

AUSTRALIAN CAPITAL TERRITORY

Small Claims (Amendment) Ordinance 1985

No. 21 of 1985

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 30 May 1985.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

LIONEL BOWEN
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 1985*.¹

Commencement

2. This Ordinance shall come into operation on such date as is fixed by the Minister of State for Territories 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 from sub-section (1) the definition of “action for nuisance” and substituting the following definition:
- “ ‘barrister and solicitor’ has the same meaning as in the *Legal Practitioners Ordinance 1970*;”;
- (b) by omitting from sub-section (1) the definition of “Clerk” and substituting the following definition:
- “ ‘Clerk’ means the Clerk or a Deputy Clerk of the Court of Petty Sessions when known by virtue of section 4A of this Ordinance as the Clerk, or a Deputy Clerk, of the Small Claims Court, as the case requires;”;
- (c) by omitting from sub-section (1) the definition of “Court” and substituting the following definition:
- “ ‘Court’ means the Court of Petty Sessions when known by virtue of section 4A of this Ordinance as the Small Claims Court;”.

Heading to Part II

5. The heading to Part II of the Principal Ordinance is omitted and the following headings are substituted:

“PART II—PROCEEDINGS IN THE COURT

***Division 1—Institution of Proceedings*”.**

Proceedings under this Ordinance

6. Section 4 of the Principal Ordinance is amended—
- (a) by omitting from sub-section (1) all the words from and including “under this Ordinance” and substituting—
- “with respect to—
- (a) a cause of action in relation to which the Court of Petty Sessions has jurisdiction under Part II of the *Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982*; and
- (b) a claim for a declaration.”;
- (b) by omitting from sub-section (2) “this Ordinance with respect to a cause of action” and substituting “sub-section (1) with respect to a cause of action or claim for a declaration”; and

(c) by adding at the end the following sub-section:

“(3) In sub-section (1), ‘declaration’ means an order declaring that the claimant is not indebted to the defendant, or that the claimant is not indebted to the defendant in an amount specified in, or in an amount exceeding an amount specified in, the order.”.

7. After section 4 of the Principal Ordinance the following section is inserted:

Small Claims Court

“4A. (1) The Court of Petty Sessions shall, when exercising the jurisdiction conferred by section 4, be known as the Small Claims Court.

“(2) The Clerk of the Court of Petty Sessions shall, when performing duties or functions under this Ordinance, be known as the Clerk of the Small Claims Court.

“(3) A Deputy Clerk of the Court of Petty Sessions shall, when performing duties or functions under this Ordinance, be known as a Deputy Clerk of the Small Claims Court.”.

Action for nuisance

8. Section 5 of the Principal Ordinance is amended by inserting in sub-section (2) “made in an action for nuisance” after “order”.

Institution of proceedings

9. Section 6 of the Principal Ordinance is amended—

- (a) by omitting from paragraph (1) (a) “and”;
- (b) by omitting paragraph (1) (b) and substituting the following paragraphs:
 - “(b) in any other case referred to in paragraph 4 (1) (a)—in accordance with Form 2; and
 - (c) in a case referred to in paragraph 4 (1) (b)—in accordance with Form 1.”.

Service of claim, &c.

10. Section 9 of the Principal Ordinance is amended by omitting sub-sections (2) and (3) and substituting the following sub-sections:

“(2) Upon the institution of proceedings, being an action for nuisance or a claim for a declaration within the meaning of section 4, the Clerk shall—

- (a) cause a copy of the claim to be served on the defendant together with notices in accordance with Forms 6 and 7; and
- (b) give to the claimant a notice in accordance with Form 7A.

“(3) A defendant upon whom a copy of a claim is served pursuant to sub-section (2) may, within 14 days after the service of the claim, file a notice of defence in accordance with Form 6.

“(4) Where a defendant referred to in sub-section (3), being the defendant in an action for nuisance, does not file a notice pursuant to that sub-section, the Clerk shall—

- (a) fix a day and time for the inquiry in the proceedings; and
- (b) not later than 3 days before the day and time so fixed, give notice in accordance with Form 8A of that day and time to the defendant and the claimant.”.

Notice of defence, &c.

