



ANNO VICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1972

No. 7 of 1972

An Act to amend the Justices Act, 1921-1969.

[Assented to 23rd March, 1972]

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, 1972". Short titles.

(2) The Justices Act, 1921-1969, as amended by this Act, may be cited as the "Justices Act, 1921-1972".

(3) The Justices Act, 1921-1969, is hereinafter referred to as "the principal Act".

2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.

3. The following section is enacted and inserted in the principal Act immediately after section 39a thereof:— Enactment of s. 39b of principal Act—

39b. An apparently genuine document purporting to be a recognizance under this Act or the Offenders Probation Act, 1913, as amended, shall, upon production and without proof of any signature, be admitted before any court or justice as *prima facie* evidence of all matters recorded or stated therein. Proof of recognizance.

Enactment of
s. 62ba of
principal Act—

4. The following section is enacted and inserted in the principal Act immediately after section 62b thereof:—

Ex parte
proceedings
where
defendant
neither appears
nor returns
written plea
of guilty.

62ba. (1) Where in any proceedings under this Act—

(a) a complaint has been made by a member of the police force or a public officer within the meaning of section 57a of this Act;

and

(b) the defendant has been duly served with a summons but does not appear at the time and place appointed for the hearing or determination of the complaint or at a time and place at which the complaint is subsequently heard or determined, or, in the case of a complaint and summons served under section 57a of this Act, he neither so appears nor pleads guilty in the manner provided by that section,

the court may proceed *ex parte* to adjudicate upon the complaint in the manner provided by, and subject to the conditions in, section 62 of this Act, but may in so doing regard any allegation contained in the summons, or complaint and summons, (as served upon the defendant) as sufficient evidence of the matter alleged.

(2) Allegations are contained in a summons, or complaint and summons, for the purposes of subsection (1) of this section if they are contained in, annexed to, or accompany, the summons or complaint and summons.

(3) The allegations referred to in subsection (1) of this section may include particulars of the alleged offence and of the circumstances in which it is alleged to have been committed.

(4) Where a complaint purports to have been made by a member of the police force or a public officer within the meaning of section 57a of this Act, it shall be presumed to have been so made in the absence of proof to the contrary.

(5) The provisions of this section are supplementary to, and do not derogate from, any other statutory provisions regulating the hearing and determination of a complaint.

Amendment of
principal Act
s. 62c—
Ex parte
proceedings.

5. Section 62c of the principal Act is amended by striking out subsection (1) and inserting in lieu thereof the following subsection:—

(1) Where a defendant fails to appear in obedience to a summons and is convicted (whether upon a plea of guilty under section 57a of this Act or after an *ex parte* hearing) the court shall not impose upon the defendant—

(a) any disqualification from holding or obtaining a licence to drive a motor vehicle;

or

(b) any sentence of imprisonment (except a sentence that is conditional upon default being made in the payment of a fine),

unless the court has first adjourned the hearing of the complaint to a time and place appointed and stated by the court in order to enable the defendant to appear for the purpose of making submissions on the question of penalty.

6. The following section is enacted and inserted in the principal Act immediately after section 62c thereof:—

Enactment of s. 62d of principal Act—

62d. (1) Where a defendant is served, at least three days before the hearing of the complaint, with a notice signed by the complainant and—

Proof of previous conviction.

(a) stating particulars of any previous convictions of the defendant;

and

(b) stating that those particulars may be alleged against him at the hearing of the complaint,

the prosecutor may, after the court has convicted the defendant of the offence alleged in the complaint, tender a copy of the notice in evidence before the court.

(2) The court may regard an allegation contained in any such notice as sufficient evidence of the matter alleged.

7. Section 72 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of s. 72 of principal Act and enactment of section in its place—

72. (1) The clerk shall, upon receipt of a request in writing, accompanied by the appropriate fee, furnish in accordance with the request a copy, or copies of a complaint, depositions, conviction or order in any proceedings—

Copies of proceedings.

(a) to a party to the proceedings;

or

(b) to a person whom a special magistrate has certified to have a proper interest in the proceedings.

(2) A special magistrate may give a certificate for the purposes of subsection (1) of this section without formal proceedings after receipt of a request in writing for such a certificate and consideration of any matters upon which the request is based and any other relevant matters.

Repeal of
s. 81 of
principal Act
and enactment
of section in
its place—

Term of
imprisonment
in default of
payment of
fine.

8. Section 81 of the principal Act is repealed and the following section is enacted and inserted in its place:—

81. (1) The term of any imprisonment for the enforcement of, or in default of payment of any fine or sum adjudged to be paid by a conviction or order shall, in the absence of any express statutory provision to the contrary, be determined by the court imposing the term of imprisonment, or the court or justice issuing the warrant of commitment, subject to the provisions of this section.

