

AUSTRALIAN CAPITAL TERRITORY

MAGISTRATES COURT (CIVIL JURISDICTION) (AMENDMENT) ORDINANCE
(NO 2) 1989

EXPLANATORY STATEMENT

Ordinance No. 58, 1989

The purpose of the Ordinance is to amend the provision of the Magistrates Court (Civil Jurisdiction) Ordinance 1982 (the Principal Ordinance) which governs the inclusion of pre-judgment interest in the amount for which judgment is entered in default of a defence being filed or following a confession or by agreement.

The Principal Ordinance was amended in 1987 to give the Magistrates Court a statutory power to award interest on monies owing from the date a cause of action arose to the date of judgment (section 227A of the Principal Ordinance).

The amendment gave a new statutory right to obtain pre-judgment interest. Its application was specifically excluded where a person was entitled to interest payable as of right, for example, where a person is entitled to have interest paid to him or her under the terms of a contract or agreement.

As well as empowering the court to award pre-judgment interest the amendment included a provision (section 227B of the Ordinance) to allow pre-judgment statutory interest to be included in the amount for which judgment was entered by default, confession or agreement.

Where a plaintiff has claimed interest payable as of right the wording of section 227B only permitted interest calculated at

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the statutory rate (which is prescribed under the Ordinance) to be included in the judgment debt. In some cases this could have resulted in a judgment including interest calculated at a lower rate than the contractual rate.

This result was never intended. A plaintiff entitled to interest payable as of right should be able to have judgment entered by default, confession or agreement for the debt plus interest calculated in accordance with the contract, as was the case before the amendments were inserted.

The Ordinance therefore amends section 227B of the Principal Ordinance to ensure that the section only applies where statutory interest has been claimed.

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Authorised by the
Minister for Justice