11. Section 10 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1) “an action for nuisance” and substituting “proceedings referred to in sub-section 9 (2)”;
- (b) by omitting paragraphs (1) (a) and (b) and substituting the following paragraphs:

“(a) file with the Clerk a notice of payment into court in accordance with Form 5 and pay money into court in such amount as he or she considers to be a full satisfaction of the claim;

(b) file with the Clerk—

(i) a notice of payment into court in accordance with Form 5; and

(ii) a notice of defence in accordance with Form 6,

and pay money into court in such amount as he or she considers to be a full satisfaction of the claim; or

- (c) file with the Clerk a notice of defence in accordance with Form 6.”;
- (c) by omitting sub-section (2) and substituting the following sub-section:
 - “(2) Where the defendant files a notice of payment into court and pays money into court, the Clerk shall notify the claimant in writing of the amount so paid and shall—
 - (a) if the amount so paid is equal to the whole amount of the claim; or
 - (b) if the claimant, not later than 14 days after being so notified of the amount paid, files with the Clerk a notice of acceptance of money paid into court in accordance with Form 8,pay the money to the claimant.”;
- (d) by omitting from sub-section (3) all the words from and including “Where” to and including “defendant” and substituting “Where money paid into court by the defendant is not paid by the Clerk to the claimant pursuant to sub-section (2)”;
- (e) by omitting from sub-section (4) “the Court shall be deemed to have given” and substituting “the Clerk shall enter”;
- (f) by omitting sub-section (5) and substituting the following sub-section:
 - “(5) Where the defendant in proceedings—
 - (a) files a notice of defence; or
 - (b) pays money into court but that money is not paid by the Clerk to the claimant pursuant to sub-section (2),and—
 - (c) the Clerk is satisfied that in the circumstances of the case it would serve no purpose to direct the holding of a conference under Division 2; or
 - (d) such a conference has been held without the matters in dispute being settled by conciliation,the Clerk shall fix a day and time for the inquiry in the proceeding and shall, not later than 10 days before the day and time so fixed, give

notice in accordance with Form 8A of that day and time to the claimant and the defendant.”;

- (g) by omitting from paragraph (7) all the words after “the Clerk” (second occurring) and substituting the following word and paragraph:

“shall—

- (c) if the proceedings are, or include, a claim for an unliquidated amount—on the application of the claimant in accordance with Form 13 within 12 months after the expiration of the period of 14 days after service of the copy of the claim referred to in sub-section (1), enter interlocutory judgment for the claimant in accordance with Form 14 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—on the application of the claimant in accordance with Form 15 within 12 months after the expiration for the period of 14 days after service of the copy of the claim referred to in sub-section (1), enter judgment or make an order (or both), as the case requires, for the claimant in accordance with Form 16.”; and
- (h) by omitting from sub-section (8) “interlocutory judgment is to be deemed to have been given” and substituting “the Clerk has entered interlocutory judgment for the claimant”.

12. After section 10 of the Principal Ordinance the following Division is inserted:

“Division 2—Conferences

Conference objectives and procedure

“10A. (1) Where, in proceedings—

- (a) the defendant files a notice of defence pursuant to sub-section 9 (3) or paragraph 10 (1) (c); or
- (b) money paid into court by the defendant is not paid by the Clerk to the claimant pursuant to sub-section 10 (2),

the Clerk shall, unless he or she is satisfied that in the circumstances of the case it would serve no purpose to do so, direct the holding of a conference between the parties to the proceedings.

“(2) Where, in proceedings, the defendant seeks to defend the proceedings at an inquiry held pursuant to sub-section 9 (4) or 10B (2), the Magistrate may order the parties to attend a conference to be held as the Clerk shall direct and may make such further order as to costs as he or she thinks fit.

“(3) For the purposes of sub-section (1) or (2), the Clerk shall, not later than 10 days before the day fixed by the Clerk for the holding of the conference, give notice in accordance with Form 7B, specifying that day, and the time and place fixed for the conference, to the parties to the proceedings.

“(4) Where there are reasonable grounds for so doing, the Clerk may vary the day, time or place fixed under sub-section (3) for a conference and shall give notice in accordance with sub-section (3) to the parties of the variation.

“(5) The requirement to give notice of a variation under sub-section (4) does not apply if the parties to the proceedings consent to its waiver.

“(6) The Clerk shall hold a conference for the purposes of—

- (a) defining and limiting the matters in dispute in the proceedings;
- (b) ensuring that the parties are taking all necessary measures to enable the inquiry in the proceedings to take place expeditiously; and
- (c) assessing the time that is likely to be required for the inquiry.

