

AUSTRALIAN CAPITAL TERRITORY

55

No. 14 of 1974

AN ORDINANCE

To amend the *Court of Petty Sessions Ordinance 1930-1973*.

I, THE GOVERNOR-GENERAL of Australia, acting with the advice of the Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910-1973*.

Dated this tenth day of April, 1974.

PAUL HASLUCK
Governor-General.

By His Excellency's Command,

LIONEL MURPHY
Attorney-General.

COURT OF PETTY SESSIONS ORDINANCE 1974

1. (1) This Ordinance may be cited as the *Court of Petty Sessions Ordinance 1974*.^{*} Short title and citation.

(2) The *Court of Petty Sessions Ordinance 1930-1973*[†] 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 1930-1974*.

2. Section 4 of the Principal Ordinance is repealed.

Parts.

3. Section 23 of the Principal Ordinance is repealed and the following section substituted:—

“ 23. (1) Where a conviction or order is made when one party does not appear, or a judgment is entered in pursuance of section 139, the party in whose absence the conviction or order was made or against whom the judgment was entered in pursuance of section 139 may apply to the Court for an order that the Court set aside the conviction, order or judgment. Ex parte order may be set aside on terms.

“ (2) Sub-section (1) does not apply to or in relation to a conviction or order made in the absence of a defendant who has entered a plea of guilty in accordance with section 116D and has not, before the entry of the conviction or the making of the order, withdrawn his plea.

^{*} Notified in the *Australian Government Gazette* on 17 April 1974.

[†] 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; No. 15, 1970; No. 37, 1972; and No. 48, 1973.

“ (3) Where, in his absence, a conviction is entered or an order is made against a person who has duly been served with a summons having attached to it, in accordance with sub-section 116B (2), documents in accordance with Forms 84, 85, 86 and 87, and—

- (a) that person did not return Form 85 or Form 87 to the Clerk before the day on which he was required by the summons to appear before the Court;
- (b) the Court, in a case in which it has previously, in the absence of that person, adjourned the hearing in pursuance of sub-section 116E (3), is satisfied that a notice under that sub-section did not come to his attention before the conviction is entered or the order made; or
- (c) the Court is satisfied that the notice referred to in section 116F did not come to his attention before the date fixed under that section for the hearing of the matter,

the Court, upon the application of that person, shall set aside the conviction or order.

“ (4) In any case other than an application to set aside a conviction or order referred to in sub-section (3), the Court may set aside the conviction, order or judgment on such terms as to costs or otherwise as the Court thinks just.

“ (5) Where, in pursuance of this section, the Court has set aside an order made, or a judgment entered, in respect of a complaint, the Court may, on such terms as the Court thinks just, set aside a summons or warrant issued, and an order made, under this Ordinance in consequence of the making of the first-mentioned order or the entry of the judgment, as the case may be.

“ (6) The making of an order under sub-section (5) in relation to a warrant issued under section 158 does not affect the title to goods or chattels sold under the warrant before the making of the order.

“ (7) Where, in pursuance of this section, the Court has set aside a conviction, the Court may set aside a warrant issued under this Ordinance in consequence of the conviction.

“ (8) Where, in pursuance of this section, the Court has set aside a conviction, order or judgment, the Court may, upon service of such reasonable notice upon the parties as the Court directs, proceed to hear and determine the matter, or may adjourn the hearing to such time and place as the Court thinks fit.

“ (9) Where the Court has adjourned the hearing of a matter under sub-section (8), the Court shall direct such notice as the Court thinks fit of the adjourned hearing to be given to the parties.”

4. Section 25 of the Principal Ordinance is repealed and the following section substituted:—

“ 25. Proceedings before the Court shall be commenced by an information or complaint, which may be laid by the informant or made by the complainant, as the case may be, or by that person’s counsel or solicitor or other person authorized in that behalf.”

Informations
and
complaints.

5. After section 27 of the Principal Ordinance the following section is inserted:—

“27A. (1) A person, not being a barrister and solicitor, employed in the office of the Deputy Crown Solicitor who has been authorized in writing by the Deputy Crown Solicitor for the purpose of this section may do any of the acts or perform any of the duties allowed or required by this Ordinance to be done or performed by an informant and may appear for the prosecution in a hearing under section 90AB.

Authority to appear, &c., in place of informant.

“ (2) For the purpose of sub-section (1) a document that purports to have been signed by the Deputy Crown Solicitor shall be taken to have been so signed unless the contrary is proved.”.

6. Section 42 of the Principal Ordinance is amended—

(a) by omitting sub-section (2) and substituting the following sub-sections:—

Warrant and summons in what cases issued.

“ (2) Subject to sub-section (3), a Magistrate may, notwithstanding the issue of a summons, issue his warrant at any time before or after the time mentioned in the summons for the appearance of the defendant.

