

AUSTRALIAN CAPITAL TERRITORY  
COURT OF PETTY SESSIONS ORDINANCE 1974  
CORONERS ORDINANCE 1974  
EXPLANATORY MEMORANDUM

I. Court of Petty Sessions Ordinance

The purpose of this Ordinance is to amend the Court of Petty Sessions Ordinance 1930-1973 as follows:

- to permit persons authorised by the Deputy Crown Solicitor to appear for the Crown in criminal proceedings (section 5 of the amending Ordinance),
- to require permanent retention of sound recordings of proceedings (section 7),
- to permit written statements to be admitted in evidence in committal proceedings (section 10),
- to allow the Court to commit a person for sentence by the Supreme Court where he has been convicted by the Court of Petty Sessions upon the trial of an indictable offence summarily (section 13),
- to allow service of summonses for certain offences and pleas in respect of those offences to be made by post (section 16),
- to repeal the provisions permitting an appeal by way of order to review from the dismissal of an information (section 19),
- to permit Magistrates to impose conditions on a grant of bail (section 22), and

- to make it clear that an application for cancellation of an order for forfeiture of a recognisance may be made to any Magistrate (section 23).

The other sections of the amending Ordinance make consequential amendments.

Appearances for the Crown in criminal proceedings

2. There is a discretion in the Court to allow a person other than the informant, his counsel or solicitor to appear for the Crown in criminal proceedings.
3. The prosecution of criminal proceedings before the Court, other than on a private information, is now conducted only by officers located in the Deputy Crown Solicitors office. The new section 27A in the principal Ordinance will enable these officers to appear as of right.

Retention of sound recordings of proceedings

4. Prior to its amendment by Ordinance No. 37 of 1972 section 60 of the principal Ordinance required sound recordings of proceedings in the Court to be kept permanently.
5. The 1972 amendment required written transcripts to be made of certain more important proceedings and the erasure after twelve months of all sound recordings of

proceedings. No such erasures have yet been made, the Senate Standing Committee on Regulations and Ordinances having considered the period of twelve months to be too short and an undertaking having been given to the Committee that the Ordinance would be further amended.

6. The amending Ordinance will restore the position existing before the 1972 amendment.

Written evidence in committal proceedings

7. Section 10 of the amending Ordinance will amend the principal Ordinance so as to permit written evidence for the prosecution to be admitted in proceedings upon a preliminary examination in the Court of Petty Sessions in respect of a charge for an indictable offence (commonly known as committal proceedings).

8. Where the prosecution wishes to use written evidence copies of the statements of evidence, a list and description of proposed exhibits and other relevant material are to be served upon the accused person at least 14 days (or a shorter period if allowed by the Court) before the committal proceedings are to be heard.

9. If the accused person wishes to cross-examine a witness whose evidence it is proposed to tender in writing he will be able to require the witness to attend to give oral evidence. Similarly, the Court and the prosecution will also be empowered to require the

attendance of such a witness.

10. The prosecution will not be obliged to use written statements of evidence, and when it does not do so, committal proceedings will be conducted as at present.

Committal for sentence upon summary conviction

11. Recent amendments to the Crimes Act 1900 of New South Wales in its application to the Australian Capital Territory, have increased the number of indictable offences that may be tried summarily in the Court of Petty Sessions. That draft Ordinance also enables the Magistrate to deal with a wider range of offences with the accused's consent; in this case the draft Ordinance increases the maximum penalties that may be imposed upon summary conviction.

12. It is anticipated that there will be cases in which a Magistrate tries such an offence summarily and convicts a defendant and thereafter it becomes apparent to him that the penalty that he has power to impose would be inadequate either because of the defendant's previous convictions, bad character or otherwise.

13. Section 13 of the amending Ordinance inserts a new section 92A in the principal Ordinance permitting a Magistrate to commit the convicted offender to the Supreme Court for sentence in these cases.

14. The effective result is that an accused person will have the option whether to be tried by Judge and Jury or to be tried summarily by the Magistrate without there being any implicit coercion to elect the second course in the knowledge that he cannot receive a greater sentence than the Magistrate can enforce. The Australian Legal Aid Office will be available to advise persons charged in the exercise of the option they have to make.

Service and Pleading by Post

15. Section 16 of the amending Ordinance inserts in the principal Ordinance a new Part VII providing for service and pleading by post.

16. The procedure will apply only to offences against the Motor Traffic Ordinance or the Traffic Ordinance for which a penalty of a fine of two hundred dollars or less, whether with or without any other penalty, is prescribed. This procedure will not replace the existing one and if the Crown wishes to allege a previous conviction the proposed new procedure will not be used.

17. The procedure will allow a summons for such an offence to be served either by certified mail or in the usual way and will allow to be served with the summons forms that will give the defendant the opportunity of pleading guilty or notifying his intention to

plead not guilty without attending Court on the return day.

18. If the defendant pleads guilty in writing the Court may convict him or it may decline to accept the plea of guilty. In the latter case, it is to adjourn the hearing and notify the defendant by post accordingly so as to enable him to attend in person if he wishes.

19. If the defendant gives notice of his intention to plead not guilty, the Court is to fix a time and place for the hearing and notify the defendant by post accordingly.

20. The defendant will in any case be able to attend Court on the return day and plead in person.

21. If the defendant does not plead, either in writing or by appearing in person, the Court may convict him if it is satisfied that the facts and circumstances set out in the summons constitute the offence charged. In these circumstances however, the defendant will have a right to have the conviction set aside and the case reheard upon application to the Court (new sub-section 23(3) in section 3 of the amending Ordinance).

22. Where the Court convicts a defendant under this procedure it will not be permitted to order a penalty of imprisonment (other than in default of

payment of a fine) or to suspend or cancel his driving licence.

Appeals from the dismissal of an information

23. Paragraph (a) of section 219B permits an informant to appeal by way of order to review to the Supreme Court from a decision of the Court of Petty Sessions dismissing an information.

24. Section 219F permits the Supreme Court, upon hearing the appeal, to confirm the decision of the Court of Petty Sessions or to set aside, quash, vary or amend that decision and in order to decide the appeal it may admit further evidence.

25. The objection can be taken that these provisions contravene the double jeopardy rule which is that a person should not have to stand trial more than once for the same offence. Section 19 of the amending Ordinance therefore, repeals paragraph (a) of section 219B of the principal Ordinance and sections 20 and 21 make consequential amendments to sections 219C and 219F.

Conditional bail

26. At present Magistrates have no power to impose conditions on a grant of bail and they therefore often have to refuse bail in circumstances in which they would permit it had they such a power. In these cases a defendant is obliged either to remain in custody or

apply to the Supreme Court which has a power to grant conditional bail.

27. Section 22 of the amending Ordinance therefore inserts a new Part XIII A in the principal Ordinance which will permit Magistrates to impose conditions on a grant of bail.

28. Where a person breaks or appears likely to break a condition of his bail, the Court may issue a warrant for his arrest.

#### Forfeiture of recognisance

29. Section 23 of the amending Ordinance remakes section 254 (enforcement of recognisances) to make it clear that it applies to recognisances containing conditions imposed under section 248A (sub-section 254 (1)) and also that an application for revocation or variation of an order forfeiting a recognisance need not be made to the Magistrate who made that order (sub-section 254 (6)).

#### II. Coroners Ordinance

30. This Ordinance amends section 33 of the Coroners Ordinance 1956-1973 so as to permit a Coroner to release a person on conditional bail where, at an inquest, the Coroner is satisfied that a prima facie case has been established against the person for an indictable offence.