“(7) Where, in the course of a conference, the Clerk is satisfied, by reason of the nature of the proceedings or the attitudes of the parties, that there is a reasonable possibility of settling the matters in dispute by conciliation, the Clerk may seek to bring about an agreement between the parties on terms that he or she thinks just.

“(8) For the purposes of sub-section (7), the Clerk may adjourn a conference in such manner and on such terms as he or she thinks fit.

“(9) A party to proceedings may be represented at a conference—

- (a) where the party is a natural person—
 - (i) by a barrister and solicitor; or
 - (ii) with the leave of the Clerk, by an unpaid agent; or
- (b) where the party is a body corporate—
 - (i) by a barrister and solicitor; or
 - (ii) by an officer or employee of the body corporate.

“(10) A person is not entitled to be present at a conference referred to in this section unless that person is—

- (a) a party to the proceedings in relation to which the conference is held;
- (b) a person who is entitled, under sub-section (9), to represent a party and who is representing that party;
- (c) the Clerk or another officer of the Court; or
- (d) a person authorized in writing by the Chief Magistrate or the Attorney-General to attend that conference or to attend conferences generally.

Failure to attend conference

“10B. (1) Subject to sub-section (4), where, on the day and at the time and place fixed for a conference, a party to the proceedings, not being an action for nuisance, fails to attend, either personally or by his or her representative, and the Clerk is satisfied that notice in accordance with sub-section 10A (3) was given to the party, the Clerk shall—

- (a) where that party is the claimant—dismiss the claim; or
- (b) where that party is the defendant—enter interlocutory judgment for the claimant in accordance with Form 14 or enter judgment or make an order (or both), as the case requires, for the claimant in accordance with Form 16, as if the claim were a claim referred to in sub-section 10 (7).

“(2) Subject to sub-section (4), where, on the day and at the time and place fixed for a conference in relation to an action for nuisance, a party to the proceedings fails to attend, either personally or by his or her representative, and the Clerk is satisfied that notice in accordance with sub-section 10A (3) was given to the party, the Clerk shall—

- (a) where the party is the claimant—dismiss the claim; or
- (b) where the party is the defendant—
 - (i) strike out the defence;
 - (ii) fix a day and time for the inquiry in the proceedings; and
 - (iii) not later than 3 days before the day and time so fixed, give notice in accordance with Form 8A of that day and time to the defendant and the claimant.

“(3) Subject to sub-section (4), where, on the day and at the time and place fixed for a conference, each party to the proceedings fails to attend, either personally or by his or her representative, the Clerk shall strike out the proceedings.

“(4) The Clerk may adjourn a conference where he or she is satisfied that a party to the proceedings or his or her representative is, for good reason, unable to attend the conference.

“(5) Where the Clerk adjourns a conference under sub-section (4), the Clerk shall notify the parties of the day, time and place fixed for the resumption of the conference.

Conference without prejudice

“10C. At an inquiry in proceedings, unless the parties otherwise agree, evidence shall not be given, and statements shall not be made, concerning any words spoken or act done at a conference held in accordance with this Division if the words spoken or act done related to any question to be determined by the Court in the proceedings.

Procedure on settlement

“10D. Where, at a conference, the plaintiff and the defendant enter into an agreement referred to in sub-section 10A (7) as to the judgment to be entered in the proceedings, the agreement shall be in accordance with Form 7C, the Clerk shall enter judgment in accordance with the agreement and the provisions of sub-sections 25A (2), (4) and (5) apply to and in relation to that agreement as if it were an agreement referred to in section 25A.”

Heading to Division 3 of Part II

13. Before section 11 of the Principal Ordinance the following heading is inserted:

“Division 3—Inquiries in proceedings”.

Requirements for evidence

14. Section 13 of the Principal Ordinance is amended—

- (a) by omitting “Evidence” and substituting “(1) Subject to this section, evidence”; and
- (b) by adding at the end thereof the following sub-sections:

“(2) Where it appears to the Court to be necessary or conducive to the proper determination of the matter at issue in proceedings, the

Court may require a person appearing as a witness in the proceedings to be examined on oath.

“(3) For the purposes of sub-section (2), the Court may administer, or cause to be administered, to a person an oath or affirmation.

“(4) A person who, upon being required to take an oath or make an affirmation under this section, refuses or fails to take the oath or make the affirmation is guilty of an offence punishable, on conviction, by a fine not exceeding \$500.”.