“ (3) Sub-section (2) does not authorize the issue of a warrant for bringing a person before the Court to answer to an information in relation to which a summons has duly been served having attached to it, in accordance with sub-section 116B (2), documents in accordance with Forms 84, 85, 86 and 87.”.

7. Section 60 of the Principal Ordinance is repealed and the following section substituted:—

“ 60. (1) Subject to sub-section (2), a record of the depositions of a witness in any proceedings in the Court, not being depositions constituted by a written statement admitted in pursuance of section 90AA, shall be made—

Recording of proceedings.

(a) by means of sound-recording apparatus; or

(b) if the Court so directs, by means of shorthand or any similar means.

“ (2) Where the Court so directs, the depositions of a witness in any proceedings shall not be recorded in accordance with sub-section (1), but shall be taken down in writing, and, after being read over to the witness or given to him to read, signed by the witness and the Magistrate constituting the Court.

“ (3) The Clerk shall have the custody of any record of depositions made in accordance with sub-section (1).

“ (4) The Clerk shall give such directions as he considers necessary for ensuring that, in any case where a transcript of the record of any depositions made in accordance with sub-section (1) is or may be required, a transcript 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.

“ (5) Where a transcript of a record is prepared in accordance with the directions of the Clerk given under sub-section (4), the person who prepared the transcript, or under whose supervision the transcript was prepared, shall certify on the transcript, by writing under his hand, that the transcript is a true transcript of a record produced out of the custody of the Clerk.

“ (6) Subject to sub-section (15), the Clerk shall, upon application made to him by a person and, where that person is not a party to the proceedings to which the transcript or depositions relate, payment by that person of the prescribed fee, furnish to that person—

- (a) a copy of any transcript prepared in accordance with the directions of the Clerk of a record made in accordance with sub-section (1) of any depositions;
- (b) where depositions were taken down in writing in accordance with sub-section (2), a copy of the depositions as so taken down; or
- (c) where depositions, in accordance with section 90AA, are constituted by a written statement or statements, a copy of the written statement or statements,

and, in each case, shall certify, by writing under his hand, that the copy so furnished is a true copy of the transcript or the depositions as so taken down, or of the written statement or statements, as the case may be.

“ (7) Where a record made by means of sound-recording apparatus, shorthand or similar means is produced out of the custody of the Clerk and the record purports to be a record made in accordance with sub-section (1) of the depositions of a witness in any proceedings, the record is evidence that that person made those depositions in those proceedings.

“ (8) Where—

- (a) a sound-recording is produced out of the custody of the Clerk; and
- (b) the sound-recording contains a record of comments that purport—
 - (i) to have been made at the same time as a sound-recording made in accordance with sub-section (1) of the depositions of a person in any proceedings; and
 - (ii) to have been made for the purpose of identifying the proceedings, voices recorded on the last-mentioned sound-recording or any other matter or thing so recorded,

the first-mentioned sound-recording is evidence of the identity of the proceedings, of the voices or of that other matter or thing, as the case may be.

“ (9) Where—

- (a) a document purports to be a transcript, or a copy of a transcript, of a record made in accordance with sub-section (1) of depositions made by a person in any proceedings; and

(b) the document bears a certificate that purports to be a certificate given in accordance with sub-section (5) or (6), the document is evidence that the person made those depositions in those proceedings.

“(10) Where a document—

- (a) purports to be the depositions of a witness in any proceedings as taken down in writing and signed in accordance with sub-section (2); or
- (b) purports to be a copy of the depositions of a witness in any proceedings as so taken down in writing and signed and bears a certificate that purports to be a certificate given in accordance with sub-section (6),

the document is evidence that the witness made those depositions in those proceedings.

“(11) This section applies in relation to the depositions of a person in proceedings before a Magistrate in the same manner as it applies in relation to the depositions of a person in proceedings in the Court and, in the application of this section for that purpose, any reference in this section to the Court or to the Magistrate constituting the Court shall be read as a reference to the Magistrate before whom the first-mentioned proceedings take place.

“(12) This section applies in relation to a statement made by an accused person in reply to the question referred to in paragraph 92 (1) (ii) as if the statement were the depositions of the person.

“(13) Where a record of a part of any proceedings in the Court or before a Magistrate, not being a record of the depositions of a witness, has been made by means of sound-recording apparatus or by any other means, the Clerk may, upon application made to him by a person and, where that person is not a party to the proceedings to which the record relates, payment by that person of the prescribed fee, but subject to sub-section (15), furnish to that person a copy of a transcript of that record.

