

## EXPLANATORY STATEMENT

### AUSTRALIAN CAPITAL TERRITORY

#### SMALL CLAIMS (AMENDMENT) ORDINANCE 1982

No. 55 of 1982

The purpose of this Ordinance is to amend the Small Claims Ordinance 1974 to increase the monetary limitation to the jurisdiction of the A.C.T. Court of Petty Sessions in small claims and to make consequential amendments to the Ordinance to coincide with the introduction of the Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982.

In view of the increase in the monetary limit to the jurisdiction of the Court to \$10,000 (under the Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982), this Ordinance increases the jurisdiction in small claims to \$2,000 (from \$1,000).

The Small Claims Ordinance 1974 ('the principal Ordinance'), which relates to the procedure to be followed in the Court of Petty Sessions for small claims, contains a number of references to the provisions of the Court of Petty Sessions Ordinance 1930 ('the old Ordinance'). Upon the coming into force of the Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982 ('the new Ordinance'), these references will be amended to refer to the relevant provisions of the new Ordinance.

It is proposed that the Small Claims (Amendment) Ordinance 1982 and the new Ordinance will come into operation on the same day.

- Section 1 is the short title.
- Section 2 provides for the commencement of the Ordinance.
- Section 3 defines the 'principal Ordinance'.
- Section 4 amends the interpretation section of the principal Ordinance by substituting references to the new Ordinance for those to the old Ordinance.
- Section 5 amends the jurisdictional provisions of the principal Ordinance by applying the civil jurisdiction vested in the Court of Petty Sessions under Part II of the new Ordinance to small claims, subject to a monetary limit of \$2,000.
- Section 6 amends section 5 of the principal Ordinance to enable the Court to grant relief in all actions for nuisance (not just nuisance caused by noise as provided in section 5 at present) and increases the penalty in section 5 for failure to comply with an

order of the Court in an action for nuisance from \$100 to \$500. This increase accords with that provided in the comparable provision in the new Ordinance.

- Section 7 omits section 7 (2) of the principal Ordinance referring to sections 134A and 134B of the old Ordinance (which relate to approval of settlement of an action by an infant and money recovered by an infant, respectively) and substitutes for it a new sub-section referring to the comparable provisions in the new Ordinance.
- Sections 8 and 9 amend sections 8 and 17 of the principal Ordinance consequential on the increase in the small claims monetary jurisdiction from \$1,000 to \$2,000.
- Sections 10 to 15 amend sections 20, 22, 23, 24, 26 and 29, respectively, of the principal Ordinance to substitute references to the provisions and procedures under the new Ordinance for references to provisions and procedures under the old Ordinance.
- Section 16 amends section 31 of the principal Ordinance to permit the Court to set aside a judgment or order where it appears to the Court that a claim which was served by post did not come to the knowledge of the defendant within a reasonable time.
- Sections 17 and 18 amend sections 41 and 46, respectively, of the principal Ordinance to substitute references to the provisions and procedures under the new Ordinance for references to provisions and procedures under the old Ordinance.
- Section 19 amends section 48 of the principal Ordinance to permit service of documents by the Clerk by ordinary post instead of by certified mail. This reflects similar provisions in the new Ordinance.
- Section 20 amends section 49 of the principal Ordinance, which relates to proof of service, consequent upon the amendment permitting service by ordinary post.
- Section 21 inserts a new section 50 in the principal Ordinance to enable the Court to adjourn or strike out proceedings or order that a document be re-served on a party where the service of the document was other than personal service and where it is satisfied that the document did not come, or that doubt exists whether the document came, to the knowledge of that party within a reasonable time.
- Section 22 amends the Schedule to the principal Ordinance by prescribing two additional forms relating to service by ordinary post.

Section 23 is a transitional provision under which claims brought under the principal Ordinance before the amending Ordinance comes into operation may be continued and determined under the principal Ordinance as though the amendments had not been made.

83/81

Authorized by the Attorney-General