

1995
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

**Magistrates Court (Amendment)
Bill (No. 2) 1995**

**A BILL
FOR**

**An Act to amend the *Magistrates Court Act 1930* and
the *Magistrates Court (Civil Jurisdiction) Act 1982***

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

Short title

- 5 1. This Act may be cited as the *Magistrates Court (Amendment) Act (No. 2) 1995*.

Commencement

- 10 2. (1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.
 (2) Paragraph 7 (b) shall be taken to have commenced on 25 September 1991.

(3) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

5 (4) If a provision referred to in subsection (3) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Principal Act

3. In this Act, "Principal Act" means the *Magistrates Court Act 1930*.¹

Magistrates not to undertake other work

10 4. Section 10E of the Principal Act is amended—

- (a) by omitting from subsection (1) "barrister, as a solicitor or as a barrister and solicitor" and substituting "legal practitioner";
- (b) by omitting from subsection (2) "approval of the Minister" and substituting "consent of the Attorney-General";
- 15 (c) by omitting from paragraph (2) (a) all the words from and including "or any office" to and including "Commonwealth"; and
- (d) by omitting from subsection (3) "Minister" and "the approval" and substituting "Attorney-General" and "consent" respectively.

Tenure of office

20 5. (1) Section 10J of the Principal Act is amended by adding at the end the following subsection:

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

25 (2) Despite the amendment effected by subsection (1), a special magistrate who was appointed before the commencement of this section to hold office for the period specified in the instrument of appointment continues to hold office until that period expires.

Authentication of acts of Magistrate or Registrar

6. Section 11 of the Principal Act is amended—

- 30 (a) by omitting all the words after "shall be" and substituting "in writing signed by the Magistrate or Registrar issuing or making it and sealed with the Court's seal"; and
- (b) by adding at the end the following subsection:

35 "(2) Documents relating to Court process shall not be signed in blank."

Acts by Magistrate or Registrar

7. Section 12 of the Principal Act is amended—

(a) by omitting from subsection (1) “a Registrar” and substituting “the Registrar”; and

5 (b) by inserting in subsection (2) “, a Clerk of Petty Sessions” after “Peace”.

Substitution

8. Sections 51 and 52 of the Principal Act are repealed and the following section is substituted:

10 Hearings to be in public except in special circumstances

“51. (1) Subject to subsection (2), the hearing of a proceeding before the Court shall be in public.

15 “(2) Where the Magistrate presiding at a hearing is of the opinion that it is desirable in the public interest or in the interests of justice to do so, the Magistrate may, by order—

(a) direct that the hearing or part of the hearing shall take place in private and give directions as to the persons who may be present;

20 (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

25 (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) is guilty of an offence punishable, on conviction—

30 (a) if the offender is a natural person—by a fine not exceeding 100 penalty units or a term of imprisonment not exceeding 12 months, or both; or

(b) if the offender is a body corporate—by a fine not exceeding 500 penalty units.”.

Substitution

35 9. Sections 61, 62 and 63 of the Principal Act are repealed and the following sections substituted:

Informant may request witnesses to attend

"60A. (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.

5 "(2) The letter shall—

- (a) set out the time and place for the hearing;
- (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
- 10 (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.

Power of Magistrate to summon witnesses

15 "61. (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.

20 "(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.

Service of summons on witness

"62. (1) A summons may be served on a witness—

- (a) personally;
- 25 (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.

30 "(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.

35 "(3) Service of a summons on a witness may be proved by the oath of the person who served it or by affidavit.

Witnesses entitled to claim expenses

5 “62A. (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.

Warrant to bring witness to Court

“63. Where a witness—

- 10 (a) has been informed of the time and place for the hearing;
- (b) has been requested, has given an undertaking, or has been served with a summons, to appear at the hearing to give evidence; and
- 15 (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.”.

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

20 10. Section 67 of the Principal Act is amended by inserting after subsection (1) the following subsections:

25 “(1A) When an order under subsection (1) is served on a person, it shall be accompanied by a form to be completed by the person to claim his or her reasonable costs and expenses of attending the examination or production.

“(1B) A person is not entitled to refuse to comply with an order under subsection (1) because the person was not given the form mentioned in subsection (1A) at the time the order was served on him or her.”.

Substitution

30 11. Section 109 of the Principal Act is repealed and the following section substituted:

Dismissal or adjournment in absence of informant

“109. (1) If—

- 35 (a) the defendant appears (whether voluntarily, in accordance with a summons or by virtue of a warrant) at the time and place for the

hearing of an information in respect of an offence punishable summarily; and

- 5 (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).”.

