

AUSTRALIAN CAPITAL TERRITORY

Court of Petty Sessions (Amendment) Ordinance (No. 3) 1985

No. 41 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 28 August 1985.

J. A. ROWLAND
Administrator

By His Excellency's Command,

LIONEL BOWEN
Attorney-General

An Ordinance to amend the *Court of Petty Sessions Ordinance 1930*

Short title

1. This Ordinance may be cited as the *Court of Petty Sessions (Amendment) Ordinance (No. 3) 1985*.¹

Principal Ordinance

2. In this Ordinance, "Principal Ordinance" means the *Court of Petty Sessions Ordinance 1930*.²

Interpretation

3. Section 5 of the Principal Ordinance is amended—

- (a) by inserting after the definition of "Court" in sub-section (1) the following definition:

“ ‘Crimes Act’ mean the Crimes Act, 1900 of the State of New South Wales in its application to the Territory;”; and

- (b) by omitting from sub-section (2) “paragraph 92 (1) (ii) and substituting “sub-section 92 (1)”.

Recording of proceedings

4. Section 54A of the Principal Ordinance is amended by omitting from paragraph (1) (a) “paragraph 92 (1) (ii)” and substituting “sub-section 92 (1)”.

Plea of guilty in committal proceedings

5. Section 90A of the Principal Ordinance is amended—

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

“(1) This section does not apply in relation to a person charged with an indictable offence punishable by imprisonment for life.

“(1A) Sub-section (1B), (2), (3) and (4) do not apply in relation to a person charged with an offence in relation to which section 477 of the Crimes Act applies.

“(1B) A person (in this section referred to as ‘the accused person’) who is before the Court charged with an indictable offence may at any stage of the proceedings plead guilty to the charge.”;

- (b) by omitting from paragraph (5) (c) “or”;
- (c) by inserting after paragraph (5) (d) the following word and paragraph:
- “; or (e) this section applies to an accused person by virtue of section 477 of the Crimes Act.”.

Proceedings where evidence sufficient to put accused on trial

6. Section 92 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1) all the words from and including “such offence and” to and including “in any other case, shall say” and substituting “such offence and shall say”; and

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

“(1A) Sub-section (1) does not apply in relation to a person charged with an indictable offence if the Court has decided to dispose of the case summarily pursuant to a law in force in the Territory.”.

7. After section 92A of the Principal Ordinance the following section is inserted:

Depositions as evidence

“92B. Where—

- (a) a person is charged with an indictable offence;
- (b) the person has not admitted the truth of the charge; and
- (c) the Court has decided to dispose of the case summarily pursuant to a law in force in the Territory,

the depositions of the witnesses who gave evidence for the prosecution at the preliminary hearing shall be deemed to be evidence given on the hearing of the charge and those witnesses, or any of them, shall, if so required by the prosecutor or the defendant, be called or recalled, as the case requires, for examination or cross-examination.”.

Transmission of depositions &c, to Director of Public Prosecutions

8. Section 106 of the Principal Ordinance is amended by omitting from sub-section (2) all the words after “referred to in” and substituting “sub-section 92 (1)”.

9. Before section 109 of the Principal Ordinance the following section is inserted in Part VII:

Indictable offences dealt with summarily

“108A. Where—

- (a) a person is charged with an indictable offence; and
- (b) the Court has decided to dispose of the case summarily pursuant to a law in force in the Territory,

this Part applies, so far as it is applicable, to the summary disposal of the case.”.

Mitigation of payment by court

10. Section 188 of the Principal Ordinance is amended by omitting from sub-section (2) “\$2,000” and substituting “\$5,000”.

Appeals to which Division applies

11. Section 208 of the Principal Ordinance is amended—

- (a) by omitting from paragraph (1) (a) all the words after “Part VII” and substituting “, Part VIIA or section 255 of this Ordinance or under section 477 of the Crimes Act;”;
- (b) by omitting from paragraph (1) (b) all the words after “section” (first occurring) and substituting “113 or 114 of this Ordinance in proceedings dealt with by the Court of Petty Sessions under Part VII of this Ordinance or under section 477 of the Crimes Act;”;
- (c) by omitting from paragraph (1) (c) “ninety A or two hundred and fifty-five of this Ordinance or under Part VII or Part VIIA” and substituting “90A or 255, or Part VII or VIIA, of this Ordinance, or under section 477 of the Crimes Act”;
- (d) by omitting from paragraph (2) (a) “ninety A or two hundred and fifty-five of this Ordinance or under Part VII or in proceedings for an order under Division 5 of Part IX” and substituting “90A or 255, or Part VII or VIIA, of this Ordinance, or under section 477 of the Crimes Act, or in proceedings for an order under Division 5 of Part IX of this Ordinance”; and
- (e) by omitting sub-section (3).

