

2006

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

COURT LEGISLATION AMENDMENT BILL 2006

EXPLANATORY STATEMENT

Circulated with the authority of
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Overview of Bill

The Court Legislation Amendment Bill 2006 (the Bill) makes amendments to legislation governing the courts. Most of the amendments are the result of various issues that arose out of development of the Court Procedures Rules 2006 (the court rules).

The court rules were developed under the *Court Procedures Act 2004*. This Act provides for the rules of the Small Claims Court, Magistrates Court, Supreme Court and Court of Appeal, dealing with the conduct and preparation of litigation, to be simplified and where possible uniform across all of the courts. The rules are made by the Rule-making Committee (which consists of the Chief Justice, the President of the Court of Appeal, a Judge, the Chief Magistrate and a Magistrate). The rules are subordinate laws and can be disallowed by the Legislative Assembly.

The court rules commenced in the Supreme Court and the Court of Appeal on 1 July 2006 and will commence in the Magistrates Court and Small Claims Court on 1 January 2007.

The Bill includes amendments:

- providing that the Magistrates Court may confer court functions on the Magistrates Court Registrar under the court rules;
- ensuring that the Magistrates Court Registrar and Deputy Registrar can exercise powers under the court rules;
- clarifying what is meant by contempt in the face of the court;
- broadening the powers of the Magistrates Court to allow action for contempt for non-compliance with court orders and undertakings;
- providing that in contempt matters the Magistrates Court has the same powers as the Supreme Court;
- including the contempt of court amendments in the *Coroners Act 1997* for the Coroners Court; and
- removing any doubt that the Magistrates Court may make practice directions about circle sentencing in the Magistrates Court.

Clause Notes

Clause 1 Name of Act – states the title of the Act as the *Court Legislation Amendment Act 2006*.

Clause 2 Commencement – sets out the commencement date of the Act. The Act commences on the day after its notification day. Part 4 of the Act commences on 1 January 2007.

Clause 3 Legislation amended – pt 2 – provides that the Act amends the *Coroners Act 1997*.

Clause 4 Contempt Section 88 – omits section 88 of the *Coroners Act 1997*. Section 88 provided that an offence was committed if a person did something in the face of the court that was contempt. This provision is no longer necessary as contempt of the Coroners Court is now dealt with in section 99A of the *Coroners Act 1997*. Section 99A allows the Coroners Court to take action for a broader range of contempts than the previous section 290, and the powers and procedures for dealing with contempt will be in line with the powers in the Supreme Court.

Clause 5 New section 99A – inserts section 99A into the *Coroners Act 1997*. Section 99A provides that a person is in contempt of the Court if the person contravenes a court order or undertaking, commits a contempt in the face of the court or commits any other contempt.

New section 99A provides examples of what is meant by contempt in the face of the court. These examples are based on section 50(1) of the *Queensland Magistrates Court Act 1921*.

This clause provides that a breach of a court order or undertaking may only be dealt with as contempt of court if there is no other effective means of enforcing the order or undertaking.

New section 99A provides that the Court has the same power to deal with contempt as the Supreme Court has to deal with contempt in the Supreme Court. This provision is in line with the new contempt provision to be included in the *Magistrates Court Act 1930*.

Clause 6 Legislation amended – pt 3 – provides that the Act amends the *Court Procedures Act 2004*.

Clause 7 Remission, refund, deferral, waiver and exemption of fees Section 15(2)(d)(iii) – omits section 15(2)(d)(iii) of the *Court Procedures Act 2004*. This section provided that a determined fee is not payable for a contempt offence against section 290 of the *Magistrates Court Act 1930*. This provision is not necessary as section 290 is being omitted.

Clause 8 Schedule 1, section 24 – substitutes section 24 of the schedule 1 of the *Court Procedures Act 2004*. Schedule 1 of that Act sets out the subject

matter for the rules. The amendment removes a reference to the Committee being able to make rules about the transfer of contempt matters from the Magistrates Court to the Supreme Court. This is not necessary as contempt matters will be able to be dealt with by the Magistrates Court under new section 307.

