

JUSTICES ORDINANCE 1961.

No. 31 of 1961.

An Ordinance to amend the *Justices Ordinance* 1928-1957 and the *Justices Ordinance* 1957.

[Assented to 13th September, 1961.]

BE it ordained by the Legislative Council for the Northern Territory of Australia, in pursuance of the powers conferred by the *Northern Territory (Administration) Act* 1910-1959, as follows:—

Short title
and citation.

1.—(1.) This Ordinance may be cited as the *Justices Ordinance* 1961.

(2.) The *Justices Ordinance* 1928-1957 is in this Ordinance referred to as the Principal Ordinance.

(3.) The Principal Ordinance, as amended by this Ordinance, may be cited as the *Justices Ordinance* 1928-1961.

Oaths of
office, &c.

2. Section eleven of the Principal Ordinance is amended—

(a) by omitting from sub-section (3.) the words “Clerk of the Supreme Court” and all the words after those words and inserting in their stead the words “the Crown Law Officer”; and

(b) by adding at the end thereof the following sub-section:—

“(4.) The Crown Law Officer shall keep a Roll of Justices in such form and containing such information as he deems proper and shall keep in his custody all documents containing oaths taken, whether before or after the commencement of the *Justices Ordinance* 1961, by persons assigned by Her Majesty’s Commission to act as Justices.”.

3. Section eighteen of the Principal Ordinance is repealed and the following section inserted in its stead:—

“18.—(1.) If a Justice—

(a) becomes bankrupt;

(b) makes a composition with his creditors or assigns his property for the benefit of his creditors;

Vacation of
office of
Justice.

(c) is convicted of any offence and the Governor-General considers that by reason of that conviction he should cease to be a Justice; or

(d) is found by a Judge or another Justice to be a mentally defective person,

the Governor-General shall direct the Attorney-General to cause his name to be removed from the Roll of Justices.

"(2.) The Attorney-General shall thereupon direct the Crown Law Officer to remove his name accordingly, and to publish notice of the removal in the *Gazette*; and upon such publication the Justice shall cease to hold office as a Justice.

"(3.) Nothing in this section shall affect any other power of the Governor-General to remove a Justice from his office.

"(4.) The Governor-General may, if he deems it just and expedient to do so, re-appoint as a Justice any person who has ceased to hold office as a Justice."

4. After section twenty-six of the Principal Ordinance, the following section is inserted in Division 2 of Part III.:—

"26A.—(1.) Any Justice may, on the application of any party to the proceedings, require any person present in the court room or other place where he is sitting for the hearing of any complaint or information to take an oath and give evidence concerning the matter of that complaint or information.

Power to
require
evidence
from persons
present in
Court.

"(2.) If any person so required refuses to take an oath or without offering any just excuse refuses to answer any question put to him concerning the matter of the complaint or information, or if any person voluntarily appearing as a witness without offering any just excuse refuses to answer any such question, the Justice may by warrant commit him to the nearest gaol, there to remain and be imprisoned for any time not exceeding seven days, unless in the meantime he consents to be examined and to answer the question put to him."

5 Section forty of the Principal Ordinance is repealed and the following section inserted in its stead:—

"40.—(1.) Upon an application for an order adjudging a recognizance or security to be forfeited, the justices to whom the application is made may order that the liability of all or any of the persons liable upon or in respect of the recognizance or security shall be remitted, suspended, or reduced.

Suspension or
mitigation of
forfeiture.

"(2.) Where an order has been made adjudging a recognizance or security to be forfeited, any two justices may at any time, whether goods have or have not been sold under a warrant

of distress issued to enforce the order, make any of the following orders which they deem just:—

- (a) that the forfeiture and any order for payment of any amount due under the recognizance or security be cancelled or suspended; and
- (b) that the liability of all or any of the persons liable upon or in respect of the recognizance or security shall be remitted, suspended or reduced.

“(3.) The Justices making an order under the last preceding sub-section may—

- (a) impose any terms and conditions which they deem just; and
- (b) make any order consequential on or incidental to any such order.

“(4.) An order made under this section shall not affect the validity of any thing done to enforce the forfeiture of the recognizance or security before the making of the order.”.

Clerks of
Courts.

