

EXPLANATORY STATEMENT

No. 33 of 1979

Australian Capital Territory

Court of Petty Sessions (Amendment) Ordinance 1979

The main purpose of this Ordinance is to repeal and remake Part VIIA of the Court of Petty Sessions Ordinance 1930 which contains provisions relating to service and pleading by post with respect to certain offences. These provisions, introduced in 1974, have been found to be in need of general review. This Ordinance is the result of that review. Changes in the existing provisions are noted where they occur.

Section 1 is the short title.

Section 2 defines the expression 'Principal Ordinance' as the Court of Petty Sessions Ordinance 1930.

Section 3 makes amendments to section 23 consequential upon the revision of the service and pleading by post provisions.

Section 4 adds to section 38 of the Principal Ordinance a new paragraph (aa) relating to the contents of a summons which is transferred from section 40 of the Principal Ordinance.

Section 5 remakes sub-section 40(1) that now relates to the signature and contents of summonses. The provisions regarding contents of summonses have been removed by the amendment as, except for the amendment made by section 4, above, they are already contained in substance in section 38.

Section 6 amends section 42 of the Principal Ordinance to take account of the revised method of service of summonses under the service and pleading by post procedure.

Section 7 contains the repeal and remaking of Part VIIA of the Principal Ordinance - Service and Pleading by Post with respect to certain offences.

New Part VIIA - description of provisions

New Part VIIA comprises new sections 116A to 116I of the Principal Ordinance.

New section 116A is essentially the same as the existing section. As indicated in sub-section 116A(1), the service and pleading by post procedure applies to all but the most serious traffic offences.

New section 116B provides for the service of summonses under the revised procedure where the defendant is to be given the option of pleading by post. Service may be effected personally (paragraph (a)), by ordinary mail (paragraph (b)) or upon a person apparently over 16 years old and apparently resident or employed and the defendant's

place of residence or business respectively (paragraph (c)). In each case the defendant is to receive two copies of the summons with instructions to the defendant with regard to his options on the back of one copy and pleading forms on the back of the other copy. At present postal service is by certified mail and separate notices are served. This is potentially confusing for the defendant and administratively costly and cumbersome.

New sections 116C, 116D, 116E and 116F are essentially the same as the existing sections with respect to proof of service and related matters, pleading and the procedure upon entry of pleas.

New section 116G makes some changes to the procedure where the defendant does not return a written plea of guilty or does not attend in person before the Court when the case is heard. The purpose of the amendments is to facilitate the determination of the matter by the Court in the absence of the defendant. The Court will be permitted to decide the case upon matters alleged in the documents if those matters constitute the offence charged. This position is intended under present section 116G but it has been felt necessary to clarify the drafting of that section.

New section 116H deals with the restrictions on the Court with respect to imposition of penalties. It repeals the existing provision under which the Court is not to impose a penalty of imprisonment or suspend or cancel a driving licence and is not to have regard to previous convictions. These provisions are replaced by one permitting the Court to impose a penalty of imprisonment provided that the defendant appears or is legally represented at the hearing. The removal of the other restrictions will allow the Court to suspend or cancel a driving licence and to have regard to previous convictions as it already may do in cases not brought under Part VIIA. An appropriate warning regarding the use of previous convictions will be in the notice to the defendant on the back of the summons (Form 84, paragraph 5).

New section 116I replaces the existing provisions and simplifies the service of notice of conviction upon the defendant. It requires service of a notice by post, as does the present section, but the present requirement for personal service of a further notice, in the event of non-compliance with the order of the Court following service of the first notice, is removed. The protection given the defendants by the requirement for personal service is replaced by a new procedure with respect to the execution of warrants described below (section 9) which will retain the feature of personal notification.

Section 8 amends section 148 of the Principal Ordinance regarding time to pay consequentially upon the adoption of the new procedure for service of summons and notices under the proposed amendments.

Section 9 amends section 150 of the Principal Ordinance with respect to the issue of a warrant of commitment to prison where a fine is not paid. At present the warrant is not to be issued unless a written notice of the order of the Court has first been served personally upon the defendant under section 116I. This requirement has proved to be unsatisfactory as staff have not been available to serve notices of conviction and consequently many orders of the Court have not yet been enforced. The new provisions will permit the issue of a warrant but will not allow it to be executed, that

is the defendant will not be able to be taken into custody, unless a member of the Police Force has made a demand upon the defendant for payment of the fine and a period of 7 days has expired since that demand was made and the fine has not been paid in full. In essence the provision allows a defendant further time to pay or to consider his position. For example, the period of 7 days will allow a defendant who claims to have been unaware of the proceedings or of the order of the Court and who wishes to apply to have the order set aside to take steps to do so. In this respect defendants will be in a better position than those proceeded against under the normal procedures against whom a warrant of commitment may be issued and executed without prior notice of the Court's order.

Section 10 amends section 191 of the Principal Ordinance with respect to the establishment of remand centres. This is not related to the service and pleading by post procedure. It is an amendment that was overlooked when other amendments of the Ordinance relating to remand centres were made in 1976.

Section 11 amends section 256 of the Principal Ordinance consequent upon the renumbering of forms. It does not involve a change of substance.

Section 12 repeals and remakes the forms relating to the service and pleading by post procedure. The new form 84 - Notice to Defendant - has been drafted in terms that, it is considered, are more informative to the defendant. New form 85 combines existing forms 85 and 86 relating respectively to a plea of guilty and a defendant's explanation upon pleading guilty. New form 86 is the same as the existing form of notice of Intention to Defend, now numbered 87.

Section 13 contains application provisions consequent upon the change in procedures. Sub-section 13(1) defines summons so as to apply the section to summonses issued in respect of the prescribed traffic offences. Sub-section 13(2) provides that the repealed provisions of Part VIIA, except for section 116I, will continue to apply to matters commenced before the new provisions come into force. Sub-section 13(3) applies the new warrant procedure to convictions entered either before or after commencement of the amendments. Sub-section 13(4) provides that, in respect of a conviction entered before the commencement of the amending provisions, a warrant is not to be issued unless a further Notice of Conviction is served upon the defendant. Sub-section 13(5) permits that notice to be served by post. Sub-section 13(6) provides that section 116I as amended applies in respect of proceedings whether determined before or after the commencement of the amendments. The effect of this sub-section is that the new warrant enforcement procedures will apply to cases in which it has not been possible to enforce the order of the Court by reason of the inability to serve notices personally under existing section 116I.

Authorized by the Attorney-General.

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