

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

No. 61 of 1984

COURT OF PETTY SESSIONS (AMENDMENT) ORDINANCE (No.4) 1984

This Ordinance amends the appeal provisions of the Court of Petty Sessions Ordinance 1930 ('the Principal Ordinance') to:

- a) change the nature of the appeal to the A.C.T. Supreme Court from the A.C.T. Court of Petty Sessions in criminal matters from a rehearing de novo to a rehearing;
- b) give the Supreme Court a discretion to extend the 21 day time limit in which an appeal can be lodged; and
- c) clarify and expand the orders that may be made by the Supreme Court on appeal, including a power to remit the matter to the Court of Petty Sessions, subject to directions of the Supreme Court.

In an appeal by way of rehearing de novo (as previously provided for under the Principal Ordinance in criminal matters) the Supreme Court deals with the case as though it were trying it at first instance and hears all the evidence of the witnesses again.

The Ordinance changes this appeal to one of rehearing. In an appeal by way of rehearing the Supreme Court is able to hear the appeal on the basis of the evidence used in the Court of Petty Sessions. The Supreme Court is, however, given power to receive further evidence if it thinks it appropriate to do so. The appeal remains one of fact as well

as of law and the Supreme Court may give such judgment as ought to be given if the case at that time came before the court of first instance.

A de novo rehearing, by requiring all the evidence to be given again in the Supreme Court, is costly and wasteful of valuable judicial time. Allowing evidence given in the Court of Petty Sessions to be used on appeal should result in a saving in cost and reduction in delays in having matters heard before the Court.

Under the Principal Ordinance there are two means of appeal against decisions of the Court of Petty Sessions in criminal matters. The first is the general appeal discussed above, the second is an appeal by way of order to review where a question of law is involved. In both kinds of appeal, the appeal must be lodged within 21 days of the decision appealed against. There is no power to extend this period.

The inflexibility of this time limit has caused problems and possible injustice. The Ordinance therefore gives a discretion to the Supreme Court to extend the period for lodging an appeal.

The Ordinance enables the Supreme Court to remit a matter to the Court of Petty Sessions for further hearing. This could be appropriate, for example, where the Supreme Court has determined an appeal on a question of law.

Details of the Ordinance are as follows:

Section 1 provides that the Ordinance may be cited as the Court of Petty Sessions (Amendment) Ordinance (No.4) 1984.

Section 2 defines the 'Principal Ordinance' to mean the Court of Petty Sessions Ordinance 1930.

Section 3 amends section 209 of the Principal Ordinance to allow the Supreme Court to extend the 21 day period in which an appeal from a conviction or order of the Court of Petty Sessions may be made to the Supreme Court.

Section 4 amends section 214 of the Principal Ordinance to provide, in effect, that the appeal to the Supreme Court is to be by way of rehearing rather than by a de novo rehearing as at present. The new provision contains provisions designed to facilitate, in appropriate cases, the taking of evidence in the Supreme Court.

Section 5 repeals section 218 of the Principal Ordinance and inserts a new section 218 which clarifies and expands the scope of the orders that may be made by the Supreme Court on an appeal. New section 218 enables the Supreme Court to set aside on appeal a decision of the Court of Petty Sessions and remit the matter back to that Court for further hearing and determination.

Section 6 amends section 219C of the Principal Ordinance to permit the Supreme Court to extend the 21 day time limit in which an appeal by way of order to review may be made.

Section 7 is the application provision. It provides that the amendments effected by sections 3 and 6 apply to decisions of the Court of Petty Sessions made on or after the date of commencement of the amending Ordinance and that the amendments in sections 4 and 5 apply to appeals arising out of proceedings instituted in that Court on or after the date of commencement of the amending Ordinance.

Authorised by the Attorney-General