Court to inquire into claims

15. Section 14 of the Principal Ordinance is amended by omitting “, subject to sub-section 5 (1), shall give judgment” and substituting “shall give judgment or make an order”.

Adjournment of proceedings

16. Section 15 of the Principal Ordinance is amended—

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

“(1A) Where it appears to the Court that an adjournment is necessary, or would be conducive, to the proper determination of the matters at issue at an inquiry in proceedings, the Court shall adjourn the inquiry.”; and

(b) by omitting from sub-section (2) all the words from and including “or, if”.

Proceedings where defendant does not appear

17. Section 16 of the Principal Ordinance is amended by omitting from paragraph (b) “either paragraph 9 (2) (b) or sub-section 10 (5)” and substituting “paragraph 9 (4) (b) or sub-section 10 (5) or 10B (2), as the case requires,”.

18. After section 16 of the Principal Ordinance the following sections are inserted:

Proceedings where claimant does not appear

“16A. Where—

(a) the claimant in proceedings does not appear on the day and at the time fixed for the inquiry or on the day and at the time to which the inquiry has been adjourned or postponed; and

- (b) the Court is satisfied that a notice under paragraph 9 (4) (b), or sub-section 10 (5) or 10B (2), as the case requires, was duly served on the claimant informing the claimant of the day and time fixed for the inquiry or that an order for substituted or other service or for the substitution for service of notice by advertisement or otherwise was duly complied with,

the Court, if it thinks it would be proper to do so, may dismiss the claim in the proceedings.

Proceedings where no party appears

“16B. Where, on the day and at the time fixed for an inquiry, or on the day and at the time to which the inquiry has been adjourned or postponed, each party to the proceedings fails to attend, either personally or by his or her representative, the Court may strike out the proceedings.”

Judgment final and conclusive

19. Section 19 of the Principal Ordinance is amended by omitting “of the Court (other than an interlocutory judgment), or an order under section 5,” and substituting “or order of the Court (other than an interlocutory judgment)”.

Enforcement of decisions

20. Section 22 of the Principal Ordinance is amended by omitting “, or is to be deemed to have been given,” and substituting “or entered”.

21. After section 22 of the Principal Ordinance the following section is inserted:

Interest on judgment

“22A. Section 228 of the *Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982* applies to and in relation to a judgment debt arising from a judgment given or entered under this Ordinance as if the judgment debt were a judgment debt referred to in that section.”

22. After section 24 of the Principal Ordinance the following sections are inserted:

Order to perform work or to pay money

“24A. Where the Court gives judgment upon an inquiry in proceedings, the Court may, in addition to any other power conferred by this Ordinance, make an order requiring the defendant in the proceedings—

- (a) to perform such work as is, or to take such other measures as are, specified in the order to rectify a defect in goods or services to which the claim in the proceedings relates within such time as is specified in the order and, in default of the defendant performing that work or taking those measures, to pay money to the claimant; or
- (b) to perform work or take measures referred to in paragraph (a) and—
 - (i) in addition, to pay money to the claimant; and
 - (ii) in default of the defendant performing that work or taking those measures—to pay money to the claimant.

Order in respect of amount specified

“24B. In relation to a claim under paragraph 4 (1) (b), the court may by order declare that money in an amount specified in the order is not due or owing by the claimant.

Payment of judgment debt by instalments

“24C (1) Where judgment is given or entered in proceedings, the Court may, on the application of the defendant, order that the judgment debt be paid by such instalments and within such times as it thinks just.

“(2) On application by a party to proceedings, the Court may, on sufficient cause being shown, by order, vary or rescind an order made under sub-section (1), and where the Court makes an order under this sub-section, it may make such further orders as to costs or otherwise as it thinks just.

“(3) While an order under sub-section (1) remains in force, it operates as a stay of enforcement of the judgment to which it relates.

“(4) Where a defendant in proceedings fails to make a payment in accordance with an order under sub-section (1)—

- (a) the order ceases to be in force; and
- (b) the judgment to which the order relates may, unless the Court otherwise orders, be enforced as regards the balance of the judgment debt.”.

Discontinuance

23. Section 25 of the Principal Ordinance is amended by omitting sub-section (3) and substituting the following sub-sections:

“(3) Where a claimant discontinues proceedings, he or she is not entitled, except with the leave of the Court and in accordance with such terms as to costs (if any) as the Court imposes, to institute further proceedings for the same, or substantially the same, cause or matter.

