

AUSTRALIAN CAPITAL TERRITORY.

No. 12 of 1958.

AN ORDINANCE

To amend the *Court of Petty Sessions Ordinance 1930-1953*.

I, THE GOVERNOR-GENERAL in and over the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910-1955*.

Dated this ninth day of July, 1958.

W. J. SLIM
Governor-General.

By His Excellency's Command,

NEIL O'SULLIVAN
Attorney-General, acting for and on behalf of the
Minister of State for the Interior.

COURT OF PETTY SESSIONS ORDINANCE 1958.

1.—(1.) This Ordinance may be cited as the *Court of Petty Sessions Ordinance 1958*.^{*} Short title and citation.

(2.) The *Court of Petty Sessions Ordinance 1930-1953*† is in this Ordinance referred to as the Principal Ordinance.

(3.) The Principal Ordinance, as amended by this Ordinance, may be cited as the *Court of Petty Sessions Ordinance 1930-1958*.

2. Section four of the Principal Ordinance is repealed and the following section inserted in its stead:—

“ 4. This Ordinance is divided into Parts, as follows:— Parts.

Part I.—Preliminary (Sections 1-6).

Part II.—Appointment and Jurisdiction of Magistrates (Sections 7-17).

Part III.—Court of Petty Sessions.

Division 1.—Establishment of Court of Petty Sessions (Section 18).

Division 2.—Jurisdiction of Court of Petty Sessions (Sections 19-24B).

^{*} Notified in the *Commonwealth Gazette* on 24th July, 1958.

[†] Ordinance No. 21, 1950, as amended by Ordinance No. 21, 1932; No. 17, 1934; No. 13, 1936; Nos. 5 and 28, 1937; Nos. 25 and 35, 1938; Nos. 20 and 22, 1940; No. 13, 1949; Nos. 7 and 12, 1951; and No. 14, 1953.

- Part IV.—Commencement of Proceedings.
 Division 1.—General (Section 25).
 Division 2.—Informations (Sections 26-31).
 Division 3.—Complaints (Sections 32-36).
 Division 4.—Summonses (Sections 37-41).
 Division 5.—Warrants of Arrest (Sections 42-50).
- Part V.—Hearing.
 Division 1.—General (Sections 51-54).
 Division 2.—Evidence (Sections 55-69).
 Division 3.—Remand (Sections 70-73).
 Division 4.—Committal and Recognisance (Sections 74-82).
 Division 5.—Adjournment of Proceedings (Sections 83-88).
- Part VI.—Proceedings in Case of Indictable Offences.
 Division 1.—Institution of Proceedings (Sections 89-93).
 Division 2.—Proceedings subsequent to Hearing of Evidence (Sections 94-97).
 Division 3.—Bail (Sections 98-105).
 Division 4.—Miscellaneous (Sections 106-108).
- Part VII.—Proceedings in Case of Offences Punishable Summarily (Sections 109-116).
- Part VIII.—Proceedings in Connexion with Complaints.
 Division 1.—General (Sections 117-134).
 Division 2.—Set-off (Sections 135-136).
 Division 3.—Default Summonses (Sections 137-140).
- Part IX.—Enforcement of Decisions.
 Division 1.—General (Sections 141-146).
 Division 2.—Warrants of Execution and Commitment (Sections 147-166).
 Division 3.—Adverse Claims (Sections 167-169).
 Division 4.—Attachment of Debts (Sections 170-180).
 Division 5.—Imprisonment of Fraudulent Debtors (Sections 181-187).
 Division 6.—Miscellaneous (Sections 188-195).
- Part X.—Surety of the Peace and for Good Behaviour (Sections 196-206).
- Part XI.—Appeals from the Decisions of the Court of Petty Sessions (Sections 207-230).
- Part XII.—Protection of Magistrates in the Execution of their Office (Sections 231-243).
- Part XIII.—Costs and Fees (Sections 244-248).

Part XIV.—Securities (Sections 249-254).

Part XV.—Miscellaneous (Sections 255-258).".

3. Section five of the Principal Ordinance is amended—

Interpretation.

