

AUSTRALIAN CAPITAL TERRITORY

7

No. 4 of 1977

AN ORDINANCE

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

I, THE GOVERNOR-GENERAL of 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*.

Dated this twenty-fourth day of March, 1977.

JOHN R. KERR
Governor-General.

By His Excellency's Command,

R. ELLICOTT
Attorney-General.

COURT OF PETTY SESSIONS (AMENDMENT) ORDINANCE 1977

1. This Ordinance may be cited as the *Court of Petty Sessions (Amendment) Ordinance 1977*.^{*} Short title.

2. In this Ordinance, "Principal Ordinance" means the *Court of Petty Sessions Ordinance 1930*.[†] Principal Ordinance.

3. (1) This section and sections 1, 2 and 10 shall come into operation on the date on which this Ordinance is notified in the *Gazette*. Commencement.

(2) The remaining provisions of this Ordinance shall come into operation on such date as is fixed by the Minister of State for the Capital Territory by notice in the *Gazette*.

4. Sections 7 to 10 (inclusive) of the Principal Ordinance are repealed and the following headings and sections substituted:—

"Division 1—*Appointment of Chief Magistrate and Stipendiary Magistrates*

"6A. In this Division, 'Magistrate' means—

Definitions.

(a) a person who holds the office of Chief Magistrate; or

(b) a person who holds an office of Stipendiary Magistrate.

^{*} Notified in the *Australian Government Gazette* on 24 March 1977.

[†] 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; No. 48, 1973; Nos. 14 and 47, 1974; and No. 42, 1976.

Chief
Magistrate,
Stipendiary
Magistrates.

“ 7. (1) For the purposes of this Ordinance, there shall be—

- (a) an office of Chief Magistrate; and
- (b) 4 offices of Stipendiary Magistrate.

“ (2) The Governor-General may appoint persons to hold offices referred to in sub-section (1).

“ (3) Where a person holding an office of Stipendiary Magistrate is appointed to hold the office of Chief Magistrate, the person ceases to hold the office of Stipendiary Magistrate.

Eligibility
for
appointment
as
Magistrate.

“ 8. A person is not eligible for appointment under sub-section 7 (2) unless he is enrolled as a legal practitioner of the High Court or of the Supreme Court of a State or Territory and has been so enrolled for not less than 5 years.

Seniority of
Stipendiary
Magistrates.

“ 9. The Stipendiary Magistrates have seniority according to the dates on which their appointments took effect or, where the appointments of 2 or more of them took effect on the same date, according to the precedence assigned to them by the instruments of their appointment.

Terms and
conditions of
appointment.

“ 10. Subject to the *Remuneration Tribunals Act 1973*, a Magistrate—

- (a) shall be paid such remuneration and allowances; and
- (b) holds office on such terms and conditions,

as the Governor-General, from time to time, determines.

Tenure of
office.

“ 10A. (1) Subject to this Ordinance, a Magistrate holds office until he attains the age of 65 years.

“ (2) A person who has attained the age of 65 years shall not be appointed under section 7.

Resignation.

“ 10B. A Magistrate may resign his office by writing signed by him and delivered to the Governor-General.

Acting Chief
Magistrate.

“ 10c. (1) Where—

- (a) there is a vacancy in the office of Chief Magistrate; or
- (b) the Chief Magistrate is absent from duty or from the Territory or, for any other reason, is unable to carry out the duties of his office,

the Governor-General may appoint a Stipendiary Magistrate to act as Chief Magistrate during that vacancy, absence or inability, as the case may be.

“ (2) Where—

(a) either—

- (i) there is a vacancy in the office of Chief Magistrate; or
- (ii) the Chief Magistrate is absent from duty or from the Territory or, for any other reason, is unable to carry out the duties of his office; and

(b) no appointment is in force under sub-section (1), the senior Stipendiary Magistrate who is in the Territory and is able and willing to do so shall act as Chief Magistrate.

“ (3) Subject to this section, a person appointed under sub-section (1) shall not continue to act as Chief Magistrate for more than 12 months.