Appeals by way of order to review

12. Section 219B of the Principal Ordinance is amended—

- (a) by adding at the end of paragraph (a) “of this Ordinance or under section 477 of the Crimes Act”;
- (b) by adding at the end of paragraph (b) “of this Ordinance or under section 477 of the Crimes Act”;
- (c) by adding at the end of paragraph (c) “of this Ordinance or under section 477 of the Crimes Act”; and
- (d) by adding at the end the following paragraphs:
 - “(e) a decision of the Court of Petty Sessions not to commit a person to the Supreme Court for sentence pursuant to section 92A;
 - (f) a decision of the Court of Petty Sessions to dispose of a case summarily pursuant to sub-section 477 (6) or 477 (7) of the Crimes Act.”.

Order *nisi* for review

13. Section 219C of the Principal Ordinance is amended—

- (a) by omitting from paragraph (1) (a) “or”;
- (b) by inserting after paragraph (a) the following paragraph:
 - “(aa) within 21 days of the making of a decision of a kind referred to in paragraph 219B (e) or (f) an application is made by the informant in the proceedings before the Court of Petty Sessions; or”;
- (c) by omitting from paragraph (1) (d) “or” (last occurring); and
- (d) by inserting after paragraph (1) (e) the following word and paragraph:
 - “; or (f) that, in the circumstances of the case, a decision of a kind referred to in paragraph 219B (e) or (f) should not have been made.”.

Ancillary order

14. Section 219D of the Principal Ordinance is amended—

- (a) by adding at the end of sub-section (1) the following word and paragraph:
 - “; and (d) where the order *nisi* is made in respect of a decision of a kind referred to in paragraph 219B (e) or (f) where, after making that decision, the Court of Petty Sessions has, pursuant to section 477 of the Crimes Act, heard and determined a case and sentenced or otherwise dealt with the defendant according to law—may order that the enforcement of any further decision made by the Court of Petty Sessions in relation to the case be stayed.”; and
- (b) by inserting after sub-section (1) the following sub-section:
 - “(1A) Where the Supreme Court grants an order *nisi* in relation to an application by the informant in respect of a decision of the Court of Petty Sessions of a kind referred to in paragraph 219B (e) or (f), the proceedings in the Court of Petty Sessions shall be stayed until the appeal is concluded, abandoned or discontinued.”.

Powers of Supreme Court

15. Section 219F of the Principal Ordinance is amended—

- (a) by omitting from paragraph (1) (b) all the words after “Court of Petty Sessions” (first occurring);
- (b) by inserting after sub-section (1) the following sub-section:

“(1A) Where, pursuant to paragraph (1) (b), the Supreme Court sets aside, quashes or otherwise varies or amends a decision of the Court of Petty Sessions, the Supreme Court may—

- (a) in the case of a decision specified in paragraph 219B (e)—
order that the Court of Petty Sessions commit the person to whom the decision relates to the Supreme Court for sentence pursuant to section 92A; or
- (b) in the case of a decision specified in paragraph 219B (f)—
order that the Court of Petty Sessions continue the preliminary examination of the person to whom the decision relates in accordance with Part VI; or
- (c) in any other case—
 - (i) remit the matter to the Court of Petty Sessions for rehearing or for further hearing with or without directions of law; or
 - (ii) make such further order, including an order granting any relief that the Supreme Court is empowered to grant on certiorari, mandamus, prohibition or habeas corpus, as the Supreme Court thinks necessary to determine the matter finally.”;
- (d) by omitting from sub-section (4) “or executed” and substituting “, executed or given effect to”; and
- (e) by inserting in sub-section (5) “, (e) or (f)” after “219B (a)”.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 5 September 1985.
2. No. 21, 1930 as amended to date. For previous amendments *see* Note 2 to No. 17, 1985 and *see also* Nos. 17 and 18, 1985.