

THE TERRITORY FOR THE SEAT OF GOVERNMENT.

No. 23 of 1937.

AN ORDINANCE

To amend the Court of Petty Sessions Ordinance
1930-1937.

BE it ordained by the Governor-General in and over the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *Seat of Government Acceptance Act 1909* and the *Seat of Government (Administration) Act 1910-1933*, as follows:—

1.—(1.) This Ordinance may be cited as the *Court of Petty Sessions Ordinance* (No. 2) 1937. Short title and citation.

(2.) Sub-section (2.) of section one of the *Court of Petty Sessions Ordinance 1937* is repealed.

(3.) The *Court of Petty Sessions Ordinance 1930-1934*, as amended by the *Court of Petty Sessions Ordinance 1937*, is in this Ordinance referred to as the Principal Ordinance.

(4.) The Principal Ordinance, as amended by this Ordinance, may be cited as the *Court of Petty Sessions Ordinance 1930-1937*.

2. The minor and consequential amendments set out in the second column of the Schedule to this Ordinance shall be made in the provisions of the Principal Ordinance respectively specified opposite to such amendments in the first column of that Schedule. Minor and consequential amendments.

3. Section five of the Principal Ordinance is amended—

Definitions.

(a) by omitting the definition of "High Court";

(b) by omitting from the definition of "Indictable offence" the words "High Court" and inserting in their stead the words "Supreme Court";

(c) by inserting, after the definition of "Information", the following definition:—

"'Judge' means the Judge of the Supreme Court;"; and

(d) by omitting the definition of "Registrar of the High Court" and inserting in its stead the following definition:—

"'Registrar' means the Registrar of the Supreme Court;".

*Acts by a
Magistrate or
Clerk.*

4. Section twelve of the Principal Ordinance is amended by adding at the end thereof the following sub-section:—

“(2¹) Without affecting the generality of the last preceding sub-section, where it is provided in any law in force in the Territory that an information or complaint may be laid or made before, or a summons or warrant issued by, a Court, a Justice of the Peace or a Clerk of Petty Sessions, the information or complaint may be laid or made, and the summons or warrant may be issued by, a Magistrate or the Clerk.”.

*Powers and
functions of
Magistrates.*

5. Section seventeen of the Principal Ordinance is amended by omitting the words “at the commencement of this Ordinance”.

*Jurisdiction of
Court.*

6. Section nineteen of the Principal Ordinance is amended—

(a) by omitting the words “by any Ordinance, whether made before or after the commencement of this Ordinance, or by this Ordinance, or by any law” and inserting in their stead the words “by any law for the time being”; and

(b) by inserting, after the word “jurisdiction” (last occurring), the words “shall be deemed to be conferred on and”.

7. After section twenty-four of the Principal Ordinance the following sections are inserted:—

*Removal of
civil cases to
the Supreme
Court.*

“24A.—(1.) Subject to any rules or regulations under this Ordinance, the Judge may, on the application of either party to an action referred to in section twenty of this Ordinance made to him before the action comes before the Court for hearing, grant leave for the removal of the action into the Supreme Court on such terms and conditions as to costs or otherwise as the Judge thinks fit.

“(2.) Upon the granting of such leave, all proceedings in the action in the Court shall be discontinued and the Clerk shall transmit to the Registrar all documents relating to the action as are filed of record in the Court.

(3.) Upon receipt of the documents, the Supreme Court shall proceed in the action as if it had been originally commenced in the Supreme Court and all subsequent proceedings in the action shall be according to the course and practice of that Court.