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

12. Section 110 of the Principal Act is amended—

- (a) by omitting paragraph (4) (a) and substituting the following paragraph:

“(a) a legal practitioner;”;

- 15 (b) by omitting paragraphs (4) (c), (d), (e) and (f) and substituting the following paragraphs:

“(c) the Registrar; or

(d) a prescribed person.”.

Consequences of conviction *ex parte*

20 13. Section 116I of the Principal Act is amended—

- (a) by omitting “(1)”; and

- (b) by omitting paragraph (b) and substituting the following paragraph:

- 25 “(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”.

Minute of decision to be made and defendant to be notified

14. Section 141 of the Principal Act is amended—

- 30 (a) by adding at the end of paragraph (1) (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

- (b) by omitting subsection (1A).

Substitution

15. Section 152 of the Principal Act is repealed and the following section substituted:

Warrant of commitment

5 “152. (1) A warrant of commitment—

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

10 (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) 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

15 (b) shall complete the report on the warrant about the person’s apparent physical condition and state of health.”.

Substitution

16. Section 242 of the Principal Act is repealed and the following section substituted:

Verdict for defendant

20 “242. 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.”.

Fees and charges—review of decisions

17. Section 248F of the Principal Act is amended—

25 (a) by omitting from paragraph (1) (a) “remission or refund of” and substituting “refusal to remit or refund”;

(b) by omitting from paragraph (1) (b) “deferral of” and substituting “refusal to defer”; and

(c) by omitting from paragraph (1) (c) “waiver of” and substituting “refusal to waive”.

Further amendments

18. The Principal Act is amended as set out in Schedule 1.

The First Schedule

19. The First Schedule to the Principal Act is amended—

- (a) by inserting after Form 8 the forms set out in Schedule 2; and
- (b) by omitting Form 35A.

Substitution of section 181 of the *Magistrates Court (Civil Jurisdiction) Act 1982*

- 5 20. Section 181 of the *Magistrates Court (Civil Jurisdiction) Act 1982* is repealed and the following section substituted:

Hearings to be in public except in special circumstances

- 10 “181. (1) Subject to subsection (2) and except in relation to a matter that may be dealt with in chambers, the hearing of a proceeding before the court shall be in public.

“ (2) Where the Magistrate presiding at a hearing is of the opinion that it is desirable in the public interest or in the interests of justice to do so, the Magistrate may, by order—

- 15 (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;
- (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
- 20 (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.
- 25 “ (3) A person who, without reasonable excuse, contravenes an order under subsection (2) is guilty of an offence punishable, on conviction—
 - (a) if the offender is a natural person—by a fine not exceeding 100 penalty units or a term of imprisonment not exceeding 12 months, or both; or
 - 30 (b) if the offender is a body corporate—by a fine not exceeding 500 penalty units.”.

SCHEDULE 1

Section 18

Subsection 5 (1) (definition of “Crimes Act”)—

Omit the definition, substitute the following definition:

SCHEDULE 1—continued

“ ‘Crimes Act’ means the *Crimes Act 1900*;”.

Subsection 5 (1)—

Insert the following definition:

- 5 “ ‘legal practitioner’ means a legal practitioner (however described) of the High Court or of the Supreme Court of the Territory, a State or another Territory;”.

Subsection 16 (3)—

Omit “the date fixed under subsection 3 (2) of the *Court of Petty Sessions (Amendment) Ordinance 1977*”, substitute “28 March 1977”.

10 **Section 21—**

Omit “(1)”.

Section 25—

- 15 Omit “that person’s counsel or solicitor or other person authorized in that behalf”, substitute “a legal practitioner or other person representing the informant”.

Subsection 31 (1)—

Omit “cognizance”, substitute “cognisance”.

Paragraph 31 (1) (a)—

- (a) Omit “Where”, substitute “where”.
20 (b) Omit “penal servitude or”.

Paragraph 31 (1) (b)—

- (a) Omit “Where”, substitute “where”.
(b) Omit “penal servitude or”.
(c) Omit “and”.

25 **Paragraph 31 (1) (c)—**

- (a) Omit “Where”, substitute “where”.
(b) Omit “penal servitude or”.

Section 37—

- (a) Omit “(1)”.
30 (b) Omit “as hereinbefore provided”.

SCHEDULE 1—continued**Section 38—**

Omit “(1)”.

Section 40—

Repeal the section.

5 Paragraph 43 (2) (a)—

(a) Omit “In any case where the person so indicted is, at the time of the application for the certificate, and of the production thereof”, substitute “where the person indicted is, at the time of both the application for and the production of the certificate”.