- (a) by omitting from the definition of "Complaint" the words "the *Deserted Wives and Children Act, 1901*, the *Masters and Servants Act, 1902*, or the *Infants Protection Act, 1902*," and inserting in their stead the words "the *Deserted Wives and Children Act, 1901*, the *Masters and Servants Act, 1902*, or the *Infant Protection Act, 1904*,";
- (b) by omitting from the definition of "Information" the words "the *Deserted Wives and Children Act, 1901*, the *Masters and Servants Act, 1902*, and the *Infants Protection Act, 1904*," and inserting in their stead the words "the *Deserted Wives and Children Act, 1901*, the *Masters and Servants Act, 1902*, and the *Infant Protection Act, 1904*,"; and
- (c) by adding at the end thereof the following sub-section:—

"(2.) A reference in sub-section (1.) of section sixty-nine (second occurring), sub-section (2.) of section ninety-two (second occurring), sub-section (3.) of section ninety-two, section one hundred and six and section one hundred and eight (wherever occurring) of this Ordinance to "depositions" is, where the depositions are recorded by any of the means specified in sub-section (2.) of section sixty of this Ordinance, a reference to a transcript, certified as prescribed by rules or regulations under this Ordinance, of the depositions as so recorded."

4. Section twenty-one of the Principal Ordinance is amended—

Jurisdiction of Court where defendant absent from the Territory.

- (a) by omitting from sub-section (1.) the words "sub-sections (2.) and (3.) of this section" and inserting in their stead the words "the next succeeding sub-section"; and
- (b) by omitting sub-section (3.).

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

"60.—(1.) Subject to the succeeding provisions of this section, the depositions of a witness—

Mode of taking evidence.

- (a) shall be taken down in writing;
- (b) shall be read over to the witness; and
- (c) shall be signed by the witness and the Magistrate constituting the Court.

“ (2.) The Court may direct that the depositions of a witness be recorded by means of shorthand, stenotype machine, sound-recording apparatus or such other means as is prescribed by rules or regulations under this Ordinance.

“ (3.) Where the depositions of a witness are recorded by any of the means specified in the last preceding sub-section, the depositions—

(a) shall subsequently be reduced to writing and the transcript certified as prescribed by rules or regulations under this Ordinance; and

(b) need not be read over to the witness or be signed by the witness and the Magistrate.

“ (4.) Where, upon the hearing of a complaint, the amount claimed or the value of the property, civil right or other matter at issue does not exceed Fifty pounds, the depositions of the witnesses shall not be recorded.”

Depositions to be recorded and delivered to the Clerk.

6. Section sixty-nine of the Principal Ordinance is amended by omitting sub-section (1.) and inserting in its stead the following sub-section:—

“ (1.) The depositions of a person upon whom an order has been served in pursuance of section sixty-seven of this Ordinance shall be recorded in accordance with the provisions of section sixty of this Ordinance and the depositions and any documents produced shall be delivered to the Clerk.”

7. Section ninety of the Principal Ordinance is repealed and the following sections are inserted in its stead:—

Depositions of witnesses to be taken in the presence of the accused person.

“ 90.—(1.) Where a person appears or is brought before the Court charged with an indictable offence, the Court shall, in the presence or hearing of the accused person and, if he so desires, in the presence or hearing of his counsel or solicitor, take the preliminary examination or statement on oath of any persons who know the facts and circumstances of the case, and the accused person or his counsel or solicitor may cross-examine those persons.

“ (2.) The depositions of a witness examined under the last preceding sub-section shall, in the presence of the accused person, be recorded in accordance with the provisions of section sixty of this Ordinance.

Plea of guilty in committal proceedings.

“ 90A.—(1.) A person who appears or is brought before the Court charged with an indictable offence, not being an offence punishable by death or penal servitude for life, may at any stage of the proceedings plead guilty to the charge and, upon the accused person so pleading guilty, the Court shall proceed in accordance with the succeeding provisions of this section.

“(2.) The Court may accept or reject the plea but the rejection of the plea at any stage of the proceedings does not prevent the accused person from pleading guilty in pursuance of this section at a later stage of the proceedings and the Court may accept or reject the plea at that later stage.

“(3.) Where the Court rejects the plea, the proceedings before the Court shall continue as if the plea had not been made.

“(4.) Where the Court accepts the plea and—

- (a) the offence is one that, under any law in force in the Territory is punishable either on indictment or on summary conviction;
- (b) the offence is one that may be dealt with summarily without the consent of the accused person;
- (c) the offence is one that may be dealt with summarily if the accused person consents to its being so dealt with and the accused person does so consent;
or
- (d) the offence is one that may, upon the request of the prosecutor, be dealt with summarily and the prosecutor requests that it be so dealt with,

and it appears to the Court that it is proper to deal with the case summarily, the Court may, without hearing further evidence, sentence or otherwise deal with the accused person and finally dispose of the charge and all incidental matters.

