



NORTHERN TERRITORY OF AUSTRALIA

No. 2 of 1983

AN ACT

To amend the *Justices Act*

[Assented to 27 April 1983]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Justices Amendment Act 1983*.

2. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3. PRINCIPAL ACT

The *Justices Act* is in this Act referred to as the Principal Act.

4. REPEAL

The *Justices Amendment Act 1981* (No. 109 of 1981) is repealed.

5. TRANSITIONAL

(1) Subject to sub-section (2), an action, prosecution or other proceeding begun before the commencement of this Act, to or in relation to which the Principal Act as amended by this Act would apply, may, on and from that commencement, be continued as if this Act had never been commenced.

(2) Where, after the commencement of this Act, a fee becomes payable in respect of a prosecution or other proceeding referred to in sub-section (1), the amount of

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the fee payable shall be that amount referred to, or prescribed in pursuance of, section 172(3) or 203(c) of the Principal Act as amended by this Act, as the case may be.

6. WARRANT BY SUMMONS NOT AVOIDED BY DEATH, &c., OF JUSTICE

Section 19 of the Principal Act is amended -

- (a) by omitting "Act or any"; and
- (b) by omitting "the same" and substituting "it".

7. SERVICE OF SUMMONS UNDER SECTION 57(2)

Section 27A of the Principal Act is amended by omitting sub-section (3) and substituting the following:

"(3) A summons served under sub-section (1)(c) on a defendant shall be served -

- (a) if the offence alleged in the summons is a traffic infringement within the meaning of section 36H(1) of the *Traffic Act* - not later than 90 days after the date of the alleged offence; or
- (b) in any other case - not later than 60 days after the date of the alleged offence,

and not earlier than one month before the date shown on the summons as the date for the hearing of the charge to which that summons relates."

8. CLERKS OF COURT

Section 42 of the Principal Act is amended by adding at the end the following:

"(3) The Minister may, by instrument in writing, appoint a person to be the deputy of a clerk.

"(4) A person appointed under sub-section (3) as the deputy of a clerk may, subject to the direction of the clerk, exercise any power or perform any function conferred or imposed under this Act upon that clerk and, where such a power is exercised or such a function is performed by that deputy, it shall be of the same validity and effect as if done by that clerk."

9. REPEAL AND SUBSTITUTION

Section 60 of the Principal Act is repealed and the following substituted:

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"60. REMAND OR DISCHARGE ON BAIL

"(1) Where a defendant is apprehended under a warrant or where, from the absence of witnesses, or from any other reasonable cause, it becomes necessary or advisable to defer or adjourn the defendant's hearing, the Justice before whom that defendant is brought or appears may remand, and that Justice or another Justice may, from time to time, further remand that defendant for such period as that Justice thinks fit, but not exceeding 15 clear days at any one time unless both parties consent thereto.

"(2) Where a Justice remands under sub-section (1) or (3) a defendant, the Justice shall, in respect of the defendant's period of remand or further period of remand, as the case may be, commit that defendant -

- (a) by warrant to the nearest prison or to some place of security;
- (b) orally to the custody of the constable or other person who apprehended him; or
- (c) orally to such other safe custody as the Justice thinks fit,

and that Justice shall order that defendant to be brought up at some stated time and placed before such Justice or Justices as shall then be there, of which order the clerk shall give the complainant due notice.

"(3) A Justice, on being satisfied that a defendant who has been remanded under sub-section (1) and committed into custody in accordance with sub-section (2) is, by reason of illness or accident, unable at the expiration of the period for which he was remanded under sub-section (1) to appear personally before a Justice may, in the absence of the defendant, further remand that defendant for such period as the Justice thinks fit, but not exceeding 15 clear days at any one time.

"(4) Where a Justice, for the purposes of a further period of remand referred to in sub-section (3), commits under sub-section (2)(a) a defendant, the warrant required by that second-mentioned sub-section may be issued by the Justice further remanding the defendant or by any other Justice.

"(5) A Justice may, instead of committing under sub-section (2) a defendant, grant the defendant bail in accordance with the *Bail Act*."

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10. ON NON-APPEARANCE OF DEFENDANT COURT MAY ISSUE WARRANT OR PROCEED *EX PARTE*

Section 62(b) of the Principal Act is amended by omitting "appearance," and substituting "appearance, subject to section 62AB".

11. PROCEDURE WHERE PERSON GRANTED BAIL FAILS TO APPEAR

Section 62A(b) of the Principal Act is amended by omitting "proceed" and substituting "subject to section 62AB, proceed".