“(14) Where a person, not being a party to the proceedings to which the transcript relates, makes application to the Clerk to furnish to him under this section a copy of any transcript and a copy of the transcript is not available, the Clerk may, before causing a copy of the transcript to be prepared, require the applicant to deposit with the Clerk on account of the fee that will become payable in respect of the furnishing of the copy to the applicant such amount as the Clerk determines, being an amount that does not, in the opinion of the Clerk, exceed the amount of the fee that will become so payable.

“(15) Nothing in sub-section (6) or (13) requires the Clerk to furnish a copy of a transcript or of any depositions to a person, not being a party to the proceedings to which the transcript or depositions relate, unless the person applying for the copy satisfies the Clerk or a Magistrate that he has good reason for so applying.”.

Recognisance
taken out of
Court.

8. Section 79 of the Principal Ordinance is amended by omitting the words "Where the Court has fixed as regards any recognisance the amount in which the principal and sureties (if any) are to be bound, the recognisance, notwithstanding anything in this or any other Ordinance," and submitting the words "Notwithstanding anything in this or any other Ordinance, a recognisance".

Forfeited
recognisances,
how to be enforced.

9. Section 80 of the Principal Ordinance is amended by adding at the end thereof the following sub-section:—

"(2) This section does not apply with respect to a failure to comply with a further condition to which a recognisance is subject by reason of section 248A."

10. Section 90 of the Principal Ordinance is repealed and the following sections substituted:—

Procedure
where
informant
proposes
to tender
written
statements
to the Court.

"90. (1) Where a person is charged with an indictable offence, the informant, not later than 14 days, or such shorter period as the Court may approve, before the date fixed for the taking of the preliminary examination, may give to that person a notice in writing—

- (a) informing him of the time and place of the preliminary examination;
- (b) stating that the Court will be asked to admit written statements as evidence without requiring the attendance of the persons who made the statements; and
- (c) setting out the terms of this section and section 90AA.

"(2) A notice under sub-section (1) is not duly given unless it is accompanied by—

- (a) a copy of the information;
- (b) a list of persons who have made written statements which the informant proposes to tender to the Court at the preliminary examination;
- (c) a copy of each of those statements;
- (d) a list of the documents and things (if any) referred to in those statements which the informant proposes to tender to the Court at the preliminary examination;
- (e) where a thing, not being a document, cannot adequately be described in that list, a photograph of that thing; and
- (f) a copy of each document mentioned in the list.

"(3) A notice and accompanying documents may be given to an accused person in any manner in which a summons issued in respect of an information may be served under any provision of this Ordinance.

"(4) The giving of a notice under sub-section (3) may be proved in the same manner as the service of a summons.

"(5) Where a notice has been given to an accused person under this section, the informant, not later than 7 days, or such shorter period as the Court may approve, before the date set down for the preliminary

examination, shall file with the Clerk a copy of the notice together with a copy of each document and photograph accompanying the notice.

“ (6) Where copies are filed with the Clerk under sub-section (5), he shall transmit them before the preliminary examination to the Magistrate constituting the Court for the preliminary examination.

“ (7) The informant, if so requested by the accused person or his counsel or solicitor shall, before the taking of the preliminary examination, permit that person or his counsel or solicitor to inspect the documents and things referred to in the list (if any) given to the accused person in pursuance of paragraph (2)(d).

“ 90AA. (1) Subject to this section, where an informant has duly given notice to an accused person under section 90, the Court at the preliminary examination may admit a written statement, a copy of which accompanied that notice, as evidence of the matters stated in the statement, and the statement shall thereupon constitute depositions of the person who made it.

Written statements may be admitted in evidence.

“ (2) A written statement shall not be admitted in evidence by the Court unless—

- (a) it is made in the form of a statutory declaration;
- (b) it contains a statement that the person who made it—
 - (i) has attained the age of 18 years; or
 - (ii) has attained the age of 14 years but not the age of 18 years; and
- (c) it contains a statement that before he signed it, the person who made it read the statement or had it read to him.

“ (3) Where a person has made a written statement which, but for this sub-section, would be admissible under sub-section (1), that statement shall not be admissible where the accused person, not later than 5 days before the date set down for the preliminary examination, gives notice in writing to the informant that he requires the attendance at the preliminary examination of the person who made the statement.

“ (4) Where the accused person gives notice in writing to the informant under sub-section (3), he shall file a copy of that notice with the Clerk.

“ (5) Where an accused person has given notice under sub-section (3), he may, at any time before the preliminary examination, notify the informant in writing that he withdraws that notice and this section shall apply as if the notice under sub-section (3) had not been given.

“ (6) Notwithstanding the failure by an accused person to give notice under sub-section (3), he may object at the preliminary examination to a written statement being tendered in evidence and the Court may, if it thinks fit, uphold the objection and require the person who made the statement to attend and give evidence to the Court.