10 (b) Omit “His Majesty’s writ of *habeas corpus*”, substitute “a writ of *habeas corpus*”.

(c) Omit “therefrom”, substitute “from custody”.

Paragraph 43 (2) (b)—

Omit “In”, substitute “in”.

15 Section 46—

Repeal the section.

Subsection 53 (1)—

Omit “his or her counsel or solicitor”, substitute “a legal practitioner representing the informant”.

20 Subsection 53 (2)—

Omit “his or her counsel or solicitor”, substitute “a legal practitioner representing the defendant”.

Section 54—

25 Omit “their respective counsel or solicitors or other persons empowered by law to appear for them before the Court”, substitute “legal practitioners or other persons appearing for them”.

Section 56—

Repeal the section.

Section 68—

30 Omit “in pursuance of the last preceding section, together with the payment or tender of a reasonable sum for expenses”, substitute “made under section 67”.

SCHEDULE 1—continued

Section 70—

Omit “fifteen clear”, substitute “15”.

Section 71—

Omit “three clear”, substitute “3”.

5 Section 74—

After “commit” insert “the defendant”.

Section 79—

Omit “the provisions of section seventy-seven of this Act”, substitute “section 77”.

10 Section 80—

Omit “(1)”.

Subsection 84 (1)—

Omit “their respective counsel or solicitors”, substitute “the legal practitioners”.

15 Section 85—

Omit “his or her or their counsel or solicitors or other persons appearing for them respectively”, substitute “legal practitioners or other persons appearing for them”.

Section 86—

20 Omit “their respective counsel, solicitors”, substitute “legal practitioners”.

Subsection 89A (3)—

Omit “counsel or solicitor”, substitute “a legal practitioner”.

Subsection 90 (7)—

25 (a) Omit “his or her counsel or solicitor”, substitute “a legal practitioner representing the accused person”.

(b) Omit “that person or his or her counsel or solicitor”, substitute “the accused person or his or her legal practitioner”.

Subsection 90AA (9)—

30 Omit “the counsel or solicitor for the prosecution”, substitute “a legal practitioner representing the informant”.

SCHEDULE 1—continued**Paragraph 90AA (9) (a)—**

Omit “his or her counsel or solicitor”, substitute “a legal practitioner representing the accused person”.

Paragraph 90AA (9) (b)—

- 5 Omit “counsel or solicitor”, substitute “legal practitioner”.

Section 90AB—

- (a) Omit “his or her counsel or solicitor” (first occurring), substitute “a legal practitioner representing the accused person”.

- 10 (b) Omit “counsel or solicitor” (last occurring), substitute “legal practitioner”.

Subsection 90A (7)—

Omit “counsel for the Crown”, substitute “a legal practitioner representing either the accused person or the informant”.

Section 93—

- 15 Omit “(4)”.

Paragraph 94 (b)—

Omit “as provided in this Act or at once admit him or her to bail as hereinafter provided”, substitute “in accordance with the *Bail Act 1992*”.

Paragraph 95 (c)—

- 20 Omit “his or her counsel or solicitor”, substitute “a legal practitioner representing the accused person”.

Subsection 103 (2)—

Omit “Christian name and surname, and the place of his or her”, substitute “full name and place of”.

- 25 **Subsection 107 (2)—**

Omit “officer in any case prosecuting on behalf of the Crown”, substitute “person representing the informant”.

Section 112—

- 30 Omit “counsel or solicitor”, substitute “legal practitioners appearing for them”.

SCHEDULE 1—continued

Section 115—

Omit “counsel or solicitor”, substitute “legal practitioners appearing for them”.

Section 116—

5 (a) Omit “his or her counsel or solicitor” (first occurring), substitute “a legal practitioner representing the defendant”.

(b) Omit “his or her counsel or solicitor” (last occurring), substitute “a legal practitioner representing the informant”.

Paragraph 116A (3) (b)—

10 Omit “\$2,000”, substitute “30 penalty units”.

Paragraph 116A (3) (c)—

Omit “\$1,000”, substitute “10 penalty units”.

Paragraph 116C (3) (b)—

Omit the paragraph, substitute the following paragraph:

15 “(b) a legal practitioner;”.

Paragraph 116H (1) (b)—

Omit “counsel or a solicitor”, substitute “a legal practitioner”.

Paragraph 116H (3) (c)—

Omit “counsel or a solicitor”, substitute “a legal practitioner”.

20 **Section 145—**

Omit “be imprisoned with or without hard labour”, substitute “a term of imprisonment”.

