

AUSTRALIAN CAPITAL TERRITORY
COURT OF PETTY SESSIONS (AMENDMENT) ORDINANCE 1977
EXPLANATORY MEMORANDUM

The purpose of this Ordinance is to amend the Court of Petty Sessions Ordinance 1930 so as to provide for the appointment of magistrates in the Australian Capital Territory independent of the Public Service and to increase the civil jurisdiction of the Court of Petty Sessions.

At present, the Chief Magistrate and the Stipendiary Magistrates hold Public Service offices in the Attorney-General's Department. They are appointed to statutory offices of magistrate under the Court of Petty Sessions Ordinance by the Governor-General. Their salary and other conditions of service derive from their Public Service offices. The appointments under the Court of Petty Sessions Ordinance are held during the pleasure of the Governor-General. The effect of these arrangements is that the magistrates do not have the appearance of independence from the Executive Government.

Section 4 of the amending Ordinance repeals the relevant provisions (sections 7 to 10) of the Principal Ordinance and replaces them with new sections 6A to 10Q.

The new provisions create an office of Chief Magistrate and four offices of Stipendiary Magistrate to which appointments will be made by the Governor-General (section 7).

Eligibility for appointment is enrolment as a legal practitioner of the High Court or the Supreme Court of a State or Territory for at least five years (section 8) and Stipendiary Magistrates' seniority is provided for in section 9.

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Subject to the Remuneration Tribunals Act 1973, the Governor-General is empowered to determine remuneration and terms and conditions of appointment by section 10. Section 10A provides that a magistrate is to hold office until the age of 65 years but he may resign his office in writing delivered to the Governor-General (section 10B).

Section 10C provides for an acting Chief Magistrate where that office is vacant or the Chief Magistrate is absent from duty or unable to carry out his duties.

Magistrates are given security of tenure by section 10D. They may be removed by the Governor-General only upon an address from each House of the Parliament in the same session of Parliament. The Governor-General is empowered to suspend a magistrate from office but the suspension is to be terminated unless each House of the Parliament determines that the magistrate should be removed from office.

Section 10E ensures that a magistrate will not undertake work other than that of magistrate without the consent of the Attorney-General.

Section 10F preserves the existing and accruing rights under the Public Service Act of magistrates who were previously public servants. By this provision the present magistrates will be able to hold statutory appointments under the new legislation and retain their public service rights although they will no longer be officers of a Department.

Section 10G provides for the arrangement of the business of the courts by the Chief Magistrate.

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Sections 10H to 10L provide for the appointment of special magistrates along lines similar to those under which the special magistrates are appointed at present.

Sections 10M and 10N provide for the appointment of a Clerk and other officers of the Court of Petty Sessions. These sections re-enact the provisions at present in the Ordinance.

Sections 10P and 10Q re-enact provisions regarding jurisdiction of magistrates that are at present in the Principal Ordinance.

Sections 5 and 11 of the amending Ordinance provide certain transitional and saving provisions.

Section 9 of the amending Ordinance provides for a new form of oath or affirmation which in substance re-enacts the existing oaths or affirmations of allegiance and of office but in one form instead of two.

Section 10 of the amending Ordinance permits the Governor-General to make appointments to statutory offices and to determine terms and conditions of employment in anticipation of amendments coming into operation.

Sections 6 to 8 and section 12 of the amending Ordinance relate to the civil jurisdiction of the Court. Their effect is that the limit of the jurisdiction is raised from \$1,000 to \$2,500. The last increase to this jurisdiction was made in 1969.