“ (7) Where, under this section, the Court admits a written statement, the Court may, of its own motion, require the person who made the statement to attend before the Court to give evidence.

“(8) Where it appears to the Court that any part of a written statement tendered in evidence under this section is inadmissible according to the rules of evidence, the Court may, where the statement is otherwise admissible under this section, admit that statement, but, where it does so, shall identify the part that is inadmissible and shall, with reference to that part, write on the statement the words ‘ruled inadmissible’ or words to that effect.

“(9) Where the Court admits a written statement under this section, the informant, or the counsel or solicitor for the prosecution, may call the person who made the statement to give oral evidence and that person and any other witnesses, not being witnesses called by the accused person, who attend before the Court—

- (a) shall be examined in the presence or hearing of the accused person and, if the accused person so desires, in the presence or hearing of his counsel or solicitor; and
- (b) may be cross-examined by the accused person or his counsel or solicitor.

Preliminary examination where written statements not tendered.

“90AB. Where a person appears or is brought before the Court charged with an indictable offence and a notice has not been given to that person in accordance with section 90, the Court shall, in the presence or hearing of the accused person and, if the accused person 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.”.

Court may discharge accused person.

11. Section 91 of the Principal Ordinance is amended by omitting the words “has been heard” and substituting the words “has been taken”.

Proceedings where evidence sufficient to put accused on trial.

12. Section 92 of the Principal Ordinance is amended by inserting in paragraph (i) of sub-section (1), after the words “hearing of the charge”, the words “and those witnesses, or any of them, shall, if so required by the prosecution or the defendant, be called or recalled, as the case may be, for examination or cross-examination”.

13. After section 92 of the Principal Ordinance the following section is inserted:—

Committal for sentence for indictable offence tried summarily.

“92A. (1) Upon the summary conviction of a person charged with an indictable offence, the Court may, where it appears to it that by reason of the character and antecedents of that person it is desirable that sentence be passed upon him by the Supreme Court, commit him for sentence to such sittings of the Supreme Court as the Court directs.

“(2) Where the Court commits a person for sentence in pursuance of sub-section (1), the Court shall deal with him in the same way as a person who is committed for trial in pursuance of paragraph 94 (b).

“(3) The Supreme Court has the same powers of sentencing or otherwise dealing with a person committed for sentence in pursuance of this section as it would have had if that person had been convicted in that court.”.

14. Section 103 of the Principal Ordinance is amended by omitting sub-section (1) and substituting the following sub-section:—

Recognition
of witnesses,
&c.

“(1) The Court may bind by recognisance every person whose written statement was admitted in evidence in pursuance of section 90AA, or who was examined before it, to appear at the court at which the defendant is to be tried, and then and there to give evidence against the defendant.”.

15. Section 110 of the Principal Ordinance is amended by omitting all the words from and including the words “If at the time” to and including the words “upon the defendant” and substituting the words “Where a summons has been served in accordance with section 41 and the defendant does not appear when called”.

Ex parte
hearing in
absence of
defendant.

16. The Principal Ordinance is amended by inserting after Part VII the following Part:—

“PART VIIA—SERVICE AND PLEADING BY POST

“116A. In this Part, unless the contrary intention appears—

Definitions.

‘defendant’ means a person who has duly been served with a summons having attached to it, in accordance with sub-section 116B (2), documents in accordance with Forms 84, 85, 86 and 87;

‘prescribed offence’ means an offence against the *Motor Traffic Ordinance* 1936-1974 or the *Traffic Ordinance* 1937-1966, being an offence for which a penalty of a fine not exceeding \$200, whether with or without any other penalty, may be imposed.

“116B. (1) A summons with respect to a prescribed offence may be served in accordance with section 41 or by posting the summons by certified mail addressed to the person to whom the summons is directed at his last known or usual place of abode or business.

Service of
summons.

“(2) A summons with respect to a prescribed offence, having attached to it, or endorsed upon it, a brief statement of the facts and circumstances of the offence charged, may have attached to it for service documents in accordance with Forms 84, 85, 86 and 87.

“(3) Service of a summons with respect to a prescribed offence, where the summons has attached to it for service, in accordance with sub-section (2), documents in accordance with Forms 84, 85, 86 and 87, shall be effected, where the summons is served in accordance with sub-section 41 (1), not less than 14 days before the day on which the person to whom it is directed is required by the summons to appear before the Court.

“(4) Where a summons is posted by certified mail, it shall be so posted not less than 21 days before the day on which the person to whom it is directed is required by the summons to appear before the Court.

Proof of
service.