6. Section forty-two of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1.) the word “sitting”; and
- (b) by omitting sub-sections (2.) and (3.) and inserting in their stead the following sub-section:—

“(2.) When a Court of Summary Jurisdiction sits in any place other than the court house for which a clerk is appointed, the police officer in charge of the police station that is situated nearest to that place shall report to the clerk of the Court—

- (a) that the Court has sat; and
- (b) the name of each Justice constituting the Court.”.

7. Section fifty-one of the Principal Ordinance is repealed and the following section inserted in its stead:—

Joinder of
charges.

“51.—(1.) Charges for any number of offences may be joined in the same complaint, if the charges arise out of the same set of circumstances.

“(2.) Where a provision constituting an offence states the offence to be the doing of or the omission to do any act in any one of any different capacities, or with any one of any different intentions, or states any part of the offence in the alternative, the acts, omissions, capacities, or intentions, or other matters stated in the alternative in the provision, may be stated in the alternative in the complaint.

“(3.) The Court may, if it thinks just, deal with any charge so joined, separately.

“(4.) This section shall apply notwithstanding anything inconsistent therewith contained in the Special Act or Ordinance.”.

8. Section sixty-five of the Principal Ordinance is amended by adding at the end thereof the following sub-sections:—

Power to the Court or a Justice to adjourn the hearing.

“(13.) A Court of Summary Jurisdiction, or a Justice, on being satisfied that a defendant who has been remanded into custody is by reason of illness or accident unable at the expiration of the period for which he was remanded to appear personally before the Court, may in the absence of the defendant order him to be kept in custody for such further period as the Court or Justice deems reasonable, but not exceeding fifteen clear days at any one time, unless both parties consent to a longer period.

“(14.) The warrant for keeping the defendant in custody pursuant to any such order may be issued by the Justice who made the order, or any other Justice.”.

9. After section seventy of the Principal Ordinance the following section is inserted:—

“70A.—(1.) Where charges for more than one offence have been joined in the same complaint, pursuant to this Ordinance, the Court may—

Convictions where charges joined in the complaint.

(a) convict the defendant of such one or more of those offences as it finds proved; and

(b) include any number of offences in a minute or memorandum of conviction or in any formal conviction.

“(2.) This section shall apply notwithstanding anything contained in the Special Act or Ordinance.”.

10. Section eighty-one of the Principal Ordinance is amended—

Term of imprisonment where none specifically prescribed.

(a) by omitting the scale after the words “within the limits fixed by the following scale:—” and inserting in its stead the following scale:—

Where the sum adjudged to be paid including the costs—	The period of imprisonment shall be—
Does not exceed One pound ..	One day
Exceeds One pound	One day and in addition one day for each pound in excess of One pound.

”; and

(b) by adding at the end thereof the following sub-section:—

“(2.) For the purposes of the last preceding sub-section, any portion of a pound by which the sum adjudged to be paid, including the costs, exceeds the number of pounds in that sum shall be deemed to be One pound.”.

Examination
before
Justices.

11. Section one hundred and six of the Principal Ordinance is amended by adding at the end thereof the following sub-section:—

“(2.) This section is subject to the next succeeding section.”.

12. After section one hundred and six of the Principal Ordinance the following section is inserted:—

Powers of
Justices to take
plea of
guilty without
evidence.

“106A.—(1.) Where the defendant appears before a special Magistrate or two or more Justices and the information charges the defendant with an offence cognizable by a Special Magistrate or Justices under section one hundred and twenty of this Ordinance, the defendant 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, and the Magistrate or Justices shall at the commencement of the proceedings inform the defendant of his right so to plead.

“(2.) If the defendant pleads guilty to such an offence—

(a) the Magistrate or Justices shall, in relation to that offence, be a Court of Summary Jurisdiction within the meaning of this Ordinance;

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

(c) sections one hundred and twenty-nine, one hundred and thirty A, one hundred and thirty-one, one hundred and thirty-two and one hundred and thirty-three of this Ordinance shall, so far as they are applicable, apply in respect of the offence,

but the plea of guilty may be withdrawn as provided in the next succeeding sub-section.

"(3.) If after the defendant 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 he or they may order that the plea of guilty be withdrawn and thereupon all further proceedings in respect of the offence shall be conducted in accordance with this Part; but if any such further proceedings are taken the defendant shall not, by reason of his plea of guilty, be entitled to plead *autrefois convict*."

