



ANNO DECIMO OCTAVO

**ELIZABETHAE II REGINAE**

**A.D. 1969**

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**No. 39 of 1969**

An Act to amend the Justices Act, 1921-1965.

[Assented to 13th November, 1969.]

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, 1969". Short titles.

(2) The Justices Act, 1921-1965, as amended by this Act, may be cited as the "Justices Act, 1921-1969".

(3) The Justices Act, 1921-1965, 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. Section 3 of the principal Act is amended—

(a) by striking out the passage "DIVISION III.—The hearing (sections 61 to 69)" and inserting in lieu thereof the passage "DIVISION III.—The hearing (sections 61 to 69a)";

and

(b) by striking out the passage "DIVISION IV.—Bail (sections 143 to 150)" and inserting in lieu thereof the passage "DIVISION IV.—Bail (sections 143 to 150a)".

Amendment of principal Act, s. 3—Division of Act.

Enactment of  
ss. 27a, 27b,  
27c and 27d of  
principal Act.

4. The following heading and sections are enacted and inserted in the principal Act immediately after section 27 thereof:—

*Service of Summons by Post, and other Matters.*

Service of  
summons by  
post.

27a. (1) Subject to this section, where a member of the police force or any other public officer as defined in section 57a of this Act makes a complaint for a simple offence, not being an offence—

(a) punishable by imprisonment either for a first offence or for a subsequent offence ;

or

(b) in respect of which it is provided that a period of disqualification from holding or obtaining a licence to drive a motor vehicle shall be imposed,

any summons for the appearance of the defendant may, in lieu of any other mode of service provided for by this Act, be served on the defendant by posting the summons by ordinary prepaid post addressed to the defendant named in the summons at his last known or most usual place of abode or of business.

(2) Without limiting the effect of subsection (1) of this section and in the absence of circumstances making it appear to the court that the defendant resides or, as the case may be, carries on business elsewhere, the address of the defendant appearing on the summons referred to in that subsection shall be deemed to be his last known or most usual place of abode.

(3) Where—

(a) the affidavit of service of a summons referred to in subsection (1) of this section sets out the name and address of the person to which it was addressed and the time and place of the posting of the summons ;

and

(b) the time of the posting of the summons is—

(i) not more than three months after the day on which it is alleged that the offence to which the summons relates was committed ;

and

(ii) not less than twenty-eight days before the day on which the defendant is summoned to appear to answer to the charge,

that summons shall, in the absence of proof to the contrary, and notwithstanding any other enactment, be deemed to have been served on the defendant named therein at the time at which it would have been delivered in the ordinary course of post.

27b. Where a complaint and summons in the form and bearing the endorsements referred to in section 57a of this Act is, pursuant to subsection (3) of section 27a of this Act, deemed to have been served on the defendant named therein and that defendant fails to appear in obedience to that summons but has, pursuant to section 57a of this Act, pleaded guilty to the offence to which that summons relates, the court may proceed in the manner provided by section 62b and section 62c of this Act as if the summons had been served on the defendant in the manner provided for in section 27 of this Act.

Hearing on a written plea of guilty.

27c. (1) Subject to this section, where a summons is, pursuant to subsection (3) of section 27a of this Act, deemed to have been served on the defendant named therein and the defendant fails to appear in obedience to that summons and, where the summons was in the nature of a complaint and summons in the form and bearing the endorsements referred to in section 57a of this Act, fails to plead guilty in the manner provided in that section to the offence to which the summons relates, the court may—

Hearing where defendant fails to appear.

(a) proceed in the absence of the defendant to the hearing of the complaint, to which the summons relates, and, notwithstanding anything in section 62c of this Act, adjudicate thereon as fully and effectually as if the defendant had personally appeared in obedience to the summons;

or

(b) order that the complaint may be heard in the absence of the defendant and adjourn the hearing and on the adjourned hearing proceed in the manner provided for in paragraph (a) of this subsection.

(2) If pursuant to paragraph (b) of subsection (1) of this section a hearing is adjourned and on that adjourned hearing it is impracticable for the special magistrate or justices who so adjourned the hearing to continue the hearing the clerk of the court shall, with the approval of a special magistrate, convene another court which may notwithstanding the provisions of section 45 of this Act but subject to this section, complete the hearing and determination of the complaint.

