

AUSTRALIAN CAPITAL TERRITORY

No. 33 of 1979

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 seventh day of November 1979.

ZELMAN COWEN
Governor-General

By His Excellency's Command,

P. DURACK
Attorney-General

COURT OF PETTY SESSIONS (AMENDMENT) ORDINANCE 1979

1. This Ordinance may be cited as the *Court of Petty Sessions (Amendment) Ordinance* 1979.¹ Short title

2. In this Ordinance, "Principal Ordinance" means the *Court of Petty Sessions Ordinance* 1930.² Principal Ordinance

3. Section 23 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (3) "having attached to it, in accordance with sub-section 116B (2), documents in accordance with Forms 84, 85, 86 and 87," and substituting "in accordance with section 116B"; and Ex parte order may be set aside on terms
- (b) by omitting from paragraph (3) (a) "Form 87" and substituting "Form 86".

4. Section 38 of the Principal Ordinance is amended by inserting after paragraph (2) (a) the following paragraph: Form of summons

"(aa) state shortly the cause of the complaint;".

5. Section 40 of the Principal Ordinance is amended by omitting sub-section (1) and substituting the following sub-section: Signature of summons

"(1) A summons shall be signed by the person issuing it.".

Issue of
warrant and
summons

6. Section 42 of the Principal Ordinance is amended by omitting from sub-section (3) all words after "summons" and substituting "has been served in accordance with section 116B".

7. Part VIIA of the Principal Ordinance is repealed and the following Part substituted:

**"PART VIIA—SERVICE AND PLEADING BY POST WITH
RESPECT TO CERTAIN OFFENCES**

Interpretation

"116A. (1) In this Part, unless the contrary intention appears—

'defendant' means a person who has been duly served with a summons in accordance with section 116B;

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

"(2) A reference in this Part, other than in sub-section 116B (2), to Form 84, 85 or 86 shall be read as a reference to a copy of that form printed on the back of a copy of a summons.

Service of
summons

"116B. (1) Without prejudice to the methods of service provided for by sub-section 41 (1), a summons with respect to a prescribed offence may be served upon the person to whom it is directed—

(a) by delivering 2 copies of the summons to him personally;

(b) by sending 2 copies of the summons by post addressed to him at his last known place of residence or business; or

(c) by leaving 2 copies of the summons at his last known place of residence or business with a person apparently resident or employed at that place and apparently over the age of 16 years.

"(2) One copy of a summons with respect to a prescribed offence served in accordance with this section shall have Form 84 printed on the back of it, and the other copy of that summons so served shall have Forms 85 and 86 printed on the back of it.

"(3) Service in accordance with this section of a summons with respect to a prescribed offence, being service in a manner referred to in paragraph (1) (a) or (c), shall be effected 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 with respect to a prescribed offence is served in accordance with this section in the manner referred to in paragraph (1) (b), the 2 copies of the summons shall be sent by post 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.

“116C. (1) Service of a summons or notice for the purposes of this Part may be proved by the oath of the person who served it, by affidavit or otherwise. Proof of service

“(2) For the purposes of this Part, where—

- (a) a summons has been served in accordance with section 116B; and
- (b) a copy of the summons is returned to the Clerk with Form 85 or 86 completed,

the defendant shall, unless the contrary is proved, be taken to have completed and signed the form so completed and to have returned the form to the Clerk.

“(3) Form 85 shall be signed in the presence of one of the following persons:

- (a) a person who is enrolled as a legal practitioner of the High Court or of the Supreme Court of a State or Territory;
- (b) a Justice of the Peace;
- (c) a Commissioner for Affidavits;
- (d) a Commissioner for Declarations;
- (e) a Notary Public.

“116D. 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 86 and returning the form, whether by post or otherwise, to the Clerk.

Pleas

“116E. (1) 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,

Procedure where plea of guilty entered

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

“(2) The Court shall, in determining proceedings in pursuance of sub-section (1), have regard to the matters (if any) drawn to the attention of the Court in the plea of guilty 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—

- (a) the Court shall adjourn the hearing and fix a time and place for the hearing of the proceedings; and
- (b) if the defendant is not before the Court, the Clerk shall 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.

Procedure
where notice
of intention
to defend
given

“116F. Where a defendant returns Form 86 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; and
- (b) the Clerk shall give by post to the defendant notice of the time and place so fixed.

