

AUSTRALIAN CAPITAL TERRITORY

Court of Petty Sessions (Amendment) Ordinance (No. 5) 1984

No. 62 of 1984

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 26 October 1984.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

GARETH EVANS
Attorney-General

An Ordinance to amend the *Court of Petty Sessions Ordinance 1930*

Short title

1. This Ordinance may be cited as the *Court of Petty Sessions (Amendment) Ordinance (No. 5) 1984*.¹

Principal Ordinance

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

Interpretation

3. Section 5 of the Principal Ordinance is amended by omitting the definition of "Judge" in sub-section (1) and substituting the following definition:

“ ‘Judge’ has the same meaning as in the *Australian Capital Territory Supreme Court Act 1933*”.

Forfeited recognizances—how enforced

4. Section 80 of the Principal Ordinance is amended by inserting in sub-section (1) “(other than a recognizance entered into under Division 3A of Part XI)” after “any recognizance”.

Stay of executions pending appeal in certain cases

5. Section 216 of the Principal Ordinance is amended by adding at the end thereof the following sub-section:

“(2) The conditions of a recognizance under this section shall include the following conditions:

- (a) that the appellant shall appear before the Supreme Court and prosecute the appeal;
- (b) that the appellant shall prosecute the appeal without delay;
- (c) that the appellant shall submit to the judgment of the Supreme Court;
- (d) that the appellant shall pay such costs as may be awarded by the Supreme Court.”.

6. After Division 3 of Part XI of the Principal Ordinance the following Division is inserted:

“Division 3A—Absconding Appellants

Interpretation

“219G. In this Division—

‘appellant’ means a person who has instituted an appeal to which Division 2 applies (other than an appeal referred to in paragraph 208 (1) (h)) and who has entered into a recognizance under section 216 or 219J;

‘surety’ means a surety bound by a recognizance entered into by an appellant under section 216 or 219J.

Warrant of apprehension of appellant

“219H. (1) Where a Magistrate or Judge is satisfied by the oath of a police officer or of a surety that there are reasonable grounds for believing that an appellant will not appear before the Supreme Court and prosecute the appeal in

compliance with a condition of the recognizance entered into by the appellant, the Magistrate or Judge may issue his warrant for the apprehension of the appellant and for the bringing of the appellant before the Court or the Supreme Court, as the case requires.

“(2) Where a Magistrate or Judge is satisfied by the oath of a police officer or of a surety that an appellant has failed to appear before the Supreme Court and prosecute the appeal in compliance with a condition of the recognizance entered into by the appellant, the Magistrate or Judge may issue his warrant for the apprehension of the appellant and for the bringing of the appellant before the Court or the Supreme Court, as the case requires.

“(3) A warrant issued by a Magistrate under this section shall—

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

“(4) A warrant under this section 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 or the Supreme Court, as the case requires, as soon as practicable after he is taken into custody.

Power of Court where person apprehended

“219J. (1) Where an appellant is brought before the Court or the Supreme Court under section 219H, the Magistrate or Judge constituting the court may—

- (a) remand the appellant in custody pending the hearing of the appeal; or
- (b) discharge the appellant upon his entering into a new recognizance, with or without surety or sureties, to the satisfaction of the Magistrate or Judge.

“(2) The conditions of a recognizance under this section shall include the following conditions:

- (a) that the appellant shall appear before the Supreme Court and prosecute the appeal;
- (b) that the appellant shall prosecute the appeal without delay;

- (c) that the appellant shall submit to the judgment of the Supreme Court;
- (d) that the appellant shall pay such costs as may be awarded by the Supreme Court.

“(3) Where an appellant is brought before the Court or the Supreme Court under section 219H and the Magistrate or Judge constituting the court does not remand the appellant in custody or discharge the appellant upon his entering into a new recognizance, the recognizance previously entered into by the appellant shall remain in full force and effect.

Effect of apprehension of appellant

“219K. (1) Subject to sub-section 219J (3), where an appellant is brought before the Court or the Supreme Court under sub-section 219H (2), the Magistrate or Judge constituting the court shall endorse on the back of the recognizance a memorandum in accordance with sub-section (2).

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

“(3) Where a memorandum is endorsed on a recognizance for the purposes of sub-section (1), the recognizance—

- (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) Subject to sub-section 219J (3), where an appellant is brought before the Court or the Supreme Court under sub-section 219H (1), the recognizance is thereupon void.

Stay of execution not affected

“219L. A stay of execution of a conviction, order, sentence or penalty under section 216 is not affected by any action taken or anything done in pursuance of a provision of this Division.”.

7. Section 220 of the Principal Ordinance is repealed and the following section substituted:

Forfeiture of recognizance

“220. Where a Magistrate or Judge endorses a memorandum on a recognizance under sub-section 219K (1), the recognizance is, unless the

Magistrate or Judge otherwise orders, thereby forfeited and the provisions of section 254 apply to and in relation to that recognizance as if the recognizance had been declared to be forfeited under that section.”.

First Schedule

8. The First Schedule to the Principal Ordinance is amended—

- (a) by inserting in Form 32 “appear before the Supreme Court and prosecute the said appeal, and” after “said A.B. shall”; and
- (b) by omitting from Form 32 “award; [*if not in custody add and further shall appear before the Court of Petty Sessions, at the Court House at Canberra within days after the judgment of the Supreme Court is given, to abide such judgment, unless the decision appealed against is reversed*];” and substituting “award,”.

NOTE

- 1. Notified in the *Commonwealth of Australia Gazette* on 2 November 1984.
- 2. No. 21, 1930 as amended to date. For previous amendments *see* Note 2 to No. 9, 1984 and *see also* Nos. 9, 10, 16 and 61, 1984.