



ANNO QUINTO

## ELIZABETHAE II REGINAE

A.D. 1956.

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### No. 57 of 1956.

An Act to amend the Justices Act, 1921-1943.

[Assented to 6th December, 1956.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

1. (1) This Act may be cited as the "Justices Act Amendment Act, 1956". Short titles.

(2) The Justices Act, 1921-1943, as amended by this Act, may be cited as the "Justices Act, 1921-1956".

(3) The Justices Act, 1921-1943, is hereinafter called "the principal Act".

2. This Act is incorporated with the principal Act and that Act and this Act shall be read as one Act. Incorporation.

3. Section 4 of the principal Act is amended by adding at the end thereof the following subsection (the preceding portion of section 4 being read as subsection (1) thereof) :— Amendment of principal Act, s. 4— Interpretation.

(2) A reference in the provisions of this Act other than Part VII to a solicitor shall be deemed to include a reference to a law clerk articulated to the solicitor and appearing on the solicitor's instructions.

Enactment of  
s. 69a of  
principal Act—

4. (1) The following section is enacted and inserted in Division III of Part IV of the principal Act after section 69 thereof :—

Examination  
of defendant.

69a. (1) Where the court has found proved the offence or other matter alleged in the complaint, the court may order that the defendant be examined by a physician, psychiatrist or psychologist directed by the court to conduct the examination and that the defendant submit to the examination.

(2) Before making any other order in respect of the defendant, the court may consider and act upon a report on the defendant prepared by the person who conducted the examination : Provided that before the order is made—

- (a) the contents of the report shall be made known to the defendant, or his counsel or solicitor, if the defendant or his counsel or solicitor so requests ;
- (b) the defendant, or his counsel or solicitor shall, if he so desires, be given an opportunity of cross-examining the person who prepared the report on the matters therein dealt with ;
- (c) the court shall, if so required by the defendant, or his counsel or solicitor, procure the attendance of that person before the court for cross-examination.

(3) For the purpose of enabling the defendant to be examined as mentioned in this section, the court may order that the defendant be taken to a suitable place for the examination.

(4) This section shall not apply where the defendant is a child under the age of eighteen years.

(2) Section 69a of the principal Act as enacted by this section shall apply whether the offence was or is committed or the matter arose or arises before or after the commencement of this Act.

Enactment of  
ss. 92a and 92b  
of principal  
Act—

5. (1) The following sections are enacted and inserted in the principal Act after section 92 thereof :—

New warrant  
where child  
attains 18  
before  
execution.

92a. (1) Where a justice is satisfied that—

- (a) a warrant or mandate has been issued committing a child under the age of eighteen years

to the custody and control of the Children's Welfare and Public Relief Board or to detention in an institution by reason of default in compliance with an order or judgment of a court of summary jurisdiction ;

(b) the child has attained the age of eighteen years ;  
and

(c) the warrant or mandate has not been executed,

the justice may withdraw the warrant or mandate and issue a warrant of commitment in place of the first-mentioned warrant or mandate.

(2) Notwithstanding anything contained in the order or judgment, the warrant of commitment so issued shall order such term of imprisonment as the justice deems proper, being a term of imprisonment which could have been ordered had the order or judgment been made in respect of a person who was at the time of the making of the order or judgment over the age of eighteen years.

92b. Where—

(a) a warrant or mandate committing a child under the age of eighteen years for any period to the custody and control of the Children's Welfare and Public Relief Board or to detention in an institution by reason of default in compliance with an order or judgment of a court of summary jurisdiction has been executed ; and

(b) the child attains the age of eighteen years before the expiration of the period,

notwithstanding anything contained in the Maintenance Act, 1926-1952, the child may be kept in the custody and under the control of the Children's Welfare and Public Relief Board or be detained in an institution for the remainder of the period, and the warrant or mandate shall be a sufficient authority for that purpose, notwithstanding that the child has attained the age of eighteen years.

(2) Sections 92a and 92b of the principal Act as enacted by this section shall apply in every case where after the commencement of this Act a child attains the age of eighteen years, whether the warrant or mandate was or is issued or executed before or after the commencement of this Act.

Child may be  
detained in  
institution,  
etc., after  
attaining 18.

Amendment of  
principal Act,  
s. 106a—

Power of  
justices to take  
plea of guilty  
without  
evidence.

6. Section 106a of the principal Act is amended by striking out the words "a minor indictable offence" in the third line of subsection (1) thereof and inserting in their place the words "an offence cognizable by a special magistrate or justices under section 120".

Amendment of  
principal Act,  
s. 108—

Evidence upon  
oath.

7. Section 108 of the principal Act is amended by adding at the end of subsection (2) thereof the following paragraph :—

The deposition of a witness may, if the justice so directs, be read over to the witness elsewhere than in the room in which the examination is taken.

Amendment of  
principal Act,  
s. 110—

Accused to be  
asked whether  
he desires to  
give evidence,  
etc.

