

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

SMALL CLAIMS (AMENDMENT) ORDINANCE 1985

No. 21 of 1985

The purpose of this Ordinance is to amend the Small Claims Ordinance 1974 ('the Principal Ordinance') to give effect to recommendations arising from a review of the Principal Ordinance by the Working Party on A.C.T. Consumer Protection Laws. The Working Party comprised the Director of Consumer Affairs (A.C.T.) (Convenor), the Chairman of the A.C.T. Consumer Affairs Council, a lecturer in law at the Australian National University and representatives of Government Departments.

Other amendments rectify procedural defects in the Principal Ordinance brought to attention by the Magistrates, the Court administration and representations from the public.

The most significant recommendation of the Working Party implemented by the Ordinance is the making of legislative provision for a preliminary conference procedure in contested small claims matters presided over by the Clerk. Such a procedure has been operating informally in practically all contested small claims matters for several years and has become an accepted part of small claims procedure. The holding of such conferences has resulted in approximately 70% of disputes being settled without a court hearing.

The Ordinance provides for the conference to be held to define and limit the areas in dispute, ensure the matter is ready for hearing and assess the length of hearing. Where there are indications from the parties that a settlement is

possible the Clerk is empowered to adopt a conciliatory role to facilitate a settlement.

The Ordinance also provides for the Court of Petty Sessions when exercising its small claims jurisdiction to be known as the Small Claims Court.

Details of the Ordinance are as follows:

Section 1 provides that the Ordinance may be cited as the Small Claims (Amendment) Ordinance 1985.

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

Section 3 defines the 'Principal Ordinance' to mean the Small Claims Ordinance 1974.

Section 4 amends section 3 of the Principal Ordinance to insert definitions of 'barrister and solicitor' 'Clerk' and 'Court' for interpretation purposes.

Section 5 substitutes a new heading to Part II of the Principal Ordinance and provides for a new Divisional heading.

Section 6 amends section 4 of the Principal Ordinance to enable a person to make a claim for a declaration.

"Declaration" is defined to mean 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.

Section 7 inserts a new section 4A in the Principal Ordinance to provide that the Court of Petty Sessions is to be

known as the Small Claims Court when exercising its jurisdiction under the Principal Ordinance. The new section also provides that the Clerk or a Deputy Clerk of the Court of Petty Sessions is to be known as the Clerk or a Deputy Clerk of the Small Claims Court as the case requires, when performing duties or functions under the Principal Ordinance.

Section 8 amends section 5 of the Principal Ordinance (which provides that the Court in an action for nuisance has power to grant the same relief as the Supreme Court has power to grant in a like action in the Supreme Court) to make it clear that the penalty (a fine not exceeding \$500) for failure to comply with a requirement of an order of the Small Claims Court relates only to orders of the Court in relation to an action for nuisance.

Section 9 amends section 6 of the Principal Ordinance to designate the form contained in the Schedule to be used for a claim for a declaration.

Section 10 amends section 9 of the Principal Ordinance to provide for the filing of a notice of defence in an action for a declaration or an action for nuisance. Previously, there was no requirement to file a notice of defence in an action for nuisance.

Section 11 amends section 10 of the Principal Ordinance to provide for the payment by the defendant of money into Court without an admission of liability and, where the sum paid by the defendant is equal to the amount claimed, to enable the Clerk to pay the sum to the claimant immediately without any application being made by the claimant. It also provides that where the defendant fails to either make a payment into Court

or file a defence or, where after filing a defence, he informs the Clerk in writing that he no longer wishes to defend the matter, the Clerk is to enter interlocutory judgment or make an order only upon the application of the claimant. The section also makes a procedural change in providing for the Clerk to enter judgment instead of, in certain circumstances, judgment being deemed to have been entered.

Section 12 inserts new sections 10A, 10B, 10C and 10D into the Principal Ordinance to provide for the holding by the Clerk of a pre-hearing conference between the claimant and the defendant.

Section 10A provides that where the defendant lodges a notice of defence, pays money into Court which is less than the amount claimed or seeks to defend the claim at a hearing, the Clerk is to direct that a conference be held between the parties. The purposes of the conference are to:

- (a) define and limit the matters in dispute in the proceedings;
- (b) ensure the parties will have the matter ready for hearing (in the Principal Ordinance called an "inquiry"); and
- (c) assess the likely length of the inquiry.

The section also provides that the Clerk at a conference may seek to bring about agreement between parties by conciliation.

Section 10B provides that the failure of a party to attend a conference either personally or by his representative is to result, where the claimant fails to attend, in dismissal

of the claim and, where the defendant fails to attend, in entry of judgment for the claimant (except in the case of an action for nuisance). In the case of an action for nuisance, where the defendant fails to attend, the Clerk may strike out the defence and fix a time for the inquiry.

Section 10C provides that at a subsequent inquiry, unless the parties otherwise agree, nothing said or done at a conference shall be received in evidence.

Section 10D provides that where the parties at a conference reach agreement, the Clerk is to enter judgment in accordance with the agreement and that the relevant provisions of section 25A (which relates to judgment by agreement) are to apply to any such agreement.

Section 13 inserts a new Divisional heading.

Section 14 amends section 13 of the Principal Ordinance to give the Court a discretion to require a witness to give evidence on oath or affirmation. A person who, upon being required to take an oath or make an affirmation under the 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.