*Procedure for
removal of
cases.*

“24B. Applications under the last preceding section shall be subject to the following provisions:—

(a) The application shall be in writing and shall—

(i) set out the grounds on which the applicant claims that leave should be granted;

(ii) be signed by the applicant or his solicitor;

(iii) be lodged (together with two copies) with the Clerk; and

(iv) be accompanied by a fee of Ten shillings and sixpence;

- (b) The applicant may lodge with the application affidavits in support;
- (c) On receipt of the application the Clerk shall forthwith transmit one copy to the other party to the action and one copy with any affidavits lodged in pursuance of paragraph (b) of this section to the Registrar and the action shall then be stayed;
- (d) On receipt of the application, the Registrar shall forthwith transmit to the Judge a copy of the application with any affidavits lodged in pursuance of paragraph (b) of this section;
- (e) The Judge shall consider every application so transmitted and may make an order either granting leave for the removal of the action into the Supreme Court or that the action be continued in the Court of Petty Sessions;
- (f) If the Judge makes an order granting leave for the removal of the action, the Registrar shall post a copy of the order to each party to the action;
- (g) If the Judge makes an order that the action be continued in the Court of Petty Sessions, the Registrar shall forthwith serve a copy of the order on the Clerk and the Clerk shall forthwith appoint a return day for the summons (if any) issued in the action and post a copy of the order to each party to the action with a notice specifying the day appointed as the return day for the summons;
- (h) The stay of the action shall cease on the day on which the copy of the order is posted to the applicant in pursuance of paragraph (g) of this section;
- (i) Time shall not run for filing any notice of intention to defend or of the grounds of defence or for any proceeding under this Ordinance in the action while the action is stayed in pursuance of this section."

8. Section thirty-eight of the Principal Ordinance is amended by omitting paragraph (c) of sub-section (2.) and inserting in its stead the following paragraph:—

Person to whom
summons to be
directed.

"(c) shall set out the complainant's address for service which address shall not be more than three miles from the office of the Clerk;".

9. Section forty-one of the Principal Ordinance is repealed and the following section inserted in its stead:—

"41.—(1.) A summons issued in respect of an information shall be served at least seventy-two hours, and a summons issued in respect of a complaint shall be served at least ten clear days, before

Service of
summons.

the time appointed in the summons for the hearing thereof, upon the person to whom it is directed, by delivering a copy thereof to him personally, or, if he cannot be found, by leaving it, at his last known place of abode, with some other person apparently an inmate thereof and apparently not less than sixteen years of age.

"(2.) If it appears to the Court or a Magistrate or the Clerk, by statement on oath or by affidavit, that from any cause service in accordance with the last preceding sub-section cannot be effected, the Court or Magistrate or the Clerk may extend the time for hearing and, in the case of a summons in respect of a complaint, the Court may make such order for substituted or other service or for the substitution for service of notice by advertisement or otherwise as to the Court seems just.

"(3.) Service of a summons in accordance with this section may be proved by the oath of the person who served it or by affidavit or otherwise."

10. Section sixty-two of the Principal Ordinance is repealed and the following section inserted in its stead:—

Service, &c., of
summons on
witness.

"62. A summons to a witness shall be served, and proof of service may be given, in the same manner as provided in section forty-one of this Ordinance in the case of a summons to a defendant."

Admission to
hall of persons
committed for
trial or sentence.

11. Section ninety-nine of the Principal Ordinance is amended—

- (a) by inserting, after the word "trial" (first, second and third occurring), the words "or sentence"; and
- (b) by inserting, after the word "trial" (fourth occurring), the words "or receive his sentence".

Admission to
hall of persons
committed for
trial or sentence
and who are in
prison awaiting
trial or sentence.

12. Section one hundred of the Principal Ordinance is amended—

- (a) by inserting, after the word "trial" (first and second occurring), the words "or sentence"; and
- (b) by inserting, after the word "tried", the words "or sentenced".

13. Section one hundred and twenty-three of the Principal Ordinance is repealed and the following section inserted in its stead:—

Notice of
intention.

"123.—(1.) Where a defendant in any complaint intends to defend the action upon the complaint, he shall, at least five clear days before the return day, file a notice of such intention to defend with the Clerk and the Clerk shall forthwith transmit by post a copy of the notice to the complainant.

"(2.) If a notice of intention to defend is not filed in pursuance of this section, the defendant shall not, without the leave of the Court, be permitted to defend the action upon the complaint.

"(3.) The Court may grant the leave referred to in the last preceding sub-section on such conditions as to costs and adjournment as the Court thinks fit.