“ 116C. (1) Where, under this Part, a summons is served by post, the service may be proved by affidavit having annexed to it—

- (a) a duly completed certified mail posting receipt, issued pursuant to regulation 176B of the Postal Regulations as in force under the *Post and Telegraph Act* 1901-1973; and
- (b) a form referred to in regulation 176E of those Regulations having on it the certified mail number that appears on the receipt referred to in paragraph (a) and bearing an acknowledgment of receipt of the postal article to which the receipt referred to in paragraph (a) relates.

“ (2) The date appearing on the acknowledgment referred to in paragraph (1) (b) shall be deemed to be the date on which the summons was served.

“ (3) Where—

- (a) a defendant returns one or more of Forms 85, 86 and 87 to the Clerk; and
- (b) each form that is so returned bears a signature above the words ‘Signature of Defendant’,

the form shall, unless the contrary is proved, be deemed to have been signed by the defendant.

“ (4) Form 85 and Form 86 shall be signed in the presence of one of the following persons:—

- (a) a Chief, Police, Stipendiary, Resident or Special Magistrate;
- (b) a person whose name is on a roll referred to in sub-section 55D (1) of the *Judiciary Act* 1903-1969;
- (c) a Justice of the Peace;
- (d) a Commissioner for Affidavits;
- (e) a Commissioner for Declarations;
- (f) a Notary Public.

Pleas.

“ 116D. (1) A defendant may—

- (a) without prejudice to any other means of pleading guilty, enter a plea of guilty by completing Form 85 and returning the form, whether by post or otherwise, to the Clerk; or
- (b) give notice of his intention to defend by completing Form 87 and returning the form, whether by post or otherwise, to the Clerk.

“ (2) A defendant who enters a plea of guilty may complete Form 86 and return the form, by post or otherwise, to the Clerk.

Procedure
where plea
of guilty
entered.

“ 116E. (1) Subject to sub-section (3), where—

- (a) a defendant enters a plea of guilty in accordance with section 116D;

(b) the defendant—

- (i) does not appear at the hearing; or
- (ii) appears but does not withdraw his plea of guilty; and

(c) the Court accepts the plea of guilty,

the Court shall record a plea of guilty and determine the proceedings accordingly.

“ (2) Where the defendant has returned a statement in accordance with Form 86 to the Clerk, the Court shall, in determining the proceedings, have regard to the matters contained in the statement and shall give to those matters such weight as to the Court seems proper.

“ (3) Where the Court declines to accept a plea of guilty entered in accordance with section 116D, the Court shall adjourn the hearing, fix a time and place at which the proceedings will be heard and, if the defendant is not before the Court, direct the Clerk to give by post to the defendant notice of the time and place so fixed.

“ (4) Where a defendant does not appear at the time and place fixed under sub-section (3), the Court may hear and determine the proceedings in the absence of the defendant.

“ 116F. Where a defendant returns Form 87 to the Clerk before the day on which he is required by the summons to appear before the Court—

- (a) the Court shall fix a time and place for the hearing of the proceedings;
- (b) the Clerk shall serve on the defendant by post notice of the time and place so fixed; and
- (c) if the defendant does not appear at that time and place, the Court may hear and determine the proceedings in the absence of the defendant.

Procedure where notice of intention to defend given.

“ 116G. Where a defendant—

- (a) does not return Form 85 or Form 87 to the Clerk before the day on which he is required by the summons to appear before the Court; and
- (b) does not appear on that day in accordance with the summons,

Procedure where defendant does not plead.

the Court may convict the defendant or make an order against him if it is satisfied that the facts and circumstances set out in the statement referred to in sub-section 116B (2) constitute the offence charged.

“ 116H. (1) Where a defendant is convicted of the offence in relation to which the summons was issued, the Court may not—

- (a) impose a penalty of imprisonment, other than imprisonment in default of payment of a fine; or
- (b) suspend or cancel a driving licence.

Certain penalties may not be imposed.

“ (2) The Court, in imposing a penalty on, or making an order against, a defendant who has been convicted, shall not have regard to any previous conviction of the defendant.

“ (3) In this section, ‘driving licence’ means a licence to drive a motor vehicle issued under the *Motor Traffic Ordinance* 1936-1974.

Con-
sequences of
conviction
ex parte.

“ 116I. (1) Where a defendant is, in his absence, convicted of the offence in relation to which the summons was issued, the Clerk shall serve on the defendant notice in writing of—

- (a) the conviction and order of the Court;
- (b) where the Court order includes the imposition of a fine, the time allowed by the Court for the payment of the fine; and
- (c) except where the proceedings are determined in accordance with sub-section 116E (1), the defendant’s right to apply for the setting aside of the conviction or order in accordance with section 23.

“ (2) The notice referred to in sub-section (1) shall be served by post.

“ (3) Where the defendant has not paid the fine within the time allowed by the Court, the Clerk shall cause notice in writing of the matters referred to in paragraphs (1) (a), (b) and (c) to be served on the defendant in accordance with section 41.