(3) Upon conviction after a hearing, pursuant to subsection (1) of this section, the court shall not—

(a) impose any penalty other than—

(i) a payment of a fine or other sum of money ;

or

(ii) imprisonment or distress in default of payment of such fine or other sum adjudged to be paid ;

(b) disqualify the defendant from holding or obtaining a licence to drive a motor vehicle ;

(c) treat the offence as other than a first offence unless the complainant proves that the defendant has previously been convicted of such an offence ;

or

(d) fail to allow the defendant a reasonable time for the payment of any fine or other sum adjudged to be paid,

unless—

(e) the court has first adjourned the hearing of the complaint to a time and place appointed ;

(f) not less than fourteen days before the time appointed pursuant to paragraph (e) of this subsection, the defendant has been personally served with a notice informing him of the particulars of that conviction and of the time and place so appointed and of his rights under section 27d of this Act ;

and

(g) the defendant, having been personally served with a notice pursuant to paragraph (f) of this subsection, fails to serve on the clerk of the court a notice of application for a re-hearing, pursuant to subsection (1) of section 27d of this Act, within seven days of the service of the notice upon him.

(4) Where a defendant, not being a defendant who has been personally served with a notice pursuant to paragraph (f) of subsection (3) of this section, is convicted after a hearing pursuant to subsection (1) of this section, the clerk of the court which so convicted the defendant shall, within seven days of that conviction, serve by post on the defendant a notice setting out the particulars of that conviction the penalty imposed, and of the rights of the defendant under section 27d of this Act.

(5) Where a defendant, who has been personally served with a notice pursuant to paragraph (f) of subsection (3) of this section, is convicted after a hearing pursuant to subsection (1) of this section, the clerk of the court which so convicted the defendant shall within seven days after the imposition of a penalty in respect of that conviction serve by post on the defendant a notice setting out the particulars of that conviction and the penalty imposed.

(6) Notwithstanding anything in this Act or any other Act, no order for distress or imprisonment in default of payment or a fine or other sum adjudged to be paid by a defendant upon conviction after a hearing pursuant to subsection (1) of this section shall be enforced against a defendant other than a defendant who has been personally served with a notice pursuant to paragraph (f) of subsection (3) of this section and who has failed to serve the clerk of the court with a notice of application for a re-hearing in accordance with paragraph (g) of that subsection, unless not less than fourteen days before the day on which it is proposed to enforce that order the defendant has been served personally with a notice setting out the particulars of the conviction, the order proposed to be enforced and the rights of the defendant under section 27d of this Act.

27d. (1) A defendant on whom a notice referred to in paragraph (f) of subsection (3), subsection (4) or subsection (6) of section 27c of this Act has been served may, within seven days after the day on which that notice was so served, by notice in the prescribed form, served by post upon the clerk of the court concerned, apply to the court for a re-hearing of the complaint.

Re-hearing of  
complaint.

(2) Upon the service of a notice of application for a re-hearing of the complaint upon the clerk all proceedings in relation to that complaint and in relation to any orders made in relation thereto shall be stayed until the question of a re-hearing is determined by the court pursuant to subsection (4) of this section.

(3) As soon as practicable after a notice of application for a re-hearing has been served on him, the clerk of the court concerned shall—

(a) fix a time and place for the hearing of the application ;

and

(b) by notice served personally or by post, whichever shall be the most convenient, notify the parties of the time and place so fixed.

(4) On the day fixed by the clerk pursuant to subsection (3) of this section the court, which need not be formed by the same persons who formed the court which adjudicated upon the complaint to which the application for a re-hearing relates, shall consider the application and, if the court is satisfied that the summons deemed to have been served pursuant to subsection (3) of section 27a of this Act had not come to the notice of the defendant a reasonable time before the day of hearing appointed therein, the court shall quash the conviction on the complaint and any other orders made thereon against the defendant and direct that the complaint shall be re-heard at a time and place then fixed by the court and if the court is not so satisfied then the conviction on the complaint and all other orders made thereon against the defendant shall stand and be of full force and effect.

