

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

MAGISTRATES COURT (CIVIL JURISDICTION) (AMENDMENT)

ORDINANCE 1987 No. 13

The purpose of this Ordinance is to enable pre-judgment interest to be awarded in the ACT Magistrates Court. Previously, the Magistrates Court (Civil Jurisdiction) Ordinance 1982 ('The Principal Ordinance') only provided for the payment of interest after judgment.

Pre-judgment interest is available in the Supreme Court of the Territory and in the superior courts and lower courts of all the States.

The Ordinance is based on the corresponding provisions of the Australian Capital Territory Supreme Court Act 1933, supplemented by additional provisions, based on equivalent NSW legislation, to enable an award of interest to be made where judgment is entered by default and to give the Court a discretion to award interest on the amount paid where the defendant pays the whole or part of the debt after the commencement of proceedings but before judgment is entered.

Details of the Ordinance are as follows:

Section 1 provides that the Ordinance may be cited as the Magistrates Court (Civil Jurisdiction) (Amendment) Ordinance 1987.

Section 2 provides that the Ordinance shall come into operation on a date to be fixed by notice in the Gazette.

Section 3 provides that "Principal Ordinance" means the Magistrates Court (Civil Jurisdiction) Ordinance 1982.

Section 4 amends section 5 of the Principal Ordinance by providing that where the amount claimed in a personal action includes interest in respect of which the court may make an order under proposed section 227A that interest is not to be taken into account in determining whether the amount claimed is within the jurisdiction of the Magistrates Court.

Section 5 amends section 16 of the Principal Ordinance by inserting a new sub-section 16(1A) to make it clear that the reference in paragraph 16(1)(a) to proceedings to recover a debt or liquidated damages includes a reference to such proceedings where the plaintiff is claiming interest.

Section 5 also amends sub-section 16(4) of the Principal Ordinance, which specifies particulars to be included by a plaintiff in a claim, by adding a requirement that where the plaintiff claims interest other than under section 227A, (e.g. under an agreement or statute) the rate at which, the amount on which and the period for which interest is claimed, are to be specified. Where interest up to judgment is claimed under section 227A on a claim for a debt or liquidated damages, the plaintiff is required to include in his or her claim a statement that interest to be calculated in accordance with sub-section 227B(2) is claimed. The plaintiff is also

required to include particulars of the period for which, the rate at which and the amount on which interest is claimed, and the amount of interest accrued to the date of filing. Where the claim is not for a debt or liquidated damages, the plaintiff must state that interest is claimed, if this is the case.

Section 6 inserts proposed sections 227A, 227B, 227C and 227D in the Principal Ordinance.

Sub-section 227A(1) provides that in proceedings for the recovery of money the Court is to order (unless good cause is shown to the contrary) that interest is to be included in the amount for which judgment is given or entered for all or part of the period between the date when the cause of action arose and the date when judgment takes effect. The rate of interest is to be such rate as the Court thinks fit. Alternatively, the Court may include in the amount for which judgment is given a lump sum in lieu of interest.

Sub-section 227A(2) applies where payment of all or part of a debt is made during the proceedings and before or without judgment being given. In those circumstances the Court may order the payment of interest on all or part of the money paid for all or part of the period between the date when the cause of action arose and the date of payment.

Sub-section 227A(3) provides that the award of interest upon interest, or of a sum in lieu of such interest, is not authorised by the provisions of section 227A and that the section neither applies to debts on which interest is already payable, by agreement or otherwise, nor affects damages recoverable for the dishonour of a bill of exchange.

Section 227B provides that where interest has been claimed and judgment is entered by default, confession or agreement, interest for the period between the date when the

cause of action arose and the date when judgment was entered is deemed to be part of the amount claimed and may be included in the amount for which judgment is entered. The rate of interest applicable in such cases is to be prescribed by regulation.

Section 227C provides that where a claim has been satisfied by the defendant after institution of proceedings and the plaintiff would otherwise have been entitled to judgment in his or her favour, the plaintiff is entitled to have judgment given or entered in his or her favour for interest only.

Section 227D provides that where a plaintiff has claimed interest calculated in accordance with sub-section 227B(2), the plaintiff may apply to the Court for leave to amend the claim to claim interest otherwise than in accordance with section 227B.

Section 7 amends Forms 14 and 15 in the Schedule to the Principal Ordinance consequential upon the new provisions in the Principal Ordinance relating to interest.

Section 8 provides that the amendments effected by the amending Ordinance do not apply to proceedings issued before the commencement of the Ordinance.