

AUSTRALIAN CAPITAL TERRITORY

EXPLANATORY STATEMENT

COURT OF PETTY SESSIONS (AMENDMENT) ORDINANCE (NO. 3) 1985

No. 41 of 1985

The Ordinance is complementary to the Crimes (Amendment) Ordinance (No.3) 1985 which, among other matters, inserts a new section 477 in the Crimes Act 1900 of New South Wales in its application to the Territory ('the Crimes Act') to extend the summary jurisdiction of the Court of Petty Sessions in relation to certain indictable offences.

Consequent upon the insertion of new section 477 in the Crimes Act, the Ordinance amends the Court of Petty Sessions Ordinance 1930 ('the Principal Ordinance') to provide for an appeal to the Supreme Court by way of order to review from a decision of the Court of Petty Sessions:

- (a) to dispose of a case summarily pursuant to new section 477 of the Crimes Act; and
- (b) not to commit a person, following a committal hearing, to the Supreme Court for sentence pursuant to section 92A of the Principal Ordinance.

The provision of this right of appeal is designed to ensure that, where a person is charged with an indictable offence and the circumstances of the particular case are serious, it may be dealt with by the Supreme Court on committal either for trial or for sentence. The Supreme Court has a much wider range of penalties available to it for serious cases than the Court of Petty Sessions which cannot impose a sentence greater than 2 years imprisonment where an indictable offence is dealt with summarily.

The Ordinance also makes it clear that under the Principal Ordinance an appeal, whether by way of order to review or otherwise, lies to the Supreme Court from a conviction,

sentence or penalty entered or made by the Court of Petty Sessions where an indictable offence is dealt with summarily pursuant to new section 477 of the Crimes Act.

Summary disposal of certain cases

Before an indictable offence can be dealt with summarily under new section 477 of the Crimes Act, the Court of Petty Sessions is required to form the opinion that the case can properly be disposed of summarily. In forming such an opinion, the Court is required to have regard to certain criteria, including any relevant representations made by the defendant and the prosecutor and, if the defendant were to be found guilty, whether the Court of Petty Sessions is empowered to impose an adequate penalty having regard to the circumstances and, in particular, to the degree of seriousness of the case.

The Ordinance empowers an informant, where the Court of Petty Sessions decides to dispose of the case summarily, to seek a review of the Court's decision in the Supreme Court. If the decision is quashed by the Supreme Court the Court of Petty Sessions will be required to continue the committal proceedings. This will result, if the defendant pleads guilty, in committal for sentence in the Supreme Court or, if there is no plea of guilty and a prima facie case against the defendant is established, committal for trial in the Supreme Court.

Committal for sentence

Under section 92A of the Principal Ordinance the Court of Petty Sessions may, where it appears that by reason of the character and antecedents of a person summarily convicted of an indictable offence it is desirable that sentence be passed by the Supreme Court, commit that person for sentence. The Ordinance permits an informant to seek a review of a

decision of the Court of Petty Sessions not to commit the defendant for sentence. If the Supreme Court quashes the decision, the Court of Petty Sessions will be required to commit the defendant to the Supreme Court for sentence.

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. 3) 1985.

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

Section 3 defines "Crimes Act" to mean the Crimes Act of N.S.W. as it applies in the A.C.T. and amends sub-section 5(2) of the Principal Ordinance consequent upon the amendment of sub-section 92(1) of the Principal Ordinance in section 6.

Section 4 amends section 54A of the Principal Ordinance consequent upon the amendment of sub-section 92(1) of the Principal Ordinance in section 6.

Section 5 amends section 90A (which provides for a plea of guilty in committal proceedings) to exclude the operation of the provisions of that section relating to taking a plea of guilty where a person is charged with an offence to which new section 477 of the Crimes Act applies. Section 477 provides its own code for receiving a plea of guilty for such an offence.

