

COURT OF PETTY SESSIONS

No. 25 of 1968

An Ordinance to amend the *Court of Petty Sessions Ordinance 1930-1967*.

Short title and citation.

1.—(1.) This Ordinance may be cited as the *Court of Petty Sessions Ordinance 1968*.*

(2.) The *Court of Petty Sessions Ordinance 1930-1967*† is in this Ordinance referred to as the Principal Ordinance.

(3.) The Principal Ordinance, as amended by this Ordinance, may be cited as the *Court of Petty Sessions Ordinance 1930-1968*.

Commencement.

2. This Ordinance shall come into operation on a date to be fixed by the Minister of State for the Interior by notice published in the *Gazette*.‡

Parts.

3. Section 4 of the Principal Ordinance is amended by omitting the words and figures—

“Division 1.—General (Sections 117-134).”

and inserting in their stead the words and figures—

“Division 1.—General (Sections 117-134B).”.

Interpretation.

4.—(1.) Section 5 of the Principal Ordinance is amended—

(a) by omitting from the definition of “Complaint” in subsection (1.) the words “a complaint under the Deserted Wives and Children Act, 1901, the Masters and Servants Act, 1902 and the Infant Protection Act, 1904, of the State of New South Wales in their application” and inserting in their stead the words “a complaint or application under the *Maintenance Ordinance 1968*, a complaint under the Masters and Servants Act, 1902, of the State of New South Wales in its application”; and

(b) by omitting from the definition of “Information” the words “a complaint under the Deserted Wives and Children Act, 1901, the Masters and Servants Act, 1902, and the Infant Protection Act, 1904, of the State of New South Wales in their application” and inserting in their stead the words “a complaint or application under the *Maintenance Ordinance 1968*, a complaint under the Masters and Servants Act, 1902, of the State of New South Wales in its application”.

* Made on 5 December 1968; notified in the *Commonwealth Gazette* on 19 December 1968.

† Ordinance No. 21, 1930, as amended by No. 21, 1932; No. 17, 1934; No. 13, 1936; Nos. 5 and 28, 1937; Nos. 25 and 35, 1938; Nos. 20 and 22, 1940; No. 13, 1949; Nos. 7 and 12, 1951; No. 14, 1953; No. 12, 1958; No. 2, 1961; No. 2, 1966; and No. 1, 1967.

‡ The date fixed was 1 January 1969; see *Commonwealth Gazette* 20 December 1968, p. 7565.

(2.) The amendments of section 5 of the Principal Ordinance do not apply to or in relation to proceedings before the Court of Petty Sessions that were commenced before the commencement of this Ordinance.

5. The Principal Ordinance is amended by inserting the following sections in Division 1 of Part VIII. after Section 134:—

“ 134A. In an action upon a complaint in which there is a claim for money or damages by or on behalf of an infant or person of unsound mind proceeding either alone or with another party, a settlement or compromise shall not be entered into, and money paid into Court shall not be accepted, without the approval of the Court.

Approval of settlement of action by infant or person of unsound mind.

“ 134B.—(1.) Money (including damages) recovered, awarded or agreed to be paid in an action in respect of the claim of an infant or person of unsound mind shall, to the extent that it has not been paid into Court or otherwise dealt with in pursuance of an order of the Court or a Magistrate under this section, be paid into Court.

Money recovered by infant or person of unsound mind.

“ (2.) The Court or a Magistrate may make an order directing how money (including damages) recovered, awarded or agreed to be paid in an action in respect of the claim of an infant or person of unsound mind shall be dealt with and, in particular, may, by order, direct—

- (a) the payment of all or a part of the money to the infant or person of unsound mind, or the person by whom the infant or person of unsound mind sued, in respect of expenses incurred by, or paid for or on behalf of, the infant or person of unsound mind or for the maintenance or benefit of the infant or person of unsound mind, or to his solicitor in respect of costs;
- (b) the investment of all or a part of the money on behalf of the infant or person of unsound mind in the manner specified in the order;
- (c) the investment of all or a part of the interest received from an investment under this section on behalf of the infant or person of unsound mind in the manner specified in the order;
- (d) the variation of an investment made under this section;
- (e) the sale of securities in which the money is invested under this section at such time and upon such conditions as are specified in the order; and
- (f) the payment of all or a part of the money, or the transfer of a security or investment under this rule (including a savings bank account), to the person entitled to it.

“ (3.) The Clerk may, at any time, apply in writing to a Magistrate for an order under this section directing how all or a part of the money referred to in the last preceding sub-section is to be dealt with and the Magistrate may make an order giving such directions in relation to the matter as he thinks fit.

“(4.) A parent, guardian or next friend of an infant may, on behalf of the infant, request the Clerk to make an application under the last preceding sub-section for an order directing the payment out of moneys invested under this section or remaining in Court of an amount for the maintenance or benefit of the infant, and the Clerk shall make the application, together with his recommendations, accordingly.

“(5.) A request under the last preceding sub-rule shall—

- (a) be in writing;
- (b) specify the amount sought to be paid; and
- (c) be supported by an affidavit or, with the consent of the Clerk, a statutory declaration, verifying the amount sought to be paid and stating the reasons for the application.

“(6.) Unless the Magistrate otherwise orders, it is not necessary for a person to appear before the Magistrate in connexion with the making of an order under sub-section (3.) of this section.