“(5.) Where the Court accepts the plea and—

- (a) it does not appear to the Court that it is proper to deal with the case summarily;
- (b) the offence is one that is punishable only on indictment;
- (c) the offence is one that may be dealt with summarily if the accused person consents to its being so dealt with and the accused person does not so consent;
or
- (d) the offence is one that may, upon the request of prosecutor, be dealt with summarily and the prosecutor does not so request,

the Court shall commit the accused person to such sittings of the Supreme Court as the Court directs and the Supreme Court shall deal with the accused person in accordance with the succeeding provisions of this section.

“(6.) A committal under the last preceding sub-section shall, for all purposes relating to the venue or change of venue of proceedings consequent on that committal, be deemed to be a committal for trial.

“(7.) The Supreme Court shall, where it appears to the Supreme Court from the information or evidence given to or before it that the facts in respect of which the accused person was charged before the Court do not support the charge to which the accused person pleaded guilty or where the accused person or counsel for the Crown requests that an order be made under this sub-section, and may, where for any other reason it sees fit so to do, order that the proceedings before the Court at which the accused pleaded guilty be continued at a time or place specified in the order.

“(8.) Except where an order is made in pursuance of the last preceding sub-section, the Supreme Court has the same powers of sentencing or otherwise dealing with the accused person and of finally disposing of the charge and of all incidental matters as it would have had if the accused person, on arraignment at any sittings of the Court, had pleaded guilty to the offence charged on an indictment filed by the Attorney-General.

“(9.) The procedure relating to committal for trial applies, as nearly as may be, to a committal under sub-section (5.) of this section and bail may be granted as on a committal for trial, but a person shall not be bound over to give evidence on a committal under that sub-section unless the Court otherwise orders.

“(10.) Where an order is made by the Supreme Court under sub-section (7.) of this section that proceedings before a Court at which an accused person pleaded guilty be continued at a time and place specified in the order—

- (a) those proceedings shall be continued in all respects as if the accused person had not pleaded guilty and as if those proceedings had been adjourned by the Court to the time and place so specified; and
- (b) the Supreme Court may exercise any power that the Court might have exercised under Division 3 of Part V. of this Ordinance if the order had been an order made by the Court adjourning the proceedings to the time and place so specified, and the provisions of Division 3 of Part V. apply to and in respect of the accused person.”

Proceedings
where evidence
sufficient to
put accused on
trial.

8. Section ninety-two of the Principal Ordinance is amended by omitting sub-section (2.) and inserting in its stead the following sub-sections:—

“(2.) The depositions of the accused person in answer to questions asked by the Court in pursuance of the last preceding sub-section shall be recorded in accordance with the provisions of section sixty of this Ordinance and shall be kept with the depositions of the witnesses.

“(3.) The depositions of the accused person and of the witnesses shall be transmitted to the Commonwealth Crown Solicitor.”.

9. Section ninety-three of the Principal Ordinance is amended by omitting sub-section (1.) and inserting in its stead the following sub-section:—

Depositions of accused person may be put in evidence and he may give or call evidence on his behalf.

“(1.) Upon the trial of the accused person, depositions made by him may—

- (a) if taken in the manner specified in sub-section (1.) of section sixty of this Ordinance be read as evidence without further proof unless it is proved that the Magistrate by whom the depositions purport to have been signed did not in fact sign them; or
- (b) if recorded by one of the means specified in sub-section (2.) of section sixty of this Ordinance, be read as evidence if it is proved that the record is a correct record of the depositions and that the transcript is a correct transcript of that record.”.

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

“95. Where, upon the trial of a person who has previously been charged before the Court with an indictable offence and committed for trial, it is proved—

Depositions of dead or absent persons.

- (a) that a witness whose depositions were taken at the hearing of the charge before the Magistrate is dead or so ill as not to be able to travel;
- (b) that the depositions of the witness were taken in the presence of the accused person; and
- (c) that the accused person or his counsel or solicitor had a full opportunity of cross-examining the witness,

the depositions may—

- (d) if taken in the manner specified in sub-section (1.) of section sixty of this Ordinance, be read as evidence at the trial of the accused person without further proof unless it is proved that the Magistrate by whom the depositions purport to have been signed did not in fact sign them; or
- (e) if recorded by one of the means specified in sub-section (2.) of section sixty of this Ordinance, be read as evidence at the trial of the accused person if it is proved that the record is a correct record of the depositions and that the transcript is a correct transcript of that record.”.

If defendant admits guilt and does not wish witnesses to appear against him again, he may be committed for sentence.

11. Section ninety-seven of the Principal Ordinance is repealed.

Grounds of defence to be in writing lodged with the Clerk.

