



ANNO TRICESIMO PRIMO

**ELIZABETHAE II REGINAE**

A.D. 1982

\*\*\*\*\*

**No. 26 of 1982**

**An Act to amend the Justices Act, 1921-1981.**

*[Assented to 25 March 1982]*

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

Short titles.

1. (1) This Act may be cited as the "Justices Act Amendment Act, 1982".
- (2) The Justices Act, 1921-1981, is in this Act referred to as "the principal Act".
- (3) The principal Act, as amended by this Act, may be cited as the "Justices Act, 1921-1982".

Commence-  
ment.

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

Amendment of  
s. 4—  
Interpretation.

3. Section 4 of the principal Act is amended—

(a) by striking out from subsection (1) the definition of "clerk" and substituting the following definition:

"clerk" means—

- (a) a person holding office as the clerk of a court of summary jurisdiction;
  - (b) a deputy of the clerk of a court of summary jurisdiction;
- or
- (c) a person appointed to act in the office of the clerk of a court of summary jurisdiction;

and

(b) by inserting after the definition of "minor indictable offence" in subsection (1) the following definition:

"personal service" of a summons or notice means service under section 27 (1); and the adverb "personally" when used in relation to the verb "to serve" has a corresponding meaning:.

4. Section 5 of the principal Act is amended by inserting after subsection (5) the following subsection:

Amendment of  
s. 5—  
Constitution  
of courts of  
summary  
jurisdiction.

(6) Where a court of summary jurisdiction constituted of two or more justices, or of a single justice, convicts a person of an offence and a penalty of imprisonment is required by law, or is in the opinion of the court warranted by the offence, the court shall remand the convicted person in custody or on bail to appear for sentence by a court of summary jurisdiction constituted of a special magistrate.

5. Section 27 of the principal Act is amended—

Amendment of  
s. 27—  
Service.

(a) by striking out the proviso;

(b) by inserting after its present contents as amended by this section (now to be designated as subsection (1)) the following subsections:

(2) Subject to any other provision of this Act, where this Act authorizes service of a notice on a party to proceedings by post, service of the notice may be effected by sending the notice by ordinary prepaid post (either alone or with other documents relating to the same proceedings) in an envelope addressed to the party at—

(a) the address appearing on the relevant complaint or summons as the address of that party;

or

(b) where the person by whom the notice is to be given has notice of some more recent address of the party—that address,

and the notice shall be deemed to have been served at the time when it would, in the ordinary course of post, have reached the address to which it was posted.

(3) Where a summons or notice is served otherwise than by being delivered personally to the person on whom it is to be served, a court or justice may require the summons or notice to be re-served if there is reasonable cause to believe that the summons or notice has not come to the notice of the person to be served.

6. Section 27c of the principal Act is amended—

Amendment of  
s. 27c—  
Hearing  
where  
defendant  
fails to  
appear.

(a) by striking out paragraphs (f) and (g) of subsection (3) and substituting the following paragraphs:

(f) the defendant is personally served, not less than fourteen days before the time to which the hearing has been adjourned, with a notice informing him of—

(i) the conviction;

(ii) the time and place to which the hearing has been adjourned;

and

(iii) the provisions of section 76a;

and

(g) the defendant does not, within fourteen days after the date of service of the notice upon him, apply in accordance with section 76a, for an order setting aside the conviction;;

(b) by striking out from subsection (4) the passage “, and of the rights of the defendant under section 27d of this Act” and substituting the passage “and of the provisions of section 76a”;

and

(c) by striking out from subsection (6) the passage “and the rights of the defendant under section 27d of this Act” and substituting the passage “and the provisions of section 76a;”.

Repeal of  
s. 27d.

7. Section 27d of the principal Act is repealed.

Amendment of  
s. 42—  
Clerks of  
court.

8. Section 42 of the principal Act is amended—

(a) by striking out subsection (1) and substituting the following subsection:

(1) The Governor may appoint a suitable person to be clerk of a court of summary jurisdiction.;

and

(b) by inserting after subsection (3) the following subsection:

(4) A special magistrate may appoint any suitable person to act, on a temporary basis, in the office of the clerk of a court of summary jurisdiction if the office is vacant, or the clerk is or will for any reason be unavailable to carry out the duties of his office.

Amendment of  
s. 57a—  
Procedure to  
enable plea  
of guilty to  
be entered  
in writing.