“(7.) Where the Court or a Magistrate has not made an order under this section for the investment or payment out of Court of all of the money paid into Court, the Clerk shall, on behalf of the infant or person of unsound mind, invest the money remaining in Court in securities of the Commonwealth or by deposit in a savings bank, and shall invest in like manner the interest received from an investment under this sub-section.

“(8.) Nothing in this section affects the lien of a solicitor for costs.

“(9.) This section does not apply in relation to money recovered or agreed to be paid in an action by an infant for the recovery of money due to him as wages or in respect of piece-work or for work as a servant.”

Warrants of
execution.

6.—(1.) Section 147 of the Principal Ordinance is amended—

- (a) by omitting from the proviso to sub-section (2.) the words “*Deserted Wives and Children Act, 1901*,” and inserting in their stead the words “*Maintenance Ordinance 1968*”; and
- (b) by omitting from that proviso the word “their” and inserting in its stead the word “its”.

(2.) The amendment of section 147 of the Principal Ordinance effected by the last preceding sub-section does not apply to or in relation to an order made by the Court of Petty Sessions before the commencement of this Ordinance.

Oral
Examination of
Debtor.

7. Section 170 of the Principal Ordinance is amended by omitting sub-section (1.) and inserting in its stead the following sub-sections:—

“(1.) Where—

- (a) an order has been made by the Court for the recovery of a sum of money from, or for the payment of a sum of money by, a person (in this Division referred to as ‘the debtor’); and

- (b) the amount or any part of the amount payable by the debtor has not been paid,

the Clerk may, upon application made by the person entitled to enforce the order, issue a summons calling upon the debtor or, in a case where the debtor is a corporate body, a specified officer of the corporate body to attend to be orally examined before the Court on the day and at the time specified in the summons for the purpose of ascertaining—

- (c) whether any, and, if so, what debts are owing to the debtor; and
 (d) whether the debtor has any property or other means of satisfying the order, and, if so, what the property or other means are.

“(1A.) A reference in paragraph (a) of the last preceding subsection to an order made by the Court for the payment of a sum of money—

- (a) shall be read as including a reference to an order for the payment of costs; and
 (b) shall not be read as including a reference to an order made by the Court in or by which the Court has, under subsection (2.) of section one hundred and forty-seven of this Ordinance, adjudged that, in default of payment of the sum of money specified in the order, the person against whom the order has been made shall be imprisoned for a specified period.”.

8. Section 173 of the Principal Ordinance is repealed and the following section inserted in its stead:—

“173. If the garnishee does not pay to the Clerk the amount due from him to the debtor or an amount equal to the amount specified in the order and the garnishee—

Where garnishee does not dispute debt.

- (a) appears at the hearing of the summons and does not dispute the debt due or claimed to be due from him to the debtor; or
 (b) does not appear upon the hearing of the order directing him to appear,

the Court may order a warrant of execution to issue, and the warrant may be issued accordingly, without any previous writ or other process, to levy the amount due from the garnishee or so much thereof as is sufficient to satisfy the order.”.

9. Section 207 of the Principal Ordinance is amended by omitting sub-section (2.) and inserting in its stead the following sub-section:—

Appeals as of right to the Supreme Court against convictions, &c.

“(2.) The appellant shall serve notice of the appeal on the Clerk within a period of twenty-one days after the day on which he is convicted or the order is made and on all other parties directly affected by the appeal before or as soon as practicable after the expiration of that period.”.

Appeals by
leave against
convictions.

10. Section 208 of the Principal Ordinance is amended—

(a) by omitting from sub-section (2.) all words after the word "Ordinance"; and

(b) by inserting after sub-section (2.) the following sub-section:—

"(2A.) The applicant shall serve a copy of the application on the Clerk within a period of twenty-one days after the day on which he is convicted and on all other parties directly affected by the proposed appeal before or as soon as practicable after the expiration of that period."

Appeals in
other cases.

11. Section 208A of the Principal Ordinance is amended—

(a) by inserting in sub-section (1.), after the word "may", the words ", within twenty-one days after the order is made,";

(b) by omitting sub-section (2.) and inserting in its stead the following sub-section:—

"(2.) The appellant shall serve notice of the appeal on the Clerk within a period of twenty-one days after the order is made and on all other parties directly affected by the appeal before or as soon as practicable after the expiration of that period."; and

(c) by omitting sub-section (4.).

Form 51.

12. The Principal Ordinance is amended by omitting Forms 50 and 51 and inserting in their stead the following Form:—

FORM 51

Section 170.

SUMMONS FOR ORAL EXAMINATION OF DEBTORS

In the Court of Petty Sessions, at Canberra

A.B., informant [or complainant].

C.D., defendant.

Date of information [or complaint]

19 .

To:

WHEREAS by an order made herein by the Court on the

day of

, 19 ,

was ordered to pay

to

the sum of

;

You are hereby commanded to attend before the Court of Petty Sessions at Canberra on the day of , 19 , at o'clock in the noon, to be orally examined before the Court for the purpose of ascertaining—

(a) whether any and what debts are owing to the said ;
and

(b) whether the said has any other property or means
of satisfying the said order.

You are also commanded to produce to the Court for the purposes of the examination all books of account and other documents in your possession or custody in any way relating to those debts, property or means.

Dated this

day of

, 19 .

Clerk of the Court of Petty Sessions.

Application.

13. The amendments of the Principal Ordinance effected by sections 9 and 10, and by paragraphs (a) and (b) of section 11, of this Ordinance do not apply to or in relation to an appeal instituted, or an application for leave to appeal lodged, before the commencement of this Ordinance.