

# AUSTRALIAN CAPITAL TERRITORY

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## Magistrates Court (Civil Jurisdiction) (Amendment) Ordinance 1987

No. 13 of 1987

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 13 April 1987.

N. M. STEPHEN  
Governor-General

By His Excellency's Command,

LIONEL BOWEN  
Attorney-General

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An Ordinance to amend the *Magistrates Court (Civil Jurisdiction) Ordinance 1982*

### Short title

1. This Ordinance may be cited as the *Magistrates Court (Civil Jurisdiction) (Amendment) Ordinance 1987*.<sup>1</sup>

### Commencement

2. This Ordinance shall come into operation on such date as is fixed by the Minister of State for Territories by notice in the *Gazette*.

### Principal Ordinance

3. In this Ordinance, "Principal Ordinance" means the *Magistrates Court (Civil Jurisdiction) Ordinance 1982*.<sup>2</sup>

(Ord. 92/86)—Cat. No.

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

**Personal action at law—amount or value**

4. Section 5 of the Principal Ordinance is amended by inserting after subsection (1) the following subsection:

“(1A) Where the amount claimed in a personal action at law includes interest, being interest in respect of which the court may make an order under section 227A, that interest shall be disregarded for the purposes of determining whether or not the court has jurisdiction to hear and determine the action.”.

**Form of claim**

5. Section 16 of the Principal Ordinance is amended:

(a) by inserting after subsection (1) the following subsection:

“(1A) A reference in paragraph (1) (a) to proceedings to recover a debt or liquidated damages shall be read as including a reference to proceedings to recover a debt or liquidated damages in which the plaintiff claims interest, whether under section 227A or otherwise.”;

(b) by omitting from paragraph (4) (e) “and” (last occurring); and

(c) by adding at the end of subsection (4) the following paragraphs:

“(g) where the plaintiff claims interest other than under section 227A, particulars of the rate or rates at which, the amount or amounts on which and the period or periods for which, interest is claimed; and

(h) where the plaintiff claims interest under section 227A:

(i) if the claim is for a debt or liquidated damages—a statement that interest is claimed, to be calculated in accordance with subsection 227B (2) and:

(A) particulars of the period or periods for which, the rate or rates at which, and the amount or amounts on which, interest is claimed; and

(B) the amount of interest calculated to have accrued to the date of filing; or

(ii) in any other case—a statement that interest is claimed.”.

6. After section 227 of the Principal Ordinance the following sections are inserted:

### **Interest up to judgment**

“227A. (1) In any proceedings for the recovery of any money (including any debt or damages or the value of any goods) the court shall, upon application, unless good cause is shown to the contrary:

- (a) order that there shall be included in the amount for which judgment is given or entered interest at such rate as it thinks fit on the whole or any part of that amount for the whole or any part of the period between the date when the cause of action arose and the date when judgment takes effect; or
- (b) without proceeding to calculate interest in accordance with paragraph (a), order that there be included in the amount for which judgment is given or entered a lump sum in lieu of any such interest.

“(2) Where:

- (a) proceedings have been instituted for the recovery of a debt or liquidated damages; and
- (b) payment of the whole or a part of the debt or damages is made during the proceedings and prior to or without judgment being given or entered in respect of the debt or damages;

the court may, upon application, order that interest be paid at such rate as it thinks fit on the whole or any part of the money paid for the whole or any part of the period between the date when the cause of action arose and the date of the payment.

“(3) This section does not:

- (a) authorise the giving of interest upon interest or of a sum in lieu of such interest;
- (b) apply in relation to any debt upon which interest is payable as of right whether by virtue of agreement or otherwise; or
- (c) affect the damages recoverable for the dishonour of a bill of exchange.

“(4) Where the amount for which judgment is given (in this subsection referred to as the ‘relevant amount’) includes, or where the court in its discretion determines that the relevant amount includes, any amount for:

- (a) compensation in respect of liabilities incurred which do not carry interest as against the person claiming interest or claiming a sum in lieu of interest;

- (b) compensation for loss or damage to be incurred or suffered after the date on which judgment is given; or
- (c) exemplary or punitive damages;

interest, or a sum in lieu of interest, shall not be given under subsection (1) in respect of any such amount or in respect of so much of the relevant amount as in the opinion of the court represents any such amount.

### **Judgment by default, confession or agreement**

“227B. (1) Where interest has been claimed in proceedings in respect of which judgment is entered pursuant to section 41, 42 or 43, an amount of interest for the period between the date when the cause of action arose and the date when judgment was entered shall, for the purposes of whichever of those sections is applicable, be deemed to be part of the amount claimed in respect of the cause of action and may be included in the amount for which judgment is entered.

“(2) Such an amount of interest shall be calculated at such rate per centum per annum in respect of such period or part of a period as is prescribed.

### **Judgment interest only**

“227C. Where:

- (a) the defendant in proceedings has satisfied the claim of the plaintiff after proceedings were instituted; and
- (b) the plaintiff would, but for the satisfaction of the claim, have been entitled to have final judgment entered in his or her favour;

the plaintiff is entitled to have final judgment given or entered in his or her favour for interest in accordance with an order under section 227A, or calculated in accordance with subsection 227B (2), as the case requires.

### **Amendment of claim for interest**

“227D. Where a plaintiff in proceedings for the recovery of a debt or liquidated damages has claimed interest to be calculated in accordance with subsection 227B (2), nothing in that section shall be taken to prevent the plaintiff from applying to the court for leave to amend his or her claim to claim interest otherwise than in accordance with that section.”.

### **The Schedule**

7. The Schedule to the Principal Ordinance is amended:

(a) by adding at the end of Form 14:

“The amount now due to the plaintiff for interest is \$        calculated as follows:

\*    [Insert relevant amount] at [Insert rate of interest] for [Insert period for which rate of interest applicable] ..... \$        .

Total interest claimed to date of filing ..... \$        .

\*    Repeat for each variation in rate of interest or amount.”; and

(b) by omitting Form 15 and substituting the following form:

“FORM 15

Section 41

JUDGMENT ON SPECIAL CLAIM

It is this day adjudged that the plaintiff do recover against the defendant(s) (name(s)) the sum of \$        , \*including interest, and \$        for costs. And it is ordered that the defendant(s) do pay the same to the plaintiff.

Dated                      19        .

Clerk

\*Strike out if inapplicable.”.

### Application

8. The amendments of the Principal Ordinance effected by this Ordinance do not apply to proceedings instituted before the commencement of this Ordinance.

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### NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 1 May 1987.
2. No. 54, 1982 as amended by Nos. 76 and 77, 1984; Nos. 9 and 67, 1986; Nos. 53 and 74, 1986.