

THE TERRITORY FOR THE SEAT OF GOVERNMENT.

Court of Petty Sessions Ordinance 1930-1932.

I, JOHN GREIG LATHAM, the Attorney-General of the Commonwealth, in pursuance of the powers conferred upon me by the *Court of Petty Sessions Ordinance 1930-1932*, do hereby make the following Rules under the said Ordinance to come into operation forthwith.

Dated this 26th day of November, 1932.

J. G. LATHAM

Attorney-General.

AMENDMENT OF COURT OF PETTY SESSIONS RULES.

1. After Part XVIII. of the Court of Petty Sessions Rules the following Parts are inserted:—

“PART XVIII.A.—SERVICE OF FOREIGN DOCUMENTS.

97A. Where, in connexion with any civil or commercial cause or matter pending before a Court or Tribunal in any foreign country which is a party to a Convention regarding Legal Proceedings in Civil and Commercial Matters which has been extended to the Commonwealth, a request for service of any document on a person in the Territory for the Seat of Government is received by the Clerk of the Court of Petty Sessions from the Consular or other authority of such country, the following procedure shall, subject to any special provisions contained in the Convention, be adopted:—

- (1) The service shall be effected by such person as the Magistrate from time to time appoints for that purpose, or by the authorized agent of that person, by delivering to and leaving with the person to be served the original document or a copy of that document, as indicated in the Request, and one copy of the translation thereof, in accordance with the Rules and Practice of the Court of Petty Sessions regulating the service of process.
- (2) No Court fees shall be charged for the service, but the particulars of the charges of the person or agent employed to effect service shall be submitted to the Clerk of the Court of Petty Sessions who shall certify the amount properly payable in respect thereof.

Service of
foreign
documents.

- (3) The Clerk shall transmit to the Attorney-General for transmission to the Consular or other authority making the request a certificate establishing the fact and the date of the service, or indicating the reasons why it has not been possible to effect it, and a statement of the amount of the charges properly payable certified in accordance with paragraph (2) of this Rule.

PART XVIII.—OBTAINING EVIDENCE FOR FOREIGN TRIBUNALS.

97B.—(1) Where, in pursuance of any Convention regarding Legal Proceedings in Civil and Commercial Matters to which the Commonwealth is a party, it is made to appear to the Magistrate by Letters of Request, or such other evidence as the Magistrate may require, that a judicial authority in any other country which is a party to the said Convention is desirous of obtaining, for the purposes of any cause or matter which is pending before that authority, the testimony of any witness or witnesses within the Territory, the Magistrate may, on the *ex parte* application of any person shown to be duly authorized to make the application and on production of the Letter of Request; or upon application made in such other manner as is provided in the Convention, make such order or orders as may be necessary to give effect to the intention of the Convention.

Obtaining evidence for foreign tribunals.

(2.) An order made under the last preceding paragraph shall be in accordance with Form 20, with such variations as circumstances may require.

(3.) The examination may be ordered to be taken before any fit and proper person nominated by the person applying, or before an Officer of the Court, or such other qualified person as to the Magistrate may seem fit.

(4.) Unless otherwise provided in the Order for Examination, the person before whom the examination is taken shall, on its completion, forward the same to the Clerk of the Court and on receipt thereof the Clerk shall append thereto a Certificate in accordance with Form 21, with such variations as circumstances may require, and shall forward the depositions so certified, and the Letter of Request, if any, to the Attorney-General for transmission to the judicial authority desirous of obtaining the said testimony in accordance with the terms of the Convention.

(5.) An Order made under paragraph (1.) of this Rule may, if the Magistrate thinks fit, direct the said examination to be taken in such manner as may be requested by the Letter of Request from the foreign judicial authority, or therein signified to be in accordance with the practice or requirements of that judicial authority, or which may, for the same reason, be requested by the applicant for the Order; but in the absence of any such special directions, the examination shall be taken in the manner prescribed by the Ordinance and the Rules and Practice of the Court in relation to civil proceedings.

(6.) Where a Letter of Request is transmitted to the Court with an intimation that it is desirable that effect should be given to the same without requiring an application to the Court by the agents of any of the parties to the action or matter in the foreign country, the Clerk shall transmit the same to the Crown Solicitor who may thereupon, with the consent of the Attorney-General, make such application and take such steps as may be necessary to give effect to the Letter of Request in accordance with these Rules.

2. After Form 19 in the First Schedule to the Court of Petty Sessions Rules the following forms are inserted:—

FORM 20.

Court of Petty Sessions Ordinance 1930-1932.

Territory for the Seat of Government.
Court of Petty Sessions.
To wit.

In the matter of a (Civil or Commercial) proceeding now pending before [description of Foreign Tribunal].

Between:

and Plaintiff
Defendant.

Upon reading the affidavit (if any) of filed the day of 19 , and the certificate of [name and description, as Ambassador, Minister, Diplomatic Agent or Consul of the Foreign Country] that proceedings are pending in the [Description of Foreign Tribunal] in [name of Foreign Country] and that such Court is desirous of obtaining the testimony of [names of witnesses]:

It is ordered that the said witness (or witnesses) do attend before [name and address of examiner], who is hereby appointed examiner herein, at [place appointed for examination] on the _____ day of _____, 19____ at _____ o'clock, or such other day and time as the said examiner may appoint, and do there submit to be examined upon oath, or affirmation, touching the testimony so required as aforesaid, and do then and there produce [description of documents, if any, required to be produced].

And it is further ordered that the said examiner do take down in writing the evidence of the said witness (or witnesses) according to the Rules and Practice of the Court of Petty Sessions pertaining to the examination and cross-examination of witnesses [or as may be otherwise directed]; and do cause each and every such witness to sign his or her depositions in his, the said examiner's presence; and do sign the depositions taken in pursuance of this order, and when so completed, do transmit the same, together with this order, to the Clerk for transmission as provided.

Dated this _____ day of _____

_____, 19____
Magistrate.

FORM 21.

I, _____, Clerk of the Court of Petty Sessions of the Territory for the Seat of Government of the Commonwealth of Australia, hereby certify that the documents annexed hereto are (1) the original order of the Court of Petty Sessions, dated the _____ 19____, made in the matter of _____ pending in the _____ at _____ in the _____ directing the examination of certain witnesses to be taken before _____; and (2) the examination and depositions taken by the said _____ pursuant to the said order, and duly signed and completed by him on the _____ day of _____ 19____.

Dated this _____ day of _____

_____, 19____
Clerk of Petty Sessions.