Section 15 amends section 14 of the Principal Ordinance to reflect the fact that in an inquiry the Court may make an order instead of giving judgment.

Section 16 amends section 15 of the Principal Ordinance to provide that the Court may adjourn proceedings where it considers an adjournment is necessary or conducive to the proper determination of the matter at issue in the proceedings.

Section 17 amends section 16 of the Principal Ordinance to allow the Court to make an order in favour of a claimant in an action for nuisance where the defendant does not appear at an inquiry held following the failure of the defendant to attend a pre-hearing conference.

Section 18 inserts new sections 16A and 16B into the Principal Ordinance.

Section 16A provides that where the claimant does not appear on the day and at the time fixed for the inquiry and the Court is satisfied that the claimant received notice of the inquiry, the Court may dismiss the claim.

Section 16B provides that where each Party does not appear on the day and at the time fixed for the inquiry the Court may strike out the proceedings.

Section 19 amends Section 19 of the Principal Ordinance to make orders (as well as judgments) of the Court final and conclusive.

Section 20 amends section 22 of the Principal Ordinance consequent upon amendments to procedure to be made by Section 11.

Section 21 inserts a new section 22A into the Principal Ordinance to apply section 228 of the Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982 to a judgment debt under the Principal Ordinance. This will cause interest to accrue on the unpaid balance of a judgment debt.

Section 22 inserts new sections 24A, 24B and 24C into the Principal Ordinance.

Section 24A provides that where the Court gives

judgment it may also make an order requiring the defendant to rectify defects in goods and services to which the claim relates and, in default, to pay money to the claimant.

Section 24B allows the Court to declare in relation to a claim for a declaration, that money in an amount specified is not due or owing by the claimant.

Section 24C provides that the Court may, on the application of the defendant, order that the judgment debt be paid by instalments. While such an order remains in force it is to operate as a stay of enforcement of the judgment. However, where the defendant fails to make a payment the order ceases to be in force and, unless the Court otherwise orders, the judgment may then be enforced.

Section 23 amends section 25 of the Principal Ordinance to provide that, except with the leave of the Court and in accordance with such terms as to costs as the Court may impose, a claimant who discontinues proceedings, or whose claim is dismissed for failure to attend a conference or an inquiry, is barred from instituting new proceedings for the same cause or matter.

Section 24 inserts new sections 25A, 25B and 25C into the Principal Ordinance.

Section 25A provides that at any time before final judgment in proceedings, the plaintiff and the defendant may enter into an agreement as to the judgment to be entered. Where such an agreement is entered into the Clerk is required to enter judgment in accordance with the agreement. Where the agreement provides for payment of a judgment debt by

instalments the Clerk is required to order that the debt be paid by the agreed instalments.

Section 25B empowers the Clerk to make an order which is consented to by all the parties and by any other person required to comply with or affected by the order (other than an order relating to a person under disability).

Section 25C provides that the Court may review any order, direction or other act of the Clerk in proceedings.

Section 25 amends section 30 of the Principal Ordinance to make it clear that the Court's power of amendment may be exercised at any time and either of its own motion or on the application of a party.

Section 26 amends section 31 of the Principal Ordinance to provide, in effect, that the Court may not set aside judgments or orders made where both parties have appeared at the inquiry. It also empowers the Court to award costs where an application to set aside a judgment or order is dismissed (as well as where such an application is granted).

Section 27 amends section 32 of the Principal Ordinance to apply Part III of the Ordinance (Appeals) to all orders made by the Court.

Section 28 amends section 33 of the Principal Ordinance as a consequence of the new definition of the Court in section 4.

Section 29 amends section 34 of the Principal Ordinance to empower the Supreme Court to extend the time for bringing an appeal.

Section 30 repeals section 38 of the Principal Ordinance and substitutes a new section which, in line with recent

amendments to the Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982, abolishes the requirement that an appellant lodge \$40 as security for costs before instituting an appeal. The power of the Court to order security for costs in particular cases is retained.

Section 31 amends section 41 of the Principal Ordinance as a consequence of the new definition of the Court in section 4.

Section 32 amends section 43 of the Principal Ordinance to make the payment out of money received by the Clerk under the section subject to the provisions of new section 43A.

Section 33 inserts a new section 43A into the Principal Ordinance to provide that where under a judgment or order a party in proceedings is required to pay money into Court and another party is required to take steps to rectify a defect in goods or services, the money paid into Court shall not be paid out until the other party takes those steps or unless the Court otherwise orders.

Section 34 inserts new sections 44A, 44B, 44C and 44D into the Principal Ordinance.

Section 44A provides that Part XI of the Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982 (which deals with persons under disability) applies in relation to a defendant in proceedings under the Principal Ordinance.

Section 44B empowers the Clerk to reject defective documents lodged for filing.

Section 44C applies section 306A of the Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982 to a register of the Small Claims Court that contains details of

default judgments in small claims actions and orders setting aside such judgments. Section 306A gives any person an entitlement, on payment of the prescribed fee, to inspect any register of the court of Petty Sessions containing such details . Section 44D empowers the Court, on such terms as it thinks just, to restore proceedings struck out under the Principal Ordinance.

Section 35 amends Section 46 of the Principal Ordinance consequent upon the insertion of new section 44C.

Section 36 amends the Schedule to the Principal Ordinance by amending current forms and substituting and inserting new forms to give effect to the amendments to be made by the Ordinance.

Authorized by the
Attorney-General

45/84