9. Section 57a of the principal Act is amended by inserting after subsection (7) the following subsection:

(7a) Where—

(a) the defendant named in a complaint and summons bearing the endorsements mentioned in subsection (1) gives written notice to the clerk of the court specified in the summons of his intention to plead not guilty to the charge;

and

(b) the clerk, by notice served personally or by post on the defendant, notifies him of a time and place at which the court will proceed with the hearing of the charge, the summons shall have effect as if the time and place notified by the clerk were substituted for the time and place fixed in the summons for the hearing of the complaint.

Amendment of  
s. 62d—  
Proof of  
previous  
convictions.

10. Section 62d of the principal Act is amended by inserting after subsection (2) the following subsections:

(3) A notice under this section may be served personally or by post.

(4) If the prosecution tenders a copy of a notice under this section as evidence of convictions, it is not precluded from tendering other evidence of the same or other convictions.

11. Section 72 of the principal Act is amended by inserting in subsection (1) after the word “, depositions,” the passage “, written reasons for judgment,”.

Amendment of s. 72—  
Copies of various documents relating to proceedings.

12. The following heading and section are inserted after section 76 of the principal Act:

Insertion of new s. 76a and heading.

*Application to have conviction or order of a court of summary jurisdiction set aside.*

76a. (1) Subject to this section, a person against whom a conviction or order is made by a court of summary jurisdiction may apply to the same or some other court of summary jurisdiction for an order setting aside the conviction or order.

Power to set aside conviction or order of court of summary jurisdiction.

(2) An application under this section must be made within fourteen days of the day on which the applicant receives notice of the conviction or order to which the application relates.

(3) Where a court of summary jurisdiction is satisfied, upon an application under this section, that—

(a) the applicant did not receive notice of the proceedings in which the conviction or order was made, or not in sufficient time to enable him to attend the hearing;

or

(b) the applicant failed to attend the hearing for reasons that render it desirable, in the interests of justice, that the conviction or order should be set aside and the proceedings re-heard,

the court may set aside the conviction or order to which the application relates.

(4) Where a court of summary jurisdiction sets aside a conviction or order under this section it may, without further formality—

(a) proceed to re-hear the proceedings in which the conviction or order was made;

or

(b) refer the proceedings for re-hearing by some other court of summary jurisdiction.

13. Section 86 of the principal Act is repealed and the following section is substituted:

Repeal of s. 86 and substitution of new section.

86. (1) Where a justice is satisfied either by examination of records of a court of summary jurisdiction or by evidence produced before him, that default has been made in the payment of a fine or sum of money adjudged to be paid by a conviction or order, he may issue a warrant of distress or commitment.

Justice may issue warrant of distress or commitment.

(2) A warrant may be issued by a justice under subsection (1) notwithstanding that he is the clerk of the court of summary jurisdiction by which the conviction or order was made.

Amendment of  
s. 163—  
Appeals.

**14. Section 163 of the principal Act is amended—**

(a) by striking out from subsection (1) the passage “(including a conviction of a minor indictable offence, or an order dismissing a complaint of a simple offence)” and substituting the passage “(including an order dismissing a charge of a simple offence or a minor indictable offence)”;

and

(b) by striking out subsection (1a).

Repeal of  
s. 165 and  
substitution  
of new section

Dispensation  
with  
requirements  
of this Act  
relating to  
institution  
of appeal.

**15. Section 165 of the principal Act is repealed and the following section is substituted:**

165. (1) The Supreme Court may dispense with compliance with any provision of this Act relating to the institution of an appeal.

(2) A dispensation may be granted under subsection (1) unconditionally or upon such conditions as the Supreme Court thinks fit.

Repeal of  
s. 171 and  
substitution  
of new section.

Manner in  
which appeal  
is to be  
instituted.

**16. Section 171 of the principal Act is repealed and the following section is substituted:**

171. (1) An appeal is instituted by filing a notice of appeal in the Supreme Court.

(2) The notice of appeal must—

(a) identify the conviction, order or adjudication against which the appeal is made;

and

(b) set out in detail the grounds of appeal.

(3) Before the expiration of seven days from the day on which the notice of appeal is filed in the Supreme Court, copies of the notice must be served upon—

(a) the respondent;

and

(b) the clerk of the court of summary jurisdiction by which the conviction, order or adjudication subject to the appeal was made.

(4) Upon receipt by the clerk of a court of summary jurisdiction of a notice of appeal, the clerk shall transmit to the Registrar of the Supreme Court—

(a) a copy of the transcript of the evidence taken in proceedings to which the appeal relates;

(b) a certified copy of the conviction, order or adjudication to which the appeal relates;

and

(c) any other documents or exhibits relevant to the proceedings.