13. Section one hundred and eight of the Principal Ordinance is amended by adding at the end thereof the following sub-section:—

Evidence upon oath.

"(3.) The deposition of a witness may, if the Justice so directs, be read over to or by the witness elsewhere than in the room in which the examination is taken."

14. Section one hundred and ten of the Principal Ordinance is amended by inserting after sub-section (2.) the following sub-section:—

Accused to be asked whether he desires to give evidence, &c.

"(2A.) The statement or evidence of the defendant may, if the Justice so directs, be read over to or by the defendant elsewhere than in the room in which the examination is taken."

15. Section one hundred and thirteen of the Principal Ordinance is amended by adding at the end thereof the following sub-sections:—

Power to remand defendant from time to time.

"(4.) Any Justice on being satisfied that a defendant who has been remanded into custody is, by reason of illness or accident, unable at the expiration of the period for which he was remanded to appear personally before a Justice, may in the absence of the defendant order him to be kept in custody for such further period as the Justice deems reasonable, but not exceeding fifteen days at any one time unless both parties consent to a longer period.

"(5.) The warrant for keeping the defendant in custody pursuant to any such order may be issued by the Justice who made the order, or any other Justice."

16. Section one hundred and fifteen of the Principal Ordinance is amended by inserting after the word "Justice", first occurring, the words "who remanded the defendant or any other Justice".

Power to continue examination before expiry of remand.

Minor offences
cognizable by
Justices.

17 — (1.) Section one hundred and twenty of the Principal Ordinance is amended:—

(a) by inserting after paragraph (iiiA) of sub-section (1.) the following paragraph:—

“(iiiB) all felonies under sections one hundred and forty-eight, one hundred and fifty-six and one hundred and fifty-eight of the Criminal Law Consolidation Act 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 omitting from paragraph (a) of sub-section (2.) the words “One hundred pounds;” and inserting in their stead the words “Two hundred pounds;”;

(c) by omitting from paragraph (a) of sub-section (2.) the word “and”, second occurring;

(d) by inserting after paragraph (a) of sub-section (2.) the following paragraph:—

“(aa) any charge in respect of any offence mentioned in paragraph (iiiB) of the last preceding sub-section where the property stolen or cut, broken, thrown down or severed with intent to steal does not exceed in value Two hundred pounds; and”;

and

(e) by omitting from paragraph (b) of sub-section (2.) the words “One hundred pounds” and inserting in their stead the words “Two hundred pounds”.

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

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

18. Section one hundred and twenty-three of the Principal Ordinance is amended by omitting sub-section (3.).

19. After section one hundred and twenty-three of the Principal Ordinance the following section is inserted:—

Charge
against a child.

“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.”.

20. Section one hundred and twenty-nine of the Principal Ordinance is amended—

Powers of Court as to punishment for minor offences.

- (a) by omitting from sub-section (2.) the words "One hundred pounds." and inserting in their stead the words "Two hundred pounds."; and
- (b) by omitting from sub-section (3.) the words "One hundred pounds." and inserting in their stead the words "Two hundred pounds."

21. After section one hundred and thirty-one of the Principal Ordinance, the following sections are inserted:—

"131A. The provisions of the next four succeeding sections apply notwithstanding the preceding sections of this Division.

Application of sections 131B, 131C, 131D, 131E.

"131B.—(1.) Subject to section one hundred and thirty-one E of this Ordinance, a Court of Summary Jurisdiction shall have jurisdiction to hear and determine in a summary way a charge in respect of a common assault, not being a common assault accompanied by circumstances of aggravation.

Summary jurisdiction in certain assault cases.

(2.) If the defendant is convicted, the Court may adjudge him to be punished by a fine not exceeding Fifty pounds or imprisonment for a period not exceeding two months.

"131C.—(1.) Subject to section one hundred and thirty-one E of this Ordinance a Court of Summary Jurisdiction constituted by a Stipendiary Magistrate shall have jurisdiction to hear and determine in a summary way a charge in respect of an unlawful assault accompanied by circumstances of aggravation.

Summary jurisdiction in assault cases of an aggravated nature.

"(2.) If the defendant is convicted, the Court may adjudge him to be punished by a fine not exceeding Two hundred pounds or imprisonment for a period not exceeding two years, and may, if it thinks fit, require the offender to enter into a recognizance to keep the peace and be of good behaviour for a period not exceeding six months from the expiration of the sentence.