8. Section 110 of the principal Act is amended by adding at the end of subsection (2) thereof the following paragraph :—

The statement or evidence of the defendant may, if the justice so directs, be read over to the defendant elsewhere than in the room in which the examination is taken.

Amendment of  
principal Act,  
s. 120—

Minor offences  
cognizable by  
justices.

9. (1) Section 120 of the principal Act is amended—

(a) by inserting after paragraph IIIa of subsection (1) thereof the following paragraph :—

IIIb. all felonies under sections 143, 150 and 152 of the Criminal Law Consolidation Act, 1935-1952, where the property stolen or cut, broken, thrown down or severed with intent to steal is of the value of five pounds or less :

(b) by inserting after paragraph (a) of subsection (2) thereof the following paragraph :—

(a1) any charge in respect of any offence mentioned in paragraph IIIb. of subsection (1) of this section where the property stolen or cut, broken, thrown down or severed with intent to steal does not exceed in value one hundred pounds :

(2) The amendments made to the principal Act by this section shall apply with respect to every offence committed whether before or after the commencement of this Act.

Amendment of  
principal Act,  
s. 123—

Duty of court  
to determine  
whether  
charge to be  
dealt with  
summarily.

10. Section 123 of the principal Act is amended by striking out subsection (3) thereof.

11. The following section is enacted and inserted in the principal Act after section 123 thereof :—

Enactment of  
s. 123a of  
principal Act—

123a. Where a child under the age of eighteen years is charged with an offence, nothing in this Division shall authorize the court to deal with the case in a summary way if the parent or guardian of the child objects to the offence being dealt with summarily.

Charge against  
a child.

12. Section 161 of the principal Act is amended—

Amendment of  
principal Act,  
s. 161—

(a) by striking out the word “five” in the second line of paragraph (a) of the proviso to subsection (1) thereof and inserting in its place the word “fifty” ;

Provision for  
summary trial  
of children.

(b) by striking out subsection (4) thereof and inserting in its place the following subsection :—

(4) This section shall not render any child punishable for any offence unless he is—

(a) above the age of eight years ; and

(b) of sufficient capacity to commit crime.

13. (1) The following section is enacted and inserted in Part V of the principal Act after section 161 thereof :—

Enactment of  
s. 161a of  
principal Act—

161a. (1) Where a child under the age of eighteen years is charged before a special magistrate or two or more justices with any indictable offence other than homicide, the child at any stage of the proceedings, and whether any statement has been taken from any witness or not, may plead guilty to the offence or any of the offences charged against him.

Power of  
justices to  
take plea of  
guilty from  
child without  
evidence.

(2) The magistrate or justices shall at the commencement of the proceedings inform the child of his right so to plead, and may if he or they think fit make a statement explaining the procedure under this section to the child.

(3) If the child pleads guilty to any such offence—

(a) the magistrate or justices shall, in relation to that offence, be a court of summary jurisdiction within the meaning of this Act ;

(b) the procedure and powers of the court shall be the same, and the provisions of this Act shall apply, as if the charge were a complaint for a simple offence under this Act ;

(c) sections 129, 130, 130a, 132, and 133 of this Act shall, so far as they are applicable, apply in respect of the offence: Provided that—

(i) where a fine is awarded the amount shall not in any case exceed fifty pounds;

(ii) in lieu of imprisonment the court shall apply the provisions of the Maintenance Act, 1926-1952; but

(d) the plea of guilty may be withdrawn as provided in subsection (4) of this section.

(4) If after the child has so pleaded guilty to an offence, the magistrate or justices, upon consideration of any facts stated by the prosecution or given in evidence, is or are of opinion that the time for taking the plea should be postponed—

(a) he or they may order that the plea of guilty be withdrawn;

(b) thereupon all further proceedings in respect of the offence shall be conducted in accordance with this Act;

(c) if any such further proceedings are taken the child shall not, by reason of his plea of guilty, be entitled to plead *autrefois convict*.

(5) Sections 106 and 161 of this Act shall be read subject to this section.

(2) Section 161a of the principal Act as enacted by this section shall apply whether the offence was or is committed before or after the commencement of this Act: Provided that a fine exceeding five pounds shall not be imposed where the offence was committed before the commencement of this Act.

Amendment of  
principal Act,  
s. 163—  
Right of  
appeal to  
Supreme Court  
in every other  
case unless  
expressly  
taken away.

14. Section 163 of the principal Act is amended—

(a) by inserting after the word “appeal” in the eleventh line of subsection (1) thereof, the figure and words “(i) subject to this proviso”;

(b) by adding at the end of subsection (1) thereof the following paragraphs:—

(ii) the day specified in the notice of appeal pursuant to subsection (1) of section 172 shall be a day fixed by the Registrar; and

(iii) subsection (3) of section 171 shall not apply.

(c) by inserting at the end of subsection (1) thereof the following subsection :—

(1a) Notwithstanding anything contained in section 46 of the Acts Interpretation Act, 1915-1949, there shall be no appeal to the Supreme Court from any order dismissing a charge of a minor indictable offence.

