

Finding
property.

21 Section forty-three of the Principal Act is amended—

- (a) by omitting from subsection (1) the words “Five pounds” and substituting therefor the words “Ten pounds”;
- (b) by omitting from subsection (2) the words “Ten pounds” and substituting therefor the words “Twenty pounds”; and
- (c) by omitting from subsection (3) the words “ten pounds” and substituting therefor the words “one hundred pounds”.

False reports
to police.

22 Section forty-four A of the Principal Act is amended—

- (a) by adding at the end of subsection (1) the words “, or three months’ imprisonment”; and
- (b) by omitting from subsection (2) the word “fine” and substituting therefor the word “penalty”.

Skins and
skin-wool
received by
tanners to be
entered in
book.

23 Section fifty-three of the Principal Act is amended by omitting from subsection (2) the words “Twenty pounds” and substituting therefor the words “Fifty pounds”.

Police officers
may enter
certain
places.

24 Section fifty-seven of the Principal Act is amended by omitting from subsection (3) the words “Five pounds” and substituting therefor the words “Ten pounds”.

Award of
damages to
persons
injured by
reason of
certain
offences.

25—(1) Section sixty-three of the Principal Act is repealed.

(2) Section thirteen of the *Police Offences Act 1962* is repealed.

(3) This section commences on the same day as the *Justices Act 1963*.

Persons
charged may
be bailed by
constable.

26 Section seventy-one of the Principal Act is repealed.

JUSTICES.

No. 33 of 1963.

AN ACT to amend the *Justices Act 1959*.
[18 September 1963.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

Short title,
citation, and
commence-
ment.

1—(1) This Act may be cited as the *Justices Act 1963*.

(2) The *Justices Act 1959*, as subsequently amended, is in this Act referred to as the Principal Act.

(3) This Act shall commence on a date to be fixed by proclamation.

2 Section three of the Principal Act is amended—

Interpre-
tation.

(a) by inserting, after the definition of “jurisdiction”, the following definition:—

“ ‘magistrate’ is synonymous with ‘justice’;”
and

(b) by inserting, after the definition of “petty session”, the following definition:—

“ ‘police magistrate’ means a territorial justice who is a barrister and has been appointed a police magistrate under the provisions of the *Public Service Act 1923* and includes any other stipendiary magistrate;”.

3 After section fifty-six of the Principal Act the following section is inserted:—

“56A—(1) When a person charged with an indictable offence on the complaint of a police officer or a person authorized or directed to make the complaint by the Crown or the Commonwealth is brought before a justice, the justice shall—

Procedure
when brought
before a
justice.

(a) explain to the defendant with what he is charged and in the prescribed form of words, or in words of like import, explain his rights and duties under this Act in respect of the charge; and

(b) inform the defendant that he is entitled to have the examination adjourned in accordance with section fifty-eight if he wants time to consider his course of action or to obtain legal advice.

“(2) Forthwith or, if the examination is adjourned, when it is resumed, the examining justice shall cause his clerk to read the charge to the defendant and ask him to plead to it.

“(3) The defendant shall then plead—

(a) that he is guilty of the crime charged, or with the consent of the justice and the prosecutor of any other crime of which he might be convicted on an indictment for the crime charged;

(b) that he is not guilty;

(c) that further proceedings may not be had on the complaint; or

(d) that he has cause to show why he should not be convicted of the charge.

“(4) If he pleads as provided in paragraph (c) of subsection (3) he shall state his ground and the justice shall before proceeding further hear and determine the plea and—

(a) amend the complaint;

(b) dismiss the complaint; or

(c) overrule the plea.

“(5) If the complaint is amended or the plea is overruled, the defendant shall be asked to plead to the amended complaint or to plead further, as the case requires.

“(6) If the defendant pleads not guilty or cause to show, he shall be asked whether he desires the depositions of witnesses to be taken before a justice.

“(7) If the defendant on being asked to plead stands mute or does not answer directly to the charge he shall be deemed to plead not guilty.

“(8) If the defendant on being asked if he desires the depositions of witnesses to be taken before a justice stands mute or does not answer directly to the question he shall be deemed so to desire.”.

Mode of
taking
evidence.

4 Section fifty-seven of the Principal Act is amended—

(a) by omitting the word “When” and substituting therefor the words “Except in a case to which section fifty-six A applies and in which the defendant has not desired that the depositions of witnesses be taken before a justice, where”; and

(b) by adding the following subsection at the end thereof:—

“(2) Where a witness has made a statutory declaration his declaration may be received as his evidence and signed deposition but the justices if they think just cause exists for doing so may, or if the opposite party requests shall, summon him to attend as a witness for further examination or cross-examination.”.

Discharge of
defendant.

5 Section sixty-one of the Principal Act is amended by omitting the word “When” and substituting therefor the words “Where in a case in which a person is charged with an indictable offence the examination includes the taking of depositions, when”.