Date of
conviction.

“ 116J. For the purposes of any law in force in the Territory, the date on which notice is served on a defendant in accordance with sub-section 116I (2) shall be deemed to be the date of conviction.”

Court may
allow time
to pay,
&c.

17. Section 148 of the Principal Ordinance is amended by omitting sub-section (1) and substituting the following sub-sections:—

“ (1) Where the Court, by a conviction or order, imposes a fine or penalty, or orders that a sum of money or costs be paid—

- (a) the Court shall, in the case of a fine imposed on conviction for an offence the summons for which had attached to it for service, in accordance with sub-section 116B (2), documents in accordance with Forms 84, 85, 86 and 87; and
- (b) the Court may, in any other case, allow time for the payment of the amount.

“ (1A) In the case of a fine referred to in paragraph (1) (a), the time allowed by the Court shall be not less than 14 days from the date of conviction.

“ (1B) In addition to allowing time for the payment of an amount, the Court may, in any case—

- (a) direct payment of the amount to be made by instalments; and

- (b) direct that the person liable to pay the amount give security, to the satisfaction of such person as is specified by the Court, with or without sureties, for the payment of the amount or of an instalment of the amount.

“(1c) The security referred to in paragraph (1B) (b) shall be given, and may be enforced, in the manner provided by this Ordinance.”.

18. Section 150 of the Principal Ordinance is amended by adding at the end thereof the following sub-section:—

Committal to prison where fine or costs not paid.

“(2) Where a conviction or order referred to in sub-section (1) is made in the absence of a defendant who was duly served with a summons having attached to it, in accordance with sub-section 116B (2), documents in accordance with Forms 84, 85, 86 and 87, the Magistrate shall not issue his warrant in pursuance of that sub-section until the expiration of 7 days after the date of service of the notice referred to in sub-section 116i (3).”.

19. Section 219B of the Principal Ordinance is amended by omitting paragraph (a).

Appeals by way of orders to review.

20. Section 219C of the Principal Ordinance is amended by omitting sub-section (1) and substituting the following sub-section:—

Grant of order *nisi* to review.

“(1) On an application by a person against whom a conviction or order referred to in section 219B has been entered or made, 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 of the Court of Petty Sessions should not be reviewed on any one or more of the following grounds, namely—

- (a) that there was a *prima facie* case of error or mistake on the part of the Court of Petty Sessions;
- (b) that the Court of Petty Sessions did not have jurisdiction or authority to make the decision; or
- (c) that the decision of the Court of Petty Sessions should not in law have been made.”.

21. Section 219F of the Principal Ordinance is amended by omitting sub-sections (5) and (6).

Powers of Supreme Court.

22. After Part XIII of the Principal Ordinance the following Part is inserted:—

“PART XIII A—SPECIAL PROVISIONS WITH RESPECT TO BAIL

“248A. (1) In this section, ‘defendant’ includes a person apprehended under a warrant issued under section 43.

Court may impose conditions.

“(2) Where the Court proposes to order that a defendant be admitted to bail, or be discharged from custody upon recognisance with or without sureties, the Court may order that the recognisance to

be entered into by the defendant be subject to such further conditions as appear to the Court likely to result in the appearance of the defendant at the time and place required or to be necessary in the interests of justice or for the prevention of crime.

“(3) The Court shall not, in an order referred to in sub-section (2), require that compliance with the further conditions be secured by a surety or sureties.

Apprehension of person admitted to bail.

“248B. (1) Where a Magistrate is satisfied by information on oath that a defendant has failed to comply with a condition of a recognisance entered into by him (not being a condition that the defendant appear on a certain day before the Court or the Supreme Court), the Magistrate may issue his warrant for the apprehension of the defendant and for the bringing of the defendant before the Court.

“(2) Where a Magistrate is satisfied by information on oath that there are reasonable grounds for believing that a defendant will not comply with a condition of a recognisance entered into by him, the Magistrate may issue his warrant for the apprehension of the defendant and for the bringing of the defendant before the Court.

“(3) A warrant under sub-section (1) or (2) shall—

- (a) be in writing signed by the Magistrate issuing it;
- (b) be directed to all police officers or to a named police officer;
- (c) state shortly the matters of the information on which it is founded; and
- (d) order the apprehension of the defendant and the bringing of the defendant before the Court.

“(4) A warrant under sub-section (1) or (2) may be issued on a Sunday as on any other day.

“(5) A person who has been apprehended under this section shall be brought before the Court as soon as practicable after he is taken into custody.

Power of Court where person apprehended.

“248C. Where a defendant who has been apprehended under section 248B is brought before the Court, the Court has the same power to remand the defendant in custody, admit the defendant to bail or order the discharge of the defendant upon recognisance as it has in relation to other defendants in custody.