“(4) Sub-section (3) applies to and in relation to a claim dismissed pursuant to section 10B or 16A as if the claimant in the proceedings had discontinued the proceedings under sub-section (1).”.

24. After section 25 of the Principal Ordinance the following sections are inserted:

Judgment by agreement

“25A. (1) At any time before final judgment has been given or entered in proceedings, the plaintiff and the defendant may enter into an agreement in accordance with Form 7C as to the judgment to be entered in the proceedings as between the parties to the agreement and as to the terms and conditions (if any) on which the judgment is to be satisfied.

“(2) An agreement under sub-section (1) shall be signed by each party to the agreement personally or on his or her behalf by his or her representative, and such an agreement signed by a party has no force or effect unless the execution of the agreement by that party is witnessed by the Clerk, a solicitor or a justice of the peace.

“(3) Where an agreement under sub-section (1) is filed before final judgment is given or entered in proceedings, the Clerk shall enter judgment in the proceedings in accordance with the agreement.

“(4) Where—

- (a) the Clerk enters judgment in proceedings pursuant to sub-section (3);
- (b) a judgment debt arises by virtue of the judgment; and
- (c) the agreement to which the judgment relates specifies the instalments by which and the times within which the judgment debt or part of that debt is to be paid,

the Clerk shall order that the judgment debt or that part of the judgment debt be paid by those instalments and within those times.

“(5) Section 24C applies to and in relation to an order made by the Clerk under sub-section (4) as if the order were an order made by the Court under that sub-section.

Consent orders

“25B. (1) Subject to this Ordinance, the Clerk may exercise the power of the Court to make any order in proceedings, being an order consented to —

- (a) by the parties to the proceedings; and
- (b) by any other person who will be required to comply with the order or who will be affected by the order.

“(2) This section does not apply in relation to any power of the Court by virtue of section 44B.

Review of decisions of the Clerk

“25C. Where the Clerk makes an order, gives a direction or does any other act in connection with proceedings, the Court may, on application made by any party to the proceedings, review the order, direction or other act and may make such order by way of confirmation, variation, discharge or otherwise as the Court thinks just.”.

Amendment of claim

25. Section 30 of the Principal Ordinance is amended by omitting “has power to” and substituting “may, at any stage of the proceedings, on application by a party or of its own motion,”.

Setting aside of judgment or order

26. Section 31 of the Principal Ordinance is amended—

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

“(1) Where, in proceedings—

- (a) judgment is given or entered, or an order made, in the absence of a party; or
- (b) the Clerk has entered judgment for the claimant pursuant to paragraph 10 (7) (c) or (d) or 10B (1) (b),

the Court, on sufficient cause being shown, may order that the judgment or order be set aside and may make such other orders as the Court thinks just.”;

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

“(1B) Where the Clerk enters judgment in accordance with section 10D, the Court may, on sufficient cause being shown, order

that the judgment be set aside, and may make such other orders as the Court thinks just.”;

- (c) by omitting from sub-section (2) “or (1A)” and substituting “, (1A) or (1B)”;
- (d) by adding at the end thereof the following sub-section:

“(4) Where, on an application under sub-section (1) or (1B), the Court does not make an order setting aside a judgment or order, the Court may make such order for the payment of costs in relation to the application as the Court thinks just.”.

Interpretation

27. Section 32 of the Principal Ordinance is amended by omitting “under section 5” and substituting “by the Court”.

Appeal to Supreme Court

28. Section 33 of the Principal Ordinance is amended by omitting from sub-section (2) “of Petty Sessions” (twice occurring).

Notice of application for leave

29. Section 34 of the Principal Ordinance is amended by omitting from paragraph (b) “ of Petty Sessions was given” and substituting “was given or within such further time as the Supreme Court allows”.

30. Section 38 of the Principal Ordinance is repealed and the following section substituted:

Effect of application for leave to appeal on execution of judgment

“38. (1) The making of an application for leave to appeal, or the institution of an appeal, in relation to a judgment or order does not operate as a stay of enforcement or execution of the judgment or order to which the application or appeal relates unless the Supreme Court otherwise orders.

“(2) Where, on an application for leave to appeal or on an appeal, the Supreme Court orders that the enforcement or execution of the judgment or order that is the subject of the application or appeal be stayed, the Supreme Court may order that the applicant or the appellant give, within such time as is specified in the order, security, in such amount as is specified in the order, for the prosecution of the application and of any appeal, or of the appeal, as the case requires.

