

AUSTRALIAN CAPITAL TERRITORY

MAGISTRATES COURT (AMENDMENT) ORDINANCE (No.3) 1986

No 74, 1986

EXPLANATORY STATEMENT

The main purpose of this Ordinance is to amend the Magistrates Court Ordinance 1930 ('the Principal Ordinance') to remove redundant provisions relating to civil matters.

The civil provisions in the Principal Ordinance, with the exception of provisions dealing with enforcement of judgment debts, have been redundant in relation to new actions since the coming into force of the Magistrates Court (Civil Jurisdiction) Ordinance 1982, ('the Civil Jurisdiction Ordinance') and in relation to appeals, since new appeal provisions were introduced in 1984. The provisions covering enforcement of judgment debts, which are self-contained, will be replaced after the Law Reform Commission's Report on this subject is received.

The Ordinance, in the main, contains no amendments of substance. The opportunity has been taken, however, in appropriate areas (for example, affidavits) to apply the relevant provisions of the Civil Jurisdiction Ordinance to criminal proceedings under the Principal Ordinance. The provisions of the Civil Jurisdiction Ordinance in the relevant areas, although of similar effect, are more modern. This approach ensures that there is uniformity in procedure in the Court's civil and criminal jurisdiction in those areas that are common to both jurisdictions.

The Ordinance also contains a provision (in clause 87) to exclude the requirement to pay fees in respect of proceedings under the Domestic Violence Ordinance 1986. This matter, which was overlooked when that Ordinance was being prepared, was drawn to attention by the Police (who would have been required to pay a fee when applying for an order) and the Court. Given the nature of the proceedings under the new Ordinance it is considered no fee should be payable under it.

A general outline of the structure of the Ordinance is as follows:

Part I provides that the Ordinance may be cited as the Magistrates Court (Amendment) Ordinance (No.3) 1986.

Part II amends the Principal Ordinance. The amendments mainly involve the repeal of sections, divisions and parts of the Principal Ordinance or the removal of provisions relating to civil matters from individual sections. In some sections the civil and criminal provisions are so intertwined that it has been necessary, from a drafting point of view, to remake the whole section in order to remove the civil provisions.

Section 65 in Part II contains a transitional provision to preserve any civil proceedings still pending in the Court and which were commenced prior to the Civil Jurisdiction Ordinance. This is a precautionary measure only as the Court has advised that there appears to be no such proceedings still before the Court.

Part III amends the Magistrates Court Rules made under the Principal Ordinance to remove redundant civil provisions.

Part IV amends a number of other Ordinances of the Territory (Division 1) and Rules under Ordinances (Division 2) consequent upon the amendments to the Principal Ordinance. A number of ACT Ordinances and Rules thereunder contained references to a 'complaint' under the Principal Ordinance (the method by which a civil matter was commenced in the Court under the Principal Ordinance). These references would have been of no effect on the repeal of provisions relating to complaints under the Principal Ordinance and therefore required amendment to refer to a claim under the Civil Jurisdiction Ordinance.

Schedules 1 & 2 contain amendments to forms in the First Schedule to the Principal Ordinance consequent upon the amendments to the Principal Ordinance in Part II of the proposed Ordinance.

Schedule 3 contains consequential amendments to the forms in the First Schedule to the Magistrates Court Rules.

Authorised by the
Attorney-General