“ (4) Where a person is acting as Chief Magistrate in pursuance of sub-section (1) or (2)—

- (a) a reference in a law of the Territory (including this Ordinance) to the Chief Magistrate includes a reference to that person; and
- (b) that person has all the powers, functions and duties conferred or imposed upon the Chief Magistrate by this Ordinance or by any other law of the Territory.

“ (5) The Governor-General may—

- (a) determine the terms and conditions of appointment of a person under this section; and
- (b) at any time terminate such an appointment.

“ (6) Where a person is acting as Chief Magistrate in pursuance of an appointment under sub-section (1) and the office of Chief Magistrate becomes vacant while that person is so acting, that person may continue so to act until the Governor-General otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

“ (7) A person may resign an appointment under sub-section (1) by writing signed by him and delivered to the Governor-General.

“ (8) The validity of anything done by a person acting as Chief Magistrate in pursuance of this section shall not be called in question—

- (a) on the ground that the occasion for his acting had not arisen or had ceased; or
- (b) in the case of a person acting in pursuance of an appointment under sub-section (1)—by reason of any defect or irregularity in, or in connexion with, that appointment.

“ 10D. (1) The Governor-General may remove a Magistrate from office on an address praying for his removal on the ground of proved misbehaviour or incapacity being presented to the Governor-General by each House of the Parliament in the same session of the Parliament. Removal from office.

“ (2) The Governor-General may suspend a Magistrate from office on the ground of misbehaviour or incapacity.

“ (3) When the Governor-General suspends a Magistrate from office, the Attorney-General shall cause a statement of the ground of the suspension to be laid before each House of the Parliament.

“ (4) Where—

- (a) a statement has been laid before each House of the Parliament in accordance with sub-section (3) within the period of 15 sitting days of that House after the date of the suspension to which the statement relates; and
- (b) each House of the Parliament, within the period of 15 sitting days of that House after the statement was laid before it, by resolution declares that the Magistrate to whom

the statement relates should be removed from office, the Governor-General shall remove that Magistrate from office.

“ (5) Where—

- (a) the Governor-General has suspended a Magistrate from office; and
- (b) on the first day on which a period of 15 sitting days of a House of the Parliament after the date of the suspension expires, the Attorney-General has not caused a statement of the ground of the suspension to be laid before that House,

the Governor-General shall cancel the suspension of the Magistrate from office.

“ (6) Where—

- (a) a statement has been laid before each House of the Parliament in accordance with sub-section (3); and
- (b) on the first day on which a period referred to in paragraph (4) (b) expires, a House of the Parliament has failed to pass the resolution referred to in that paragraph,

the Governor-General shall cancel the suspension of the Magistrate from office.

“ (7) The suspension of a Magistrate from office under this section does not affect any entitlement of the Magistrate to be paid remuneration and allowances.

“ (8) The Governor-General may, with the consent of a Magistrate, retire the Magistrate from office on the ground of invalidity or physical or mental incapacity.

“ (9) A Magistrate shall not be removed or suspended from office except as provided by this section.

Magistrates
not to
undertake
other work.

“ 10E. (1) A Magistrate shall not engage in practice as a barrister, as a solicitor or as a barrister and solicitor.

“ (2) A Magistrate shall not, without the consent of the Attorney-General, engage in paid employment outside the duties of his office under this Ordinance or any office or appointment held by him in the Defence Force.

“ (3) The acceptance by a Magistrate of appointment to a judicial office in another Territory does not affect his office under this Ordinance.

Rights of
public
servants.

“ 10F. Where a Magistrate was, immediately before his appointment, an officer of the Australian Public Service or a person to whom the *Officers' Rights Declaration Act 1928* applied, he retains his existing and accruing rights.

Arrangement
of business
of Courts.

“ 10G. The Chief Magistrate is responsible for ensuring the orderly and expeditious discharge of the business of the Court of Petty Sessions, the Children's Court and the Coroner's Court and accordingly may, subject to this Ordinance and to such consultation with the Stipendiary Magistrates as is appropriate and practicable, make arrangements as to the Magistrate who is to constitute each of those Courts in particular matters or classes of matters.

“ Division 2—Special Magistrates

“ 10H. For the purposes of this Ordinance, the Governor-General may appoint such special magistrates as are required. Appointment of Special Magistrates.