“(3) If security for the prosecution of an application or an appeal required to be given by an order under sub-section (2) is not given in the amount and within the time specified in the order, the application or appeal shall be deemed to have been abandoned.

“(4) Security may be given for the purpose of sub-section (2) either by the deposit of money with the Clerk or by a bond in accordance with a form, and with a security, approved by the Clerk and left with the Clerk.”.

Orders by Supreme Court on appeals

31. Section 41 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1) “of Petty Sessions”; and
- (b) by omitting from sub-section (2) “of Petty Sessions”.

Judgments &c., to be paid to clerk

32. Section 43 of the Principal Ordinance is amended by omitting from sub-section (3) “Money paid” and substituting “Subject to section 43A, money paid”.

33. After section 43 of the Principal Ordinance the following section is inserted:

Court may provide for money paid to Clerk to be paid out on fulfilment of conditions

“43A. Subject to any contrary order made by the Court, where, under a judgment or order, a party to proceedings is required to pay money to the Clerk and another party is to perform work or to take other measures specified in the judgment or order to rectify a defect in goods or services, the judgment or order may provide that the money paid to the clerk is not to be paid out until that other party has performed that work or taken those other measures, as the case requires.”.

34. After section 44 of the Principal Ordinance the following sections are inserted:

Person under disability

“44A. Part XI of the *Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982* applies to and in relation to a defendant in proceedings who is a person under disability within the meaning of that Ordinance as if those proceedings were proceedings under that Ordinance.

Rejection of documents

“44B. (1) Where a document lodged at the office of the Court for filing in proceedings, by reason of a defect in the document or a failure to comply with this Ordinance or for any other reason, would, if filed, be ineffective for the purpose for which it was lodged, the Clerk may reject that document.

“(2) Where the Clerk rejects a document pursuant to sub-section (1), he or she shall, either orally or in writing, give notice of the rejection and the reason for the rejection to the party who sought to file the document.

Access to records, &c.

“44C. (1) Subject to this section, section 306A of the *Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982* applies to and in relation to a register of the Court that contains particulars of—

- (a) judgments that have been entered pursuant to section 10; or
- (b) the setting aside of any such judgments pursuant to section 31,

as if references in that section to sections 41 and 219 of that Ordinance were references to sections 10 and 31, respectively, of this Ordinance.

“(2) Regulations made under section 306A of the *Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982* apply to and in relation to a register of the Court as if references in those regulations to parts of a register referred to in that section were references to the corresponding parts (if any) of a register of the Court referred to in sub-section (1).

“(3) Section 306 of the *Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982* applies to and in relation to a certificate or certified copy of a judgment, order or document filed in proceedings as if that certificate or certified copy were a certificate or certified copy under that Ordinance.

Restoration of proceedings struck out

“44D. Where proceedings have been struck out by the Court or the Clerk under this Ordinance, the Court may, on the application of any party to the proceedings, order that the proceedings be restored on such terms as to costs, the staying of the proceedings until the payment of costs, the priority of the hearing of the proceedings or otherwise, as the court thinks just.”

Court fees

35. Section 46 of the Principal Ordinance is amended by inserting in sub-section (1) “section 44C and” after “Subject to”.

Schedule

36. The Schedule to the Principal Ordinance is amended—

(a) by omitting Form 1 and substituting the following form:

FORM 1

Section 6

CLAIM FOR NUISANCE OR DECLARATION

To the Clerk of the Small Claims Court.

I, *(name and address of claimant)*, hereby claim against *(name and address of defendant)* the following relief:

(Set out briefly the relief sought.)

The grounds on which this claim is made are as follows:

(Set out briefly the nature of the claim.)

Dated

19 .

Claimant

DIRECTION

The relief that may be sought in a declaration is an order declaring that the claimant is not indebted to the defendant or that the claimant is not indebted to the defendant in an amount specified in, or in an amount exceeding an amount specified in, the order.

(b) by omitting Form 3 and substituting the following form:

FORM 3

Section 9

NOTICE TO DEFENDANT

To (*name and address of defendant*).

The claimant (*name and address of claimant*) has instituted proceedings against you in the Small Claims Court at Canberra, pursuant to the *Small Claims Ordinance 1974*.

2. A copy of the claim by which the proceedings were instituted is attached. The amount claimed and the nature of the claim are set out in the claim. A notice of payment into court and a notice of defence are also attached.