Procedure
where
defendant
does not
plead

“116G. Where—

- (a) a summons has been served in accordance with section 116B;
- (b) either—
 - (i) the defendant does not enter a plea of guilty in accordance with section 116D or return Form 86 to the Clerk before the day on which he is required by the summons to appear before the Court; or
 - (ii) having so returned Form 86 to the Clerk, the defendant does not appear before the Court at the time and place specified in the notice given to him in accordance with section 116F; and
- (c) the Court is satisfied—
 - (i) that the matters alleged in the summons are reasonably sufficient to inform the defendant of the offence alleged against him; and
 - (ii) that the matters so alleged constitute the offence charged in the summons,

the Court may convict the defendant of the offence charged in the summons.

Restrictions
on the
imposition of
certain
penalties

“116H. Where a defendant is convicted under section 116G of an offence, the Court may not impose on the defendant a penalty of imprisonment, other than imprisonment in default of payment of a fine, unless—

- (a) the defendant is before the Court; or
- (b) the defendant is represented before the Court by a person who is a barrister and solicitor.

“116I. (1) Where a defendant is, in his absence, convicted of an offence, the Clerk shall give to the defendant notice in writing of—

Consequences of conviction *ex parte*

- (a) the conviction and order of the Court;
- (b) where the order of the Court 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 at the last known place of residence or business of the defendant.”

8. Section 148 of the Principal Ordinance is amended by omitting paragraph (1) (a) and substituting the following paragraph:

Court may allow time to pay, &c.

- “(a) the Court shall, in the case of a fine imposed on conviction for an offence where the summons was served in accordance with section 116B; and”

9. Section 150 of the Principal Ordinance is amended by omitting sub-section (2) and substituting the following sub-sections:

Committal to prison where fine or costs not paid

“(2) Where—

- (a) the summons in proceedings was served in accordance with section 116B;
- (b) the defendant was convicted in his absence; and
- (c) it was adjudged that the defendant pay a fine or penalty or a sum of money, other than costs,

a warrant issued under sub-section (1) shall not be executed unless—

- (d) a member of the Police Force has made a demand upon the defendant for payment of the fine, penalty or sum of money;
- (e) a period of 7 days has expired since that demand was made; and
- (f) the fine, penalty or sum of money has not been paid in full.

“(3) A demand referred to in paragraph (2) (d) shall be made—

- (a) to the defendant in person; or
- (b) by writing addressed to the defendant and left at his last known place of residence or business with a person apparently resident or employed at that place and apparently over the age of 16 years.”

10. Section 191 of the Principal Ordinance is amended by omitting “and every keeper of a gaol” and substituting “, keeper of a gaol and Superintendent of a remand centre”.

Accounts to be kept in the form in Third Schedule

11. Section 256 of the Principal Ordinance is amended by omitting from sub-section (1A) “85, 86 or 87” and substituting “85 or 86”.

Forms

First
Schedule—
Forms 84, 85
and 86

12. The First Schedule to the Principal Ordinance is amended by omitting Forms 84, 85, 86 and 87 and substituting the following forms:

FORM 84

NOTICE TO DEFENDANT

1. This summons has been issued against you for an alleged offence against the *Motor Traffic Ordinance 1936 (or Traffic Ordinance 1937)*. The summons indicates the nature of the offence. Also enclosed is a copy of the summons on the back of which are printed the forms referred to below.

2. The courses open to you are as follows:

- You may plead guilty by post with an explanation. See instructions in block A below.
- You may plead guilty by post without giving any explanation. See instructions in block B below.
- You may attend court and plead guilty in person. See instructions in block C below.
- You may defend the proceedings. See instructions in block D below.

3. If you plead guilty by post and do not attend court, you will be informed by post of the order of the Court. You will also be allowed time to pay any fine.

4. If you do nothing about the summons, the proceedings will be heard without further notice to you.

5. You are reminded that, if you plead guilty or are convicted, the Court, in considering the penalty (if any) to be imposed, will be entitled to take into account any convictions previously recorded against you.

6. If you wish to obtain legal advice, you should take the summons to a solicitor without delay.

A

Plead Guilty by Post
WITH EXPLANATION

1. Complete both parts (PLEA and EXPLANATION) of the form titled PLEA OF GUILTY on the back of the copy of the summons.
2. Sign the form in the presence of one of the persons listed at the foot of the form *and* see that the person also signs the form.
3. Return the copy of the summons with the form on it to the Clerk of the Court of Petty Sessions, Law Courts, Canberra City 2601 WITHOUT DELAY.