“ 10J. A special magistrate holds office during the pleasure of the Governor-General. Tenure of office.

“ 10K. A special magistrate may resign his office by writing signed by him and delivered to the Governor-General. Resignation.

“ 10L. Subject to the *Remuneration Tribunals Act 1973* and to section 10J, a special magistrate holds office upon such terms and conditions, whether as to remuneration or otherwise, as the Governor-General, from time to time, determines. Terms and conditions of appointment.

“ Division 3—Clerk and other officers of the Court of Petty Sessions

“ 10M. For the purposes of this Ordinance, the Attorney-General may appoint a Clerk of the Court of Petty Sessions and such Deputy Clerks of the Court, bailiffs and other officers as are required. Appointment of Clerk, &c.

“ 10N. The Clerk shall perform such duties as are prescribed by or under this Ordinance or as the Chief Magistrate directs. Duties of the Clerk.

“ Division 4—Jurisdiction of Magistrates

“ 10P. (1) A person appointed under sub-section 7 (2) or section 10H shall not exercise or perform any of the powers, functions or duties conferred or imposed upon a Magistrate by any law of the Territory unless he has made an oath or affirmation in accordance with the form in the Second Schedule. Oath, &c., of office.

“ (2) An oath or affirmation for the purpose of sub-section (1) shall be made before the Judge.

“ 10Q. (1) An act done by a Magistrate, by virtue of his office, outside the Territory for the purpose of authenticating the signature of a person to an instrument intended to take effect in the Territory shall, unless the act is required by law to be done in the Territory, be effective for the purposes of any law of the Territory. Acts done beyond the Territory.

“ (2) An oath or affirmation administered by a Magistrate, by virtue of his office, outside the Territory in any case in which an oath or affirmation may be administered by a Magistrate shall, unless the oath or affirmation is required by law to be administered in the Territory, be effective for the purposes of any law of the Territory.”

5. Section 16 of the Principal Ordinance is amended by adding at the end thereof the following sub-section:— Order in lieu of mandamus.

“ (3) Where, before the date fixed under sub-section 3 (2) of the *Court of Petty Sessions (Amendment) Ordinance 1977*, a Magistrate or the Clerk had refused to do an act relating to the duties of his office, sub-sections (1) and (2) apply, on and after that date, and proceedings under sub-section (1) may be continued, as if—

- (a) sections 7, 10H and 10M had been in operation at the time of the refusal; and

(b) the Magistrate or Clerk had held office under section 7, section 10H or section 10M, as the case may be.”.

Civil jurisdiction of the Court.

6. Section 20 of the Principal Ordinance is amended by omitting from sub-section (1) the words “One thousand dollars” (wherever occurring) and substituting the symbol and figures “\$2,500”.

Complaint may be for one or more matters.

7. Section 33 of the Principal Ordinance is amended by omitting from sub-section (1) the words “One thousand dollars” and substituting the symbol and figures “\$2,500”.

Jurisdiction in case of stranger about to leave Territory.

8. Section 132 of the Principal Ordinance is amended by omitting the words “One thousand dollars” (wherever occurring) and substituting the symbol and figures “\$2,500”.

Second Schedule.

9. The Second Schedule to the Principal Ordinance is repealed and the following Schedule substituted:—

SECOND SCHEDULE

Section 10P

OATH

I, A.B., do swear that I will be faithful and bear true allegiance to Her Majesty, Queen Elizabeth the Second, Her heirs and successors, according to law, that I will well and truly serve in the office of _____ and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will. So help me God!

AFFIRMATION

I, A.B., do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty, Queen Elizabeth the Second, Her heirs and successors, according to law, that I will well and truly serve in the office of _____ and that I will do right to all manner of people, according to law, without fear or favour, affection or ill-will.

Appointments, &c., may be made before commencement.

10. (1) The Governor-General may make appointments under sub-section 7 (2) and section 10H of the Principal Ordinance, as amended by this Ordinance, before the date fixed under sub-section 3 (2) of this Ordinance as if section 4 of this Ordinance had come into operation on the date referred to in sub-section 3 (1) of this Ordinance.