6 Section sixty-two of the Principal Act is repealed and the following section is substituted therefor:—

Committal of
defendant.

“62 Where—

(a) in a case to which section fifty-six A applies and in which the defendant has not desired that the depositions of witnesses be taken before a justice, the defendant has pleaded not guilty or cause to show or in the case of an offence punishable by death guilty; or

(b) in a case in which depositions have been taken before the justices, the evidence in the opinion of the justices—

(i) is sufficient to put the defendant on his trial for an indictable offence; or

(ii) raises a strong or probable presumption of his guilt,

they shall order him to be committed to a session of oyer and terminer and general gaol delivery for his trial, and in the meantime shall by their warrant commit him to a gaol, to be there safely kept until the session to which he is committed, or until he is delivered in due course of law or admitted to bail.”.

7 Section sixty-three of the Principal Act is amended by omitting subsection (1) and substituting therefor the following subsection:—

Defendant
pleading
guilty.

“(1) Where—

- (a) in a case to which section fifty-six A applies, the defendant has pleaded guilty to a charge of an indictable offence not punishable by death; or
- (b) in any other case where a person is charged with an indictable offence, the defendant upon being asked whether he wishes to say anything in answer to the charge, admits that he is guilty of an indictable offence not punishable by death and desires to plead guilty,

the examining justice—

- (c) in the former case, shall; and
- (d) in the latter case, may, instead of committing him for trial,

commit him to the Supreme Court for sentence.”.

8 After section sixty-nine of the Principal Act the following section is inserted:—

“69A In a case to which section fifty-six A applies and in which the defendant has not desired that depositions be taken before a justice, the Crown, the prosecutor, or the defendant may—

Witnesses
where no
depositions
taken.

- (a) apply to a justice to summon a person who might have been a witness had depositions been taken, in accordance with section forty-one; and
- (b) on that person's appearance—
 - (i) apply to the justices for the examination of that person, which shall be done in the presence of the defendant as if depositions were being taken and section fifty-seven shall be complied with in respect of that witness; or
 - (ii) whether or not the witness is so examined, apply to the justices to bind the witness by recognizance, with or without sureties, in such sum as they think fit, to appear at the court at which the defendant's matter is to be determined and then and there to give evidence if so required, and the justices may so do.”.

9 Section seventy-one of the Principal Act is amended—

Summary
trial of
certain
crimes.

- (a) by omitting subsection (1) and substituting therefor the following subsections:—

“(1) Where a person is brought before justices upon a complaint for an offence under section two hundred and thirty-four, section two hundred and thirty-seven, section two hundred and thirty-nine, section two hundred and

fifty, section two hundred and fifty-two, section two hundred and fifty-three, or section two hundred and fifty-eight of the *Criminal Code* in respect of property the value of which does not exceed ten pounds, the section creating the offence charged shall be deemed to have created a simple offence and the complaint shall be dealt with accordingly, subject to the provisions of this section.

“(1A) Where a person is brought before justices upon a complaint for an offence—

- (a) under section one hundred and six, section one hundred and seven, section one hundred and eight, section one hundred and nine, or section one hundred and thirteen of the *Criminal Code*;
- (b) under section two hundred and thirty-four, section two hundred and thirty-seven, section two hundred and thirty-nine, section two hundred and fifty, section two hundred and fifty-two, section two hundred and fifty-three, or section two hundred and fifty-eight of the *Criminal Code* in respect of property the value of which exceeds ten pounds but does not exceed two hundred pounds;
- (c) under section two hundred and forty-seven of the *Criminal Code*, except where it is alleged that in the commission of the offence—
 - (i) property to the value of more than two hundred pounds has been stolen;
 - (ii) violence has been used or offered to any person in or about the building;
 - (iii) the defendant had in his possession a gun, pistol, dagger, cosh, or other offensive weapon;
 - (iv) explosives were used; or
 - (v) the defendant intended to commit a crime other than stealing; or
- (d) under section two hundred and seventy-eight or section two hundred and seventy-nine of the *Criminal Code* in respect of a cheque for not more than two hundred pounds,

instead of asking him to plead under section fifty-six A, the justices may, in the prescribed form of words or in words of like import, ask the defendant if he is willing to be tried by the justices instead of by jury and if that person, or, if he is under the age of sixteen years, his parent, does not object to his being tried by the justices, the section creating the offence shall be deemed to have created a simple offence and the complaint shall be dealt with accordingly, subject to the provisions of this section.”; and

- (b) by omitting subsection (4) and substituting therefor the following subsections:—

“(4) Upon conviction under this section the defendant is, subject to section seventy-six, liable—

(a) except as provided in paragraph (b) of this subsection, to twelve months’ imprisonment for a first offence and two years’ imprisonment for a subsequent offence; and

(b) for an offence under section two hundred and forty-seven of the *Criminal Code*, to two years’ imprisonment.