3. You may complete and file the notice of payment into court and pay into court the amount of money which, in your view, represents the amount to which the claimant is entitled. If the claimant accepts the payment, no further action will be taken. If the claimant does not accept the payment, the procedures set out in paragraph 7 below will apply.

4. Payment into court is not taken to mean that you admit the claim. If you pay money into court, you may also file notice of defence, but it is not necessary to do so.

5. If you wish to contest the claim (whether or not you intend to pay money into court), you should complete the notice of defence and file it in the Court office within 14 days after service of this notice.

6. If you do not file a notice of payment into court or a notice of defence (or both), the Court will deal with the matter without further notice to you.

7. If you pay into court less than the whole amount claimed and the claimant does not accept the payment or if you file a notice of defence, the Clerk will notify you of a day for the holding of a conference between the parties to the proceedings. The conference will be held before the Clerk to consider the matters in dispute.

8. Should you require any information regarding these proceedings to be followed, you are invited to contact the Court office (telephone number _____).

Dated

19 .

Clerk

- (c) by omitting paragraphs 2 and 3 in Form 4 and substituting the following paragraphs:

“2. If the defendant pays into court an amount equal to the whole amount of the claim, the amount paid in will be sent to you by the Court. If the defendant pays into court an amount less than the whole amount of the claim, you will be notified. If you accept the amount paid in full satisfaction of your claim, you will not need to take any further steps. The amount paid in will be sent to you by the Court.

“3. If you do not accept the amount paid into court in full satisfaction of your claim or the defendant files a notice of defence, the Clerk will notify you of a day for the holding of a conference between the parties to the proceedings. The conference will be held before the Clerk to consider the matters in dispute.”;

- (d) by omitting Form 5 and substituting the following form:

FORM 5

Section 10

NOTICE OF PAYMENT INTO COURT

To the Clerk of the Small Claims Court.

I, *(name and address of defendant)* hereby pay into \$ _____ in full satisfaction of
the claim made against me on _____ 19 _____ by *(name of*
claimant).

Dated _____ 19 _____ .

Defendant

- (e) by omitting Form 7 and substituting the following forms:

FORM 7

Section 9

NOTICE TO DEFENDANT IN CLAIM FOR NUISANCE OR DECLARATION

To *(name and address of defendant)*:

The claimant *(name of claimant)* has instituted proceedings against you in the Small Claims Court at Canberra, pursuant to the *Small Claims Ordinance 1974*. A copy of the claim by which the proceedings were instituted is attached. A notice of defence is also attached.

2. If you wish to defend the proceedings, you should complete the notice of defence and file it in the Court office not later than 14 days after service of this notice.

3. If you file a notice of defence, the Clerk will notify you of a day for the holding of a conference between the parties to the proceedings. The conference will be held before the Clerk to consider the matters in dispute.

*4. (*in the case of a claim for nuisance*) If you do not file a notice of defence—

- (a) the Court will fix a day for the inquiry in the proceedings and you will be notified of the day; and
- (b) if you then seek to defend the proceedings at the inquiry, the Court may order that a conference be held and may make such order for costs against you as it thinks just.

*4. (*in the case of a claim for a declaration*) If you do not file a notice of defence, the Court will deal with the proceedings without further notice to you.

5. Should you require any information regarding these proceedings or the procedures to be followed, you are invited to contact the Court office (telephone number).

Dated 19 .

Clerk

* Strike out whichever is inapplicable.

FORM 7A

Paragraph 9 (2) (b)

NOTICE TO CLAIMANT IN CLAIM FOR NUISANCE OR DECLARATION

Arrangements will be made by the Clerk to have the claim that you have filed served on the defendant. You will not be called upon to bear the expense of service, nor will you be required to pay any other fee in respect of the proceedings.

2. If the defendant contests the claim, the Clerk will notify you of a day for the holding of a conference between the parties to the proceedings. The conference will be held before the Clerk to consider the matters in dispute.

3. If the defendant does not file a notice of defence within 14 days after service of the claim, the procedures applicable under the *Small Claims Ordinance 1974* are as follows:

- (a) if the proceedings are an action for nuisance—the Court will fix a day for the inquiry in the proceedings and you will be notified of the day; or
- (b) if the proceedings are a claim for a declaration—you will be notified of any steps that you are required to take in order to obtain judgment.

4. Should you wish to discuss any matter relating to the procedures of the Court, you are invited to contact the Court office (telephone number).

