

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

No. 62 of 1984

COURT OF PETTY SESSIONS (AMENDMENT) ORDINANCE (NO.5) 1984

This Ordinance amends the Court of Petty Sessions Ordinance 1930 ('the Principal Ordinance') to make provision for the apprehension of absconding appellants.

The Principal Ordinance permits a defendant in a criminal matter to appeal to the A.C.T. Supreme Court from a decision of the Court of Petty Sessions. Where such an appeal is lodged, the Principal Ordinance provides for a stay of execution pending the outcome of the appeal.

Where an appellant is in custody following the decision of the Court of Petty Sessions appealed against, the Principal Ordinance permits a Magistrate to release the appellant from custody pending the determination of the appeal, upon his entering into a recognizance with or without sureties.

Some appellants have taken advantage of their release from custody under this provision to leave the jurisdiction and not prosecute the appeal as required by the conditions of the recognizance entered into upon their release.

The Principal Ordinance was deficient in that it made no provision for the apprehension of an appellant released from custody pending an appeal who had breached the condition of the recognizance that he appear before the Supreme Court and prosecute the appeal. The Ordinance will remedy this defect. It is based on the sections of the Principal Ordinance which

provide for the apprehension of a defendant released from custody on a recognizance pending the hearing of a criminal matter in the Court of Petty Sessions.

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.5) 1984.

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

Section 3 amends the definition of 'Judge' in sub-section 5(1) of the Principal Ordinance to take account of the fact that there is now more than one Judge of the A.C.T. Supreme Court.

Section 4 makes a consequential amendment to sub-section 80(1) of the Principal Ordinance to exclude that sub-section's operation in relation to failure to comply with a condition of a recognizance entered into by an appellant. This latter aspect is dealt with separately in the Ordinance (see new section 219K and section 7).

Section 5 amends section 216 of the Principal Ordinance to specify the conditions that must be included in a recognizance entered into by an appellant upon being released from custody. With one exception, the conditions are substantially those contained in the form of recognizance on appeal (Form 32) in the First Schedule to the Principal Ordinance.

Section 6 inserts a new Division 3A (sections 219G to 219L) entitled 'Absconding Appellants' in the Principal Ordinance.

New section 219G contains interpretation provisions for the purposes of the new Division.

Where a Magistrate or Judge is satisfied by the oath of a police officer or surety that an appellant has failed to appear, or that there are reasonable grounds for believing that an appellant will not appear, before the Supreme Court and prosecute the appeal in compliance with a condition of the recognizance entered into by the appellant, the Magistrate or Judge may issue a warrant for the apprehension of the appellant and for bringing him before the appropriate court. The appellant must be brought before the court as soon as practicable after he is taken into custody (new section 219H).

Where an appellant is brought before the court the Magistrate or Judge constituting the court may remand the appellant in custody pending the hearing of the appeal or discharge him upon his entering into a new recognizance (new section 219J).

Where a condition of a recognizance has been breached the Magistrate or Judge constituting the court is required, where an appellant is brought before the court, to endorse a memorandum on the recognizance stating that the appellant has failed to comply with a specified condition of the recognizance (new section 219K).

The stay of execution of the decision of the Court of Petty Sessions provided for under the Principal Ordinance is not affected by any action taken or anything done under the provisions of the new Division (new section 219L).

Section 7 repeals section 220 of the Principal Ordinance and inserts a new section 220 to provide that where a memorandum is endorsed on a recognizance by a Magistrate or Judge (see new section 219K above) the recognizance is thereby forfeited and may be enforced under the relevant provisions of the Principal Ordinance.

Section 8 makes consequential amendments to Form 32 (the form of recognizance on appeal) in the First Schedule to the Principal Ordinance to bring the conditions specified in that form into line with the conditions specified in amended section 216 of the Principal Ordinance.

Authorised by the Attorney-General

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