(5) The court before which the complaint is re-heard pursuant to a direction under subsection (4) of this section shall have power to adjudicate thereon as fully and effectually as if—

(a) the summons to the defendant had been served personally on the defendant ;

(b) the time and place appointed in the summons were the time and place fixed by the court pursuant to subsection (4) of this section for the re-hearing of the complaint ;

and

(c) the original hearing of the complaint had not occurred.

Amendment of  
principal Act,  
s. 33—Recogn-  
izances taken  
out of court.

5. Section 33 of the principal Act is amended—

(a) by inserting in subsection (1) after the passage “of such gaol” the passage “, or where any of the parties is in an institution as defined in the Social Welfare Act, 1926-1965, as amended, before the person in charge of such institution”;

(b) by striking out the word “or” first occurring in the proviso to subsection (1) and inserting in lieu thereof the passage “member of the police force in charge of any police station,”;

and

(c) by inserting in the proviso to subsection (1) after the passage “keeper of a gaol” the passage “or person in charge of any institution referred to in this subsection”.

6. The following section is enacted and inserted in the principal Act immediately after section 33b thereof :—

Enactment of s. 33c of principal Act—

33c. (1) Any recognizance of bail may be made subject to the conditions that the defendant will comply with such requirements with respect to—

Other conditions of recognizance of bail.

(a) his place of abode or residence ;

(b) the persons with whom he may or may not associate ;

or

(c) any other matters,

as to the justice seems necessary or desirable.

(2) Where a justice is satisfied by information given on oath that, or as to any facts which raise a probable presumption that, a person has failed to comply with any condition provided for by subsection (1) of this section of a recognizance of bail entered into by him, or on his behalf, such justice or any other justice may issue a warrant for the apprehension of that person and may commit him to gaol to be there safely kept, notwithstanding his having been admitted to bail as aforesaid, until he shall be thence delivered by due course of law.

7. Section 62 of the principal Act is amended—

(a) by inserting in subsection (1) immediately after paragraph (b) the following paragraph :—

Amendment of principal Act, s. 62—On non-appearance of defendant court may issue warrant or proceed *ex parte*.

(ba) upon proof that the summons was served a reasonable time before the time thereby appointed for the defendant's appearance, order that the complaint may be heard *ex parte* and adjourn the hearing ; or ;

and

(b) by inserting after the present contents thereof (which are hereby designated subsection (1) thereof) the following subsections :—

(2) At a hearing adjourned pursuant to paragraph (ba) of subsection (1) of this section, the court may proceed *ex parte* to the hearing of the complaint and subject to section 62c of this Act adjudicate thereon as fully and effectually, to all intents and purposes, as if the defendant had personally appeared before it in obedience to the summons.

(3) If pursuant to paragraph (ba) of subsection (1) of this section a hearing is adjourned and on that adjourned hearing it is impracticable for the

special magistrate or justices who so adjourned the hearing to continue the hearing the clerk of the court shall, with the approval of a special magistrate, convene another court which may, notwithstanding the provisions of section 45 of this Act, complete the hearing and determination of the complaint.

Amendment of principal Act, s. 62b—Powers of court where plea of guilty entered in writing.

**8. Section 62b of the principal Act is amended—**

(a) by striking out from paragraph (b) of subsection (6) the passage “driving licence as provided by the Road Traffic Act, 1934-1956” and inserting in lieu thereof the passage “licence to drive a motor vehicle” ;

and

(b) by striking out subsection (9).

Amendment of principal Act, s. 62c—Power of court in the absence of a defendant to imprison or suspend driving licence.

**9. Section 62c of the principal Act is amended—**

(a) by striking out from paragraph (a) of subsection (1) the passage “driving licence as provided by the Road Traffic Act, 1934-1956” and inserting in lieu thereof the passage “licence to drive a motor vehicle” ;

and

(b) by striking out from subsection (3) the passage “driving licence” and inserting in lieu thereof the passage “licence to drive a motor vehicle”.

Enactment of s. 70ab of principal Act—

**10. The following heading and section are enacted and inserted in the principal Act immediately after section 70a thereof :—**

*Recognizances.*

Court may require convicted person to enter into recognizance.