"(4.) At the close of the opening of the complainant's case and before any evidence is taken, the defendant, if so required by the complainant, shall, by himself or his counsel or solicitor, give a concise statement of his defence to the complaint and of the points on which he relies, and he shall not, except by leave of the Court, enter or rely upon or give evidence as to any other matters than those included in the defence and points so stated."

14. Section one hundred and twenty-five of the Principal Ordinance is amended by omitting the words "or if he gives a statement of defence as provided in section one hundred and twenty-three of this Ordinance" and inserting in their stead the words "and has filed a notice of intention to defend as provided in section one hundred and twenty-three of this Ordinance or has been granted leave under that section to defend the action".

Proceedings when facts not admitted.

15. Section one hundred and twenty-seven of the Principal Ordinance is repealed and the following section inserted in its stead:—

"127. Where the defendant in any complaint—

- (a) does not appear at the time and place appointed in the summons or at the time to which the hearing of the summons was adjourned or postponed (as the case may be); or
- (b) has not filed a notice of intention to defend as provided in section one hundred and twenty-three of this Ordinance or been granted leave under that section to defend the action and does not admit the truth of the complaint,

Proceedings where defendant does not appear.

and it appears to the Court, on oath or affidavit, that the summons was duly served within the time prescribed by section forty-one of this Ordinance for the service thereof or that an order for substituted or other service or for the substitution for service of notice by advertisement or otherwise was duly complied with and sufficient grounds are not shown for an adjournment, the Court may proceed *ex parte* to hear and determine the complaint or may adjourn the hearing to a future day."

16. Section one hundred and thirty-five of the Principal Ordinance is amended by omitting all the words from and including the words "a reasonable time" and inserting in their stead the

Special defence to be notified to complainant.

words "a notice of intention to defend the action is filed as provided in section one hundred and twenty-three of this Ordinance and it is stated in the notice that the defendant sets up such defence".

Term of imprisonment where part payment is made.

17. Section one hundred and fifty-three of the Principal Ordinance is amended by omitting from sub-section (2.) all the words commencing with the words "to such an extent" and inserting in their stead the words "the Court or the Magistrate shall by its or his warrant of commitment order that the term of imprisonment be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days in the term as the amount of the reduction bears to the total amount adjudged to be paid."

Order nisi for attachment of debt.

18. Section one hundred and seventy-one of the Principal Ordinance is amended—

- (a) by omitting the word "of" (first occurring) and inserting in its stead the word "or"; and
- (b) by inserting, after the word "Magistrate" (wherever occurring), the words "or the Clerk".

Procuring the attendance of the defendant.

19. Section one hundred and ninety-nine of the Principal Ordinance is amended—

- (a) by omitting the words "If the defendant is not present at the time of laying the information, the Magistrate may issue such and the same process to procure his" and inserting in their stead the words "(1.) The Magistrate may issue such and the same process to procure the defendant's"; and
- (b) by adding at the end thereof the following sub-section:—

"(2.) Any summons issued under this section may be served at any time before the date upon which the defendant is summoned to appear."

Proceedings on appearance of defendant.

20. Section two hundred of the Principal Ordinance is amended by omitting all the words before the word "appears" and inserting in their stead the words "The Court before which the defendant".

21. Sections two hundred and seven to two hundred and eighteen (both inclusive) of the Principal Ordinance are repealed and the following sections inserted in their stead:—

Appeals as of right to the Supreme Court against convictions, &c.

"207.—(1.) Where any person is aggrieved—

- (a) by a conviction of the Court imposing a fine of Five pounds or more, or any term of imprisonment except imprisonment in default of payment of a fine; or

(b) by an order for commitment under Division 5 of Part IX. of this Ordinance,

he may appeal in the prescribed manner to the Supreme Court against the conviction or order.

"(2.) The appellant shall serve notice of the appeal on the Clerk and on all parties directly affected by the appeal within twenty-one days after the conviction or order is made.

"208.—(1.) Any person who is aggrieved by a conviction or order (other than a conviction or order referred to in the last preceding section) may, within twenty-one days after the conviction or order is made or given, apply in the prescribed manner to the Judge for leave to appeal to the Supreme Court against the conviction or order. Appeals in other cases.