Effect of apprehension of defendant.

“248D. (1) Where a defendant who has been apprehended in pursuance of sub-section 248B (1) is brought before the Court, the Magistrate constituting the Court shall endorse on the back of the recognisance a memorandum in accordance with sub-section (2) of this section.

“(2) The memorandum to be endorsed on a recognisance for the purpose of sub-section (1) is a memorandum signed by the Magistrate and stating that the defendant has failed to comply with a specified condition of the recognisance.

“ (3) Where a memorandum is endorsed on a recognisance in accordance with sub-section (1), the recognisance—

- (a) in so far as it is subject to the condition specified in the memorandum, is of full force and effect; and
- (b) in so far as it is subject to any other condition, is void.

“ (4) Where a defendant who has entered into a recognisance is apprehended in pursuance of a warrant issued under sub-section 248B (2) the recognisance is thereupon void.”.

23. Section 254 of the Principal Ordinance is repealed and the following section substituted:—

“ 254. (1) Where—

- (a) a person has entered into a recognisance for the purposes of this Ordinance; and
- (b) the Court is satisfied that the person has failed to comply with a condition of the recognisance,

Enforcement
of
recognisance.

the Court may declare the recognisance to be forfeited and may make an order that the person pay the whole or a part of the sum in which he is bound under the recognisance.

“ (2) Where—

- (a) the Court has declared a recognisance to be forfeited by reason of the failure of a person to comply with a condition of the recognisance; and
- (b) a person is bound by the recognisance as surety for the performance of that condition,

the Court may make an order that the person referred to in paragraph (b) pay the whole or a part of the sum in which he is bound under the recognisance.

“ (3) An order made under sub-section (1) or (2) may be enforced as if it were an order made on a complaint by the Clerk.

“ (4) Subject to sub-section (5), the Court may, on application by a person against whom an order has been made under sub-section (1) or (2)—

- (a) vary the order by reducing the amount payable under the order; or
- (b) revoke the order and, if the order was made under sub-section (1), revoke the declaration that the recognisance is forfeited.

“ (5) Where—

- (a) the Court has made an order under sub-section (1) or (2);
- (b) a warrant has been issued under section 158; and
- (c) goods or chattels have been sold under the warrant,

the Court shall not make an order under sub-section (4).

“ (6) It is not necessary that, for the purpose of hearing an application under sub-section (4), the Court be constituted by the Magistrate who made the order to which the application relates.”.

Forms.

24. Section 256 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1) the words “ Subject to any rules or regulations for the time being in force under this Ordinance ” and substituting the words “ Subject to sub-section (1A) ” ; and
- (b) by inserting after sub-section (1) the following sub-section:—
- “ (1A) Sub-section (1) does not apply to or in relation to Form 84, 85, 86 or 87.”.

First
Schedule—
Form 21.

25. Form 21 in the First Schedule to the Principle Ordinance is amended by inserting, after the word “[each]”, the words “ (*to be included where an order is made under section 248A*) And the within-named A.B. himself in the sum of *to comply with (here insert terms of order under section 248A)* ”.

First
Schedule—
Form 22.

26. Form 22 in the First Schedule to the Principal Ordinance is amended by inserting, after the word “[each]”, the words “ (*to be included where an order is made under section 248A*) And the within-named A.B. himself in the sum of *to comply with (here insert terms of order under section 248A)* ”.

First
Schedule—
Forms 32A
and 32B.

27. The First Schedule to the Principal Ordinance is amended by inserting after Form 32 the following forms:—

“ FORM 32A

ADDITIONAL MATTERS TO BE INCLUDED IN RECOGNISANCE WHERE ORDER IS MADE UNDER SECTION 248A

1. ‘And the said A.B. also acknowledged himself to owe as aforesaid the sum of *to be made and levied as aforesaid if he the said A.B. shall fail in the further condition endorsed.*’

‘Further condition

2. The further condition of the within recognisance is (*or The further conditions of the within recognisance are*) such that, if (*here insert terms of order under section 248A*); then the said recognisance in so far as the said A.B. has acknowledged himself to owe the sum of *if he shall fail in this further condition (or any of these further conditions) to be void; or else to stand in full force and virtue.*’

“ FORM 32B

ADDITIONAL MATTER TO BE INCLUDED IN NOTICE OF RECOGNISANCE TO BE GIVEN TO DEFENDANT WHERE ORDER MADE UNDER SECTION 248A

‘ And take notice that you, the said A.B. are bound in the sum of *, that you, A.B., (here insert terms of order made under section 248A); and unless you comply with that condition (or those conditions), the recognisance entered into by you so far as you have acknowledged yourself to owe the sum of if you shall fail so to comply will forthwith be put in suit, and enforced against you.*’ ”.

