

EXPLANATORY STATEMENT
AUSTRALIAN CAPITAL TERRITORY
MAGISTRATES COURT (CIVIL JURISDICTION)
COURT OF PETTY SESSIONS (CIVIL JURISDICTION)
ORDINANCE 1982

No. 54 of 1982

Introduction

The purpose of this Ordinance is to increase the civil jurisdiction of the A.C.T. Court of Petty Sessions to \$10,000 (from \$2,500) and to introduce a revised civil procedure for the Court.

The substantial increase in the monetary limit to the jurisdiction of the Court will not merely make an adjustment to that limit that is necessary due to inflation (since the time the limit was last adjusted in 1977) but will enable proceedings involving (in real terms) higher sums of money than previously to be brought before the Court. Since such proceedings would otherwise have to be brought in the A.C.T. Supreme Court, the bringing of such proceedings in the A.C.T. Court of Petty Sessions following the increase in the monetary limit will have two significant consequences. One is that the costs to the parties will be lower; the other is that the A.C.T. Supreme Court will be relieved of some of its workload.

The current civil jurisdiction and procedure of the Court are set out in the Court of Petty Sessions Ordinance 1930. The procedure has remained substantially unaltered since the Court's inception in that year. Under the Ordinance, the procedure is revised and expanded having regard, in particular, to the expected increase in complexity of the proceedings before the Court due to the increase in the monetary limit to its jurisdiction.

A large proportion of the provisions in the Ordinance contain rules of procedure for the regulation of proceedings in the Court. The procedures provided in the Ordinance reflect, in general, the more or less standard procedural rules in civil proceedings that have evolved over a long period and which are to be found in the procedural rules followed in the courts of the States when exercising comparable jurisdiction.

The procedures encompass simple debt recovery actions as well as complicated defended actions. Nevertheless, the obtaining of a judgment by default (in a simple debt recovery action) will be no more complex than under the current Ordinance, while in a defended action the range of procedures available will be similar to those available in the Supreme Court.

The Ordinance relates only to the Court's jurisdiction and procedure up to judgment. The provisions of the Court of Petty Sessions Ordinance relating to

appeals to the Supreme Court and enforcement of judgment debts will apply to judgments obtained under the new Ordinance (section 311). This is an interim measure only pending a complete review of those provisions. This approach has been adopted to enable the most pressing need, an increase in the Court's jurisdiction, to be met without additional delay.

Provision has been made, at least pending the review of the enforcement provisions in the Court of Petty Sessions Ordinance, for the registration, for the purposes of enforcement, of Petty Sessions' judgments in the Supreme Court, (section 230). This will expand the enforcement remedies available for judgments obtained in the Court.

Forms prescribed for the purposes of the Ordinance are to be found in the Schedule to the Ordinance.

The following is a broad description of the main features of the provisions of the Ordinance concerning proceedings brought in the Court. As most of the provisions contain detailed procedural rules, no attempt has been made to give a detailed description of each provision. However, the main headings of the procedures and the purpose served by the procedures are indicated. Important changes to the procedures, as well as new procedures, are also indicated.

Provisions of General Application

Application of the Ordinance: The Ordinance will apply to all civil proceedings in the Court of Petty Sessions other than proceedings under the Small Claims Ordinance 1974, the Child Welfare Ordinance 1957, the Workmen's Compensation Ordinance 1951 and the Maintenance Ordinance 1968 (section 4).

Jurisdiction: Jurisdiction is conferred on the Court to hear and determine a personal action at law, that is, an action in tort or in contract where the amount claimed does not exceed \$10,000 (section 5). Under the Ordinance the Court is empowered, for the first time, to grant equitable relief e.g., an injunction, in a matter that otherwise falls within its jurisdiction (section 6). The Court has been empowered to grant relief in all actions for nuisance (its current power in this regard relates only to actions for nuisance caused by noise) (section 8). Jurisdiction conferred on the Court under any other law in force in the Territory is not affected by the Ordinance (section 5).

Institution of Proceedings: Proceedings for debt or liquidated damages are commenced by a special claim or, in any other case, by an ordinary claim (section 16). Appeals or applications under other Ordinances in force in the Territory are instituted by means of an application to the Court (section 20).

Provision is made for the appointment of a next friend or guardian ad litem for a party where that party is a person under disability (Part XI).

Service: In addition to the usual methods of service, provision is made, for the first time, for service (by the Clerk of the Court) of a claim or an application by post (section 22). Where service is by post, provisions as to doubtful service (section 29)

and setting aside of judgments ([section 219](#)) have been included to protect the rights of defendants in the event of their not duly receiving the claim or application posted to them.