12. NEW SECTION

The Principal Act is amended by inserting after section 62A the following:

"62AB. *EX PARTE* PROCEEDINGS

"(1) Where the Court proceeds *ex parte* in pursuance of, and in accordance with, section 62(b) or 62A(b) to hear and adjudicate upon a complaint, it may in so doing, in respect of the complaint, regard -

- (a) an allegation contained in the summons as served upon the defendant to which that complaint relates;
- (b) an allegation contained in that complaint where that complaint is a complaint made on oath in accordance with the requirements of section 50(3)(b); or
- (c) oral evidence,

as evidence of the matter alleged.

"(2) For the purposes of sub-section (1)(a) and (b), an allegation is contained in a summons or complaint if it is contained in, annexed to, or accompanies the summons or complaint.

"(3) An allegation referred to in sub-section (1) may include particulars of the alleged offence and of the circumstances in which it is alleged to have been committed.

"(4) Where the Court finds a charge proved in *ex parte* proceedings under section 62(b) or 62A(b), heard and adjudicated upon in accordance with this section, the prosecutor may recite to the Court a relevant matter alleged against the defendant to which those proceedings relate as if that defendant had personally appeared and pleaded guilty."

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13. NEW SECTION

The Principal Act is amended by inserting after section 63 the following:

"63A. CERTAIN DECISIONS OF COURT MAY BE SET ASIDE ON APPLICATION BY DEFENDANT OR COMPLAINANT

"(1) Where the Court has -

- (a) proceeded *ex parte*, under section 62(b) or 62A(b), to hear and adjudicate on a complaint and has convicted or made an order against the defendant to which the complaint relates; or
- (b) dismissed under section 63(1) a complaint,

the defendant or complainant may, not later than one month after -

- (c) in the case of that defendant - the conviction or order referred to in paragraph (a) coming to that defendant's notice; and
- (d) in the case of that complainant - the dismissal referred to in paragraph (b) coming to that complainant's notice,

serve on the clerk of the Court by which that conviction or order or dismissal was made, a written application to the Court to set aside that conviction or order, or dismissal, as the case may be, and of the grounds of the application.

"(2) Where a clerk is served an application referred to in sub-section (1), he shall appoint a time and place for the hearing by the Court of the application and shall give written notice to the defendant or complainant making that application of the time and place so appointed.

"(3) Where a defendant who has served an application referred to in sub-section (1) is in custody pursuant to the conviction or order to which the application relates, a Justice may, upon application by the defendant, if satisfied that that first-mentioned application has been duly served and that that defendant is not in custody for some other cause, grant the defendant bail in accordance with the *Bail Act*.

"(4) Where a defendant is in custody pursuant to a conviction or order referred to in sub-section (1)(a), the keeper of the gaol where the defendant is being held, or a person authorized by him in writing for that purpose, shall, upon the request of that defendant, as soon as practicable, make all necessary arrangements -

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- (a) for the purpose of allowing service of an application referred to in sub-section (1); and
- (b) for the purpose of allowing that defendant to make an application referred to in sub-section (3).

"(5) A defendant who has served an application referred to in sub-section (1) and who is not granted bail pursuant to sub-section (3) shall, pending the determination under sub-section (7) of the application and for so long as he is not in custody for some other cause, be treated in the same manner as a person who is in custody pursuant to section 60(1).

"(6) Where, as a result of a determination under sub-section (7), a defendant is required to serve a term of imprisonment, the period, if any, during which the defendant is in custody pending the determination shall count as part of the whole term.

"(7) At the time and place appointed under sub-section (2) for the hearing of an application referred to in sub-section (1), the Court shall, unless the applicant to which the application relates was a defendant who was, under sub-section (3), granted bail in accordance with the *Bail Act* and who fails to appear in accordance with his bail undertaking, proceed to hear and determine that application -

- (a) by refusing that application; or
- (b) by adjourning the hearing of that application to a time and place appointed by the Court, and giving to the other party written notice -
 - (i) of that time and place; and
 - (ii) that that other party may, if he thinks fit, at that time and place appear to oppose that application,

and the Court shall then and there set aside the conviction or order, or dismissal, as the case may be, to which that application relates, on such terms and conditions as the Court thinks fit, or the Court may refuse to set aside that conviction or order, or dismissal.

"(8) The Court may, in making a determination under sub-section (7), make such order as to costs as it thinks fit.

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"(9) Where an application referred to in sub-section (1) relates to a conviction or order against the applicant and the conviction or order imposed a sentence of imprisonment but that applicant was, under sub-section (3), granted bail in accordance with the *Bail Act* and the Court, in determining under sub-section (7) the application -

- (a) refuses, under sub-section (7)(a), that application; or
- (b) refuses, under sub-section (7)(b), to set aside that conviction or order,

it shall order the return of the applicant to custody according to the conviction or order to which that application relates."

14. APPLICATION BY CLERK

Section 98 of the Principal Act is amended by omitting "Upon" and substituting "Subject to section 180C(6), upon".