12. Section one hundred and thirty-nine of the Principal Ordinance is amended—

(a) by omitting sub-section (1.) and inserting in its stead the following sub-section:—

“ (1.) In an action where a default summons has been issued, the defendant shall—

(a) where the default summons was served in the Territory, within ten days after personal service on him of the summons, or, where personal service has not been effected, within fourteen days after the service prescribed by a Magistrate; or

(b) where the default summons was served in a State or in the Northern Territory, within twenty days after personal service on him of the summons, or, where personal service has not been effected, within twenty days after the service prescribed by a Magistrate; or

(c) in any other case, within forty-five days after personal service on him of the summons, or, where personal service has not been effected, within forty-five days after the service prescribed by a Magistrate,

file in duplicate with the Clerk notice of the grounds of defence to the action in writing in the form prescribed by rules or regulations under this Ordinance, signed by the defendant or his solicitor, together with an affidavit verifying the notice of grounds of defence.”;

(b) by omitting sub-section (3.) and inserting in its stead the following sub-sections:—

“ (3.) Where the defendant does not, within the time specified in sub-section (1.) of this section, file notice of the grounds of defence and an affidavit in accordance with that sub-section, the plaintiff may, within three months after the

expiration of the time so specified, upon filing an affidavit of service and an account setting out particulars of his claim verified by the affidavit of the plaintiff, his solicitor or agent, and, where the default summons was served outside the Territory, after obtaining an order for leave to proceed in the action, have judgment entered by the Court or the Clerk against the defendant for the amount of the claim together with costs as prescribed by rules or regulations under this Ordinance.

“(3A.) Where the default summons was served outside the Territory, the Court shall not grant leave to proceed in the action unless the plaintiff proves orally or by affidavit that—

(a) the debt or the demand sued for arose within the Territory; or

(b) the defendant has given an engagement or promise in writing to pay the debt or sum at a particular place specified and that place is within the Territory.”; and

(c) by omitting from sub-section (4.) the words “the last preceding sub-section” and inserting in their stead the words “sub-section (3.) of this section”.

13. Section one hundred and forty of the Principal Ordinance is amended by omitting from sub-section (1.) the words “the action shall be set down for trial at the next sitting of the Court held not less” and inserting in their stead the words “the Clerk shall set the action down for trial at such sitting of the Court as a Magistrate directs, not being a sitting to be held earlier”.

14. Section two hundred and eight of the Principal Ordinance is amended by omitting from sub-sections (1.) and (5.) the words “or order” (wherever occurring).

Appeals by
leave against
convictions.

15. After section two hundred and eight of the Principal Ordinance the following sections are inserted:—

“208A.—(1.) Subject to sub-section (3.) of this section, a person aggrieved by an order of the Court (other than an order for commitment referred to in section two hundred and seven of this Ordinance) may appeal in the prescribed manner to the Supreme Court against the order.

Appeals in
other cases.

“(2.) The appellant shall serve notice of the appeal on the Clerk and on all parties directly affected by the proposed appeal.

“(3.) An appeal does not lie to the Supreme Court from an order of the Court unless the order—

- (a) is given or pronounced for or in respect of a sum or matter at issue exceeding, or of a value exceeding, an amount of Fifty pounds; or
- (b) involves directly or indirectly a claim, demand or question to or respecting any property or civil right exceeding, or of a value exceeding, an amount of Fifty pounds.

“(4.) The last preceding sub-section does not apply to an order made under the Infant Protection Act, 1904, or the Deserted Wives and Children Act, 1901, of the State of New South Wales in their application to the Territory.

Substituted
service of
notice of
appeal.

“208B. Where it appears to the Court that personal service of a notice of appeal in accordance with section two hundred and seven or two hundred and eight of this Ordinance on a party directly affected by the appeal cannot be effected, 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.”

16. Section two hundred and twelve of the Principal Ordinance is repealed and the following section inserted in its stead:—

Conditions
subject to
which
depositions
may be read
as evidence on
appeal.

“212.—(1.) An appeal to the Supreme Court shall be in the nature of a re-hearing.

“(2.) The depositions of a witness called or examined before the Court may be read as evidence for either party at the hearing of the appeal if—

- (a) the other party consents;
- (b) it is proved on oath that—

- (i) where the depositions were taken in the manner specified in sub-section (1.) of section sixty of this Ordinance—the depositions were taken in the presence of the other party or his counsel or solicitor, or, where the depositions were recorded by one of the means specified in sub-section (2.) of section sixty of this Ordinance—the record is a correct record of the depositions and was made in the presence of the other party or his counsel or solicitor and the transcript is a correct transcript of that record;