"(2.) An application under the last preceding sub-section shall be in writing and shall—

(a) set out the grounds on which the applicant claims that leave should be granted;

(b) be signed by the applicant or his solicitor;

(c) be lodged (in duplicate) with the Registrar; and

(d) be accompanied by a fee of Ten shillings and sixpence,

and the applicant shall forthwith serve a copy of the application on the Clerk and on all the parties directly affected by the proposed appeal.

"(3.) The applicant may lodge with the application affidavits in support.

"(4.) On receipt of an application, the Registrar shall forthwith transmit to the Judge a copy of the application and any affidavits or other documents lodged in support thereof.

"(5.) The Judge shall consider any application so transmitted to him and may, in the absence of the parties, make an order granting or refusing leave to appeal against the conviction or order, or may order that the application be set down for hearing before him in Chambers on a day and at a time appointed by him.

"(6.) Where the Judge sets down an application for hearing before him in Chambers, the Registrar shall notify the applicant of the time and place appointed for the hearing and proceedings shall be taken as upon any *ex parte* application to the Judge in Chambers, and the Judge may make an order granting or refusing leave to appeal.

"(7.) Where an order granting or refusing leave to appeal has been made in pursuance of sub-section (5.) or sub-section (6.) of this section, the Registrar shall forthwith serve a copy of the order upon the Clerk who shall forthwith cause a copy of the order to be served on the applicant and a copy to be posted to each other party directly affected by the proposed appeal.

"(8.) The applicant shall, within five days after the service on him in pursuance of the provisions of sub-section (7.) of this section of a copy of an order granting leave to appeal, serve notice of appeal on the Clerk and on all parties directly affected by the appeal.

Appellant to
give security
for costs.

"209. Within seven days after the service of any notice of appeal on the Clerk, the appellant shall give security in the sum of Twenty pounds for the costs of the appeal.

Security, how
given.

"210. Security may be given for the purposes of the last preceding section either by the deposit of money with the Clerk or by a bond in accordance with a form and with a surety approved by the Clerk and left with the Clerk and the following provisions shall apply with respect to any such deposit or bond:—

(a) Where money is deposited with the Clerk, the Clerk shall pay the money into an account in the Commonwealth Bank pending the determination of the appeal and upon such determination—

(i) if the costs of and incidental to the appeal are not ordered to be paid by the appellant to the respondent, the Clerk shall repay the amount deposited to the person by whom it was deposited; or

(ii) if the costs of and incidental to the appeal are ordered to be paid by the appellant to the respondent, the Clerk, on being satisfied that the amount payable has been ascertained and that the whole or any portion thereof has not been paid to the respondent, shall apply the amount deposited in or towards satisfaction of the amount of costs unpaid and shall repay the balance (if any) to the person by whom it was deposited; and

(b) Where a bond is given as security, the Clerk shall, if costs of and incidental to the appeal are ordered to be paid by the appellant to the respondent, deliver the bond to the respondent who shall be entitled to the benefit thereof.

When appeal
deemed to be
duly instituted.

"211. When security for the costs of the appeal is given in the prescribed manner, the appeal shall be deemed to be duly instituted, otherwise it shall be deemed to have been abandoned.

Other evidence
not to be
received on
hearing without
consent or
order.

"212. Evidence other than the evidence and proceedings before the Court shall not be received on the hearing of the appeal, except by consent of the parties or by order of the Supreme Court.

Supreme Court
may make any
order (including
order as to
costs) on
appeal.

"213. The Supreme Court on appeal may make any order thereon (including an order as to the costs of and incidental to the appeal) as it thinks just, and the order shall have effect as

if it were a judgment of the Court of Petty Sessions and may be enforced by that Court accordingly.

"214.—(1.) Where an appeal is duly instituted, the enforcement or execution of the conviction or order appealed from shall be stayed until the appeal is concluded or is abandoned or discontinued and if the appellant is in custody he may, if not detained for any other cause, be liberated by the order of a Magistrate upon a recognizance with or without a surety or sureties to the satisfaction of the Magistrate. Stay of execution pending appeal.

