

No. 50 of 1973

An Ordinance to amend the *Justices Ordinance* 1928 as amended

[Assented to 18 July, 1973]

BE it ordained by the Legislative Council for the Northern Territory of Australia as follows:—

1. This Ordinance may be cited as the *Justices Ordinance* (No. 2) 1973. Short title

2. The *Justices Ordinance* 1928 as amended is in this Ordinance referred to as the Principal Ordinance. Principal Ordinance

3. This Ordinance will come into operation on a date to be fixed by the Administrator by notice published in the *Gazette*.* Commencement

4. Section 22 of the Principal Ordinance is amended— Forms of summons
 (a) by omitting “Every summons” and substituting “Subject to this section, every summons”; and
 (b) by adding at the end the following sub-section:
 “(2.) A summons issued under sub-section (2.) of section 57 shall be in triplicate and in accordance with the form in the Third Schedule.”

5. Section 27 of the Principal Ordinance is amended by omitting all words after the words “sixteen years of age”. Service of summonses and notices under this Ordinance

6. After section 27 of the Principal Ordinance the following section is inserted:

“27A.—(1.) A summons issued under sub-section (2.) of section 57 to a person other than a corporation may be served on a defendant— Service of summons under section 57(2.)

(a) by delivering 2 copies of the summons to the defendant personally;

* The date fixed was 25 October, 1973 (see *Northern Territory Government Gazette* No. 42 of 18 October, 1973, page 337).

- (b) subject to sub-section (2.), by leaving 2 copies of the summons for the defendant at his last-known place of abode or business with a person apparently an inmate or employed at that place and apparently not less than 16 years of age; or
- (c) subject to sub-sections (2.) and (3.), by posting by prepaid certified mail, as provided by the Postal Regulations, 2 copies of the summons to the defendant at his last-known place of abode or business.

“(2.) If a certificate of the Clerk given under sub-section (3.) of section 57 is to be served on the defendant, the summons shall also be served on the defendant personally.

“(3.) A summons shall not be served by post on the defendant under sub-section (1.) later than one month after the date of the alleged offence and earlier than one month before the date shown on the summons as the date for the hearing of the charge.

“(4.) A summons issued under sub-section (2.) of section 57 to a corporation may be served on the corporation—

- (a) by delivering 2 copies of the summons to a director, secretary, or other responsible officer of the corporation; or
- (b) by posting by certified mail, as provided by the Postal Regulations, 2 copies of the summons to the principal place of business of the corporation in the Northern Territory.

“(5.) In the absence of evidence to the contrary, the address appearing on the summons shall be deemed to be the defendant’s last-known place of abode or business.

“(6.) Where a summons has not been served personally, a Court or Justice may, if it or he is of the opinion that there is a reasonable probability that the summons has not come to the notice of the defendant, refuse to adjudicate upon the complaint and direct that a fresh summons be issued and served personally on the defendant.”.

Proof of service
of process, &c.

7. Section 28 of the Principal Ordinance is amended by adding at the end the following sub-sections:

“(4.) Service of a summons issued under sub-section (2.) of section 57 may, without prejudice to any other mode of proof, be proved by a receipt for certified mail issued under the Postal Regulations and bearing the serial number referred to in evidence as the number relating to the summons sent by that certified mail and by a written receipt under those Regulations purporting to be duly completed and acknowledging receipt of that certified mail article.

“(5.) The receipt and returned receipt of certified mail are admissible at the hearing of the summons as *prima facie* evidence that the summons was received by the addressee of the article and of the matters set out in them.”.

8. Section 57 of the Principal Ordinance is amended by adding at the end the following sub-sections:

Issue of
summons on
complaint

“(2.) Where a complaint is made by a public officer charging that an offence to which this sub-section applies has been committed, the Justice may, upon the request of the complainant issue a summons under sub-section (2.) of section 22.