70ab. (1) Where any person is convicted by the court of any offence (whether a simple offence or a minor indictable offence) the court may, subject to this section, in addition to or in lieu of imposing any penalty which may lawfully be imposed, order the defendant to enter into his own recognizance, with or without sureties, for keeping the peace or being of good behaviour, or both, and for complying with such other conditions, if any, as the court may impose.

(2) If the person referred to in subsection (1) of this section—

(a) refuses or fails to enter into the recognizance ;

or

(b) refuses or fails to find the sureties.



the court may, impose on that person a penalty which, when aggregated with the penalty, if any, imposed by the court upon conviction for the offence in relation to which the convicted person was ordered to enter into his own recognizance pursuant to subsection (1) of this section, does not exceed the maximum penalty which could have, but for this section, been imposed on that person upon conviction for that offence.

11. Section 112 of the principal Act is amended by inserting in paragraph (b) of subsection (3) after the passage "him to bail" the passage "or certify for his admission to bail".

Amendment of principal Act, s. 112—If on completion of examination the evidence is not thought sufficient to warrant commitment, defendant to be discharged. If considered sufficient, defendant to be committed or admitted to bail.

12. Section 136 of the principal Act is amended by inserting in paragraph (a) after the passage "him to bail" the passage "or certify for his admission to bail".

Amendment of principal Act, s. 136—On plea of guilty defendant to be committed or admitted to bail for sentence.

13. Section 143 of the principal Act is amended—

(a) by striking out the word "or" occurring at the end of paragraph VIII ;

and

(b) by inserting after paragraph IX the passage—  
"; or

X. any indictable misdemeanour not mentioned in paragraphs I to IX (inclusive) of this section".

Amendment of principal Act, s. 142—Power to admit to bail persons charged with felony or certain misdemeanours.

14. Section 144 of the principal Act and the heading thereto are repealed.

Repeal of s. 144 of principal Act.

15. The following section is enacted and inserted in Division IV of Part V of the principal Act immediately after section 150 thereof :—

Enactment of s. 150a of principal Act—

150a. (1) Any recognizance of bail may be made subject to the conditions that the defendant will comply with such requirements with respect to—

Other conditions of recognizance of bail.

- (a) his place of abode or residence ;
- (b) the persons with whom he may or may not associate ;

or

- (c) any other matters,

as to the justice seems necessary or desirable.

(2) Where a justice is satisfied by information given on oath that, or as to any facts which raise a probable presumption that, a person has failed to comply with any condition provided for by subsection (1) of this section of a recognizance of bail entered into by him, or on his behalf, such justice or any other justice may issue a warrant for the apprehension of that person and may commit him to gaol to be there safely kept, notwithstanding his having been admitted to bail as aforesaid, until he shall be thence delivered by due course of law.

Amendment of principal Act, s. 159—Power to award costs of prosecution.

16. Section 159 of the principal Act is amended by striking out the passage “, notwithstanding that the parties may not be bound over by recognizance to prosecute and give evidence, and although no committal for trial may take place”.

Amendment of principal Act, s. 165—Power of Supreme Court to dispense with conditions relating to appeal where complaint impracticable.

17. Section 165 of the principal Act is amended by striking out the passage “precedent to the right of appeal,” and inserting in lieu thereof the passage “relating to an appeal,”.

Amendment of principal Act, s. 171—Appeal to be instituted within one month unless period extended.

18. Section 171 of the principal Act is amended—

- (a) by striking out from subsection (2) the word “Every” and inserting in lieu thereof the passage “Except as provided in subsection (2a) of this section, every”;

and

- (b) by inserting immediately after subsection (2) the following subsection :—

(2a) Where the Supreme Court is satisfied—

- (a) that the appellant has done whatever is reasonably practicable to institute an appeal ;

or

(b) that some special reason, not arising from the fault of the proposed appellant, exists which would justify it so extending the period,

it may extend the period of one calendar month referred to in subsection (2) of this section, in which case it shall be sufficient compliance with that subsection if the appeal is instituted within that extended period.

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

J. W. HARRISON, Governor.