"(2.) Where an application for leave to appeal against a conviction or order is lodged as provided in this Part and the applicant furnishes security to proceed with the application and, in the event of leave to appeal being granted, to prosecute the appeal, the enforcement of the conviction or order shall be stayed until—

- (a) a copy of an order refusing leave to appeal is served on the applicant in pursuance of sub-section (7.) of section two hundred and eight of this Ordinance; or
- (b) twelve days after a copy of an order granting leave to appeal has been served on the applicant in pursuance of that sub-section,

whichever is the earlier, and, if the applicant is in custody, he may, if not detained for any other cause, be liberated by order of a Magistrate upon recognizance with or without a surety or sureties to the satisfaction of the Magistrate.

"(3.) Security to proceed with an application for leave to appeal and, in the event of leave to appeal being granted to prosecute the appeal, may be given—

- (a) where the application is in respect of an order for the payment of an amount not exceeding Twenty pounds, by the deposit with the Clerk of a sum of money equal to the amount ordered to be paid or by the applicant entering into a recognizance before the Clerk with or without sureties to the satisfaction of the Clerk in such sum conditioned that he will proceed with the application and, in the event of leave to appeal being granted, will prosecute the appeal; or
- (b) in any other case, by the deposit with the Clerk of the sum of Twenty pounds or by the applicant entering into a recognizance before the Clerk with or without sureties to the satisfaction of the Clerk in the sum of Twenty pounds conditioned that he will proceed with the application and, in the event of leave to appeal being granted, will prosecute the appeal."

Award of costs.

22. Section two hundred and forty-four of the Principal Ordinance is amended—

- (a) by omitting from paragraph (f) of sub-section (1.) the word "and";
- (b) by adding at the end of paragraph (g) of that sub-section the words "and the costs in proceedings to obtain judgment on complaints shall follow the event; and"; and
- (c) by adding at the end of that sub-section the following paragraph:—

"(h) Whenever a complaint over which the Court has no jurisdiction is brought before the Court, the Court may award costs to the like extent and recoverable in the like manner as if the Court had jurisdiction and the complaint had been dismissed."

23. After section two hundred and forty-five of the Principal Ordinance the following section is inserted:—

Remission of fees.

"245A. Where it appears to the Attorney-General or any officer thereto authorized by the Attorney-General that the payment of any fee payable to the Clerk of the Court under this Ordinance would, owing to the exceptional circumstances of the particular case, involve undue hardship, the Attorney-General or that officer may reduce or remit the fee, or postpone payment of the fee, in that particular case."

24. Section two hundred and forty-six of the Principal Ordinance is repealed and the following section inserted in its stead:—

Solicitor's fees.

"246. In any proceedings in which a solicitor or a solicitor and counsel are employed by a complainant or a defendant against whom a complaint is made, the costs incurred by the complainant or defendant in employing a solicitor or a solicitor and counsel to be included in the costs to be paid to the complainant or defendant by another party shall not exceed for the work done the sums respectively prescribed by rules or regulations under this Ordinance."

25. Sections two hundred and fifty and two hundred and fifty-one of the Principal Ordinance are repealed and the following section inserted in their stead:—

Recovery of sums due under security.

"250. Any sum becoming due in pursuance of a security under this Ordinance shall be recoverable summarily on complaint by a member of the Police Force or by the Clerk or by some other person thereto authorized by the Court."

Sums paid by party may be recovered from principal.

26. Section two hundred and fifty-two of the Principal Ordinance is amended by omitting the words "before the Court in manner directed by this Ordinance" and inserting in their stead the words "summarily on complaint by the surety".

THE SCHEDULE.

MINOR AND CONSEQUENTIAL AMENDMENTS.

SECTION 2.