“(3.) Where the defendant to a complaint in a summons issued under sub-section (2.) has previously been convicted of another offence, the Clerk may give a certificate under his hand—

- (a) alleging that the defendant has been so convicted of that offence; and
- (b) stating that the certificate is admissible at the hearing of the summons as *prima facie* evidence of the matters alleged.

“(4.) The certificate is admissible as *prima facie* evidence of the matters alleged if a copy of the certificate is served on the defendant personally at the same time as the summons is served on him.

“(5.) For the purposes of sub-section (2.)—

- (a) an offence to which that sub-section applies is an offence other than an offence on conviction for which the defendant, if an individual, is liable under the law creating the offence—
 - (i) to a term of imprisonment only; or
 - (ii) to a fine as prescribed by that law exceeding Two hundred dollars, whether with or without a term of imprisonment; and
- (b) ‘public officer’ means—
 - (i) a member of the Police Force of the Northern Territory;
 - (ii) a person employed by an authority or corporation established under a law of the Northern Territory and authorized by or under that law to make a complaint charging an offence against a law in force in the Northern Territory; or
 - (iii) an officer or employee of the Public Service of the Commonwealth or of the Northern Territory acting in the course of his employment as such an officer or employee.”.

9. After section 57 of the Principal Ordinance the following sections are inserted:

Plea of guilty
may be made
in writing
if summons
in form of
Third Schedule

“57A.—(1.) A person upon whom is served a summons in the form in the Third Schedule may plead guilty to the charge specified therein by—

- (a) completing the endorsement appearing on a copy of the summons;
- (b) signing (whether within or without Australia) the endorsement, so completed, before a person entitled to administer an oath in any part of Australia or before a barrister or solicitor or member of the police force of the Commonwealth or of a State or Territory of the Commonwealth; and
- (c) delivering or serving by post, not less than three days prior to the date on which he is required by the summons to appear, the copy of the summons so completed and signed to the complainant or the Clerk of the Court of Summary Jurisdiction at the place at which he is required to appear.

“(2.) Service of the copy of the summons duly completed and signed shall be deemed to have been effected under the last preceding sub-section if it is left at the office of the Clerk of the Court of Summary Jurisdiction before which the defendant is required to appear or if it is left at any police station within fifty miles of the place at which appearance is required by the summons.

“(3.) A person who has pleaded guilty in the manner prescribed by this section is not required to appear in person or otherwise at the Court before which he is summoned to appear.

“(4.) A Court may accept a plea of guilty made by endorsement as prescribed by this section without proof of any signature thereon or of the office or occupation of any person purporting to have signed the endorsement and, subject to the next succeeding section, may proceed in such manner and make such adjudication and orders as it might have made if the defendant had appeared in answer to the summons in person or by counsel.

Limits on power
of Court where
plea of guilty
in writing

“57B. Where a person has pleaded guilty in the manner prescribed by the last preceding section, the Court shall not—

- (a) impose a sentence of imprisonment in the first instance;
- (b) cancel or suspend a licence held by the defendant or otherwise disqualify him from holding a licence;

- (c) treat the offence as other than a first offence unless the Court is satisfied upon evidence that the defendant has been previously convicted as stated in the certificate of the Clerk given under sub-section (3.) of section 57;
- (d) fail to allow a reasonable time for payment of any sum adjudged to be paid by the defendant; and
- (e) order the defendant to pay any sum in respect of the attendance of any witness.

“57C. Where a person has been convicted of an offence to which he has pleaded guilty in the manner prescribed by section 57A of this Ordinance, the Clerk of the Court in which the conviction was recorded shall forthwith serve, personally or by post, on the defendant notice of the conviction and of any order or sentence made on that conviction and no further proceedings upon the conviction or order shall be taken until the expiry of fourteen days after such service.