“(5) Section twenty-six does not apply to complaints dealt with under this section.”.

10 After section eighty-five of the Principal Act the following section is inserted:—

“85A—(1) Where a summary conviction or order adjudges the payment of a sum of money, with or without costs, or for costs alone and it appears to the justices that the defendant is without, or about to depart from, the State, the justices may—

Power to impose imprisonment in default of payment of fine, &c.

- (a) if they think it just, allow the defendant time to pay the sum so adjudged; and
- (b) impose on the defendant a period of imprisonment in default of payment not exceeding the limit fixed by the scale set forth in the second schedule.

“(2) Where—

- (a) a summary conviction or order adjudges the payment of a sum of money, with or without costs, or for costs alone, without imposing a period of imprisonment in default of payment; and

(b) on or by the return of—

(i) a summons or warrant issued under section seventy-nine; or

(ii) a warrant of execution,

it appears to the justices that the defendant is without the State,

the justices may amend the conviction or order to impose on the defendant a period of imprisonment in default of payment not exceeding the limit fixed by the scale set forth in the second schedule.”.

11 After section ninety-two of the Principal Act the following section is inserted in Part IX:—

Execution by
civil process.

“92A—(1) Where a summary conviction or order adjudges the payment of a sum of money, with or without costs, or for costs alone, the clerk of petty sessions may draw up and seal a memorandum of the conviction or order and transmit it with the prescribed request to the registrar of a convenient court under the *Local Courts Act 1896*.

“(2) So much of a summary conviction or order of which a memorandum is received by a registrar under this section as relates to the payment of money shall be deemed to be a judgment of the court whose registrar has received it and be enforceable therein by the Crown or other person to whom the money is payable.”.

12 Section one hundred and forty of the Principal Act is repealed and the following section is substituted therefor:—

Award of
damages in
certain cases.
Cf. 26 Geo. V
No. 44, s. 63.

“140—(1) In this section, ‘civil party’ means a person—

(a) who has suffered damage by an offence against section fifteen A, section twenty-four A, Part III, Part IV, or section forty-two of the *Police Offences Act 1935* or section thirty-seven of the *Traffic Act 1925*; and

(b) on whose behalf the complainant of such an offence claims damages therefor.

“(2) The complainant of such an offence may with the written consent of the civil party claim such damages and the court may subject to subsection (4) if the defendant is convicted assess the damages and adjudge that the civil party recover them, with or without costs, from the defendant, up to an amount—

(a) if a police magistrate constitutes, or is a member of, the court, of two hundred and fifty pounds; and

(b) in any other case, of one hundred pounds.

“(3) A claim for damages under this section may be made in the complaint or by word of mouth on the conviction of the defendant.

“(4) The court which convicts the defendant shall, where damages are claimed under this section—

(a) forthwith, or after such adjournment as is just, assess and adjudge the damages; or

(b) adjourn the claim to a day and place to be fixed by it, for the damages then and there to be assessed and adjudged by such justices as may then be there, who have jurisdiction accordingly.

“(5) On the application of the complainant after the conviction of the defendant, the civil party shall be allowed to conduct as a party so much of the proceedings as concerns him.

“(6) If an application for damages is made, the civil party is bound by the finding thereon, and the order of the justice is a bar to any civil proceeding by him against the offender in respect of the damage in respect of which the application was made.

“(7) Where in a complaint by or on behalf of the person aggrieved in respect of an offence against section thirty-five of the *Police Offences Act 1935*, the justices upon hearing the case upon the merits find that the offence is not proved, or that the assault charged was justified or of so trifling a nature as not to merit any punishment, they may dismiss the complaint, and upon the application of the defendant shall issue to him a certificate of dismissal in the prescribed form, which certificate shall be a bar to any civil proceedings in respect of the assault alleged in that case.

“(8) A person may not be convicted of an offence under subsection (4) of section thirty-seven of the *Police Offences Act 1935* in respect of the property of a public authority if on demand by that public authority he pays to it the cost of repairing, replacing, or making good the damage done by him.”.

13 Until such time as rules for the purposes of the amendments made by this Act are made under section one hundred and forty-four of the Principal Act, the Attorney-General may make rules for those purposes in respect of any matter for which rules may be made under that section.

Transitory provision for rules.

LAUNCESTON FLOOD PROTECTION.

No. 34 of 1963.

AN ACT to amend the *Launceston Flood Protection Act 1960*. [18 September 1963.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—(1) This Act may be cited as the *Launceston Flood Protection Act 1963*.

Short title and citation.

(2) The *Launceston Flood Protection Act 1960*, as subsequently amended, is in this Act referred to as the Principal Act.