

AUSTRALIAN CAPITAL TERRITORY

Court of Petty Sessions (Amendment) Ordinance (No. 2) 1985

No. 18 of 1985

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 11 April 1985.

JAMES RAMSEY
Administrator

By His Excellency's Command,

LIONEL BOWEN
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. 2) 1985*.¹

Principal Ordinance

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

3. After section 23A of the Principal Ordinance the following section is inserted:

Rectification of certain orders, &c.

"23B. (1) In this section—

- (a) a reference to a penalty shall be read as including a reference to a cancellation, forfeiture, suspension or other loss of a licence or privilege and to a disqualification of a person from obtaining, holding, using or enjoying a licence or exercising a privilege;
- (b) a reference to the Court in relation to proceedings shall be read as a reference to the magistrate who convicted the defendant or made the order against the defendant; and
- (c) a reference to a business day shall be read as a reference to a day other than a Saturday, a Sunday or a public holiday.

“(2) Subject to sub-section (3), where the Court enters a conviction or makes an order against a defendant and—

- (a) imposes a penalty that is contrary to law; or
- (b) fails to impose a penalty that is required by law to be imposed,

the Court may, of its own motion or on the application of a party to the proceedings, re-open the proceedings and, after giving the parties an opportunity of being heard, amend the conviction or order to impose a penalty that is in accordance with the law.

“(3) The Court may re-open proceedings under sub-section (2)—

- (a) of its own motion before the expiration of 28 days after the day on which the penalty was imposed, the conviction was entered or the order was made, as the case may be;
- (b) on application under sub-section (2) before the expiration of 28 days after the day on which the penalty was imposed, the conviction was entered or the order was made, as the case may be; or
- (c) with the consent of the parties to the proceedings—at any time.

“(4) Subject to sub-section (5)—

- (a) the Clerk shall serve on each party to the proceedings written notice of the intention of the Court to re-open proceedings of its own motion under sub-section (2) at least 3 business days before the proceedings are re-opened; and
- (b) an applicant shall serve on the Clerk and, at least 3 business days before the day on which the application is heard, on the other party to the proceedings, written notice of an application referred to in sub-section (2).

“(5) The requirements of sub-section (4) may be dispensed with by the Court when each of the parties is before the Court.

“(6) Where, under sub-section (2), the Court re-opens proceedings and, in the absense of a party to those proceedings, amends a conviction or an order, the clerk shall cause written notice of the amended conviction or order to be serviced on that absent party forthwith.

“(7) Service of any notice referred to in sub-section (4) or (6) may be effected in accordance with section 41 as if the notice were a summons issued in respect of an information.

“(8) The jurisdiction conferred on the Court by sub-section (2) shall be exercised only on the evidence and material before the Court in the original proceedings.

“(9) Proceedings shall not be re-opened under sub-section (2) in respect of a conviction or order that is the subject of an appeal.

“(10) Where proceedings re-opened under this section have not been determined in respect of a conviction or order that, after the proceedings have been re-opened but before they are determined, becomes the subject of an appeal, the re-opened proceedings shall be stayed until the appeal is determined.

“(11) Where the Court re-opens proceedings under sub-section (2), the Court may make such order as to costs as it thinks just and reasonable.

“(12) Subject to sub-section (13), an order made or a conviction or order amended by the Court, in determining proceedings that have been re-opened under this section shall, unless the court otherwise directs, take effect from the beginning of the day on which the original conviction was entered or on which the original order was made, as the case requires.

“(13) For the purposes of Part XI, where the Court, in determining proceedings that have been re-opened under this section, makes an order or amends a conviction or order, the time within which an appeal may be made from that order, amended conviction or amended order shall commence on the day on which that order was made, or that conviction or order was amended, as the case may be.”.

4. Sections 211, 212 and 213 of the Principal Ordinance are repealed and the following section is substituted:

When appeal deemed to be duly instituted

“211. An appeal under this Division shall be deemed to have been duly instituted when notice of appeal has been served on the Clerk in accordance with paragraph 209 (1) (a).”.

Provisions applicable in relation to security given for costs of appeal

5. Section 230 of the Principal Ordinance is amended by omitting “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 D of this Ordinance,” and substituting “an order made under section 219D,”.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 17 April 1985.
2. No. 21, 1930 as amended to date. For previous amendments *see* Note 2 to No. 17, 1985 and *see also* No. 17, 1985.