(2) Subject to subsection (3) of this section, the term of imprisonment shall be determined within the following limits:—

(a) where the sum adjudged to be paid is ten dollars or less, the term of imprisonment shall not exceed one day;

(b) where the sum adjudged to be paid exceeds ten dollars the term of imprisonment shall not exceed a period arrived at on the basis of one day for each multiple of ten dollars constituting that sum and where it is not exactly divisible into multiples of ten dollars, a further day for any remainder.

(3) A term of imprisonment determined under this section shall not exceed six months.

Repeal of
s. 106 of
principal Act
and enactment
of section in
its place—
Examination
before justices.

9. Section 106 of the principal Act is repealed and the following section is enacted and inserted in its place:—

106. (1) Where a defendant appears before a justice charged upon an information with an indictable offence, the justice, before he commits the defendant to trial, or admits him to bail, shall, in the presence of the defendant, take the statements of witnesses for the prosecution.

(2) Where the statement of a witness for the prosecution has been reduced to writing and verified in accordance with subsection (3) of this section, and the written statement is submitted to the justice and a copy thereof has been received by the defendant or his counsel, the statement shall, for the purposes of this section, be deemed to have been duly taken by the justice.

(3) A written statement submitted under subsection (2) of this section must be verified by affidavit of the person by whom the statement was made.

(4) The relevance to the proceedings of any object tendered as an exhibit by the prosecutor may be proved for the purposes of those proceedings by affidavit.

(5) Where a written statement has been submitted pursuant to the provisions of this section, the justice shall, before the completion of the case for the prosecution, allow the defendant a reasonable opportunity to study the statement.

(6) The defendant, or his counsel, may before the completion of the case for the prosecution, request—

(a) that a person by whom a written statement, submitted under this section, was made;

or

(b) that a person by whom an affidavit relating to an object tendered as an exhibit under this section, was made,

appear for the purpose of cross-examination, and where such a request is made, that person shall be called, or summoned to appear, for that purpose.

(7) Where a person is cross-examined under subsection (6) of this section, the prosecutor shall have the usual rights of re-examination in relation to that person.

(8) This section shall not apply where the defendant pleads guilty in accordance with section 106a of this Act and the justices proceed to deal with the matter pursuant to the provisions of that section.

10. Section 108 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of
s. 108 of
principal Act
and enactment
of section in
its place—

108. (1) Where a witness is to be examined orally, the usual oath shall be administered to him.

Examination of
witnesses.

(2) Where a witness is examined orally, his statement shall be taken down in writing in the presence of the defendant, and his deposition shall be read over to the witness and shall be signed by him and by the justice.

(3) 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 conducted.

11. Section 109 of the principal Act is amended by inserting in subsection (1) after the word "heard" the passage "or submitted".

Amendment of
principal Act,
s. 109—
Procedure on
completion of
the case for
the prosecution.

Amendment of principal Act, s. 110—

Accused to be asked whether he desires to give evidence.

12. Section 110 of the principal Act is amended by striking out from subsection (1) the passage “Having heard the evidence for the prosecution” and inserting in lieu thereof the passage “Now that the evidence for the prosecution has been taken”.

Repeal of ss. 122 and 123 of principal Act and enactment of section in their place—

Exercise of jurisdiction under s. 120.

13. Sections 122 and 123 of the principal Act are repealed and the following section is enacted and inserted in their place:—

122. (1) The jurisdiction conferred upon a court of summary jurisdiction under section 120 of this Act shall be exercisable subject to the provisions of this section.

(2) At any time in the course of proceedings in respect of a minor indictable offence up to and including the completion of the case for the prosecution, the defendant may elect to be tried upon indictment and upon the making of that election the court shall not proceed to convict the defendant but may commit him for trial upon indictment.

(3) If it appears to the court that the offence, by reason of its seriousness, the intricacy of the facts in issue, the difficulty of any questions of law likely to arise at the trial, or for any other reason, ought to be tried upon indictment, it shall not proceed to convict the defendant but may commit him for trial upon indictment.

(4) Where a defendant appears before a court of summary jurisdiction charged with a minor indictable offence, the court shall, if the defendant does not elect to be tried upon indictment, inform him, at the completion of the case for the prosecution, whether or not it proposes to deal with the case in a summary way.

(5) If the defendant duly elects to be tried upon indictment, or the court determines not to deal with the case in a summary way, the court shall complete the preliminary examination.

Amendment of principal Act, s. 140—

Procedure where defendant is to appear for sentence in the Supreme Court or the District Criminal Court.

14. Section 140 of the principal Act is amended—

(a) by inserting in paragraph (a) of subsection (1) after the passage “to be next held” the passage “after the expiration of fourteen days from the date of the record”;

(b) by inserting in paragraph (b) of subsection (1) after the passage “to be held” the passage “after the expiration of fourteen days from the date of the record”;

and

(c) by inserting after subsection (1) the following subsection:—

(1a) A Judge of the Supreme Court may, by order, reduce or extend the period of fourteen days referred to in paragraph (a) and paragraph (b) of subsection (1) of this section in any appropriate case.

15. Sections 158 to 160 (inclusive) of the principal Act and the heading immediately preceding section 158 are repealed.

Repeal of
ss. 158-160 of
principal Act
and of heading.