Clause 9 Legislation amended – pt 4 – provides that the Act amends the *Justice and Community Safety Legislation Amendment Act 2006*.

Clause 10 Schedule 2, part 2.23 (*Magistrates Court Act 1930*), amendment 2.129, proposed section 9B(4) – omits part of amendment 2.129 of the *Justice and Community Safety Legislation Amendment Act 2006*. The part that has been omitted from amendment 2.129 prevented the Registrar of the Magistrates Court from exercising functions under the court rules. This provision is no longer necessary and would be inconsistent with the amendments in clause 13 and 14.

Clause 11 Legislation amended – pt 5 – provides that the Act amends the *Magistrates Court Act 1930*.

Clause 12 Offences against Act – application of Criminal Code etc Section 3A – omits section 3A of the *Magistrates Court 1930*. This section referred to the application of the Criminal Code to section 290 of the Act. As the offence in section 290 is being omitted this reference is no longer necessary. Section 3A also included a note referring to the value of a penalty unit for an offence. This information is included in the front of the Act under the heading 'About this republication'.

Clause 13 Constitution of court New section 4(4) to (6) – inserts new sections 4(4) to 4(6) into the *Magistrates Court Act 1930*. The new sections provide that the court rules may provide for the jurisdiction of the court to be exercised by the Registrar. This amendment brings section 4 more closely into line with the equivalent provision in the *Supreme Court Act 1933*.

Clause 14 Appeals to which div 3.10.2 applies New section 208(1)(b) – amends section 208(1)(b) of the *Magistrates Court Act 1930* to remove a reference to section 290. As section 290 is being omitted this reference is no longer necessary.

Clause 15 Section 208(1)(d) – amends section 208(1)(d) to remove a reference to section 290. As section 290 is being omitted this reference is no longer necessary.

Clause 16 Appeals by way of orders to review Section 219B(1)(f) – amends section 219B(1)(f) to remove a reference to section 290. As section 290 is being omitted this reference is no longer necessary.

Clause 17 Contempt in face of court Section 290 – omits section 290 of the *Magistrates Court Act 1930*. Section 290 provided that an offence was committed if a person did something in the face of the court that was

contempt. This provision is no longer necessary as contempt of the Magistrates Court is now dealt with in section 307. Section 307 allows the Magistrates Court to take action for a broader range of contempts than the previous section 290 and the powers and procedures for dealing with contempt will be in line with the powers in the Supreme Court.

Clause 18 New section 307 - inserts section 307 into the *Magistrates Court Act 1930*. Section 307 provides that a person is in contempt of the Magistrates Court if the person contravenes a court order or undertaking, commits a contempt in the face of the court or commits any other contempt.

New section 307 provides examples of what is meant by contempt in the face of the court. These examples are based on section 50(1) of the *Queensland Magistrates Court Act 1921*.

This clause provides that a breach of a court order or undertaking may only be dealt with as contempt of court if there is no other effective means of enforcing the order or undertaking.

New section 307 provides that the Magistrates Court has the same power to deal with contempt of the Magistrates Court as the Supreme Court has to deal with contempt in the Supreme Court.

Clause 19 Section 309 – substitutes section 309 of the *Magistrates Court Act 1930*. Section 309 provides that the court may make directions about procedures. The new section 309 provides that the court may make directions about procedures and removes any doubt that the Magistrates Court can make a direction about circle sentencing for certain Aboriginal or Torres Strait Islander offenders.

Clause 20 Section 311 – substitutes section 311 of the *Magistrates Court Act 1930*. This section provides that a matter occurs before the court if the appearance occurs by audiovisual or audio link. This section removes a reference to provisions of the *Evidence (Miscellaneous Provisions) Act 1991* which no longer apply. The reference has been replaced with a reference to rule 6703 of the Court Procedures Rule 2006.