15. OFFENCES THAT MAY BE DEALT WITH SUMMARILY WITH CONSENT OF ACCUSED

Section 121A of the Principal Act is amended by inserting after sub-section (1) the following:

"(1A) Subject to sub-section (1B), a person the subject of a charge referred to in sub-section (1)(a) being dealt with in the manner referred to in sub-section (1) and who, in respect of the charge, is represented by a legal practitioner, may, at any stage of the proceedings relating to the hearing of that charge, plead guilty to that charge.

"(1B) The Court hearing a charge being dealt with in the manner referred to in sub-section (1) shall not, in respect of that charge, accept a plea of guilty under and in accordance with sub-section (1A) from the person the subject of that charge unless it is of the opinion that it is proper to do so."

16. RIGHT OF APPEAL TO SUPREME COURT

Section 163 of the Principal Act is amended by omitting sub-section (1) and substituting the following:

"(1) A party to proceedings before the Court may appeal to the Supreme Court from a conviction, order, or adjudication of the Court (including a conviction of a minor indictable offence but not including an order dismissing a complaint of an offence), on a ground which involves -

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- (a) sentence; or
- (b) an error or mistake, on the part of the Justices whose decision is appealed against, on a matter or question of fact alone, or a matter or question of law alone, or a matter or question of both fact and law,

as hereinafter provided, in every case, unless some Special Act expressly declares that such a conviction, order, or adjudication shall be final or otherwise expressly prohibits an appeal against it."

17. NO APPEAL ON REMOVAL INTO SUPREME COURT TO BE ALLOWED EXCEPT UNDER THIS ACT

Section 164 of the Principal Act is amended by omitting "by *certiorari* or otherwise".

18. NOTICE OF APPEALS

Section 172(3) of the Principal Act is amended by omitting "a fee of \$3 or such other fee as may be prescribed by rules of the Supreme Court" and substituting "the prescribed fee or, where there is no prescribed fee, a fee of \$3".

19. TRANSMISSION OF COPY OF DEPOSITIONS TO SUPREME COURT ON APPEAL

Section 175 of the Principal Act is amended by inserting after "of the witnesses" the words "or all exhibits tendered".

20. NEW SECTION

The Principal Act is amended by inserting after section 175 the following:

"175A. TRANSMISSION OF DOCUMENTS TO SUPREME COURT DEEMED TO BE A TENDERING IN EVIDENCE TO THAT COURT

"Where, under section 174(1) or 175, a document or exhibit referred to in either of those sections is transmitted to the Supreme Court, the transmission of the document or exhibit shall be deemed to be a tendering in evidence to that Court of that document or exhibit."

21. EVIDENCE ON APPEAL

Section 176 of the Principal Act is amended -

- (a) by inserting after "documents" the words "or exhibits"; and
- (b) by omitting "or by order of the Supreme Court on appeal".

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22. REPEAL AND SUBSTITUTION

Section 176A of the Principal Act is repealed and the following substituted:

"176A. TENDERING OF EVIDENCE TO SUPREME COURT

"(1) Where evidence is tendered to the Supreme Court, that Court shall, unless it is satisfied that the evidence, if received, would not afford a ground for allowing the appeal, admit that evidence if -

- (a) it appears to it that that evidence is likely to be credible and would have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal;
- (b) it is satisfied that that evidence was not adduced in those proceedings and there is a reasonable explanation for the failure to adduce it; and
- (c) it is satisfied that the appellant has complied with the requirements of sub-sections (2) and (3) in respect of that evidence.

"(2) An appellant shall not, under sub-section (1), tender evidence to the Supreme Court unless he has, not less than 7 days before the hearing of the appeal to which the evidence relates is commenced by that Court, given, subject to sub-section (3), written notice to the other party to the proceedings of the evidence to be so tendered including, where such evidence is to be given by a person, irrespective of whether it is to be given orally or by affidavit, the name, address and occupation of the person.

"(3) For the purposes of sub-section (2), an appellant shall give a notice referred to in that sub-section by delivering or leaving it at, or by sending it by certified mail to, the last known residential or business address of -

- (a) the other party to the proceedings; or
- (b) the solicitor, if any, of the other party to the proceedings."

23. PROCEDURE AND POWER OF SUPREME COURT ON APPEAL

Section 177 of the Principal Act is amended by omitting, from sub-section (2), paragraphs (d) and (e) and substituting the following:

- "(d) remit the case for hearing or for further hearing before the Court of Summary Jurisdiction;

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- (e) make such further or other order as to costs or otherwise as it thinks fit; or
- (f) notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred."

