

AUSTRALIAN CAPITAL TERRITORY

MAGISTRATES COURT (AMENDMENT) ORDINANCE 1987

EXPLANATORY STATEMENT

No. 56 of 1987

The main purpose of the Ordinance is to amend the Magistrates Court Ordinance 1930 ('the Principal Ordinance') to clarify the powers of Magistrates in committal proceedings following the decision of the NSW Court of Appeal in Wentworth v Rogers [1984] 2 NSWLR 422.

Under the Principal Ordinance a Magistrate in committal proceedings must decide at the conclusion of the prosecution evidence (the first stage) whether a prima facie case has been established (i.e. whether the evidence is capable of satisfying a jury beyond reasonable doubt that the defendant has committed an indictable offence). If such a case is found, the Magistrate proceeds to hear the evidence, if any, for the defendant and then decides, on all the evidence before the Court, whether to commit the defendant for trial. At this second stage of the committal the Principal Ordinance previously provided that the defendant is to be discharged if the Court is of opinion that the evidence is not sufficient to put the defendant upon his trial for an indictable offence.

The Ordinance contains a revised test recommended by the A.C.T. Criminal Law Consultative Committee to be applied by a Magistrate at the second stage of the committal proceedings. The Committee includes the President of the Law Reform Commission, representatives of the ACT judiciary and

magistracy, the Director of Public Prosecutions, the Australian Federal Police, the ACT Law Society and Bar Association and the Attorney-General's Department.

Under the revised test a defendant would be discharged if the Court is of the opinion that, having regard to all the evidence before it, a jury would not convict the defendant.

This test ensures the Magistrate retains a 'screening' function i.e. a discretion not to commit for trial in those relatively rare borderline cases where the prima facie case is very weak. These cases usually arise where the prosecution evidence is manifestly unreliable or lacks any real credibility.

Such a function is an appropriate one for a Magistrate to perform in committal proceedings in the proper administration of criminal justice. It avoids unwarranted committals for trial and ensures that the screening of cases occurs in open Court rather than being left entirely to the Director of Public Prosecutions in private in deciding whether or not to file an indictment in the Supreme Court.

In Wentworth's case the Court held that under the Justices Act of that State a Magistrate must commit a person for trial if the evidence establishes a prima facie case against the defendant. The Court held that the Act did not authorise a committing Magistrate, at the conclusion of the evidence for the prosecution and the defendant, to discharge the defendant on the ground that, in the Magistrate's opinion, a reasonable jury properly instructed would not convict the defendant. Previously it had been thought the Act authorised this latter formula which had been adopted by NSW Magistrates over many years

The decision meant, in effect, that NSW Magistrates lost their 'screening' function in committal proceedings. This led to an unacceptable increase in committals in the State and

legislation subsequently passed was intended to restore the situation which existed before the decision. The amendments permit the discharge of a defendant if the Magistrate is of the opinion that, having regard to all the evidence before him/her, a jury would not be likely to convict the defendant.

As the Justices Act provision was in substantially the same terms as the equivalent provision of the Principal Ordinance, the need to amend the Ordinance in the light of the Wentworth decision was referred to the A.C.T. Criminal Law Consultative Committee.

In accordance with the Committee's recommendation, the revised test in the Ordinance, while following the format of that in NSW, is not as broad in its scope as it excludes the reference to "not be likely to" convict which has drawn criticism and has caused difficulty in its application by Magistrates in that State. In particular, it avoids the inherent difficulty with the inclusion of this reference in the test of deciding to what degree a Magistrate must be satisfied that a jury would not convict the defendant.

The Committee considers the test as formulated in the Ordinance strikes the appropriate balance between allowing a Magistrate a screening function in committal proceedings and usurping the proper role of the jury. It will give legislative support to the approach adopted by ACT Magistrates in borderline cases over many years which has proved quite satisfactory in practice.

#### Meaning of 'prima facie case'

The decision in Wentworth also dealt with the meaning of the evidence having established a 'prima facie case' which is the test to be applied by a Magistrate at the end of the first stage of committal proceedings (i.e. after hearing the prosecution evidence). The Court said that this meant that the Magistrate had to form the opinion that the evidence is

capable of satisfying a jury beyond reasonable doubt that the defendant has committed an indictable offence. The NSW Act was amended to replace the references to prima facie case with a formula to this effect and similar amendments have been included in the Ordinance. This will express more clearly the intention of the Ordinance.

#### Setting aside a summons to a witness

The Ordinance also contains a provision providing that the Court may set aside, wholly or in part, a summons to a witness to give evidence or to produce documents on the application of the person to whom the summons is addressed. The Court already has this power as part of its inherent jurisdiction and the purpose of the amendment is merely to make the law on this point clearer and more accessible. There is a legislative provision to the same effect in the Magistrates Court (Civil Jurisdiction) Ordinance 1982 which governs civil actions in the Court.

Details of the Ordinance are as follows:

Section 1 provides that the Ordinance may be cited as the Magistrates Court (Amendment) Ordinance 1987.

Section 2 defines 'Principal Ordinance' to mean the Magistrates Court Ordinance 1930.

Section 3 inserts new section 66A into the Principal Ordinance which provides that the Court may set aside, wholly or in part, a summons to a witness to give evidence or produce documents on the application of the person to whom the summons is addressed. That person is required to serve a copy of the application on the party to the proceedings on whose request the summons was issued.

Section 4 inserts a new Division 1A (new section 88A) in the Principal Ordinance to define jury for the purposes of Part VI (Proceedings in Case of Indictable Offences) of the Principal Ordinance to mean "a reasonable jury properly instructed".

Section 5 amends section 89A of the Principal Ordinance to substitute for the reference to the evidence having established a "prima facie case" a reference to the evidence being "capable of satisfying a jury beyond reasonable doubt" that the defendant has committed an indictable offence.

Section 6 amends section 91 to substitute for the reference to the evidence having established a "prima facie case", a reference to the evidence being "capable of satisfying a jury beyond reasonable doubt" that the defendant has committed an indictable offence. The amendment also makes it clear that if the Court is not so satisfied the defendant is, if in custody, to be discharged.

Section 7 amends section 92 of the Principal Ordinance consequent upon the amendment to section 91.

Section 8 amends section 94 of the Principal Ordinance by inserting the new test to be applied by the Court, after hearing the evidence for the prosecution and the defendant, in deciding whether or not to commit the defendant for trial in the Supreme Court. As outlined in the introduction, the Court is to discharge the defendant if it is of the opinion that, having regard to all the evidence before it, a jury would not convict the defendant of an indictable offence.

Section 9 amends section 97 of the Principal Ordinance consequent upon the amendment to sections 91 and 94 in sections 6 and 8, respectively.

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Authorised by the  
Minister for Justice