28. The First Schedule to the Principal Ordinance is amended by adding at the end thereof the following forms:— First
Schedule.

“ FORM 84

(Heading as in summons)

NOTICE TO DEFENDANT

To (full name and address of defendant)

1. With this notice there is enclosed a summons that has been issued against you out of the Court of Petty Sessions at . The offence with which you are charged is specified in the summons and a brief statement of the facts and circumstances of the alleged offence is attached to (or endorsed on) the summons.

2. The date on which the proceedings will come before the Court is the date mentioned in the summons as the date on which you are to appear before the Court.

3. If you wish to plead guilty to the charge, you may do so—

- by attending court on the date mentioned in the summons and personally entering a plea of guilty; or
- by instructing a legal practitioner to attend court and enter a plea of guilty on your behalf; or
- by completing Form 85 titled ‘Plea of Guilty’ and returning the form, whether by post or otherwise, to the Clerk of the Court of Petty Sessions at the address indicated at the top of the form. If you return Form 85 to the Clerk of the Court, you may still attend the hearing or be represented by a legal practitioner if you so desire.

4. If you wish to bring any matter to the attention of the Court you may do so—

- by completing Form 86 and returning the form, whether by post or otherwise, to the Clerk of the Court at the address indicated at the top of the form; or
- by attending court and bringing the matter to the attention of the Court; or
- by having the matter brought to the attention of the Court by a legal practitioner.

5. If you enter a plea of guilty by returning Form 85, the proceedings will, as far as possible, be disposed of on the date specified in the summons. You need not attend court if you do not wish to do so. If you do not attend court, you will be notified of the order of the court and allowed time in which to pay any fine that may be imposed.

6. If you wish to defend the charge, you should sign Form 87 titled ‘Notice of Intention to Defend’ and return the form, whether by post or otherwise, to the Clerk of the Court of Petty Sessions at the address indicated on the form. If the form is returned to the Court, you need not attend on the date specified in the summons if you do not wish to do so, as the matter will not be heard on that day. The Court will fix a date for the hearing of the charge and, if you are not present, you will be notified by post of the date so fixed.

7. You will see that Form 87 invites you to state whether you would prefer the Court hearing to take place during the evening (i.e. at some time between 5.30 p.m. and 10.00 p.m.). If you have a preference please indicate in the manner shown on the Form.

8. If, after you have returned the ‘Notice of Intention to Defend’ and after you have been given notice of the date fixed for the hearing of the charge, you do not appear at the hearing, the matter may be heard and determined without further notice to you.

9. Please note that if, on the date mentioned in the summons, you have not returned a ‘Plea of Guilty’ or a ‘Notice of Intention to Defend’ and you do not appear in Court on that day, either in person or by a legal practitioner, the Court may convict you in your absence.

Dated this day of , 19 .

Clerk of the Court of Petty Sessions.

FORM 85

NOTE: If you wish to plead guilty, this form should be completed and returned to the Clerk, Court of Petty Sessions, (*insert address of Court*).

(*Heading as in summons*)

PLEA OF GUILTY

I, _____, the above-named defendant hereby admit that I am guilty of the offence with which I am charged in these proceedings.

(*Signature of Defendant*)

* Signed in my presence by the above-named defendant this _____ day of _____, 19____.

(*Signature and qualification of witness*)

* This form must be signed in the presence of one of the following persons:—

- A Magistrate
- A Legal Practitioner
- A Commissioner for Affidavits
- A Justice of the Peace
- A Commissioner for Declarations
- A Notary Public

FORM 86

(*Heading as in summons*)

STATEMENT BY DEFENDANT WHO PLEADS GUILTY

I, _____, the above-named defendant, having pleaded guilty to the offence with which I am charged, draw the following matters to the attention of the Court in relation to that offence:—

(*Signature of Defendant*)

* Signed in my presence by the above-named defendant on the _____ day of _____, 19____.

(*Signature and qualification of witness*)

* This form must be signed in the presence of one of the following persons:—

- A Magistrate
- A Legal Practitioner
- A Justice of the Peace
- A Commissioner for Affidavits
- A Commissioner for Declarations
- A Notary Public

FORM 87

NOTE: If you wish to defend the proceedings, this form should be completed and returned to the Clerk, Court of Petty Sessions, (*insert address of Court*).

(*Heading as in summons*)

NOTICE OF INTENTION TO DEFEND

To the Clerk of the Court of Petty Sessions.

Take notice that I, _____, the above-named defendant, intend to defend these proceedings.

I would/would not* prefer the Court hearing to take place at some time between 5.30 p.m. and 10.00 p.m. * Strike out the inapplicable words.

Dated this _____ day of _____, 19 ____ .

(*Signature of Defendant*) "