24. NEW PART

The Principal Act is amended by inserting after Part VI the following:

"PART VIA - RECIPROCAL ENFORCEMENT OF FINES
AGAINST BODIES CORPORATE

"180A. DEFINITIONS

"In this Part, unless the contrary intention appears -

'conviction' means a conviction or order entered or made by a Court in the exercise of summary jurisdiction in proceedings for an offence;

'fine' includes -

(a) a pecuniary penalty, pecuniary forfeiture and pecuniary compensation; and

(b) fees, charges and costs payable by a body corporate under an order made in proceedings in which a conviction was entered in respect of the body corporate;

'reciprocating court' means a court, or a court included in a class of courts, declared under section 180B to be a reciprocating court or a reciprocating court included in a class of reciprocating courts;

'relevant officer', in relation to a reciprocating court, means the clerk or other corresponding officer of the Court;

'State' includes a Territory other than the Northern Territory;

'Territory fine' means a fine payable under a conviction of the Court.

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"180B. DECLARATION OF RECIPROCATING COURT

"Where a State of the Commonwealth has laws providing for enforcement in the State of a Territory fine against a body corporate, the Minister may, by notice in the Gazette -

- (a) declare a court of summary jurisdiction in that State to be a reciprocating court; or
- (b) declare a class of courts of summary jurisdiction in that State to be a class of reciprocating courts.

"180C. ENFORCEMENT OF FINE

"(1) Where, under a conviction of a reciprocating court, a fine is payable by a body corporate having or appearing to have property in the Territory and the clerk at or near to a place where the body corporate has or appears to have property receives a request in writing from the relevant officer of the reciprocating court for the enforcement of the conviction, accompanied by -

- (a) a copy, certified by the relevant officer to be correct, of the conviction; and
- (b) a certificate under the hand of the relevant officer specifying the amount of the fine that remains unpaid,

the clerk shall -

- (c) register the conviction by filing in the Court the certified copy of the conviction; and
- (d) note, on the certified copy referred to in paragraph (c), the date of the registration referred to in that paragraph relating to that certified copy.

"(2) Upon the registration under sub-section (1)(c) of a conviction -

- (a) the conviction shall, for the purposes of this Part, be deemed to be a conviction of the Court adjudging payment of a fine by the body corporate in the amount specified as unpaid in the certificate referred to in sub-section (1)(b) relating to that conviction;
- (b) the clerk shall issue a warrant of distress for the purpose of recovering the amount referred to in paragraph (a); and

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- (c) this Act shall, subject to this section, apply to and in relation to the warrant referred to in paragraph (b) and the execution of that warrant as if that warrant had been issued in connection with a conviction of the Court.

"(3) Where a request is made under sub-section (1) in respect of a fine payable under a conviction of a reciprocating court and the clerk, after the request, receives a notification from the relevant officer of the reciprocating court of payment of an amount in satisfaction in whole or in part of the amount of the fine, the clerk shall note the particulars of the payment on the certified copy of the conviction filed in accordance with sub-section (1)(c).

"(4) Where -

- (a) a warrant is issued under sub-section (2)(b) in respect of a fine; and
- (b) before execution of the warrant, the clerk receives a notification referred to in sub-section (3) relating to the fine,

the clerk shall arrange for the return of that warrant and, upon its return, he shall -

- (c) where the amount of the fine has been paid in full - withdraw that warrant; or
- (d) where part of the amount of the fine remains unpaid - amend that warrant to show the amount still unpaid.

"(5) Where a warrant issued under sub-section (2)(b) is amended in pursuance of sub-section (4)(d), the warrant shall be enforced in respect of the amount of the fine for the time being shown in that warrant as unpaid.

"(6) Where a sum of money is paid to the clerk in satisfaction in whole or in part of a fine payable under a conviction registered under sub-section (1)(c), the clerk shall remit the sum of money to the relevant officer of the reciprocating court by which the conviction was entered.

"(7) For the purposes of this section, a document that purports to have been signed by the relevant officer of a reciprocating court shall be taken to have been so signed unless the contrary is proved.

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"180D. EFFECT OF ENFORCEMENT BY RECIPROCATING COURT

"A sum of money received by the clerk from a reciprocating court in satisfaction in whole or in part of a Territory fine shall be applied by the clerk as if the sum had been paid to him by the body corporate by which the fine was payable in satisfaction in whole or in part of the fine.

"180E. CLERK TO NOTIFY PAYMENT OF TERRITORY FINE

Where -

- (a) a conviction of the Court under which a fine is payable is registered by the relevant officer of a reciprocating court; and
- (b) a sum of money is received by the clerk in satisfaction in whole or in part of the fine,

the clerk shall, as soon as practicable, notify the relevant officer of the amount of that payment."

25. REPEAL

Section 201 of the Principal Act is repealed.

26. REGULATIONS

Section 203 of the Principal Act is amended by inserting after paragraph (b) the following:

- "(c) the fees to be paid for a matter or thing required or permitted to be done under this Act and the circumstances in which such fees may be waived by the clerk;"