
Small Claims (Amendment) Ordinance 1982

No. 55 of 1982

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 25 June 1982.

ZELMAN COWEN
Governor-General

By His Excellency's Command,

P. DURACK
Attorney-General

An Ordinance to amend the *Small Claims Ordinance 1974*

Short title

1. This Ordinance may be cited as the *Small Claims (Amendment) Ordinance 1982*.¹

Commencement

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

Principal Ordinance

3. In this Ordinance, "Principal Ordinance" means the *Small Claims Ordinance 1974*.²

Interpretation

4. Section 3 of the Principal Ordinance is amended—

- (a) by omitting "Court of Petty Sessions Ordinance" from the definition of "Clerk" in sub-section (1) and substituting "*Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982*"; and
- (b) by omitting from sub-section (1) the definition of "Court of Petty Sessions Ordinance".

Proceedings under this Ordinance

5. Section 4 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1) all words after “action” and substituting “in relation to which the Court has jurisdiction under Part II of the *Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982*”; and
- (b) by omitting sub-sections (2) and (3) and substituting the following sub-section:

“(2) Subject to section 8, a person is not entitled to institute proceedings under this Ordinance with respect to a cause of action for an amount exceeding \$2,000.”.

Action for nuisance

6. Section 5 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1) “caused by noise”; and
- (b) by omitting from sub-section (2) “\$100” and substituting “\$500”.

Proceedings by infants

7. Section 7 of the Principal Ordinance is amended by omitting sub-section (2) and substituting the following sub-section:

“(2) Sections 94 and 95 of the *Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982* apply in relation to proceedings instituted by an infant as if his claim were a claim under that Ordinance.”.

Abandonment of excess

8. Section 8 of the Principal Ordinance is amended by omitting “\$1,000” and “One thousand dollars” and substituting “\$2,000”.

Counterclaim and set-off

9. Section 17 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1) “\$1,000” and substituting “\$2,000”; and
- (b) by omitting from sub-section (3) “\$1,000” and “One thousand dollars” and substituting “\$2,000”.

Summons to witness

10. Section 20 of the Principal Ordinance is amended by omitting from sub-section (8) “Court of Petty Sessions Ordinance and the summons had been issued under section 61 of that Ordinance” and substituting “*Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982* and the summons had been issued under section 185 of that Ordinance”.

Enforcement of decisions

11. Section 22 of the Principal Ordinance is amended by omitting from sub-sections (1) and (2) “a complaint under the Court of Petty Sessions Ordinance” and substituting “a claim under the *Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982*”.

Order for proceedings to be dealt with under Civil Jurisdiction Ordinance

12. Section 23 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1) “complaint under the Court of Petty Sessions Ordinance” and substituting “claim under the *Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982*”; and
- (b) by omitting sub-sections (4) to (7) (inclusive) and substituting the following sub-section:

“(4) Where an order under this section is made in relation to a claim—

- (a) the claim shall be deemed to be a claim under the *Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982* served in accordance with that Ordinance on the date on which the order was made;
- (b) any notice of defence filed in response to the claim shall be deemed to be a notice of grounds of defence filed under the *Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982* and served in accordance with that Ordinance on the date on which the order was made; and
- (c) any counterclaim or set-off specified in such a notice of defence shall be deemed to be a cross-claim pleaded in such a notice of grounds of defence.”.

Order for proceedings under Civil Jurisdiction Ordinance to be dealt with under this Ordinance

13. Section 24 of the Principal Ordinance is amended—

- (a) by omitting sub-section (1) and substituting the following sub-section:

“(1) Subject to sub-section (3), the Court may, at any stage of proceedings on a claim under the *Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982* where the amount claimed does not exceed \$2,000, order that the claim be heard as a claim under this Ordinance.”;

- (b) by omitting sub-section (4) and substituting the following sub-section:

“(4) Upon an order being made under this section in relation to a claim under the *Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982*—

- (a) that claim shall be deemed to be a claim under this Ordinance served in accordance with this Ordinance on the date on which the order was made;
- (b) any notice of grounds of defence under the *Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982* filed in response to the first-mentioned claim shall be deemed to be a notice of defence filed under this Ordinance and served in accordance with this Ordinance on the date on which the order was made; and

- (c) any counterclaim or set-off included in a cross-claim pleaded in such a notice of grounds of defence shall be deemed to be a set-off or counterclaim, as the case requires, specified in such a notice of defence.”;
- (c) by omitting from sub-section (5) “a complaint” and substituting “a claim under the *Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982*”; and
- (d) by omitting from sub-section (5) “a hearing of the complaint” and substituting “the hearing of the relevant proceedings under the first-mentioned Ordinance”.

14. Section 26 of the Principal Ordinance is repealed and the following section substituted:

Joint liability

“26. Section 226 of the *Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982* applies in relation to proceedings as if a claim under this Ordinance were a claim under the first-mentioned Ordinance.”.