15. Section 167 of the principal Act is repealed.

Repeal of  
s. 167 of  
principal Act—  
Recognizances  
on appeal.

16. Section 168 of the principal Act is repealed and the following section enacted and inserted in its place :—

Repeal and  
re-enactment  
of s. 168 of  
principal Act—

168. (1) Where the appellant is in custody pursuant to the conviction or order appealed against, a special magistrate or any two justices may, subject to this section, if satisfied that his appeal has been duly instituted, release him upon his entering into a recognizance with or without sureties, conditioned for his appearance before the justices whose decision is appealed against, or if that is impracticable, before some other justice or justices, within fourteen days of the day on which the Supreme Court announces its decision on the appeal, to abide the result of the decision, unless the conviction or order is reversed.

Release of  
appellant in  
custody.

(2) The appellant shall give the respondent reasonable notice of his intention to apply for release.

(3) The respondent may object to the application for release.

(4) An appellant who has instituted his appeal and is not released pursuant to this section shall, pending the determination of his appeal and for so long as he is not in custody for some other cause, be treated in the same manner as a person who is committed for trial and is in custody awaiting trial.

If as a result of his appeal the appellant is required to serve a term of imprisonment, subject to the direction of the Supreme Court, the time during which the appellant is in custody and is specially treated shall count as part or the whole of that term.

17. Section 169 of the principal Act is repealed.

Repeal of  
s. 169 of  
principal Act—  
Amendment of  
recognizances  
on appeal.

Amendment of  
principal Act,  
s. 171—

Appeal to be  
instituted  
within one  
month.

**18.** Section 171 of the principal Act is amended—

(a) by striking out subsection (1) thereof and inserting in its place the following subsection :—

(1) Subject to subsection (3) of this section, the appeal shall be instituted by notice served in compliance with section 172, and payment of the fee mentioned therein.

(b) by adding at the end thereof the following subsection:—

(3) An appeal shall not be deemed to be duly instituted unless the day specified in the notice pursuant to subsection (1) of section 172 is the first commencing day after the expiration of twenty days from the service of the notice pursuant to subsection (2) of that section.

In this subsection “commencing day” means a day on which sittings of the Supreme Court for hearing appeals under this Act will in accordance with rules of the Supreme Court, if practicable, commence.

Repeal and  
re-enactment of  
ss. 172 and 173  
of principal  
Act—

Notice of  
appeal.

**19.** Sections 172 and 173 of the principal Act are repealed and the following sections enacted and inserted in their place :—

172. (1) The notice of appeal shall be in writing, and shall be served upon the respondent, and shall state—

(a) that the appellant appeals to the Supreme Court at the sittings thereof for hearing appeals under this Act commencing on a day specified in the notice in accordance with this subsection ; and

(b) the nature and grounds of the appeal.

The day specified in the notice shall be a day on which sittings of the Supreme Court for hearing appeals under this Act will in accordance with rules of the Supreme Court, if practicable, commence.

(2) Two copies of the notice of appeal shall be served upon the clerk of the justices whose decision is appealed against, and shall be accompanied by a fee of thirty shillings or such other fee as may be prescribed by rules of the Supreme Court.

Hearing of  
appeals.

173. An appeal shall unless it has been summarily dismissed be heard at the sittings of the Supreme Court for hearing appeals under this Act commencing on the day specified in the notice of appeal in accordance with subsection (1) of section 172, or, if sittings are not commenced



on that day, the first sittings commencing thereafter :  
 Provided that this section shall not affect the power of  
 the Supreme Court to adjourn the hearing.

20. Section 174 of the principal Act is amended by striking out the words "an appeal is instituted" in the first line of subsection (1) thereof and inserting in their place the words "notice of appeal is served pursuant to subsection (2) of section 172 and the fee mentioned therein is paid".

Amendment of principal Act, s. 174.—

Convictions, etc., to be transmitted to Supreme Court.

21. Section 175 of the principal Act is amended by inserting after the word "cause" in the first line thereof, the words "a copy of the notice of appeal, together with the fee paid pursuant to section 172 and".

Amendment of principal Act, s. 175—

Evidence to be sent to the Supreme Court.

22. Section 177 of the principal Act is amended by adding at the end thereof the following subsection :—

Amendment of principal Act, s. 177—

(3) The Supreme Court may upon such terms as it thinks fit at any time before the order of dismissal is drawn up and sealed re-instate any appeal dismissed for want of prosecution.

Procedure and power of Supreme Court on appeal.

23. Section 179 of the principal Act is amended by striking out all the words in subsection (1) thereof after the word "justices" in the fourth line of subsection (1) thereof.

Amendment of principal Act, s. 179.—

Enforcement of payment of costs of appeal.

24. Section 180 of the principal Act is repealed.

Repeal of s. 180 of principal Act—  
 Supreme Court may make rules for proceedings.

25. The principal Act as amended by sections 14 to 23 of this Act shall apply only with respect to convictions, orders or adjudications pronounced after the commencement of this Act.

Application of ss. 14 to 23.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

R. A. GEORGE, Governor.