Judgment by default: Where a notice of grounds of defence to a special or ordinary claim is not filed by the defendant within 21 days after service of the claim, the plaintiff may, in relation to a special claim, have final judgment entered ([section 41](#)) or, in relation to an ordinary claim, have interlocutory judgment entered ([section 39](#)), against the defendant. Upon entry of interlocutory judgment of an ordinary claim, the matter will proceed to hearing only for the purpose of the assessment of the amount to be recovered by the plaintiff. The defendant will be given notice of the interlocutory judgment and the assessment hearing ([section 40](#)).

Provision has also been made for the entry of judgment against a defendant who confesses to the whole or part of the amount claimed by the plaintiff ([section 42](#)) and the entry of judgment with the agreement of the plaintiff and the defendant ([section 43](#)).

Provisions Applicable Mainly in the Case of Defended Proceedings

Defence: A special or ordinary claim may be defended by the defendant filing a notice of grounds of defence at any time before judgment has been entered against him ([section 35](#)). The defendant may include a cross-claim, that is, a claim he may have against the plaintiff, in his notice of grounds of defence ([section 46](#)). Provision has been made for the defendant to join a third party in the proceedings ([Part VIII](#)).

Preparation of case: [Part XII](#) – Pleadings and particulars and [Part XIII](#) – Interlocutory Matters contain provisions designed, in general, to enable each party to receive or obtain the necessary information to prepare his case and the evidence to support it in readiness for the hearing.

The primary role of provisions relating to pleadings and particulars is to define the issues which the parties wish the Court to determine, to state concisely the case which each party intends to rely on and to give notice of that case to the other party. [Part XIII](#) – Interlocutory Matters contains provisions allowing amendment of documents ([sections 124 to 135](#)), the joinder of additional parties ([section 140](#)) and summary judgment – where the plaintiff does not have a cause of action or the defendant has no defence ([sections 136 and 137](#)). Provisions are included in this Part concerning admissions of fact or the authenticity of documents ([section 154](#)) and, for the first time, interrogatories ([section 159](#)) and the discovery and inspection of documents ([sections 160 to 175](#)). The new provisions enable one party to obtain from another, before the hearing, information, evidence and facts relevant to the issues between them. This saves the cost of obtaining and proving this material at the hearing.

An application to the court in relation to any matter arising before the hearing is made by an interlocutory application ([section 121](#)).

Hearing: When both parties are ready for their case to be heard by the Court, they file a certificate of readiness for hearing and the Clerk will then arrange for setting the case down for hearing (section 176).

The procedures and powers of the Court at the hearing are contained in Part XIV and evidentiary provisions in Part XV.

Judgment: When the Court has completed the hearing of proceedings, it proceeds to determine the matter and is given a wide discretion as to the judgment or order it may give or make (section 214). Part XVI of the Ordinance includes a number of general provisions relating to judgments and orders of the Court. They include provisions empowering the Court to set aside a judgment or order given or entered in the absence of a party on the application of that party (section 219), providing (for the first time) interest on amounts due under judgments which are not paid within 21 days (section 228) and allowing the Court to order the payment of a judgment debt by instalments (section 229).

Costs: The Ordinance provides three means of determining costs in proceedings, namely, fixing by the Magistrate at the hearing (section 240), agreement between the parties (section 241), or taxation of costs by the Clerk (section 242). Provision has been made for the amount of costs to be allowed on taxation (sections 250 to 264) and procedures on taxation (sections 265 to 277). Provision has also been made (for the first time) for the Court to order the plaintiff to give security for costs (section 278).

Transfer of proceedings from or to Supreme Court: Provision is made in Part XIX for an application to be made to the Supreme Court for the transfer of proceedings in that court to the Court of Petty Sessions (for the first time) and for the transfer of proceedings from the Court of Petty Sessions to the Supreme Court. These provisions will enable proceedings to be transferred to whatever Court is appropriate to deal with them even if the proceedings were not started in that Court.

Miscellaneous Matters

Provision has been made in Part XIX for a number of miscellaneous matters in relation to proceedings brought in the Court. These include provisions relating to documents (sections 284 to 291), court fees (section 292), the hearing of applications by a Magistrate in chambers (sections 293 and 294), consent orders (section 295), solicitors (sections 297 to 300) and time (sections 301 to 303).

Authorized by the Attorney-General

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