Costs

15. Section 29 of the Principal Ordinance is amended by omitting from sub-section (2) “Court of Petty Sessions Ordinance” and substituting “*Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982*”.

Setting aside of judgment or order

16. Section 31 of the Principal Ordinance is amended—

- (a) by inserting after sub-section (1) the following sub-section:

“(1A) Where—

- (a) the claim in proceedings was served by post in accordance with section 48; and
- (b) after judgment has been given or an order has been made in the proceedings it appears to the Court that the claim did not come to the knowledge of the defendant within a reasonable time,

the Court may, of its own motion, order that the judgment or order be set aside, and the Court may make such other orders as it thinks just.”; and

- (b) by inserting in sub-section (2) “or (1A)” after “sub-section (1)”.

Orders by Supreme Court on appeals

17. Section 41 of the Principal Ordinance is amended by omitting from sub-section (1) “complaint” and substituting “claim under the *Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982*”.

Court fees

18. Section 46 of the Principal Ordinance is amended by omitting from sub-section (2) "Court of Petty Sessions Rules" and substituting "*Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982*".

Service of documents

19. Section 48 of the Principal Ordinance is amended—

- (a) by inserting in paragraph (1) (c) "the Clerk" after "by" (first occurring);
- (b) by omitting from paragraph (1) (c) "by certified mail";
- (c) by inserting in paragraph (1) (d) "the Clerk" after "by" (first occurring);
- (d) by omitting from paragraph (1) (d) "by certified mail"; and
- (e) by inserting after sub-section (1) the following sub-sections:

"(1A) A claim in proceedings shall not be served in accordance with paragraph (1) (c) or (d) unless the claimant has completed an application for postal service in accordance with Form 2A.

"(1B) Where a document is served in accordance with paragraph (1) (c) or (d), the Clerk shall complete a certificate of postal service in accordance with Form 2B.

"(1C) A claim under this Ordinance shall not be served in accordance with paragraph (1) (c) or (d) unless the address of the defendant specified in the claim is an address within the Territory."

Proof of service

20. Section 49 of the Principal Ordinance is amended by omitting sub-sections (2) and (3) and substituting the following sub-section:

"(2) Service of a document in proceedings in accordance with paragraph 48 (1) (c) or (d) may be proved by production of a completed certificate of postal service, and that service shall, unless the contrary is proved, be deemed to have been effected 2 days after the date of posting."

21. After section 49 of the Principal Ordinance the following section is inserted:

Doubtful service

"50. Where—

- (a) a document in proceedings has been served in a manner other than that referred to in paragraph 48 (1) (a); and
- (b) the Court is satisfied that—
 - (i) the document did not come to the knowledge of the party served within a reasonable time; or
 - (ii) doubt exists whether the document came to the knowledge of the party served within a reasonable time,

the Court, on application by the Clerk or a party to the proceedings or of its own motion, shall not allow any fresh step in the proceedings to be taken against the party served, and the Court shall—

- (c) strike out or adjourn the proceedings; or
- (d) order that such a document be re-served on that party in such manner (if any) as is specified in the order,

as the Court thinks just, and the Court may make such other orders and give such directions as it thinks just.”.

Schedule

22. The Schedule to the Principal Ordinance is amended—

- (a) by inserting after Form 2 the following forms:

FORM 2A

Section 48

APPLICATION FOR POSTAL SERVICE OF CLAIM

I hereby request that the defendant (*name*) be served with the annexed claim by post, and I certify that—

- (a) I have reason to believe that the claim, if sent to the defendant at the address specified in the claim, will come to the defendant’s knowledge within a reasonable time after the date on which the claim would be delivered in the ordinary course of post; and
- (b) I understand that if judgment is obtained as a result of postal service and is afterwards set aside on the ground that the service did not give the defendant adequate notice of the proceedings, I may be ordered to pay the costs of setting aside the judgment.

Dated 19 .

Claimant

FORM 2B

Section 48

CERTIFICATE OF POSTAL SERVICE

I certify that today I served with at by sending a copy of it by pre-paid post addressed to

Dated 19 .

Clerk

and

- (b) by omitting from Form 4 “Court of Petty Sessions Ordinance” and substituting “*Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982*”.

Transitional

23. (1) Subject to sub-section (2), proceedings pending at the commencement of this Ordinance may be continued and determined as if this Ordinance had not been made, and for the purposes of this section, the Principal Ordinance continues to apply in relation to those proceedings.

(2) Section 23 of the Principal Ordinance as amended by this Ordinance applies in relation to proceedings referred to in sub-section (1).

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 9 July 1982.
2. No. 6, 1974 as amended by No. 42, 1974; No. 46, 1978.