

EXPLANATORY STATEMENT  
AUSTRALIAN CAPITAL TERRITORY  
COURT OF PETTY SESSIONS (CIVIL JURISDICTION) (AMENDMENT)

ORDINANCE (No.2) 1984

No. 77 of 1984

The principal purpose of this Ordinance is to amend the Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982 ('the Principal Ordinance') to allow any person to inspect a register of default judgments maintained by the Court of Petty Sessions. A default judgment is entered by the Court where a claim for debt is not defended. Similar provision is also made for the inspection of the register in relation to an order of the Court setting aside a default judgment.

The opportunity has also been taken to include in the Ordinance amendments designed to rectify two technical defects in the Principal Ordinance relating to when a defence may be filed and when summary judgment may be given.

The right of any person to inspect records of default judgments has been endorsed by the Chief Justice of the A.C.T. Supreme Court, the A.C.T. Magistrates and the Law Society.

Subject to certain exceptions (not relevant for present purposes) Supreme Court files were already open for inspection. However, Court of Petty Sessions files are not open for public inspection. Non-parties may obtain a copy of relevant documents if they satisfy a Magistrate or the Clerk that they have a good reason for applying.

Default judgments entered in the Court of Petty Sessions are a matter of public record and as a matter of principle, should, as is the case with Court hearings, be open to the

public for inspection. There is a right of public access to details of default judgments in most of the States. Such access was recommended in a Report of the Victorian Parliament's Statute Law Revision Committee on the Publication of Lists of Writs and Summonses.

One consequence of the amendments is that credit bureaus will have access to court records and so will be able to obtain more accurate and timely information.

In its recent Report on Privacy, the Law Reform Commission commented favourably on credit bureaus and their operation. It said: "Properly conducted credit bureaus serve an important and useful function in society. Credit bureaus do provide essential information which assists creditors in assessing credit applications and which helps to reduce the risk of bad debts, with consequent savings to credit grantors and to their other customers. There is a benefit to many applicants for credit who may be helped to avoid the damages of over-commitment". The Commission considered that credit bureaus in Australia, including those operating in the A.C.T., have developed very detailed information - handling systems which serve to protect the privacy of the persons about whom they hold information, and the trade interests of the bureaus in that information.

The Commission said that 'many of the problems in credit reporting seem to come from the information practices of credit grantors rather than of bureaus'. The Commission noted that credit bureaus are dependent upon information provided by credit grantors and that failures by credit grantors to up-date

Public access to court records both of default judgments and of orders setting aside judgments would therefore provide a more reliable and accurate source of information to credit bureaus.

Details of the Ordinance are as follows: -

Section 1 provides that the Ordinance may be cited as the Court of Petty Sessions (Civil Jurisdiction) (Amendment) Ordinance (No. 2) 1984.

Section 2 provides that the Ordinance shall come into operation on such date as is fixed by the Minister of State for Territories and Local Government by notice in the Gazette.

Section 3 defines the 'Principal Ordinance' to mean the Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982.

Section 4 amends sub-section 35(1) of the Principal Ordinance by removing the reference to interlocutory judgments. This corrects a technical error in the Principal Ordinance and removes a conflict between that sub-section and section 39 (which deals with interlocutory judgments) of the Principal Ordinance.

Section 5 amends sub-section 136(1) of the Principal Ordinance by deleting the reference in that sub-section to a defendant in proceedings having filed a notice of grounds of defence. The inclusion of these words in the Principal Ordinance has unduly restricted the operation of the section (which provides for summary judgment on the application of

the plaintiff). It is not appropriate to restrict the right to apply for summary judgment to circumstances where the defendant has filed a notice of grounds of defence.

Section 6 inserts a new section 306A in the Principal Ordinance to give any person an entitlement on payment of the prescribed fee to inspect any register of the Court, part of such register or documents therein containing particulars of default judgments or of the setting aside of a judgment.

Authorised by the Attorney-General