

AUSTRALIAN CAPITAL TERRITORY

SMALL CLAIMS ORDINANCE 1974

EXPLANATORY MEMORANDUM

No. 6 of 1974

This Ordinance will provide an alternative procedure in the Court of Petty Sessions for the determination of civil actions for money and for nuisance caused by noise, ie. most of the matters in which the Court already has jurisdiction under sections 20 and 20A of the Court of Petty Sessions Ordinance 1930-1973. Claims to the property in, or possession of, goods – in respect of which the Court also has jurisdiction under section 20 – will, however, be excluded from the procedure.

2. The Ordinance is based upon the recommendations made by the Law Reform Commission of the Australian Capital Territory in its report on the Civil Procedure of the Court of Petty Sessions. The main features of the Ordinance are as follows.

3. No formal rules of procedure are laid down in the Ordinance and there is no provision for Rules of Court formalising a procedure. The Court is given power to adopt an appropriate procedure in each case which is to be such as to allow the proceedings to be dealt with expeditiously and with as little formality as possible (sub-section 11 (1) and (2)). If the procedure adopted is unfair the parties will have a right of appeal to the Supreme Court (paragraph 33 (b)).

4. Proceedings before the Court will take the form of an inquiry in which the magistrate is expected to assume a more active role than is usual in the adversary system of procedure (section 14). He is expected to seek the facts rather than hear the parties present their own cases with a minimum of activity from the Bench. This will in part be a result of the parties appearing personally rather than with legal representatives which, it is hoped, will occur. Parties will however, be permitted legal representation (section 42).

5. The Court will not be bound by the rules of evidence (section 12) and evidence will not be given on oath (section 13). Giving false testimony whether on oath or not is an offence under section 35 of the Crimes Act (Commonwealth).

6. A hearing will not be necessary in claims for money unless the defendant gives notice that he intends to defend the claim. In the absence of such a notice judgment will be entered by default (sub-section 10 (7)). There is provision for application to be made to the Court for a judgment to be set aside (section 31). A hearing will always be needed where a defendant gives notice of intention to defend or where the claim is for relief from nuisance by noise but if the defendant does not attend the case may proceed in his absence (section 16).

7. In appropriate cases the Court will be able to appoint an investigator to inquire into, and report to it upon, any question of fact arising in proceedings (section 27). It is anticipated that investigators will be persons having some expert knowledge regarding the subject matter of their investigation.

8. There will be no fees payable to the Court by the parties except for execution of a judgment (section 46).

9. There will be no orders for costs except in limited circumstances (section 29).

10. An officer of the Court will be available to assist persons with the institution of proceedings and to explain the procedures of the Court to them (section 44).

11. Documents in proceedings will be served by the Clerk of the Court (section 9).

12. The Ordinance will permit proceedings to be transferred from the small claims procedure to the ordinary procedure under the Court of Petty Sessions Ordinance (section 23) and vice versa (section 24).

13. Parties will have a right of appeal to the Supreme Court on the ground that the Magistrate's decision was wrong in law or that the procedure he adopted was unfair (section 32).