Notice of conviction or plea of guilty in writing to be first served

“57D. Where, upon its consideration of the subject matter of a complaint to which a defendant has pleaded guilty as prescribed by section 57A of this Ordinance or of any explanation endorsed by a defendant upon a copy of a summons issued upon such a complaint, the Court is of the opinion—

Court may refuse to accept plea of guilty in writing

- (a) that the offence may be one which merits punishment other than a fine;
- (b) that the defendant did not understand the consequences of his submitting a written plea of guilty; or
- (c) that for some other reason justice would be better served by requiring the appearance of the defendant in person,

the Court shall vacate the summons issued and shall order that a summons in the form prescribed by the regulations shall issue.

“57E.—(1.) Where a summons has been issued under sub-section (2.) of section 57 and a conviction has been recorded in the absence of the defendant, the defendant may, within seven days after service upon him of a notice under section 57C of this Ordinance, serve either personally or by post on the Clerk of the Court in which the conviction was recorded a notice requiring further consideration of the complaint upon which the conviction was recorded.

Further consideration of complaint may be required

“(2.) Upon service of a notice under the last preceding sub-section, no proceedings shall be taken to enforce the conviction or any order made thereon until after the proceedings consequent upon that notice have been completed.

“(3.) As soon as is practicable after service on him of a notice under sub-section (1.) of this section, the Clerk of the Court so served shall fix a time and place for the further consideration of the complaint and, by notice served personally or by post, notify the complainant and defendant of the time and place so fixed.

“(4.) On the day fixed under the last preceding sub-section, the court (which need not be formed by the same persons who formed the Court which recorded the conviction in the first place)—

- (a) may quash the conviction and vacate any orders made thereon if it is satisfied that the summons first issued on the complaint did not come to the notice of the defendant a reasonable time before the date appointed by the summons for the hearing; and
- (b) direct that the complaint shall be reheard at a time and place then fixed by the Court; or
- (c) confirm the conviction and any orders made thereon.

“(5.) The Court before which a complaint is reheard in pursuance of a direction under the last preceding sub-section has power to adjudicate thereon as if the rehearing was the first hearing of the complaint and the defendant had been personally served with a summons requiring his attendance on the day fixed by the direction.

Third Schedule

10. After the Second Schedule of the Principal Ordinance the following schedule is inserted:—

“THIRD SCHEDULE
THE NORTHERN TERRITORY OF AUSTRALIA
Justices Ordinance
SUMMONS TO A PERSON ON COMPLAINT.

Sections 22,
57 and 57A

To _____ of _____

Whereas you have this day been charged by _____ of _____ before the undersigned, a Justice of the Peace for the Northern Territory of Australia, for that on the _____ day of _____, 19____, at _____, in the Northern Territory of Australia you did _____

These are therefore to command you to be and appear on _____ day the _____ day of _____ 19____, at _____ o'clock in the _____ noon, at _____ in the said Territory before me or such other Justice or Justices of the Peace for the said Territory as may then be there, to answer the said charge, and to be further dealt with according to law.

Dated this _____ day of _____, 19____, at _____ in the said Territory.

Justice of the Peace.

This summons is issued for an offence which is punishable by fine only.

You must either appear in Court on the date shown to plead guilty or not guilty or, if you prefer that the Court should take your plea of guilty without your going to Court, you must sign the 'Endorsement' hereunder and deliver it to the Court where this summons requires you to appear or to the nearest police station in the Northern Territory.

Endorsement

I have read the terms of the charge against me herein specified and I acknowledge my commission of the offence charged and plead guilty thereto.

I offer the following explanation for the acts alleged in the summons to be an offence:—

AFFIDAVIT OF SERVICE

I of
make oath and say [or affirm] that I did on the day of 19 ,
between the hours of and in the noon, at
in the Northern Territory duly serve the within-named defendant with this summons
by delivering 2 copies of the summons to him personally [or by leaving 2 copies of
the summons with him at his last-known place of abode (or of business) with some
other person apparently an inmate of that place (or employed in that place) and
apparently not less than 16 years of age].

Sworn [or affirmed] before me at
on day of 19 .
Justice of the Peace."

