

No. 37 of 1972

AN ORDINANCE

To amend the *Court of Petty Sessions Ordinance 1930-1970*.

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 1910-1972*.

Dated this ninth day of November, 1972.

PAUL HASLUCK
Governor-General.

By His Excellency's Command,

IVOR J. GREENWOOD
Attorney-General, acting for and on behalf of
the Minister of State for the Interior.

COURT OF PETTY SESSIONS ORDINANCE 1972

1.—(1.) This Ordinance may be cited as the *Court of Petty Sessions Ordinance 1972*.^{*} Short title and citation.

(2.) The *Court of Petty Sessions Ordinance 1930-1970*[†] 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 1930-1972*.

2.—(1.) Sections 1, 2, 6 and 14 of this Ordinance shall come into operation on the date on which this Ordinance is notified in the *Gazette*. Commencement.

(2.) The remaining sections of this Ordinance shall come into operation on such respective dates as are fixed by the Minister of State for the Interior by notice published in the *Gazette*.

3.—(1.) Part XI. of the Principal Ordinance, as amended by this Ordinance, applies to and in relation to decisions of the Court of Petty Sessions made on or after the date of commencement of section 10 of this Ordinance. Application of amendments.

(2.) Part XI. of the Principal Ordinance continues to apply, notwithstanding the amendments made by section 10 of this Ordinance, to and in relation to decisions of the Court of Petty Sessions made before the date of commencement of that section.

^{*} Notified in the *Commonwealth Gazette* on 16 November 1972.

[†] Ordinance No. 21, 1930, as amended by 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; No. 14, 1953; No. 12, 1958; No. 2, 1961; No. 2, 1966; No. 1, 1967; No. 25, 1968; No. 12, 1969; and No. 15, 1970.

Parts.

4. Section 4 of the Principal Ordinance is amended by omitting the words—

“ Part XI.—Appeals from the Decisions of the Court of Petty Sessions (Sections 207-230).”

and inserting in their stead the words—

“ Part XI.—Appeals to the Supreme Court.

Division 1.—The Appellate Jurisdiction of the Supreme Court (Section 207).

Division 2.—Appeals (Sections 208-219).

Division 3.—Orders to Review (Sections 219A-219F).

Division 4.—General Provisions (Sections 220-230).”

Warrants of execution after appeal.

5. Section 14 of the Principal Ordinance is repealed.

Recording of proceedings.

6. Section 60 of the Principal Ordinance is amended—

(a) by omitting sub-section (4.) and inserting in its stead the following sub-sections:—

“ (4.) Where, in proceedings before the Court, being proceedings—

(a) under the *Maintenance Ordinance 1968*;

(b) in which a person charged with an indictable offence is committed to take his trial before the Supreme Court;

(c) in which evidence is taken in pursuance of a request referred to in section twenty-three A of this Ordinance;

(d) by way of appeal under section twenty of the *Commonwealth Employees' Compensation Act 1930-1971*;

(e) before the Court under the *Compensation (Commonwealth Employees) Act 1971-1972*; or

(f) before the Court under the *Workmen's Compensation Ordinance 1951-1972* (other than prosecutions for offences against that Ordinance),

a record of any depositions has been made in accordance with sub-section (1.) of this section, the Clerk shall give such directions as he considers necessary for ensuring that a transcript of the record is prepared and, for the purpose of enabling the transcript to be prepared, the record shall be produced out of the custody of the Clerk.

“(4A.) The Clerk shall, upon application made to him by a person and payment by that person of the prescribed fee, furnish, subject to sub-section (15.) of this section, to that person a copy of the transcript of the record and may, upon payment of such further fee as is prescribed, certify by writing under his hand that the copy is a true copy of the transcript.

“ (4B.) Where—

- (a) a record of any depositions has been made in accordance with sub-section (1.) of this section in proceedings before the Court, not being proceedings referred to in sub-section (4.) of this section; and
- (b) a person makes application to the Clerk for a copy of a transcript of the record of those depositions and pays the prescribed fee,

the Clerk shall, subject to sub-sections (15.) and (17.) of this section, give such directions as he considers necessary for ensuring that a transcript of the record is prepared and, for the purpose of enabling the transcript to be prepared, the record shall be produced out of the custody of the Clerk.

