

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

COURT OF PETTY SESSIONS (AMENDMENT) ORDINANCE (NO. 2) 1985

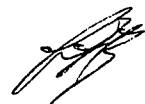
No. 18 of 1985

The primary purpose of this Ordinance is to amend the Court of Petty Sessions Ordinance 1930 (the 'Principal Ordinance') to enable a Magistrate of the A.C.T. Court of Petty Sessions to re-open a criminal case to correct a mistake or omission in a sentence, penalty, or order imposed or made by the Court.

The Court of Petty Sessions handles a very large number of relatively routine criminal matters. There have been occasions where the Court, from oversight or lack of information, has failed to make the order required by law or made an order or imposed a fine or sentence for which it did not have jurisdiction, for example cancellation of a licence when the only power was to suspend, or suspension of a licence when the order should have provided for cancellation or disqualification. There have also been cases where a fine in excess of the maximum was imposed.

Previously the only way to rectify such an error or omission was to seek a writ of certiorari in the Supreme Court or to appeal to that Court. A quicker, simpler and cheaper procedure will benefit both the defendant and the informant.

The Ordinance also amends the Principal Ordinance to remove the requirement that an appellant (who, under the relevant provisions, can only be the defendant) in criminal matters give security of \$40 for the costs of an appeal from the Court of Petty Sessions to the Supreme Court. This requirement served no useful purpose and increasing the amount to a realistic sum for modern conditions (the amount of \$40 was set in 1937) could lead



to hardship and injustice for defendants. The requirement has previously been removed in relation to appeals from the Court of Petty Sessions to the Supreme Court in civil matters.

Details of the Ordinance are as follows:

Section 1 provides that the Ordinance may be cited as the Court of Petty Sessions (Amendment) Ordinance (No. 2) 1985.

Section 2 defines the Principal Ordinance to mean the Court of Petty Sessions Ordinance 1930.

Section 3 inserts a new section 23B in the Principal Ordinance.

Sub-section 23B(1) contains interpretation provisions for the purposes of the new section.

Sub-section 23B(2) enables the Court, of its own motion or on the application of a party to the proceedings, to re-open proceedings where it has entered a conviction or made an order against a defendant and has imposed a penalty that is contrary to law, or has failed to impose a penalty that is required by law to be imposed. The Court is required to give the parties the opportunity of being heard and, on re-opening the proceedings, may amend the conviction or order to impose a penalty that is in accordance with the law.

Sub-section 23B(3) provides that the Court may re-open proceedings of its own motion or on the application of a party before the expiration of 28 days after the day on which the decision of the Court was made. The Court is able to re-open proceedings at any time with the consent of the parties.

Sub-section 23B(4) requires service of a written notice on the parties by the Clerk of the intention of the court to re-open



proceedings of its own motion and, where a party applies for a re-opening of proceedings, for a written notice of the application to be served by that party on the other party to the proceedings. Service is to be effected at least three business days before the proceedings are re-opened or the application is heard, as the case requires.

Sub-section 23B(5) enables the Court to dispense with the service of notice requirements in sub-section 23B(4) when each of the parties is before the Court.

Sub-section 23B(6) provides that where the Court re-opens proceedings in the absence of a party to the proceedings and amends a conviction or order, the Clerk is to serve written notice of the amended conviction or order on the absent party.

Sub-section 23B(7) provides that a notice is to be served in accordance with section 41 of the Principal Ordinance as if the notice were a summons issued in respect of an information.

Sub-section 23B(8) requires the jurisdiction conferred on the Court under the new section to be exercised only on the evidence and material before the Court in the original proceedings.

Sub-section 23B(9) prevents the Court from re-opening proceedings where the conviction or order is the subject of an appeal to the Supreme Court.

Sub-section 23B(10) provides that where proceedings have been re-opened but not yet determined and an appeal is lodged in respect of the conviction or order to which the proceedings relate, the re-opened proceedings are to be stayed until the appeal is determined.

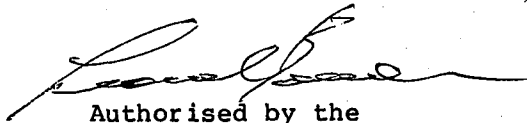
Sub-section 23B(11) enables the Court, where it re-opens proceedings, to make such order as to costs as it thinks just and reasonable.

Sub-section 23B(12) provides that, unless the Court otherwise directs, an order made or conviction or order amended by the Court in the re-opened proceeding shall take effect on the day on which the original conviction was entered or the original order was made, as the case requires.

Sub-section 23B(13) provides that the time within which an appeal from an order or an amended conviction or order may be made, commences from the day on which the decision of the Court in the re-opened proceedings was made.

Section 4 repeals sections 211, 212 and 213 of the Principal Ordinance and inserts a new section 211. The repeal of the sections referred to abolishes the requirement for a defendant to give security for the costs of appeal to the Court of Petty Sessions from the Supreme Court in criminal matters. As a consequence of the repeal of section 212, new section 211 provides that a criminal appeal is deemed to be duly instituted when notice of the appeal has been served on the Clerk.

Section 5 amends section 230 of the Principal Ordinance consequent upon the repeal of sections 211 and 213 of the Principal Ordinance.



Authorised by the
Attorney-General

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