"(3.) A person shall not be punished as for an assault accompanied by circumstances of aggravation within the meaning of this section unless he has been charged with committing such an assault and the circumstances of aggravation have been stated in the charge.

"131D.—(1.) In the last two preceding sections, 'circumstances of aggravation' includes circumstances that make the assault—

Definitions.

- (a) an offence of a sexual nature;
- (b) an unlawful assault on a child under the age of seventeen years; or
- (c) an unlawful assault on a female.

"(2.) In this section, 'offence of a sexual nature' includes—

- (a) an offence constituted wholly or partly by an act whereby the offender has exhibited a failure to exercise proper control over his sexual instincts; and
- (b) an offence so committed that the offender has, in the circumstances associated with the committal, exhibited a failure to exercise proper control over his sexual instincts.

No jurisdiction
in certain
assault cases.

"131E. Sections one hundred and thirty-one B and one hundred and thirty-one C of this Ordinance do not authorize a Court of Summary Jurisdiction to deal summarily with a charge of assault—

- (a) on which a question arises as to—
 - (i) the title to land, an estate in land or an interest in or accruing from land;
 - (ii) bankruptcy; or
 - (iii) the execution of the process of any court of justice; or
- (b) where the Court before which the charge is brought—
 - (i) is of the opinion that the assault complained of was accompanied by an attempt to commit a felony or, where the Court is not constituted by a Stipendiary Magistrate, a misdemeanour; or
 - (ii) is of the opinion that the charge is a fit subject for prosecution by indictment."

Provision for
summary trial
of children.

22. Section one hundred and sixty-one of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1.) all the words after the words "may deal summarily with the offence";
- (b) by omitting from sub-section (2.) the words "if they think it desirable," and inserting in their stead the words "if he or they think it desirable,"; and
- (c) by omitting from sub-section (4.) the words "seven years," and inserting in their stead the words "eight years,".

23 After section one hundred and sixty-two of the Principal Ordinance the following section is inserted in Division 1 of Part VI.:—

“ 162A.—(1.) The Justice or Justices by whom an order is made dismissing a complaint or information shall, if so requested by counsel for the Crown upon or after the conclusion of the hearing, reserve for decision by the Supreme Court any question of law arising at or in connexion with the hearing.

Case to be stated at request of counsel for Crown.

“ (2.) No such request shall be made without the written consent of the Crown Law Officer.

“ (3.) The question reserved shall be referred by the Justice or Justices to the Supreme Court for decision, together with a statement of the circumstances out of which the question arose and such further statement, if any, as the Supreme Court requires.

“ (4.) The Supreme Court shall have power to determine the question reserved.

“ (5.) The determination by the Supreme Court of the question reserved shall not in any way affect or invalidate any order at or after the conclusion of the hearing.

“ (6.) Any person charged at the hearing or affected by the order shall be entitled to be heard before the Supreme Court upon the determination of the question reserved, and if it appears that no such person proposes to be represented upon the determination, the Crown Law Officer shall instruct counsel to argue the question before the Supreme Court on behalf of the person so charged or affected.

“ (7.) The reasonable costs of legal representation of any person heard before the Supreme Court as provided in this section shall be paid by the Crown.

“ (8.) No report of any request made pursuant to sub-section (1.) of this section shall be published.

“ (9.) No report of proceedings under this section shall be published which discloses the name or identity of the person charged at the hearing or affected by the decision given at the hearing.

“ (10.) Any publication in contravention of either of the last two preceding sub-sections shall be punishable as contempt of the Supreme Court.”.

24. Section one hundred and sixty-three of the Principal Ordinance is amended by omitting from sub-section (1.) the words “ or an order dismissing a complaint of a simple offence ” and inserting in their stead the words “ but not including an order dismissing a complaint of any offence ”.

Right of appeal to Supreme Court.

Recognizances
on appeal.

25 Section one hundred and sixty-seven of the Principal Ordinance is amended—

- (a) by omitting from sub-section (2.) the words “The Justice”, first occurring, and inserting in their stead the words “Subject to this section, the Justice”; and
- (b) by adding at the end thereof the following sub-sections:—

“(5.) In relation to an order dismissing a complaint, not being a complaint of any offence, the Court making the order may order that if the decision is appealed against no recognizance shall be entered into.

“(6.) Where the Court so orders no recognizance on appeal shall be entered into.