Reference to Section or Schedule amended.	Extent of amendment.
4	Before "Sessions" (last occurring) insert "Petty".
16	Omit "High Court" (wherever occurring) insert "Supreme Court".
21	Omit "on" insert "or".
43	Omit "High Court" (wherever occurring) insert "Supreme Court".
66	Omit "High Court" insert "Supreme Court".
81	Omit "the High Court" insert ", or to receive sentence from, the Supreme Court".
94	Omit "High Court" insert "Supreme Court".
97	Omit "ninety" insert "ninety-two".
	Omit "High Court" insert "Supreme Court".
	Omit "their".
98	Omit "High Court or a Justice thereof" insert "Supreme Court or the Judge".
114	Omit "complainant" (wherever occurring) insert "informant".
128	Omit "if" insert "but".
133	Omit "complaint" insert "complainant".
139	Omit "to" (last occurring).
142	Omit "High Court" insert "Supreme Court".
178	Omit "warrant of".
	Omit "such proceeding as is mentioned in the last preceding section" insert "proceeding under this Division".
181	Omit "on a conviction".
195	Omit "High Court" (wherever occurring) insert "Supreme Court".
196	After "person" (first occurring) insert "(in this Part referred to as the 'defendant')".
	Omit "has used any language indicating" insert "by his language or conduct has indicated".
219	Omit the whole.
220	Omit "or section two hundred and eighteen".
221	Omit the whole.
222	Omit "High Court, or a Justice thereof" insert "Supreme Court or the Judge".
	Omit "High Court or Justice" insert "Supreme Court or the Judge".
223	Omit "High Court or Justice" insert "Supreme Court or the Judge".
224	Omit "High Court or a Justice" insert "Supreme Court or the Judge".
225	Omit "two hundred and twenty-three" insert "two hundred and twenty-two".
	Omit "High Court or Justice" insert "Supreme Court or the Judge".
226	Omit "High Court or Justice" (wherever occurring) insert "Supreme Court or the Judge".
227	Omit "two hundred and twenty-four" insert "two hundred and twenty-three".
	Omit "High Court or Justice" insert "Supreme Court or the Judge".
230	Omit "Justices of the High Court or a majority of them" insert "Judge".
	Omit ", and in particular, regulating the practice and procedure in reference to stating cases under this Part".
231	Omit "High Court" insert "Supreme Court".
234	Omit "High Court or a Justice thereof" insert "Supreme Court or the Judge".
236	Omit "a Justice of the High Court" insert "the Judge".

THE SCHEDULE—continued.

Reference to Section or Schedule amended.	Extent of amendment.
239	Omit "a Justice of the High Court" insert "the Judge".
242	Omit "Justice" (second occurring) insert "Judge". Omit "two hundred and forty-seven" insert "two hundred and thirty-seven". Omit "two hundred and forty-eight" insert "two hundred and thirty-eight".
257	Omit "Act" (first occurring) insert "Ordinance".
258	Omit "(g)" (second occurring) insert "(h)". Omit sub-sections (2.), (3.) and (4.).
The First Schedule	
Form 4	Omit "Criminal Sittings of the High Court of Australia" insert "Sittings of the Supreme Court". Omit "State of".
Form 5	Omit "made" insert "laid".
Form 6	Omit "laid" insert "made".
Form 9	After "notice" (last occurring) insert "The complainant's address for service is.....to which, or at which, all notices may be posted or left".
Forms 26 and 39	Omit "Criminal Sittings of the High Court" insert "Sittings of the Supreme Court".
Form 32	Omit "High Court" (wherever occurring) insert "Supreme Court".
Form 43	Omit "complaint" insert "information".
Form 52	Omit "Magistrate" insert "Magistrate or Clerk of the Court of Petty Sessions".
Form 61	Omit "High Court" (wherever occurring) insert "Supreme Court".
Forms 63 and 68	Omit "Criminal Sittings of the High Court" insert "Sittings of the Supreme Court".
Form 77	Omit "criminal sittings of the High Court" insert "Sittings of the Supreme Court".
The Fourth Schedule	Omit "High Court" insert "Supreme Court". Omit the item "For certificate of refusal of case 2c."

Dated this fifteenth day of December, 1937.

GOWRIE

Governor-General.

By His Excellency's Command,

ROBERT G. MENZIES

for Minister of State for the Interior.

By Authority: L. F. JOHNSTON, Commonwealth Government Printer, Canberra.