16. Section 163 of the principal Act is amended by inserting after subsection (1a) the following subsections:—

Amendment of
principal Act,
s. 163—

(1b) An appeal to the Supreme Court from any conviction, sentence or order recorded, imposed or made upon the hearing of proceedings relating to a minor indictable offence shall be heard and determined by the Full Court unless the notice of appeal contains a request that the appeal be heard and determined by a single judge of the Supreme Court.

Right to
appeal to
Supreme
Court.

(1c) A request that an appeal be heard by a single judge of the Supreme Court under subsection (1b) of this section, shall not derogate from the power of a judge to refer an appeal to the Full Court for hearing and determination.

17. Sections 171, 172 and 173 of the principal Act are repealed and the following sections are enacted and inserted in their place:—

Repeal of
ss. 171, 172
and 173 of
principal Act
and enactment
of sections in
their place—

171. (1) An appeal must be instituted in accordance with the provisions of this section.

Institution of
appeal.

(2) A notice of appeal must be served upon the respondent, and two copies of the notice accompanied by the fee prescribed by rules of the Supreme Court, must be served upon the clerk to the justices whose decision is subject to the appeal.

(3) A notice of appeal under this section must state—

(a) that the appellant appeals to the Supreme Court against the conviction, order or adjudication referred to in the notice;

and

(b) the nature and grounds of appeal.

(4) The appeal shall be deemed to have been duly instituted when the copies of the notice of appeal are served upon the clerk to the justices in accordance with this section, but if the notice of appeal is not served upon the respondent before the

expiration of seven days after the date of service upon the clerk, or such longer period as the Supreme Court may allow, the institution of the appeal shall be rendered void.

Time for instituting appeal and hearing thereof.

172. (1) An appeal must be instituted within one month after the date of the conviction, order or adjudication subject to appeal.

(2) An appeal shall be heard by the Supreme Court in accordance with the appropriate rules of the Supreme Court.

Amendment of principal Act, s. 174—
Order, etc. to be transmitted to Supreme Court.

18. Section 174 of the principal Act is amended by striking out from subsection (1) the passage “When notice of appeal is served pursuant to subsection (2) of section 172 and the fee mentioned therein is paid” and inserting in lieu thereof the passage “When an appeal has been duly instituted under this Part”.

Amendment of principal Act, s. 175—
Evidence to be sent to Supreme Court.

19. Section 175 of the principal Act is amended by striking out the passage “paid pursuant to section 172”.

Amendment of principal Act, s. 177—
Powers of Supreme Court upon appeal.

20. Section 177 of the principal Act is amended by inserting after subsection (2) the following subsections:—

(2a) In determining any question raised upon the hearing of an appeal relating to any penalty, forfeiture or disqualification awarded against, or imposed upon, the appellant or respondent, the Supreme Court may, if it considers that it is in the interests of justice to do so, take into account, and exercise any of its powers under subsection (2) of this section in relation to, any penalty, order or adjudication awarded or made in respect of the appellant or respondent by justices—

- (a) in the proceedings from which the appeal arises;
 - (b) in proceedings heard concurrently with those proceedings;
- or
- (c) in proceedings arising from the same circumstances as those proceedings, or from circumstances that together with those circumstances constitute or form part of a series of offences of the same or similar character,

notwithstanding that no appeal has been instituted in relation to that penalty, order or adjudication.

(2b) The Supreme Court may make any ancillary order or direction that is preliminary to or incidental to, or consequent upon, the exercise of the powers conferred by subsection (2a) of this section.

21. The following section is enacted and inserted in the principal Act immediately after section 200 thereof:—

Enactment of
s. 200a of
principal Act—

200a. (1) At the conclusion, or in the course, of any proceedings under this Act, the justices, at the request of the prosecutor or any witness for the prosecution, may, if they think fit, subject to this Act and any other Act or regulations, grant a certificate of compensation in favour of that person for any expense, trouble or loss of time reasonably incurred by him in connection with the proceedings.

Certificate of
compensation.

(2) A certificate under subsection (1) of this section may be granted in respect of the expenses of apprehending the defendant and of detaining him in custody and of such other expenses incurred prior to commitment for trial or sentence as are by law certifiable under this section.

(3) Where the proceedings in which the certificate is granted are in the nature of a preliminary examination, the certificate under this section shall be forwarded to the sheriff for payment.

(4) The amount of any certificate of compensation shall—

(a) where the proceedings in which the certificate is granted are proceedings in the nature of a preliminary examination be paid by the sheriff to a person apparently entitled to payment in accordance with the certificate;

or

(b) in any other case, be paid by the clerk to a person apparently entitled to the payment in accordance with the certificate,

and a payment made under this subsection shall effectually discharge the sheriff or the clerk from any claim made by the person named in the certificate or any person claiming under him.

(5) Any payment by the sheriff or the clerk under this section shall be made out of moneys provided by Parliament for the purpose.

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

M. L. OLIPHANT, Governor