

No. 61 of 1977

AN ORDINANCE

To amend the *Court of Petty Sessions Ordinance 1930*

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 this eighteenth day of November 1977.

JOHN R. KERR
Governor-General

By His Excellency's Command,

P. DURACK
Attorney-General

COURT OF PETTY SESSIONS (AMENDMENT) ORDINANCE
(No. 4) 1977

- 1. This Ordinance may be cited as the *Court of Petty Sessions (Amendment) Ordinance (No. 4) 1977*.* Short title
- 2. In this Ordinance, "Principal Ordinance" means the *Court of Petty Sessions Ordinance 1930*.† Principal Ordinance
- 3. Section 70 of the Principal Ordinance is amended by omitting "a charge of" and substituting "a person alleged to have committed". Remand of defendant
- 4. Section 87 of the Principal Ordinance is amended by inserting "to give evidence or produce documents" after "attendance". Witnesses to attend adjourned sittings
- 5. Section 89 of the Principal Ordinance is amended— Disobedience of summons
 - (a) by omitting "Where a person charged with an indictable offence" and substituting "Subject to sub-section (2), where a person who is alleged by an information to have committed an indictable offence and"; and
 - (b) by adding at the end thereof the following sub-section:
" (2) Sub-section (1) does not apply where an order has been made under sub-section 89A (1).".

* Notified in the *Commonwealth of Australia Gazette* on 21 November 1977.
† Ordinance No. 21, 1930 as amended. For references to amending Ordinances made before 1977, see footnote † to Ordinance No. 4, 1977. For amendments made during 1977 see Ordinances Nos. 4 and 34, 1977.

6. After section 89 of the Principal Ordinance the following section is inserted:

Accused
person may
be excused
from
attendance
before Court

“ 89A. (1) Where—

- (a) an information for an indictable offence has been laid; and
- (b) either—
 - (i) a summons has been issued against the person named in the information; or
 - (ii) that person has been arrested, with or without warrant, and discharged upon his entering into a recognizance,

the Court may, on an application made by or on behalf of that person, by order excuse that person from attendance before the Court to answer the information or for any other purpose in connexion with the proceedings commenced by the information.

“ (2) An order under sub-section (1) may be made—

- (a) where a summons has been issued—at any time after the issue of the summons and before the completion of the taking of evidence for the prosecution;
- (b) whether or not any evidence has been taken in the proceedings; and
- (c) whether or not the applicant for the order is before the Court or has attended before the Court in connexion with the proceedings.

“ (3) The Court shall not make an order under sub-section (1) unless the Court has been informed, by or on behalf of the applicant, that the applicant is represented by counsel or solicitor for the purposes of the proceedings.

“ (4) The Court may, at any time during proceedings commenced by an information for an indictable offence, direct the informant to give to a person in respect of whom an order has been made under sub-section (1) notice in writing requiring him to attend before the Court, for the purposes of those proceedings, at such time and place as are specified by the Court.

“ (5) Where—

- (a) a person has been excused, under sub-section (1), from attendance before the Court; and
- (b) after all the evidence for the prosecution has been taken, the Court is of the opinion that the evidence has established a *prima facie* case against the person in respect of an indictable offence,

the Court shall direct the informant to give to the person a notice in writing requiring him to attend, at such time and place as are specified by the Court, to be dealt with in accordance with section 92.

“ (6) A notice under sub-section (4) or (5) may be given to a person by delivering a copy of the notice to him or by leaving a copy of the notice at his last-known or usual place of residence or business with a person who is apparently an inmate of, or employed at, that place and is apparently over the age of 16 years.

“ (7) The giving of a notice under sub-section (4) or (5) may be proved in the same manner as the service of a summons.

“ (8) If an accused person does not attend before the Court in accordance with a notice under sub-section (4) or (5), the Court may issue a warrant for the arrest of the person and for bringing him before the Court at the time and place specified in the warrant.

“ (9) Where—

- (a) a person has been discharged from custody upon his entering into a recognizance;
- (b) an order is made under sub-section (1) excusing the person from attendance before the Court at the time and place specified in the recognizance; and
- (c) the person does not attend before the Court at that time and place,

the person shall not be taken to have failed to comply with a condition of the recognizance by reason only that he did not so attend before the Court, and the recognizance continues to have effect in relation to any condition other than a condition requiring the person to attend before the Court.”.

7. Section 90 of the Principal Ordinance is amended by omitting from sub-section (1) “is charged with an indictable offence” and substituting “is alleged to have committed an indictable offence”.

Procedure where informant proposes to tender written statements to Court

8. Section 90AB of the Principal Ordinance is amended by omitting “appears or is brought before the Court charged with” and substituting “is alleged to have committed”.

Preliminary examination where written statements not tendered

9. After section 90AB of the Principal Ordinance the following section is inserted:

“ 90ABA. An accused person is not required to be present during the preliminary examination under sub-section 90AA (9) or section 90AB where he is excused from attendance during that examination under section 89A.”.

Attendance not required under section 90AA or 90AB where order made under sub-section 89 (1)

Proceedings
where
evidence
sufficient to
put accused
on trial

10. Section 92 of the Principal Ordinance is amended by omitting from sub-paragraph (1) (ii) the words "Having heard the evidence do" and substituting the word "Do".

First
Schedule

11. The First Schedule to the Principal Ordinance is amended—
(a) by inserting after Form 14 the following Form:

FORM 14A

*Warrant to apprehend defendant where a notice under
section 89A is disobeyed*

In the Court of Petty Sessions at Canberra.

To the Commissioner of Police at Canberra, in the Australian Capital Territory, and to all other Police Officers in the said Territory.

WHEREAS on the day of , 19 , an information was laid that A. B., [*&c., as in the summons or warrant*]; and whereas A. B. was excused from attendance under sub-section 89A (1); and whereas a notice under sub-section 89A (4) [*or 89A (5)*] was served on A. B. requiring A. B. to attend on the day of 19 , at o'clock in the noon before the Court of Petty Sessions; and whereas it has been proved on oath that the notice was duly served on A. B.; and whereas A. B. neglected to attend at the time and place specified in the notice: These are therefore to command you, in Her Majesty's name, forthwith to apprehend A. B. and to bring [him] before the Court of Petty Sessions to be dealt with according to law.

Given under my hand, at Canberra, in the said Territory, this day of

 , 19 .

J. S.

Clerk of Court of Petty Sessions or Magistrate

- (b) by omitting Form 33;
- (c) by omitting from Form 34 "*[&c., as in the caption of the depositions]*" and substituting "*[describe the offence as in a warrant of commitment]*"; and
- (d) by omitting from Form 34 "in [his] presence the said A.B. is now addressed by the Court as follows:—'Having heard the evidence, do'" and substituting "the said A.B. is now addressed by the Court as follows:—'Do'".

Application

12. The Principal Ordinance, as amended by this Ordinance, applies to, and in relation to, a person against whom proceedings have been commenced by means of an information for an indictable offence, being—

- (a) proceedings commenced before the date of commencement of this Ordinance and pending on that date; or
- (b) proceedings commenced on or after the date of commencement of this Ordinance.