“ (4C.) The Clerk shall furnish to the person making an application under the last preceding sub-section and, subject to sub-sections (15.) and (17.) of this section, to any other person who subsequently makes application to the Clerk and pays to the Clerk the prescribed fee, a copy of the transcript of the record and may, upon payment of such further fee as is prescribed, certify by writing under his hand that the copy is a true copy of the transcript.”;

- (b) by omitting from sub-section (5.) the words “ the last preceding sub-section ” and inserting in their stead the words “ this section ”;
- (c) by omitting sub-section (6.) and inserting in its stead the following sub-section:—

“ (6.) Subject to sub-section (15.) of this section, the Clerk shall, upon application made to him by a person and payment by that person of the prescribed fee, furnish to that person a copy of any depositions taken down in writing in accordance with sub-section (2.) of this section, and, may, upon payment of such further fee as is prescribed, certify by writing under his hand that the copy is a true copy of the depositions as so taken down.”;

- (d) by omitting from sub-section (13.) the words “ sub-section (15.) of this section ” and inserting in their stead the words “ sub-sections (15.) and (17.) of this section ”; and
- (e) by omitting sub-section (15.) and inserting in its stead the following sub-sections:—

“ (15.) Where a person, not being a party to the proceedings in which a transcript or depositions are taken, applies to the Clerk for a copy of the transcript or depositions, nothing in sub-section (4B.) of this section requires the Clerk to give directions that a transcript be prepared, and nothing in sub-section (4A.), (4C.), (6.) or (13.) of this section requires the Clerk to furnish a copy of the

transcript of depositions to that person, unless the person applying for the copy satisfies the Clerk or a Magistrate that he has good reason for so applying.

“(16.) The Clerk shall cause to be erased the record of the depositions of a witness in proceedings before the Court recorded by means of sound-recording apparatus and the record of any other part of any proceedings in the Court or before a Magistrate made by means of sound-recording apparatus as soon as practicable after the expiration of twelve months after the date of completion of the proceedings.

“(17.) Nothing in sub-section (4B.) of this section requires the Clerk to give directions that a transcript be prepared, and nothing in sub-section (4C.) or (13.) of this section requires the Clerk to furnish a copy of any transcript or record of any proceedings in the Court or before a Magistrate, in a case where the Clerk does not have in his custody a copy of the transcript or record, unless the application and payment of the prescribed fee are made within twelve months after the date of completion of the proceedings.”

Minute of decision to be made and served on defendant.

7. Section 141 of the Principal Ordinance is amended by inserting after sub-section (1.) the following section:—

“(1A.) Where the Court convicts a person under sub-section (2.) of section one hundred and thirty-nine B of the *Motor Traffic Ordinance* 1936-1972, the Court shall, in the minute or memorandum of conviction, add a memorandum in accordance with or to the effect of Form 35A in the First Schedule to this Ordinance.”

Warrant of distress after appeal.

8. Section 163 of the Principal Ordinance is repealed.

Copies of depositions may be used on appeal.

9. Section 185 of the Principal Ordinance is repealed.

10. The heading to Part XI. and sections 207 to 214 (inclusive) of the Principal Ordinance are repealed and the following heading and Divisions inserted in their stead:—

“PART XI.—APPEALS TO THE SUPREME COURT.

“Division 1.—*The Appellate Jurisdiction of the Supreme Court.*

Jurisdiction of Supreme Court.

“207.—(1.) The appellate jurisdiction of the Supreme Court with respect to decisions of the Court of Petty Sessions under this Ordinance extends to the hearing and determination of the following appeals and to no others, namely:—

(a) appeals to which Division 2 of this Part applies; and

(b) appeals from decisions of the Court of Petty Sessions by way of orders to review made in accordance with Division 3 of this Part.

“(2.) Nothing in this Part limits the operation of any other Ordinance that makes provisions with respect to the appellate jurisdiction of the Supreme Court.

“ *Division 2.—Appeals.*

“208.—(1.) Each of the following appeals is an appeal to which this Division applies:—

Appeals
to which
this Division
applies.