(2) The Governor-General may make determinations under section 10, sub-section 10C (5) and section 10L of the Principal Ordinance, as amended by this Ordinance, before the date fixed under sub-section 3 (2) of this Ordinance as if section 4 of this Ordinance had come into operation on the date referred to in sub-section 3 (1) of this Ordinance.

(3) An appointment or determination made in pursuance of sub-section (1) or (2) has effect from and including the date fixed under sub-section 3 (2) of this Ordinance.

Transitional and saving provisions.

11. (1) In this section—

“commencement date” means the date fixed under sub-section 3 (2);

“Coroner” has the same meaning as in the *Coroner's Ordinance* 1956.

(2) Where—

- (a) the appointment of a person under sub-section 7 (2) or section 10H of the Principal Ordinance, as amended by this Ordinance, has effect from and including the commencement date;
- (b) immediately before the commencement date, that person held office by virtue of an appointment under paragraph 7 (1) (a) or sub-section 8 (1) of the Principal Ordinance; and
- (c) at the commencement date, the Court of Petty Sessions constituted by that person had commenced the hearing of proceedings but—
 - (i) the hearing had not been completed; or
 - (ii) the proceedings had not been determined,

the Court of Petty Sessions constituted by that person may continue the hearing of the proceedings and may determine the proceedings as if—

- (d) section 4 of this Ordinance had come into operation before the hearing of the proceedings commenced; and
- (e) that person had been appointed under a provision referred to in paragraph (a) immediately before the hearing of the proceedings commenced.

(3) For the purposes of the Principal Ordinance, as amended by this Ordinance, and of any law of the Territory that—

- (a) confers or imposes any power, function or duty upon a magistrate or upon the Coroner; or
- (b) confers any jurisdiction upon the Court of Petty Sessions,

an act done before the commencement date by a person holding office by virtue of an appointment under paragraph 7 (1) (a) or sub-section 8 (1) of the Principal Ordinance has the same force and effect after the commencement date as it would have had if—

- (c) section 4 of this Ordinance had been in operation when the act was done; and
- (d) the person had, at that time, held office under sub-section 7 (2) or section 10H of the Principal Ordinance, as amended by this Ordinance.

(4) A person who, immediately before the commencement date, held office by virtue of an appointment under paragraph 7 (1) (b) of the Principal Ordinance continues, after the commencement date, to hold office as if—

- (a) section 4 of this Ordinance had been in operation when the appointment was made; and
- (b) the appointment had been made under section 10M of the Principal Ordinance, as amended by this Ordinance.

(5) An act done before the commencement date by a person holding office by virtue of an appointment under paragraph 7 (1) (b) of

the Principal Ordinance has the same force and effect after the commencement date as it would have had if—

- (a) section 4 of this Ordinance had been in force when the act was done; and
- (b) the person had, at that time, held office under section 10M of the Principal Ordinance, as amended by this Ordinance.

(6) Where the appointment of a person under sub-section 7 (2) or section 10H of the Principal Ordinance, as amended by this Ordinance, is made, in pursuance of section 10 of this Ordinance, before the commencement date—

- (a) an oath or affirmation made by that person before the commencement date, being an oath or affirmation in accordance with the form in the Second Schedule to the Principal Ordinance, as amended by this Ordinance, has effect, on and after the commencement date, for the purposes of the Principal Ordinance, as amended by this Ordinance, as if it had been made on the commencement date; and
- (b) an oath or affirmation made by that person before the commencement date, being an oath or affirmation made in accordance with section 10 of the *Coroners Ordinance* 1956, has effect, on and after the commencement date, for the purposes of that Ordinance as if it had been made on the commencement date.

Application
of
amendments
effected by
sections 6, 7
and 8.

12. (1) Sections 20, 33 and 132 of the Principal Ordinance, as amended by this Ordinance, apply to, and in relation to, every action in the Court of Petty Sessions commenced on or after the date fixed under sub-section 3 (2).

(2) Sections 20, 33 and 132 of the Principal Ordinance, as in force immediately before the date fixed under sub-section 3 (2), continue to apply to, and in relation to, an action in the Court of Petty Sessions commenced before that date.