EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

COURT OF PETTY SESSIONS
(AMENDMENT) ORDINANCE (NO. 2) 1982

No.3 of 1982

The purpose of this proposed Ordinance is to amend the Court of Petty Sessions Ordinance 1930 (the Principal Ordinance) to permit an informant to apply to have a conviction entered in the defendant's absence set aside and to increase from $50 to $2,000 the amount of the fine that a Magistrate may impose instead of imprisonment pursuant to sub-section 188(2) of the Principal Ordinance.

Setting Aside a Conviction by Informant

Sub-section 23(1) of the Principal Ordinance enables a person, against whom a conviction or order is made in his absence, to apply to the Court for an order that the Court set aside the conviction or order. The section does not permit a similar application by the prosecuting informant.

Circumstances can arise in which a person is convicted in his absence through error or inadvertance not attributed to him when it would not be reasonable to expect the convicted defendant to apply to the Court for the conviction to be set aside even though sub-section 23(1) of the Principal Ordinance gives him that option.

Clause 3 of the legislation will permit an informant, that is, the prosecution, to apply to the Court of Petty Sessions in those circumstances for an order that the Court set aside the conviction (new sub-section 23AA(1)). If the application is successful the Court, in addition to setting aside the conviction or order, must also dismiss the information and set aside any warrant issued under the Principal Ordinance in consequence of the conviction (new

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sub-section 23AA(4)). The dismissal of the information will, pursuant to section 143 of the Principal Ordinance, operate as a bar to any other information or legal proceedings in any Court (other than proceedings on appeal) for the same matter against that defendant. Accordingly, the right to apply conferred by the amendment will not be available to allow the prosecution to set aside a conviction so as to re-commence proceedings against the defendant.

The provisions will not apply where the defendant has pleaded guilty by post under the pleading by post provisions of the Principal Ordinance unless he has withdrawn his plea before the conviction was entered. A similar exception applies in relation to an application by a defendant under sub-section 23(1) of the Principal Ordinance (new sub-section 23AA(2)).

Amendment of sub-section 188(2) of the Principal Ordinance

There are some Australian Capital Territory laws that prescribe only imprisonment for an offence punishable on summary conviction. In these circumstances sub-section 188(2) of the Principal Ordinance permits the Court, if it thinks the justice of the case will be better met by a fine than by imprisonment, to impose a fine not exceeding $50. That amount has not been changed since 1930 and is now clearly inadequate.

Clause 4 of the legislation increases the upper limit of the fine in sub-section 188(2) of the Principal Ordinance from $50 to $2,000. The amount of $2,000 is consistent with the jurisdiction normally exercised by Magistrates in summary proceedings, for example it is the maximum fine that a Magistrate may impose if he tries an indictable offence summarily.

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