

AUSTRALIAN CAPITAL TERRITORY

COURT OF PETTY SESSIONS (AMENDMENT) BILL (NO. 2) 1976

EXPLANATORY MEMORANDUM

No. 42 of 1976

The purpose of this Bill 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 Magistrates 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. It has been recognised for some time that this is an undesirable situation, and that different provisions should be made. Added point has been given to the need for change by a recent decision of the Supreme Court of South Australia. The Court held that in the particular circumstances that applied at the time in South Australia, a Magistrate should not try a matter where both he and the Crown Prosecutor prosecuting the matter were subject to the same departmental head.

The Bill will enable the present Magistrates to hold statutory appointments as magistrates with judicial tenure of office and to become unattached officers of the Public Service under the Officers' Rights Declaration Act. They will no longer be officers of a Department, but their existing and accruing rights under the Public Service Act will be preserved.

The increase in the civil jurisdiction of the Court of Petty Sessions is from a monetary limit of \$1,000 to \$2,000. The last increase was in 1969.

- Clause 1 is the short title.
- Clause 2 defines "Principal Ordinance".
- Clause 3 is a commencement provision allowing appointments to offices to be made in anticipation of the provisions creating them coming into operation.
- Clause 4 repeals sections 7 to 10 (inclusive) of the Principal Ordinance relating to appointment and jurisdiction of Magistrates and replaces them by new provisions – section 6A to 10N.

New Section 6A defines “Magistrate” for the purposes of the new provisions.

New Section 7 creates new offices of Chief Magistrate and Stipendiary Magistrates and provides for appointments to be made to those offices by the Governor-General.

New Section 8 requires a Magistrate to be legally qualified and to have been so qualified for at least five years.

New Section 9 provides for a Magistrate’s remuneration allowances and terms and conditions of appointment to be determined by the Governor-General subject to the Remuneration Tribunals Act 1973.

New Section 10 fixes a retiring age for Magistrates of 65 years.

New Section 10A permits a Magistrate to resign his office by written notice to the Governor-General.

New Section 10B permits the Governor-General to appoint a Stipendiary Magistrate to act as Chief Magistrate if that office is vacant or if the Chief Magistrate is absent or unable to carry out his duties.

New Section 10C permits the Governor-General to remove a Magistrate from office only if he receives an address from each House of Parliament praying for the removal on the ground of proved misbehaviour or incapacity. The Governor-General may suspend a Magistrate from office on that ground but the matter must be reported to the Parliament for consideration whether the Magistrate ought to be removed from office.

New Section 10D forbids a Magistrate to practise as a legal practitioner or, except with the Attorney-General’s consent, to engage in paid employment outside the duties of his office. A Magistrate will, however, be permitted to hold office in another Territory. It may be necessary on occasions for example for an A.C.T. Magistrate to assist as a relieving Magistrate in the Northern Territory.

New Section 10E provides for the preservation of public service rights of a Magistrate who was, immediately before his appointment, a public servant.

New Section 10F repeals existing section 8A which deals with the functions of the Chief Magistrate.

New Sections 10G to 10K (inclusive) provide for the appointment of Special Magistrates. The provisions are similar to those at present in section 8 of the Ordinance. It is intended that Special Magistrates will be appointed for special purposes or for short term relief in the Court.

New Sections 10L and 10M provide for the appointment of a Clerk and Deputy Clerks of the Court and their duties. They are in substance the same as the provisions in existing paragraph 7 (1) (b) and section 8B.

New Section 10N provides for a Magistrate to take an oath of allegiance and office in accordance with the Second Schedule. This provision is in substance the same as that at present in section 10 of the Ordinance.

New Section 10P preserves existing section 9 regarding acts done by a magistrate, by virtue of his office, outside the Territory.

- Clause 5 amends section 16 of the Principal Ordinance so as to preserve its operation, after the amendments come into force, with respect to matters occurring before that time.
- Clauses 6, 7 and 8 amend sections 20, 33 and 132 of the Principal Ordinance so as to increase the civil jurisdiction of the Court of Petty Sessions from \$1,000 to \$2,000.
- Clause 9 repeals and replaces the Second Schedule which prescribes the form of oath or affirmation of allegiance and of office. The new schedule combines the two oaths previously needed into one but is otherwise in substance the same.
- Clause 10 permits the Governor-General to appoint Magistrates in anticipation of the commencement of the provisions contained in clauses 4 and 5 of the Bill.
- Clause 11 contains transitional provisions that will ensure that the new appointments do not affect proceedings already commenced in the Court and acts done by Magistrates appointed under the existing provisions of the Ordinance.
- Clause 12 provides for the application of the amendments increasing the civil jurisdiction of the Court.

It is proposed that existing Magistrates who are public servants and who are appointed to the newly created offices independent of the Public Service will retain their existing and accruing rights as public servants by the application of the Officers's Rights Declaration Act 1928. It is also proposed that the Remuneration Tribunals Act 1973 will apply to their offices so that their remuneration will be determined by the Remuneration Tribunal. As statutory office holders they will also receive the benefit of the Superannuation Act 1976, the Commonwealth Employees' Furlough Act 1943 and the Compensation (Australian Government Employees) Act 1971.