“(7.) When any fine or sum of money is adjudged to be paid by a conviction or order, a person appealing against the conviction or order may, at his option—

- (a) enter into a recognizance on appeal; or
- (b) pay into Court—

- (i) the amount of the fine or sum of money adjudged to be paid; and

- (ii) the amount of Ten pounds, to abide the order of the Supreme Court on the appeal.

“(8.) Unless a recognizance on appeal is entered into before a Stipendiary Magistrate or a Special Magistrate, any surety bound by the recognizance shall make an affidavit as to his means of paying the sum in which he is bound.”.

26. Section one hundred and sixty-eight of the Principal Ordinance is repealed and the following section inserted in its stead:—

Release of
appellant in
custody.

“168.—(1.) Where the appellant is in custody pursuant to the conviction or order appealed against, a Special Magistrate or a Justice 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 Justice or 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.

"(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.

"(5.) 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 of the whole of that term."

27. Section one hundred and seventy-one of the Principal Ordinance is amended by omitting sub-section (1.) and inserting in its stead the following sub-section:—

Appeal to be
instituted
within one
month.

"(1.) The appeal shall be instituted by notice in accordance with the next succeeding section, by entering into such recognizance on appeal as is required under sections one hundred and sixty-seven and one hundred and sixty-eight of this Ordinance and by payment of the fee specified in the next succeeding section."

28. Sections one hundred and seventy-two and one hundred and seventy-three of the Principal Ordinance are repealed and the following sections are inserted in their stead:—

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

Notice of
appeals.

(a) that the appellant appeals to the Supreme Court at the sittings of the Supreme Court for hearing appeals under this Ordinance commencing at Darwin or Alice Springs, as the case requires, on a day specified in the notice in accordance with the next succeeding sub-section; and

(b) the nature and grounds of the appeal.

"(2.) The day specified in the notice shall be a day on which sittings of the Supreme Court for hearing appeals under this Ordinance will, in accordance with the rules of the Supreme Court, if practicable, commence at Darwin or Alice Springs, whichever is nearer to the place at which the decision appealed against was made and shall be the first such day after the expiration of twenty-one days from the service of the notice.

"(3.) 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 Ordinance commencing at Darwin or Alice Springs, as the case requires, on the day specified in the notice of appeal in accordance with sub-section (1.) of the last preceding section, or if sittings are not commenced there on that day, the first sittings commencing there after that day; but this section shall not affect the power of the Supreme Court to adjourn the hearing to any time or place it thinks fit."

Convictions,
&c., to be
transmitted to
the Supreme
Court.

29. Section one hundred and seventy-four of the Principal Ordinance is amended by omitting from sub-section (1.) the words "an appeal is instituted" and inserting in their stead the words "notice of appeal is served pursuant to section one hundred and seventy-two of this Ordinance and the fee mentioned in that section is paid."

Evidence to be
sent to the
Supreme Court.

30. Section one hundred and seventy-five of the Principal Ordinance is amended by inserting after the word "cause" the words "a copy of the notice of appeal, together with the fee paid pursuant to section one hundred and seventy-two of this Ordinance and".

Procedure and
power of
Supr me Court,
on appeal.

31. Section one hundred and seventy-seven of the Principal Ordinance is amended by adding at the end thereof the following sub-section:—

"(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 reinstate any appeal dismissed for want of prosecution."

If costs not
paid according
to order of
Supreme Court,
certificate to
be granted.

32. Section one hundred and seventy-eight of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1.) the words "clerk or other proper officer of the Court," and inserting in their stead the words "Master or other proper officer of the Supreme Court,"; and
- (b) by omitting from sub-section (2.) the words "clerk or other proper officer of the Court," and inserting in their stead the words "Master or other proper officer of the Supreme Court,".

Amendment of
Justices
Ordinance 1957.

33.—(1.) Section three of the *Justices Ordinance 1957* is amended—

- (a) by inserting after the words "section one hundred and thirty A" the words "of the Principal Ordinance"; and

(b) by omitting the words and figures "*Police and Police Offences Ordinance 1923-1955*" and inserting in their stead the words and figures "*Police and Police Offences Ordinance 1923-1954*".

(2.) The amendments effected by the last preceding subsection shall be deemed to have come into operation on the date of commencement of the *Justices Ordinance* 1957.