- (a) an appeal, by the person convicted, from a conviction for an offence dealt with by the Court of Petty Sessions under Part VII. or under section two hundred and fifty-five of this Ordinance;
- (b) an appeal, by the person against whom the order is made, from an order made in pursuance of section one hundred and thirteen or section one hundred and fourteen of this Ordinance in proceedings dealt with by the Court of Petty Sessions under Part VII.;
- (c) an appeal from a sentence or penalty imposed by the Court of Petty Sessions by a person convicted of an offence dealt with by that Court under section ninety A or two hundred and fifty-five of this Ordinance or under Part VII., whether or not that person appeals against the conviction in respect of which the sentence or penalty was imposed;
- (d) an appeal, by the person charged, from a decision of the Court of Petty Sessions made in pursuance of—
 - (i) sub-section (1.) of section five hundred and fifty-six A of the Crimes Act;
 - (ii) sub-section (3.) of that section;
 - (iii) sub-section (1.) of section five hundred and fifty-six B of that Act; or
 - (iv) paragraph (b) of sub-section (7.) of section five hundred and fifty-six c of that Act;
- (e) an appeal, by a person who has given a recognizance under section five hundred and fifty-six A or five hundred and fifty-six B of the Crimes Act or by his surety, from a decision of the Court of Petty Sessions on an application made under section five hundred and fifty-six D of that Act to that Court;
- (f) an appeal, by the informant or the defendant in proceedings dealt with by the Court of Petty Sessions under Part X., from a decision of the Court of Petty Sessions made in pursuance of section two hundred and two of this Ordinance;
- (g) an appeal, by the person against whom the order is made, from an order for commitment made by the Court of Petty Sessions under Division 5 of Part IX.; and
- (h) an appeal, by a party to the proceedings in which the order was made, from an order, whether final or interlocutory, of the Court of Petty Sessions—
 - (i) given or pronounced for or in respect of a sum or matter at issue exceeding, or a value exceeding, One hundred dollars; or

- (ii) involving, 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 One hundred dollars.

“(2.) A reference in paragraph (h) of the last preceding sub-section to an order of the Court of Petty Sessions shall not be read as including a reference to—

- (a) an order of that Court in proceedings dealt with by that Court under section ninety A or two hundred and fifty-five of this Ordinance or under Part VII, or in proceedings for an order under Division 5 of Part IX.; or
- (b) a decision of that Court made in pursuance of Part XV. of the Crimes Act.

“(3.) In this section, ‘the Crimes Act’ means the Crimes Act, 1900, of the State of New South Wales in its application to the Territory.

Manner of making appeal to which this Division applies.

“209.—(1.) An appeal to which this Division applies shall be made by the appellant—

- (a) serving on the Clerk, within twenty-one days after the conviction or order was made, notice of appeal; and
- (b) serving, before or as soon as practicable after the expiration of that period, a copy of the notice of appeal—
- (i) in the case of an appeal against a conviction or against a sentence or penalty—on the informant; or
- (ii) in the case of an appeal against an order—on each other person who was a party to the proceedings in the Court of Petty Sessions.

“(2.) A notice of appeal shall, in the case of an appeal referred to in paragraph (h) of sub-section (1.) of the last preceding section—

- (a) state whether the appeal is from the whole or part only of the order of the Court of Petty Sessions and, if the appeal is from part only of the order, the part of the order from which the appeal is made;
- (b) specify the grounds of appeal; and
- (c) specify the order that the appellant seeks to have made in the place of the order or part of the order from which the appeal is made.

“(3.) The Supreme Court may, on such terms and conditions as it thinks fit, grant leave to the appellant to amend a notice of appeal referred to in the last preceding sub-section.

Substituted service of notice of appeal.

“210.—(1.) Where it appears to the Supreme Court, on an application made for an order under this section, that personal service of a notice of appeal under the last preceding section on a person on whom it is required to be served cannot be effected, the Supreme Court may make such order for substituted or other service as the Supreme Court thinks just.

“(2.) The Supreme Court may, on an application made for an order under this sub-section, dispense with service of a notice of appeal if the Court thinks it necessary or expedient to do so.

“(3.) An order under the last preceding sub-section may be made subject to such conditions (if any) as the Supreme Court thinks fit.

“211.—(1.) Within seven days after a notice of appeal is served on the Clerk or within such further time as the Supreme Court, on an application made either before or after the expiration of that period of seven days, allows, the appellant shall give security in the sum of Forty dollars for the costs of the appeal. Appellant to give security for costs.

“(2.) Security may be given for the purposes of the last preceding sub-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.

“212. An appeal under this Division shall be deemed to have been duly instituted when security is given in accordance with the last preceding section. When appeal deemed to be duly instituted.

“213.—(1.) Where an appeal under this Division has been duly instituted, the Supreme Court may, on application by the respondent or a respondent to the appeal, order that the amount of security given by the appellant be increased and that the additional security be given within such time as is specified in the order. Increase in amount of security.

“(2.) If the additional security required by an order made under the last preceding sub-section is not given within the time specified in the order, the Supreme Court may dismiss the appeal.

“214.—(1.) This section applies to an appeal referred to in paragraph (a), (b), (c), (d), (e), (f) or (g) of sub-section (1.) of section two hundred and eight of this Ordinance. Appeals in cases other than civil cases.

“(2.) The Supreme Court shall determine an appeal to which this section applies in accordance with the law as in force on the date on which the hearing of the appeal is concluded and on the evidence for the respondent, and the evidence (if any) for the appellant, given before the Supreme Court.

