

No. 63 of 1974

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

[Assented to 21 October 1974]

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* Short title
(No. 2) 1974.

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

3. The following new section is inserted in Part V of the Principal Ordinance before section 101:

“100A. In this Part, Definition
‘prosecutor’ means the informant, a solicitor or counsel acting for the informant or a solicitor or counsel acting for the Crown.”.

4. Section 106 of the Principal Ordinance is repealed and the following sections substituted:

“105A.(1) Where a person is charged with an indictable offence, the prosecutor, not later than 14 days, or such shorter period as a Justice may approve, before the date fixed for the taking of the preliminary examination, may give to that person a notice in writing— Procedure where prosecutor proposes to tender written statements to the court

(a) informing him of the time and place of the preliminary examination;

(b) stating that the Justice conducting the preliminary examination will be asked to admit written statements as evidence without requiring the attendance of the persons who made the statements; and

(c) setting out the terms of this section and section 105B.

“(2) A notice under sub-section (1) is not duly given unless it is accompanied by—

- (a) a copy of the information;
- (b) a list of persons who have made written statements which the prosecutor proposes to tender to the Justice at the preliminary examination;
- (c) a copy of each of those statements;
- (d) a list of the documents and things (if any) referred to in those statements which the prosecutor proposes to tender to the Justice at the preliminary examination;
- (e) where a thing, not being a document, cannot adequately be described in that list, a photograph of that thing; and
- (f) a copy of each document mentioned in the list.

“(3) A notice and accompanying documents may be given to a defendant in any manner in which a summons issued in respect of an information may be served under any provision of this Ordinance.

“(4) The giving of a notice under sub-section (3) may be proved in the same manner as the service of a summons.

“(5) Where a notice has been given to a defendant under this section, the prosecutor, not later than 7 days, or such shorter period as a Justice may approve, before the date set down for the preliminary examination, shall file with the Clerk a copy of the notice together with a copy of each document and photograph accompanying the notice.

“(6) Where copies are filed with the Clerk under sub-section (5), he shall transmit them before the preliminary examination to the Justice before whom the defendant will appear for the preliminary examination.

“(7) The prosecutor, if so requested by the defendant or his counsel or solicitor, shall, before the taking of the preliminary examination, permit the defendant or his counsel or solicitor to inspect the documents and things referred to in the list (if any) given to the defendant in pursuance of sub-section (2)(d).

“105B.(1) Subject to this section, where a prosecutor has duly given notice to a defendant under section 105A, the Justice at the preliminary examination may admit a written statement, a copy of which accompanied that notice, as evidence of the matters stated and the statement shall thereupon constitute depositions of the person who made it.

“(2) A written statement shall not be admitted in evidence by the Justice unless—

- (a) the accuracy of the statement is verified by the person making the statement by statutory declaration made pursuant to the *Statutory Declarations Act 1959-1966*;
- (b) it contains a statement that the person who made it—
 - (i) has attained the age of 18 years; or
 - (ii) has attained the age of 14 years but not the age of 18 years;
- (c) it contains a statement that, before he signed it, the person who made it read the statement or had it read to him; and
- (d) if it contains a statement that, before he signed it, the person who made it had it read to him, it contains a further statement indicating whether that person is disabled so that he cannot read it and, if so, the nature of the disablement.

“(3) Where a person has made a written statement which, but for this sub-section, would be admissible under sub-section (1), that statement shall not be admissible where the defendant, not later than 5 days before the date set down for the preliminary examination, gives notice in writing to the prosecutor that he requires the attendance at the preliminary examination of the person who made the statement.

“(4) Where the defendant gives notice in writing to the prosecutor under sub-section (3), he shall file a copy of that notice with the Clerk.

“(5) Where the defendant has given notice under sub-section (3), he may, at any time before the preliminary examination, notify the informant in writing that he withdraws that notice and this section shall apply as if the notice under sub-section (3) had not been given.

“(6) Notwithstanding the failure by the defendant to give notice under sub-section (3), he may object at the preliminary examination to a written statement being tendered in evidence and the Justice may, if he thinks fit, uphold the objection and require the person who made the statement to attend and give evidence before him.

“(7) Where, under this section, the Justice admits a written statement, he may, of his own motion, require the person who made the statement to attend before him to give evidence.

“(8) Where it appears to the Justice that any part of a written statement tendered in evidence under this section is inadmissible

according to the rules of evidence, he may, where the statement is otherwise admissible under this section, admit that statement, but, where he does so, he shall identify the part that is inadmissible and shall, with reference to that part, write on the statement the words 'ruled inadmissible' or words to that effect.

“(9) Where the Justice admits a written statement under this section, the prosecutor may call the person who made the statement to give oral evidence and that person and any other witnesses, not being witnesses called by the accused person, who attend before the Justice—

(a) shall be examined in the presence or hearing of the defendant and, if the defendant so desires, in the presence or hearing of his counsel or solicitor; and

(b) may be cross-examined by the defendant or his counsel or solicitor.

“(10) Where a justice admits a written statement under this section, the statement—

(a) is, for the purposes of sections 116, 131, 139 and 175, a deposition of a witness; and

(b) is, for the purposes of section 152 a deposition of a witness notwithstanding the fact that the deposition was not taken in the presence of the defendant.

Preliminary
examination
where written
statements
not tendered

“106. Subject to section 106A, where a person appears or is brought before a Justice charged with an indictable offence and a notice has not been given to that person in accordance with section 105A, the Justice shall, in the presence or hearing of the defendant, and if the defendant so desires, in the presence or hearing of his counsel or solicitor, take the preliminary examination or statement on oath of any persons who know the facts and circumstances of the case, and the defendant or his counsel or solicitor may cross-examine those persons.”

Procedure on
completion of
the evidence
for the
prosecution

5. Section 109(1) of the Principal Ordinance is amended by omitting “has been heard” and substituting “has been taken”.

Binding
witnesses by
recognizances

6. Section 117 of the Principal Ordinance is amended by omitting sub-section (1) and substituting the following sub-section:

“(1) The Justice before whom any witness is examined, or by whom the written statement of any person was admitted in evidence under section 105B, may bind that witness or person, by recognizance, to appear at the court at which the defendant is to be tried, then and there to give evidence.”

7. Section 123 of the Principal Ordinance is amended by adding the following sub-section:

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

“(3) Where—

- (a) the Court decides to deal with the case in a summary way; and
- (b) the defendant, on being asked in accordance with section 125, if he is guilty or not guilty, does not plead guilty to the charge,
a statement admitted under section 105B is not evidence in the summary proceeding and an opportunity shall be afforded—
- (c) to the prosecutor, to cause the person who made the statement to attend before the Court to give evidence; and
- (d) to the defendant, his counsel or solicitor to cross-examine that person.”.

8. Section 126 of the Principal Ordinance is amended by omitting “When” and substituting “Subject to section 123(3), when”.

Witnesses for prosecution may be recalled for a cross-examination