Dated 19 .

Clerk

FORM 7B

Section 10A

NOTICE OF CONFERENCE

To the claimant:

the defendant:

I have, pursuant to the *Small Claims Ordinance 1974*, directed the holding of a conference between the parties to these proceedings.

2. The conference will be held before me at (*place*) on 19 , at (*time*).

3. The conference is to be held for the purposes of—

- (a) defining and limiting the matters in dispute in the proceedings;
- (b) ensuring that the parties are taking all necessary measures to enable the inquiry in the proceedings to take place expeditiously;
- (c) assessing the time that is likely to be required for the inquiry; and
- (d) examining whether there is a reasonable possibility of settling the matters in dispute by conciliation.

*4. (*for claimant*) if you do not attend the conference your claim will be dismissed.

*4. (*for defendant*) if you do not attend the conference—

- (a) where the proceedings are a claim for an amount of money or for a declaration—interlocutory judgment or final judgment, as the case requires, may be entered against you in your absence; or
- (b) where the proceedings are an action for nuisance—a day for an inquiry by a magistrate will be fixed.⁽¹⁾

Dated 19 .

Clerk

* Strike out whichever is inapplicable.

⁽¹⁾ If you seek to defend the proceedings at such an inquiry, the Magistrate may order that a conference be held before the Clerk and may make such further order as to costs against you as he or she thinks fit.

FORM 7C

Sub-section 25A (1)

AGREEMENT AS TO JUDGMENT

The claimant and the defendant(s) agree that judgment shall be entered for the claimant against the defendant(s) for \$ _____ and that the judgment debt may be paid by instalments of \$ _____ per _____, the first payment to be made on or before _____, 19____.

(To be signed by or on behalf of each party entering into the agreement, and each signature, if not of a solicitor or barrister, to be witnessed by the Clerk, a solicitor or a justice of the peace).

(f) by omitting Form 8 and substituting the following forms:

FORM 8

Sub-section 10 (2)

NOTICE OF ACCEPTANCE OF MONEY PAID INTO COURT

To the Clerk of the Small Claims Court.

I, the claimant (*name and address of claimant*) accept \$ _____ paid into court by the defendant in full satisfaction of my claim.

Dated _____ 19____.

Claimant

FORM 8A

Sections 9, 10 and 10B

NOTICE OF INQUIRY

To the claimant:

the defendant:

An inquiry in the abovementioned proceedings will be conducted by a Magistrate at (*place*) on _____ 19____, at (*time*).

*2. (*for claimant*) If you do not attend the inquiry, your claim may be dismissed.

*2. (*for defendant*) If you do not attend the inquiry, an order may be made, or judgment given, against you.

3. Should you require any information regarding the procedure to be followed, you are invited to contact the Court office (telephone number _____).

Dated _____ 19____.

Clerk

* Strike out whichever is inapplicable. _____ ; and

(g) by inserting after Form 11 the following forms:

FORM 12
GENERAL FORM OF JUDGMENT

19 .

It is this day adjudged that—

(terms of the judgment, in numbered paragraphs if necessary).

By the Court
Clerk (or Magistrate)

FORM 13
APPLICATION FOR INTERLOCUTORY JUDGMENT

Paragraph 10 (7) (c)

To the Clerk:

The claimant applies for the entry of the interlocutory judgment in these proceedings against the defendant(s) (*names(s)*)

FORM 14
INTERLOCUTORY JUDGMENT

Paragraph 10 (7) (c)

I enter interlocutory judgment in these proceedings in favour of the claimant against the defendant(s) (*insert names(s)*).

Dated 19 .

Clerk

FORM 15
APPLICATION FOR ENTRY OF JUDGMENT

Paragraph 10 (7) (d)

To the Clerk:

The claimant applies for the entry of judgment in these proceedings against the defendant(s) (*names(s)*)

The amount now due to the claimant in respect of the claim is \$

FORM 16

Paragraph 10 (7) (d)

DEFAULT JUDGMENT

It is adjudged that the claimant recover against the defendant(s) (*insert name(s)*) the amount of \$ _____ and it is ordered that the defendant(s) pay that amount to the claimant.

OR

It is ordered that—

(Insert terms of order in claim for a declaration).

Dated

19 .

Clerk

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 7 June 1985.
2. No. 6, 1974 as amended by No. 42, 1974; No. 46, 1978; No. 55, 1982.