



Taxation Administration Amendment Act 1983

No. 117 of 1983

An Act to amend the *Taxation Administration Act 1953*

[Assented to 16 December 1983]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title, &c.

1. (1) This Act may be cited as the *Taxation Administration Amendment Act 1983*.

(2) The *Taxation Administration Act 1953*¹ is in this Act referred to as the Principal Act.

Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

3. After section 8 of the Principal Act the following Part is inserted:

“PART III—SERVICE OF TAXATION SUMMONSES

Interpretation

“9. In this Part, unless the contrary intention appears—

‘defendant’, in relation to a prescribed offence, means a person to whom a summons has been sent in accordance with section 10 in relation to the offence (whether or not the summons has been delivered to, or received by, the person);

‘fine’ includes any pecuniary penalty;

‘prescribed offence’ means an offence against this Act or a taxation Act, being an offence for which a fine may be imposed but not being an offence that is directly punishable by imprisonment;

‘summons’, in relation to a person, means a writ or process notifying or directing the person to appear on a designated day before a specified court;

‘taxation Act’ means an Act of which the Commissioner of Taxation has the general administration.

Service of summons by post

“10. (1) Without prejudice to any other method of service provided for under any other law of the Commonwealth or under a law of a State or Territory, a summons for the appearance before a court of summary jurisdiction of a person charged with having committed a prescribed offence may be served upon the person to whom it is directed by sending a copy of the summons, not less than 21 days before the day on which the person is required by the summons to appear before the court, by ordinary prepaid post addressed to the person at his last known place of residence or last known place of business.

“(2) Where a summons is served in the manner permitted by sub-section (1), the court may require the summons to be re-served if the court has reasonable cause to believe that the summons has not come to the notice of the person to whom it is directed.

Notice of conviction *ex parte*

“11. (1) Where a defendant who has not entered a plea in relation to a prescribed offence is, in his absence, convicted of the offence, the proper officer of the court concerned shall cause to be served on the defendant notice in writing of—

- (a) the conviction;
- (b) the order of the court;
- (c) where the order of the court includes the imposition of a fine—the time allowed by the court for payment of the fine; and
- (d) the right of the defendant to make an application under section 13A for an order setting aside the conviction.

“(2) Without prejudice to any other method of service provided for under any other law of the Commonwealth or under a law of a State or Territory, a notice under sub-section (1) may be served on the defendant by sending the notice to him by ordinary prepaid post addressed to him at his last known place of residence or last known place of business.

Notice of intention to issue warrant in default of payment

“12. Where—

- (a) a defendant, not being a body corporate, has been served with a notice under sub-section 11 (1), being a notice that includes notice of a fine imposed on him in consequence of a conviction;
- (b) the fine is not paid in full within the time allowed by the court for payment of the fine; and
- (c) a period of not less than 21 days has elapsed after the date of service of the notice,

the proper officer of the court concerned may cause to be served personally on the defendant a notice (in this section referred to as the ‘personal notice’) informing the defendant that unless

- (d) the fine is paid in full before the expiration of 21 days after the date of service of the personal notice; or
- (e) an application in accordance with section 13A for the setting aside of the conviction is made before the expiration of 14 days after the date of service of the personal notice,

a warrant for his commitment to prison may be issued.

Limitation of action to enforce payment of fine

“13. Notwithstanding anything contained in any other law of the Commonwealth or in a law of a State or Territory, where a defendant who has not entered a plea in relation to a prescribed offence is, in his absence, convicted of the offence and the order of the court includes the imposition of a fine—

- (a) a warrant for commitment of the defendant to prison for failure to pay the fine shall not be issued unless—
 - (i) a notice has been served on the defendant under section 12 in relation to the fine; and
 - (ii) a period of not less than 21 days has elapsed after the date of service of the notice; and
- (b) no other action for enforcement of payment of the fine shall be taken unless—
 - (i) a notice has been served on the defendant in relation to the conviction under sub-section 11 (1); and
 - (ii) a period of not less than 21 days has elapsed after the date of service of the notice.

