance is amended—

- (a) by omitting from paragraph (1) (a) “219B (a)” and substituting “219B (1) (a)”;
 - (b) by omitting from paragraph (1) (aa) “219B (e) or (f)” and substituting “219B (1) (e), (f) or (g)”;
 - (c) by omitting from subparagraph (1) (b) (i) “219B (b)” and substituting “219B (1) (b)”;
 - (d) by omitting from subparagraph (1) (b) (ii) “219B (c) or (d)” and substituting “219B (1) (c) or (d)”;
 - (e) by omitting from paragraph (1) (e) “or”;
 - (f) by omitting from paragraph (1) (f) “219B (e) or (f)” and substituting “219B (1) (e) or (f)”;
- and

- (g) by adding at the end of subsection (1) the following word and paragraph:

“; or (g) that a sentence or penalty of a kind referred to in paragraph 219B (1) (g) was manifestly inadequate or otherwise in error.”.

Security for costs and stay of execution

5. Section 219D of the Principal Ordinance is amended—

- (a) by omitting from paragraph (1) (d) “219B (e) or (f)” and substituting “219B (1) (e) or (f)”; and
- (b) by omitting from subsection (1A) “219B (e) or (f)” and substituting “219B (1) (e) or (f)”.

Powers of Supreme Court

6. Section 219F of the Principal Ordinance is amended—

- (a) by omitting from paragraph (1A) (a) “219B (e)” and substituting “219B (1) (e)”;
- (b) by omitting from paragraph (1A) (a) “or”;
- (c) by omitting from paragraph (1A) (b) “219B (f)” and substituting “219B (1) (f)”;
- (d) by omitting from paragraph (1A) (b) “or”;
- (e) by inserting after paragraph (1A) (b) the following paragraph:
- “(ba) in the case of a decision specified in paragraph 219B (1) (g)—
- (i) impose such sentence or penalty as the Supreme Court thinks fit; or
- (ii) by order, exercise any power which the Magistrates Court might have exercised; or”;
- (f) by inserting after subsection (2) the following subsection:

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

- (a) vary a sentence or penalty such that the sentence or penalty as varied could not have been imposed by the Magistrates Court; or
 - (b) impose a sentence or penalty which could not have been imposed by the Magistrates Court.”;
- (g) by inserting after subsection (4) the following subsection:
- “(4A) Where, in respect of a sentence or penalty referred to in paragraph 219B (1) (g), the Supreme Court—
- (a) varies a sentence or penalty under paragraph (1) (b); or
 - (b) imposes a sentence or penalty or makes an order under paragraph (1A) (ba);
- 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.”; and
- (h) by omitting from subsection (5) “an order of the Magistrates Court referred to in paragraph 219B (a), (e) or (f)” and substituting “an order, decision, sentence or penalty referred to in paragraph 219B (1) (a), (e), (f) or (g)”.

PART III—CHILDREN’S SERVICES ACT 1986 OF THE TERRITORY

Principal Act

7. In this Part, “Principal Act” means the *Children’s Services Act 1986* of the Territory.

Jurisdiction of Supreme Court

8. Section 144 of the Principal Act is amended by adding at the end of subsection (1) the following paragraph:

- “(h) an appeal, by way of order to review, by the informant from an order of the Court made under Division 3 of Part IV.”.

Application of Magistrates Court Ordinance

9. Section 145 of the Principal Act is amended—

- (a) by omitting from subsection (3) “or (g)” and substituting “, (g) or (h)”;

- (b) by omitting from paragraph (3) (a) “219B (a)” and substituting “219B (1) (a)”;
- (c) by omitting from paragraph (3) (b) “219B (c)” and substituting “219B (1) (c)”;
- (d) by omitting from paragraph (3) (c) “219B (f)” and substituting “219B (1) (f)”;
- (e) by omitting from paragraph (3) (c) “and”;
- (f) by omitting from paragraph (3) (d) “section 219B (e)” and substituting “paragraph 219B (1) (e)”; and
- (g) by adding at the end of subsection (3) the following word and paragraph:

“; and (e) in the case of an appeal of the kind referred to in paragraph 144 (1) (h)—a decision of the kind specified in paragraph 219B (1) (g).”.

Orders that Supreme Court may make

10. Section 147 of the Principal Act is amended by omitting from subsection (2) “or (e)” and substituting “, (e) or (h)”.

PART IV—APPLICATION OF AMENDMENTS

Application

11. The amendments effected by this Ordinance apply in relation to proceedings instituted after the commencement of this Ordinance.

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 29 June 1990.