“(3.) On the hearing of an appeal to which this section applies the depositions of a witness called or examined on the hearing of the proceedings before the Court of Petty Sessions are admissible in evidence—

(a) with the consent of all the parties to the appeal;

(b) if it is proved that—

(i) the depositions were taken in the presence of the party against whom they are tendered or of his counsel or solicitor;

(ii) the party against whom they are tendered or his counsel or solicitor had full opportunity of cross-examining the witness; and

- (iii) the witness is dead, is outside Australia and it is not reasonably practicable to secure his attendance, is unfit by reason of old age or is bodily or mentally unfit to appear as a witness or cannot, with reasonable diligence, be found; or

(c) if the Supreme Court for any special reason so directs.

Appeals in civil cases.

“ 215.—(1.) This section applies to an appeal referred to in paragraph (h) of sub-section (1.) of section two hundred and eight of this Ordinance.

“ (2.) The Supreme Court shall determine an appeal to which this section applies in accordance with the law as in force on the date on which the hearing of the appeal is concluded and—

- (a) on the evidence before the Court of Petty Sessions; and
 (b) on any evidence in respect of which leave is granted in pursuance of the next succeeding sub-section.

“ (3.) On the hearing of an appeal to which this section applies, a party is not entitled to call evidence except with the leave of the Supreme Court—

- (a) granted on the ground that the evidence is evidence in relation to matters that have occurred after the hearing of the proceedings in the Court of Petty Sessions; or
 (b) granted for any other special reason.

Stay of execution pending appeal in certain cases.

“ 216. Where an appeal to which this Division applies (other than an appeal referred to in paragraph (h) of sub-section (1.) of section two hundred and eight of this Ordinance) has been duly instituted, the enforcement or execution of the conviction, order, sentence or penalty 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 released from custody by the order of a Magistrate upon his entering in a recognizance, with or without a surety or sureties, to the satisfaction of the Magistrate.

Execution not to be stayed in other cases except by order of Supreme Court.

“ 217.—(1.) The enforcement or execution of an order referred to in paragraph (h) of sub-section (1.) of section two hundred and eight of this Ordinance shall not, unless the Supreme Court otherwise orders, be stayed by the institution of the appeal.

“ (2.) Where the Supreme Court orders, under the last preceding sub-section, that enforcement or execution of an order appealed from be stayed, the Supreme Court may order that the appellant give, within such time as the Supreme Court allows, security in such sum as the Supreme Court directs to prosecute the appeal and, if security is not given accordingly, the appeal shall be deemed to have been abandoned.

“ 218. On an appeal to which this Division applies, the Supreme Court may make such order as it thinks just, and the order shall have effect as if it were a decision of the Court of Petty Sessions and may be enforced by that Court accordingly.

Orders by Supreme Court on appeals.

“ 219.—(1.) Where an order *nisi* to review a decision of the Court of Petty Sessions has been granted under the next succeeding Division to a person entitled to appeal against that decision to the Supreme Court under this Division, that person ceases to be entitled to appeal to the Supreme Court under this Division.

Barring of right of appeal under this Division if order to review is granted.

“ (2.) Where an order *nisi* to review a decision of the Court of Petty Sessions is granted under the next succeeding Division to a person after that person has, in pursuance of section two hundred and nine of this Ordinance, served on the Clerk notice of appeal to the Supreme Court against that decision, the notice of appeal shall be deemed to have been withdrawn.

“ *Division 3.—Orders to Review.*

“ 219A. In this Division, ‘defendant’ includes a person against whom an order for commitment has been made under Division 5 of Part IX.

Interpretation.

“ 219B. Each of the following is a decision of the Court of Petty Sessions from which an appeal by way of order to review may be made in accordance with this Division:—

Appeals by way of orders to review.

- (a) an order of the Court of Petty Sessions dismissing an information dealt with by that Court under Part VII.;
- (b) a conviction by the Court of Petty Sessions for an offence dealt with by that Court under Part VII.;
- (c) an order made in pursuance of section one hundred and thirteen or one hundred and fourteen of this Ordinance in proceedings dealt with by the Court of Petty Sessions under Part VII.;
- (d) an order for commitment under Division 5 of Part IX.

“ 219C.—(1.) On an application made—

- (a) in the case of an order referred to in paragraph (a) of the last preceding section—by the informant; or
- (b) in the case of a conviction referred to in paragraph (b), or an order referred to in paragraph (c) or (d) of the last preceding sub-section—by the defendant,

Grant of order nisi to review.

in the proceedings before the Court of Petty Sessions, the Supreme Court may grant an order *nisi* calling on the other party to the proceedings to show cause on a date specified in the order *nisi* why the decision should not be reviewed on any one or more of the following grounds, namely—

- (c) that there was a *prima facie* case of error or mistake on the part of the Court of Petty Sessions;
- (d) that the Court of Petty Sessions did not have jurisdiction or authority to make the decision; or

(e) that the decision of the Court of Petty Sessions should not in law have been made.