17. Sections 174 and 175 of the principal Act are repealed.

Repeal of  
ss. 174 and  
175.

18. Section 187a of the principal Act is amended—

Amendment of  
s. 187a—  
Proof of  
convictions  
or orders.

(a) by striking out the second sentence of subsection (1);

and

(b) by inserting after subsection (1) the following subsection:

(1a) The copy must be certified by—

(a) the person, or one of the persons, constituting the court by which the conviction or order was made;

(b) the clerk of that court, or, if that court no longer exists, the clerk of a court of summary jurisdiction to which the records of that court have been transferred;

or

(c) the Registrar.

19. The following heading and section are inserted after section 200a of the principal Act:

Insertion of  
new section  
200b and  
heading.

*Reciprocal Enforcement of Fines, etc., against Bodies Corporate.*

200b. (1) In this section—

Reciprocal  
Enforcement  
of Fines, etc.  
against Bodies  
Corporate.

“fine” includes a pecuniary penalty, pecuniary forfeiture, pecuniary compensation and fees, charges and costs payable under a conviction or order of a court in the exercise of summary jurisdiction:

“reciprocating court” means a court of a reciprocating State or Territory declared by proclamation under this section to be a reciprocating court:

“reciprocating State or Territory” means another State or a Territory of the Commonwealth declared by proclamation under this section to be a reciprocating State or Territory.

(2) The Governor may by proclamation declare another State or a Territory of the Commonwealth (being a State or Territory having laws providing for enforcement in that State or Territory of a fine payable under a conviction or order of a court of summary jurisdiction in this State against a body corporate) to be a reciprocating State or Territory.

(3) The Governor may by proclamation declare a court having summary jurisdiction in a reciprocating State or Territory to be a reciprocating court.

(4) The Governor may, by subsequent proclamation, vary or revoke a proclamation under this section.

(5) Where, under a conviction or order of a reciprocating court made in the exercise of its summary jurisdiction, a fine is payable by a body corporate having or appearing to have property in this State and the clerk of a court of summary jurisdiction at or near to a place where the body corporate has or appears to have property receives a request in

writing from the clerk or other corresponding officer of that reciprocating court for the enforcement of the conviction or order accompanied by—

(a) a certified copy of the conviction or order;

and

(b) a certificate under the hand of the clerk or corresponding officer making the request certifying the amount of the fine outstanding under the conviction or order,

he shall register the conviction or order by filing in the court a certified copy of the conviction or order and shall note the date of registration on the copy.

(6) Upon the registration of a conviction or order under subsection (5)—

(a) the conviction or order shall for the purposes of this section be deemed to be a conviction or order of the court in which it is registered requiring payment by the body corporate of the amount of the fine stated in the certificate referred to in subsection (5) as outstanding;

(b) the clerk shall for the purposes of this section issue a warrant of distress for the purpose of recovering the amount of the fine required to be paid by levying against the goods and chattels of the body corporate;

and

(c) the warrant so issued shall be deemed to be a warrant of distress issued by a justice under this Act and the provisions of this Act shall, with all necessary adaptations, apply and extend accordingly with respect to the enforcement of that warrant.

(7) Where the clerk receives, after the request for the enforcement of the conviction or order, a notification from the clerk or other corresponding officer of the reciprocating court of payment by or on behalf of the body corporate of an amount in satisfaction in whole or in part of the amount of the fine outstanding, he shall—

(a) note the particulars of the payment on the certified copy of the conviction or order filed in the court;

and

(b) arrange for the return of the warrant issued under subsection (6) if it is unexecuted, and—

(i) withdraw it if the amount of the fine has been paid in full;

or

(ii) if part of the amount of the fine remains outstanding, amend the amount stated in the warrant to show the amount still outstanding, and the warrant shall then be enforced in respect of the altered amount.

(8) A sum of money paid to or received by a clerk of court of summary jurisdiction in satisfaction in whole or in part of a fine payable under a conviction or order enforced under subsection (6) shall be

remitted forthwith to the clerk or other corresponding officer of the reciprocating court by which the conviction or order was made.

(9) A sum of money paid to or received by a clerk of a court of summary jurisdiction from a reciprocating court in satisfaction in whole or in part of a fine payable under a conviction or order of the court of summary jurisdiction enforced by the reciprocating court shall be applied by the clerk of the court of summary jurisdiction as if the sum had been paid to the clerk by the body corporate by which the fine was payable in satisfaction in whole or in part of the fine.

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

K. D. SEAMAN, Governor