Section 6 amends sub-section 92(1) of the Principal Ordinance by, in effect, deleting paragraph 92(1)(i). That paragraph contained provisions allowing a Magistrate, where the evidence for the prosecution established a prima facie case against an accused person in committal proceedings, to dispose of the case summarily in certain circumstances. The provisions of this paragraph are superseded by new section 477 of the Crimes Act.

The Section also inserts a new sub-section 92(1A) in the Principal Ordinance to provide that section 92 of the Principal Ordinance (which relates to committal proceedings) does not apply where an indictable offence is to be disposed of summarily pursuant to new section 477 of the Crimes Act.

Section 7 inserts a new section 92B in the Principal Ordinance to allow evidence given in committal proceedings to be received as evidence given on the hearing of an indictable offence summarily. A similar provision was contained in a proviso to paragraph 92(1)(i) of the Principal Ordinance which is repealed by the deletion of the paragraph by section 6. The provision will, however, still be relevant where jurisdiction is exercised under new section 477 of the Crimes Act and it is re-inserted in the Principal Ordinance by new section 92B.

Section 8 amends section 106 of the Principal Ordinance consequent upon the deletion of paragraph 92(1)(i) of the Principal Ordinance by section 6.

Section 9 inserts a new section 108A in the Principal Ordinance to make it clear that, where the Court of Petty Sessions hears an indictable offence summarily, the provisions of the Principal Ordinance dealing with proceedings in cases of offences punishable summarily apply, as far as is applicable, to the summary disposal of the case.

Section 10 amends sub-section 188(2) of the Principal Ordinance to increase from \$2,000 to \$5,000 the amount of the fine that the Court of Petty Sessions may impose where, apart from the sub-section, it only has power to impose imprisonment for an offence punishable summarily. The sub-section allows the Court to impose a fine rather than imprisonment where it considers that the justice of the case will be better met by the imposition of a fine. The maximum fine of \$5,000 is the maximum fine that the Court may impose where an offence is dealt with summarily under new section 477 of the Crimes Act.

Section 11 amends section 208 of the Principal Ordinance (which relates to appeals to the Supreme Court) to provide for an appeal from a conviction, sentence or penalty entered or imposed by the Court of Petty Sessions in respect of an indictable offence dealt with summarily by the Court of Petty Sessions under new section 477 of the Crimes Act.

Section 12 amends section 219B of the Principal Ordinance to provide that an appeal by way of order to review lies from a decision of the Court of Petty Sessions not to commit a person to the Supreme Court for sentence pursuant to section 92A of the Principal Ordinance and a decision to dispose of a case summarily pursuant to new section 477 of the Crimes Act. Provision is also made for an appeal by way of order to review from a conviction or order entered or made by the Court of Petty Sessions in the summary disposal of an indictable offence pursuant to new section 477 of the Crimes Act.

Section 13 amends section 219C to provide that an appeal is to be brought by the informant within 21 days of a decision of the Court of Petty Sessions not to commit a person to the Supreme Court for sentence pursuant to section 92A of the Principal Ordinance and a decision to dispose of the case summarily pursuant to new section 477 of the Crime Act. The Supreme Court is empowered to review the decision of the Court of Petty Sessions on the ground that, in the circumstances of the case, the decision not to commit for sentence or to dispose of the case summarily should not have been made.

Section 14 amends section 219D of the Principal Ordinance to provide for a stay of proceedings in the Court of Petty Sessions and a stay of the execution or enforcement of a decision of that Court pending the hearing of the appeal.

Section 15 amends section 219F of the Principal Ordinance to empower the Supreme Court, where it sets aside a decision of the Court of Petty Sessions not to commit a person for

sentence, to order that the person be committed to the Supreme Court for sentence. Where it sets aside a decision of the Court of Petty Sessions to deal with the case summarily the Supreme Court is empowered to order that the Court of Petty Sessions continue the preliminary examination of the person concerned in accordance with the relevant provisions of the Principal Ordinance.

Authorised by the
Attorney-General

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