

No. 56 of 1977

AN ORDINANCE

To amend the *Court of Petty Sessions Ordinance 1930*

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated this fourth day of October 1977.

JOHN R. KERR
Governor-General

By His Excellency's Command,

P. DURACK
Attorney-General

COURT OF PETTY SESSIONS (AMENDMENT) ORDINANCE (No. 3) 1977

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| 1. This Ordinance may be cited as the <i>Court of Petty Sessions (Amendment) Ordinance (No. 3) 1977</i> .* | Short title |
| 2. In this Ordinance, "Principal Ordinance" means the <i>Court of Petty Sessions Ordinance 1930</i> .† | Principal Ordinance |
| 3. Section 70 of the Principal Ordinance is amended by omitting "a charge of" and substituting "a person alleged to have committed". | Remand of defendant |
| 4. Section 87 of the Principal Ordinance is amended by inserting "to give evidence or produce documents" after "attendance". | Witnesses to attend adjourned sittings |
| 5. Section 89 of the Principal Ordinance is amended— | Disobedience of summons |
| (a) by omitting "charged with an indictable offence" and substituting "who is alleged to have committed an indictable offence and"; and | |
| (b) by omitting "may issue its warrant" and substituting "may, unless his attendance is excused under section 89A, issue its warrant". | |
| 6. After section 89 of the Principal Ordinance the following section is inserted: | |

* Notified in the *Commonwealth of Australia Gazette* on 6 October 1977.

† Ordinance No. 21, 1930 as amended. For references to amending Ordinances made before 1977, see footnote † to Ordinance No. 4, 1977. For amendments made during 1977 see Ordinances Nos. 4 and 34, 1977.

Accused person may be excused from attendance during preliminary examination

“ 89A. (1) Subject to this section, a person alleged to have committed an indictable offence shall be present during the preliminary examination.

“ (2) Sub-section (3) applies to and in relation to an accused person—

- (a) against whom a summons but no warrant has been issued; or
- (b) who has been arrested, with or without a warrant, and discharged upon his entering into a recognisance.

“ (3) Subject to this section the Court may, on an application made by or on behalf of an accused person to whom this sub-section applies, by order excuse the person from attendance or further attendance before the Court in connexion with the preliminary examination.

“ (4) An application for an order under sub-section (3) may be made at any time before or during the taking of evidence for the prosecution.

“ (5) The Court shall not make an order under sub-section (3) unless it is satisfied that the accused person will be represented by counsel or solicitor while he is absent during the preliminary examination.

“ (6) The Court may, at any time during the preliminary examination, direct the informant to give to an accused person who has been excused from attendance under sub-section (3) a notice requiring him to attend during the preliminary examination at such time and place as are specified in the notice, and the accused person shall attend accordingly.

“ (7) Where—

- (a) an accused person is excused from attendance under sub-section (3); and
- (b) after all the evidence for the prosecution has been taken, the Court is of the opinion that the evidence has established a *prima facie* case against the accused person in respect of an indictable offence,

the Court shall direct the informant to give to the accused person a notice requiring him to attend, at such time and place as are specified in the notice, to be dealt with in accordance with section 92, and the accused person shall attend accordingly.

“ (8) A notice under sub-section (6) or (7) may be given to the accused person by delivering a copy of the notice to him or by leaving a copy of the notice at his last-known or usual place of abode or business with a person who is apparently an inmate of, or employed at, that place and apparently over the age of 16 years.

“ (9) The giving of a notice under sub-section (6) or (7) may be proved in the same manner as the service of a summons.

“(10) If an accused person does not attend in accordance with a notice under sub-section (6) or (7), the Court may issue a warrant for the arrest of the accused person and for bringing him before the Court at such time and place as are specified in the warrant.

“(11) Where—

- (a) an accused person has been discharged from custody upon his entering into a recognisance;
- (b) the person is excused, under sub-section (3), from attending before the Court at the time and place specified in the recognisance; and
- (c) the person does not appear at that time and place,

the person shall not be taken to have failed to comply with a condition of the recognisance by reason only of the fact that he does not so appear, and the recognisance continues to have effect, during the period for which he is excused, in relation to any condition of the recognisance other than a condition requiring his appearance before the Court.”.

7. Section 90 of the Principal Ordinance is amended by omitting from sub-section (1) “is charged with an indictable offence” and substituting “is alleged to have committed an indictable offence”.

Procedure where informant proposes to tender written statements to Court

8. Section 90AA of the Principal Ordinance is amended by omitting from paragraph (9) (a) “or hearing of the accused person and, if the accused person so desires, in the presence or hearing” and substituting “of the accused person or”.

Written statements may be admitted in evidence

9. Section 90AB of the Principal Ordinance is amended—

- (a) by omitting “appears or is brought before the Court charged with” and substituting “is alleged to have committed”; and
- (b) by omitting “, in the presence or hearing of the accused person and, if the accused person so desires, in the presence or hearing of his counsel or solicitor,”.

Preliminary examination where written statements not tendered

10. Section 92 of the Principal Ordinance is amended by omitting from sub-paragraph (1) (ii) the words “Having heard the evidence do” and substituting the word “Do”.

Proceedings where evidence sufficient to put accused on trial

11. The First Schedule to the Principal Ordinance is amended—

- (a) by inserting after Form 14 the following Form:

First Schedule

FORM 14A

Warrant to apprehend defendant where a notice under section 89A is disobeyed

In the Court of Petty Sessions at Canberra.

To the Commissioner of Police at Canberra, in the Australian Capital Territory, and to all other Police Officers in the said Territory.

WHEREAS on the day of , 19 , an information was laid that A. B., [*&c., as in the summons or warrant*]; and whereas A. B. was excused from attendance under sub-section 89A (3): and whereas a notice under sub-section 89A (6) [*or 89A (7)*] was served on A. B. requiring A. B. to attend on the day of , 19 , at o'clock in the noon before the Court of Petty Sessions: and whereas it has been proved on oath that the notice was duly served on A. B.: and whereas A. B. neglected to attend at the time and place specified in the notice: These are therefore to command you, in Her Majesty's name, forthwith to apprehend A. B. and to bring [him] before the Court of Petty Sessions to be dealt with according to law.

Given under my hand, at Canberra, in the said Territory, this day of , 19 .

J. S

Clerk of Court of Petty Sessions *or* Magistrate

- (b) by omitting Form 33;
- (c) by omitting from Form 34 “ [*&c., as in the caption of the depositions*] ” and substituting “ [*describe the offence as in a warrant of commitment*] ”; and
- (d) by omitting from Form 34 “ in [his] presence the said A.B. is now addressed by the Court as follows:— ‘ Having heard the evidence, do ’ ” and substituting “ the said A.B. is now addressed by the Court as follows:— ‘ Do ’ ”.

Application

12. The Principal Ordinance, as amended by this Ordinance, applies to and in relation to—

- (a) a preliminary examination that commenced before the date of commencement of this Ordinance and is not completed on that date; and
- (b) a preliminary examination that commences *after* the date of commencement of this Ordinance.