C

Attend Court and Plead
Guilty in Person

1. Attend at the Law Courts, Canberra City on the date and at the time shown in the summons.
2. The notice-board in the vestibule of the Courts will indicate the courtroom at which you should attend.
3. Inform the attendant in that courtroom of your presence and follow his directions.

B

Plead Guilty by Post
WITHOUT EXPLANATION

1. Complete only the first part (PLEA) of the form titled PLEA OF GUILTY on the back of the copy of the summons.
2. Sign the form in the presence of one of the persons listed at the foot of the form *and* see that the person also signs the form.
3. Return the copy of the summons with the form on it to the Clerk of the Court of Petty Sessions, Law Courts, Canberra City 2601 WITHOUT DELAY.

D

Defend the Proceedings

1. You may either—
 - (a) attend court on the date and at the time shown in the summons and plead not guilty; *OR*
 - (b) complete and sign the form titled NOTICE OF INTENTION TO DEFEND on the back of the copy of the summons *and* return that copy of the summons to the Clerk of the Court of Petty Sessions, Law Courts, Canberra City 2601 WITHOUT DELAY.
2. If you return the form, you need not attend court on the date shown in the summons as the court will fix another date for the hearing of the charge and you will be notified by post of the date fixed.

FORM 85

PLEA OF GUILTY

PLEA

I, _____, the defendant named in this summons, hereby admit that I am guilty of the offence mentioned in the summons.

EXPLANATION

* I draw the following matters to the attention of the Court in relation to the offence:

(Signature of defendant)

†Signed in my presence by the abovenamed defendant on _____

19 .

(Signature and qualification of witness)

* The defendant is not obliged to give an explanation in relation to the commission of the offence. If the defendant does not wish to offer any explanation, this part of the form should be left blank.

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

- A Barrister or Solicitor
- A Justice of the Peace
- A Commissioner for Affidavits
- A Commissioner for Declarations
- A Notary Public

FORM 86

NOTICE OF INTENTION TO DEFEND

To the Clerk of the Court of Petty Sessions.

Take notice that I, _____, the defendant named in this summons, 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.

(Signature of defendant)

(Date)

* Strike out whichever is not appropriate.

13. (1) In this section, "summons" means a summons with respect to a prescribed offence within the meaning of Part VIIA of the Principal Ordinance as amended by this Ordinance. Application

(2) Notwithstanding the repeal effected by section 7 of this Ordinance but subject to sub-sections (3) and (4), the Principal Ordinance, other than section 116I, as in force immediately before the commencement of this Ordinance, continues to apply to, and in relation to—

- (a) a summons issued before the commencement of this Ordinance; and
- (b) the proceedings relating to the summons.

(3) The amendment effected by section 9 of this Ordinance applies in relation to a conviction entered or order made before or after the commencement of this Ordinance.

(4) Where—

- (a) before the commencement of this Ordinance, a defendant was convicted, in his absence, of an offence;
- (b) the order of the Court included the imposition of a fine; and
- (c) before the commencement of this Ordinance, notice was served on the defendant in accordance with sub-section 116I (1) of the Principal Ordinance,

a warrant may not be issued under section 150 of the Principal Ordinance as amended by this Ordinance in respect of the defendant until the expiration of 7 days after service on him of a notice stating the matters referred to in paragraphs 116I (1) (a), (b) and (c) of the Principal Ordinance as amended by this Ordinance.

(5) A notice for the purpose of sub-section (4) may be served by post at the last known place of residence or business of the defendant.

(6) Section 116I of the Principal Ordinance as amended by this Ordinance applies to and in relation to a conviction entered or order made before the commencement of this Ordinance where, at the commencement of this Ordinance, no notice had been given, in relation to the conviction or order, under section 116I of the Principal Ordinance as in force immediately before the commencement of this Ordinance.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 14 November 1979.
2. Ordinance No. 21, 1930 as amended by No. 21, 1932; No. 17, 1934; No. 13, 1936; Nos. 5 and 28, 1937; Nos. 25 (as amended by No. 35, 1938) 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; No. 42, 1976; Nos. 4, 34, 56 and 61, 1977; and No. 46, 1978.