

No. 42 of 1974

AN ORDINANCE

To amend the *Small Claims Ordinance 1974*.

I, THE GOVERNOR-GENERAL of Australia, acting with the advice of the Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910-1973*.

Dated this tenth day of October, 1974.

JOHN R. KERR
Governor-General.

By His Excellency's Command,

LIONEL MURPHY
Attorney-General.

SMALL CLAIMS ORDINANCE (No. 2) 1974

1. (1) This Ordinance may be cited as the *Small Claims Ordinance* (No. 2) 1974.* Short title and citation.

(2) The *Small Claims Ordinance 1974*† is in this Ordinance referred to as the Principal Ordinance.

(3) The Principal Ordinance, as amended by this Ordinance, may be cited as the *Small Claims Ordinances 1974*.

2. Section 10 of the Principal Ordinance is amended by omitting sub-section (7) and substituting the following sub-sections:— Notice of defence, &c.

“(7) Where the defendant in proceedings, not being an action for nuisance—

(a) fails to file a notice in accordance with Form 5 or Form 6 within the time limited by sub-section (1); or

(b) after filing a notice in accordance with Form 6, informs the Clerk in writing that he no longer intends to defend the proceedings,

the Clerk shall endorse on the claim a note of the defendant's failure or intention not to defend, and—

(c) if the proceedings are, or include, a claim for an unliquidated amount—interlocutory judgment shall be

* Notified in the *Australian Government Gazette* on 18 October 1974.
† Ordinance No. 6, 1974.

deemed to have been given for the claimant and the proceedings shall continue for the purpose only of the assessment by the Court of the amount for which the claimant is entitled to have judgment in the proceedings; and

- (d) in any other case—judgment shall be deemed to have been given for the claimant for the amount claimed.

“ (8) Where—

- (a) by virtue of sub-section (7), interlocutory judgment is to be deemed to have been given in proceedings; and

- (b) the Court has assessed the amount for which the claimant is entitled to have judgment in the proceedings,

the Court shall give judgment for the claimant for that amount.”.

Judgment
final
and
conclusive.

3. Section 19 of the Principal Ordinance is amended by inserting after the word “ Court ” the words “ (other than an interlocutory judgment) ”.

Enforcement
of decisions.

4. Section 22 of the Principal Ordinance is amended by omitting from sub-section (1) the word “ Judgment ” and substituting the words “ A judgment that has been given, or is to be deemed to have been given, under this Ordinance (other than an interlocutory judgment) ”.

Appeal to
Supreme
Court.

5. Section 33 of the Principal Ordinance is amended by inserting in sub-section (1), after the word “ judgment ”, the words “ (other than an interlocutory judgment) ”.

Amend-
ments of
Forms.

6. The Schedule to the Principal Ordinance is amended—

- (a) by omitting from Form 3 the words—

“ the Court will enter judgment against you for the amount claimed ”

and substituting the words—

“ the Court will deal with the proceedings without further notice to you ”; and

- (b) by omitting from Form 4 the words—

“ judgment will be entered in your favour and you will be notified ”

and substituting the words—

“ you will be notified of any further steps that you are required to take in order to obtain judgment ”.

Application.

7. (1) The Principal Ordinance, as amended by this Ordinance, applies to, and in relation to—

- (a) proceedings instituted on or after the date of commencement of this Ordinance; and

- (b) proceedings instituted before the date of commencement of this Ordinance, being proceedings that were pending on that date.

(2) The Principal Ordinance, as amended by this Ordinance, applies to, and in relation to, proceedings instituted before the date of commencement of this Ordinance as if—

- (a) the proceedings had been instituted in accordance with the Principal Ordinance as amended by this Ordinance; and
- (b) each step taken in the proceedings before the date of commencement of this Ordinance had been taken in accordance with the Principal Ordinance as amended by this Ordinance.