Setting aside of conviction or order

“13A. (1) Where a defendant has been served with a notice under section 11 in relation to a conviction or order of a court, the defendant may

- (a) where a fine was imposed by the court before the expiration of
 - (i) the period allowed by the court for payment of the fine; or
 - (ii) a period of 21 days after the date of service of the notice,whichever is the longer; or
- (b) where no fine was imposed by the court within 21 days after the date of service of the notice,

make an application in writing to the court, or to another court of summary jurisdiction that would have had jurisdiction to make the conviction or order, for an order setting aside the conviction or order.

“(2) Where a defendant has been served with a notice under section 12 in relation to a conviction or order of a court, the defendant may, within 14 days after the date of service of the notice, make an application in writing to the court, or to another court of summary jurisdiction that would have had jurisdiction to make the conviction or order, for an order setting aside the conviction or order.

“(3) Any person who was a party to the proceedings in which the conviction or order to which an application under sub-section (1) or (2) relates was made shall be a party to proceedings in respect of the application.

“(4) Where a court is satisfied, on an application made by a defendant in accordance with sub-section (1) or (2) in relation to a conviction or order, that

- (a) in the case of an application under sub-section (1)
 - (i) the defendant did not receive notice of the proceedings in which the conviction or order was made, or did not receive such notice in sufficient time to enable the defendant to attend the proceedings; or
 - (ii) the defendant failed to attend the proceedings in which the conviction or order was made for reasons that, in the opinion of the court, render it desirable, in the interests of justice, that the conviction or order be set aside and the matter re-heard; or
- (b) in the case of an application under sub-section (2)
 - (i) the defendant
 - (A) did not receive notice of the proceedings in which the conviction or order was made, or did not receive such notice in sufficient time to enable the defendant to attend the proceedings; and
 - (B) did not receive notice of the conviction or order, or did not receive such notice in sufficient time to enable the defendant to apply, within the time specified in paragraph (1) (a), for an order setting aside the conviction or order; or

- (ii) the defendant failed to attend the proceedings in which the conviction or order was made, and failed to make an application in accordance with sub-section (1) in relation to the notice served on the defendant under section 11 in relation to the conviction or order, for reasons that, in the opinion of the court, render it desirable, in the interests of justice, that the conviction or order be set aside and the matter re-heard,

the court shall set aside the conviction or order and shall

- (c) proceed forthwith to re-hear and determine the matter; or
- (d) adjourn the proceedings for re-hearing the matter to such time and place as the court thinks fit.

“(5) Where an application is made to a court (in this sub-section referred to as the ‘relevant court’) under this section for the setting aside of a conviction or order of a court, the proper officer of the relevant court shall forthwith

- (a) cause notice of the making of the application to be given to each party to the application other than the defendant; and
- (b) where the conviction or order was made by a court other than the relevant court—cause notice of the making of the application to be given to that other court.

“(6) Where, under sub-section (4), a court sets aside a conviction or order of another court, the proper officer of the first-mentioned court shall forthwith cause notice of the setting aside of that conviction or order to be given to the other court.

Proof of service of summons or notice

“13B. Service of a summons in accordance with section 10 or of a notice in accordance with section 11 or 12 may be proved by the oath of the person who served it or by affidavit or otherwise.

Application of other laws

“13C. (1) The provisions of this Part have effect in addition to, and not in derogation of, any other law of the Commonwealth or a State or Territory that makes provision for, or in relation to, the service of summonses.

“(2) Without limiting the generality of section 79 of the *Judiciary Act 1903*, the laws (if any) of a State or Territory relating to any procedure whereby a person may, without appearing in court in obedience to a summons, enter a plea in relation to a charge of having committed an offence apply in like manner, *mutatis mutandis*, to a defendant charged with having committed a prescribed offence.”.

Taxation Administration Amendment No. 117, 1983

NOTE

1. No. 1, 1953, as amended. For previous amendments, see Nos. 28, 39, 40 and 52, 1953; No. 18, 1955; No. 39, 1957; No. 95, 1959; No. 17, 1960; No. 75, 1964; No. 155, 1965; No. 93, 1966; No. 120, 1968; No. 216, 1973; No. 133, 1974; No. 37, 1976; Nos. 19 and 59, 1979; and No. 39, 1983.