“(2.) On an application for an order to review a decision of the Court of Petty Sessions or on an application made after the making of such an order, the Supreme Court may, if it thinks fit, make an order requiring the Magistrate by whom the Court of Petty Sessions was constituted to furnish to the Supreme Court a report setting forth the reasons for the decision of the Court of Petty Sessions and any facts or matters which in the view of the Magistrate were relevant to the decision of the Court of Petty Sessions.

Security for costs and stay of execution.

“219D.—(1.) The Supreme Court, in granting an order *nisi* under the last preceding section—

- (a) may order that the person on whose application the order is made give, within such time as is specified in the order or within such further time as the Supreme Court allows, security in such amount as the Supreme Court thinks fit for the costs of the appeal;
- (b) may order that the enforcement or execution of the decision of the Court of Petty Sessions be stayed pending the hearing of the appeal; and
- (c) may, if the appellant is in custody and is not detained for any other cause, order that he be released upon his entering into a recognizance, with or without a surety or sureties, as directed by the Supreme Court.

“(2.) If security for the costs of the appeal is not given in accordance with the order of the Supreme Court, the Supreme Court may, on an application made by the person called upon to show cause by the order *nisi*, revoke the order *nisi*.

Non-appearance of applicant.

“219E. If the person on whose application the order *nisi* has been granted under section two hundred and nineteen c of this Ordinance fails to appear on the date specified in the order or on any date to which the hearing is adjourned, the Supreme Court may discharge the order.

Powers of Supreme Court.

“219F.—(1.) On the return of an order *nisi* to review a decision of the Court of Petty Sessions, the Supreme Court, on consideration of the evidence before the Court of Petty Sessions and any further evidence called by leave of the Supreme Court—

- (a) may, if satisfied that the decision of the Court of Petty Sessions should be confirmed, discharge the order *nisi*; or
- (b) may set aside or quash, in whole or in part, or otherwise vary or amend, the decision of the Court of Petty Sessions and—
 - (i) may remit the matter to the Court of Petty Sessions for rehearing or for further hearing with or without directions of law; or

- (ii) may make such further order, including an order granting any relief that the Supreme Court is empowered to grant on certiorari, mandamus, prohibition or habeus corpus, as the Supreme Court thinks necessary to determine finally the matter.

“ (2.) For the purpose of—

- (a) correcting any defect or error in the proceedings before the Court of Petty Sessions; or
 (b) enabling the matter to be determined upon the merits,

the Supreme Court may make such amendments of the proceedings in the Court of Petty Sessions as it thinks appropriate.

“ (3.) The Supreme Court may, notwithstanding the ground or any of the grounds on which the order *nisi* to review a decision of the Court of Petty Sessions was granted has been established, discharge the order *nisi* if the Supreme Court is of the opinion that no substantial miscarriage of justice has occurred.

“ (4.) On the discharge of an order *nisi* to review a decision of the Court of Petty Sessions, that decision may be enforced or executed as if the order *nisi* had not been granted.

“ (5.) On an appeal under this Division from a decision of the Court of Petty Sessions dismissing an information dealt with by that Court under Part VII., the Supreme Court shall order that the costs of and incidental to the appeal shall be paid by the appellant.

“ (6.) The last preceding sub-section applies whether the Supreme Court orders that the order *nisi* be discharged or the Court exercises any of the other powers conferred on it by the preceding provisions of this section.”

11. Before section 220 of the Principal Ordinance the following heading is inserted— Heading.

“ *Division 4.—General Provisions.*”

12. Section 220 of the Principal Ordinance is amended by omitting the words “ section two hundred and fourteen ” and inserting in their stead the words “ section two hundred and sixteen ”. Forfeiture of recognizance.

13. Section 230 of the Principal Ordinance is repealed and the following section inserted in its stead:—

“ 230.—(1.) Where security is given, in accordance with section two hundred and eleven of this Ordinance or in accordance with an order made under section two hundred and thirteen or two hundred and nineteen of this Ordinance, by deposit of money with the Clerk, the Clerk shall— Provisions applicable in relation to security given for costs of appeal.

- (a) if, upon the determination of the appeal, the costs of and incidental to the appeal are not ordered to be paid by the appellant to the respondent—repay the amount deposited to the person by whom it was deposited; or

