

AUSTRALIAN CAPITAL TERRITORY
COURT OF PETTY SESSIONS ORDINANCE 1972

EXPLANATORY MEMORANDUM

No. 37 of 1972

The main purpose of this Ordinance is to amend the Court of Petty Sessions Ordinance 1930-1970 of the Australian Capital Territory to make new provisions for appeals from the Court of Petty Sessions to the Supreme Court.

The Ordinance also includes amendments relating to:—

- (a) the erasure of tape recordings of evidence given in the Court of Petty Sessions;
- (b) the penalty for interrupting or insulting a magistrate; and
- (c) the convictions of persons for the offence of driving a vehicle with a blood-alcohol content exceeding the prescribed limit.

Appeals

Section 10 of the Ordinance repeals Part XI of the existing Court of Petty Sessions Ordinance and inserts a new Part dealing with appeals to the Supreme Court. The more important effects of the new provisions are as follows:—

- (a) An appeal in a criminal case lies as of right in all cases and the existing requirement of leave in certain cases is abolished.
- (b) Under the existing provisions, the Supreme Court is required to hear afresh all cases in which appeals are brought. Under the new provisions, complete rehearings are limited to criminal cases. In civil cases, appeals will be determined on the evidence given in the Court of Petty Sessions together with such further evidence as may be given before the Supreme Court.
- (c) The new provisions introduce a procedure for appeal by way of order to review. This procedure is new to the Territory although it has been used in certain of the States for some years. Its use is largely confined to the criminal jurisdiction and it provides a convenient means whereby decisions of the Court of Petty Sessions on questions of law may be reviewed by the Supreme Court. The procedure is available to both prosecutor and defendant. For the first time in the Territory, it will be possible for a prosecutor to appeal against the dismissal of an information charging an offence but, in such a case, the defendant's costs of the appeal will be payable by the prosecutor whatever the outcome of the appeal.

Other amendments

The Court of Petty Sessions Ordinance provides for the recording of evidence given in the Court by means of sound-recording apparatus. There is, however, no provision for such sound-recordings to be erased when they are no longer required. The amending Ordinance provides, subject to certain exceptions, for the erasure of recordings after a period of twelve months from the date on which they were made (section 6).

Under section 255 of the Court of Petty Sessions Ordinance the penalty for interrupting or insulting a magistrate sitting in the exercise of his jurisdiction is a fine of Ten dollars with imprisonment for seven days in default of payment. The Ordinance provides for a penalty of Fifty dollars with imprisonment for fourteen days in default of payment (section 14).

The Motor Traffic Ordinance of the Territory makes it an offence for a person to drive a motor vehicle with a blood-alcohol level in excess of the prescribed limit. The penalties for a second offence depend to some extent upon the blood-alcohol level established in the first case. Section 15 of the Ordinance makes provision for the magistrate before whom a person is convicted to sign a memorandum stating the blood-alcohol level proved by the prosecution (section 7 and 15).