Section 146A—

25 Omit “, 1900 of the State of New South Wales in its application to the Territory”.

Section 151—

Omit “(1)”.

Paragraph 151 (a)—

Omit “with or without hard labour”.

30 **Paragraph 151 (b)—**

Omit “with or without hard labour”.

SCHEDULE 1—continued**Subparagraphs 208 (1) (d) (i), (ii), (iii) and (iv)—**

Omit the subparagraphs, substitute the following subparagraphs:

- “(i) subsection 556A (1) of the Crimes Act;
- “(ii) subsection 556A (3) of that Act;
- 5 “(iii) subsection 556B (1) of that Act; or
- “(iv) paragraph 556C (7) (b) of that Act;”.

Paragraph 208 (1) (e)—

- 10 Omit “five hundred and fifty-six A”, “five hundred and fifty-six B” and “five hundred and fifty-six D”, substitute “556A”, “556B” and “556D” respectively.

Paragraph 219B (1) (c)—

Omit “in pursuance of section one hundred and thirteen or one hundred and fourteen”, substitute “under section 113 or 114”.

Paragraph 219B (1) (f)—

- 15 Omit “477” (last occurring).

Subparagraph 219C (1) (b) (ii)—

Omit “or (d)”.

Subsection 219D (1)—

Omit “the last preceding section”, substitute “subsection 219C (1)”.

20 **Section 219E—**

Omit “section two hundred and nineteen C of this Act”, substitute “subsection 219C (1)”.

Subsection 227 (1)—

Omit “two hundred and twenty-three of this Act”, substitute “223”.

25 **Section 247—**

Omit “two hundred and forty-four of this Act”, substitute “244”.

Subsection 255AA (3) (penalty provision)—

Omit “\$5,000”, substitute “50 penalty units”.

Paragraph 255A (1) (a)—

- 30 Omit “182 or 183,”, substitute “206L or 206P of this Act”.

SCHEDULE 2

Paragraph 19 (a)

Magistrates Court Act 1930

FORM 9

Paragraphs 60A (2) (b) and 62 (2) (a)

MAGISTRATES COURT

AUSTRALIAN CAPITAL TERRITORY

UNDERTAKING TO ATTEND AS A WITNESS

TO BE COMPLETED BY THE INFORMANT (SECTION 60A) OR BY THE COURT (SECTION 62) AND GIVEN TO A PERSON REQUIRED AS A WITNESS AT A HEARING IN THE MAGISTRATES COURT

Court Ref:

File No:

[name]

[address]

.....P/C..... Date of birth: /..... /19..... M/F

is required to attend the Magistrates Court to give evidence in the matter

of

at

on [date] / /19..... at [time] a.m.

[signed]

on [date] / / 19.....

Informant/Registrar

Do not detach

TO BE COMPLETED BY THE PERSON REQUESTED OR SUMMONED TO ATTEND AS A WITNESS AT A HEARING IN THE MAGISTRATES COURT AND TO BE RETURNED TO THE INFORMANT/THE MAGISTRATES COURT IN THE ATTACHED STAMPED AND ADDRESSED ENVELOPE BY

..... / / 19.....

FAILURE TO RETURN THIS UNDERTAKING BY THE ABOVE DATE MAY RESULT IN A WARRANT BEING ISSUED FOR YOUR ARREST

I [name]

[address]

.....P/C.....

will attend the Magistrates Court to give evidence in the matter

of

at

on [date] / /19..... at [time] a.m.

[signed] on [date] / / 19.....

NB A form for the claim for reimbursement of the reasonable costs and expenses incurred by you in appearing as a witness is attached. Please complete the form and present it to the Court Registry counter following your appearance as a witness.

SCHEDULE 2—continued*Magistrates Court Act 1930*

FORM 10

Paragraphs 60A (2) (c) and 62 (2) (b)
Subsections 62A (1) and 67 (1A)**MAGISTRATES COURT
AUSTRALIAN CAPITAL TERRITORY
CLAIM FOR EXPENSES BY WITNESS**

Court Ref:

File No:

I

travelled from to the Magistrates Court and from the
Magistrates Court

to

by [means of travel]

[number of journeys]

and claim the reasonable expenses of travel to give evidence of

\$

☐

Receipts /tickets attached

[signed].....

[date]..... /..... / 19.....

RECEIPT

I have received the sum of \$..... being the expenses of travel to give evidence.

[signed].....

[date] /..... / 19.....

NOTES

Principal Act

1. Reprinted as at 10 April 1995. See also Act No. 41, 1995.

Penalty units

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

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