



ANNO VICESIMO SECUNDO

# GEORGII V REGIS.

## A.D. 1931.

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### No. 2051.

An Act to amend the Justices Act, 1921, and for other purposes.

*[Assented to, December 9th, 1931]*

**B**E 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, 1931". Short titles.  
 (2) The Justices Acts, 1921 and 1923, and this Act may be cited together as the "Justices Acts, 1921 to 1931".  
 (3) The Justices Act, 1921, is hereinafter called "the principal Act".
2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.
3. This Act is incorporated with the other Acts mentioned in section 1, and those Acts and this Act shall be read as one Act. Incorporation.
4. Section 9 of the principal Act is amended by inserting after the word "offence" in the second line of subsection (2) thereof the words "or to any other matter determinable by a Justice or Justices in a summary way". Amendment of principal Act, s. 9.
5. Section 10 of the principal Act is amended— Amendment of principal Act, s. 10—
  - (a) by striking out in the first line of subsection (1) thereof the words "oaths of office and of allegiance" and inserting Power of Special Magistrates to administer oaths of office.

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in lieu thereof the words “oath of allegiance and the judicial oath”.

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

(2a) The said oaths may also be taken before any Special Magistrate sitting in open Court or in Chambers.

(c) by striking out subsection (4) thereof and by inserting in lieu thereof the following subsection:—

(4) Every oath taken before a Special Magistrate or commissioner shall be subscribed by the person taking the same in the presence of, and attested by the Special Magistrate or commissioner, and the person taking the same shall forward the document containing the oath duly subscribed to the Attorney-General. The Attorney-General shall send all such oaths to the Master of the Supreme Court to be kept with the Roll of Justices.

Appointment of  
Special Magistrates.

6. Section 11 of the principal Act is amended by adding at the end thereof the following subsection:—

(2) After the commencement of the Justices Act, 1931, no Special Magistrate or Local Court Judge shall be appointed, except on the recommendation of the Public Service Commissioner endorsed by the Chief Justice of the Supreme Court, and no Special Magistrate or Local Court Judge (whether appointed before or after the commencement of the said Act) shall be dismissed or reduced in status except on the recommendation of the Chief Justice of the Supreme Court: Provided that this section shall not affect the application of section 70 of the Public Service Act, 1916, to Special Magistrates and to the Local Court Judge.

New section 22A—

7. Part III. of the principal Act is amended by inserting therein after section 22 the following section:—

Description of  
offence in documents  
under this Act.

22A. (1) Every information, complaint, summons, warrant, or other document under this Act in which it is necessary to state the matter charged against any person shall be sufficient if it contains a statement of the specific offence with which the accused person is charged, together with such particulars as are necessary for giving reasonable information as to the nature of the charge.

(2) The statement of the offence shall describe the offence shortly in ordinary language, avoiding as far as possible the use of technical terms, and without necessarily stating all the essential elements of the offence, and, if the offence charged is one created by statute, shall contain a reference to the section of the statute creating the offence.

(3) After the statement of the offence, necessary particulars of the offence shall be set out in ordinary language, in which the use of technical terms shall not be required. (4) Any

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(4) Any information, complaint, summons, warrant, or other document to which this section applies, which is in such form as would have been sufficient in law if this section had not passed shall, notwithstanding anything in this section, continue to be sufficient in law.

8. Subsection (1) of section 33 of the principal Act is amended by striking out the proviso thereto and inserting in lieu thereof the following:—

Amendment of principal Act, s. 33—

Sureties to justify in certain cases.

Provided that no such other Justice, and no clerk, officer of police, or keeper of a gaol shall take the recognizance of any person proposed as a surety unless the person so proposed first makes an affidavit or declaration of justification in the form prescribed by rules under this Act.

9. Part III. of the principal Act is amended by inserting therein after section 33 the following sections:—

New sections 33A and 33B—

33A. The provisions of section 32 and section 33 of this Act shall apply and be deemed always to have applied in every case where a Court of Summary Jurisdiction is authorised to take a recognizance or where any recognizance is required to be entered into before a Court of Summary Jurisdiction.

Extension of provisions for taking recognizance out of Court.

33B. When any defendant is bound by recognizance under this Act to appear before the Supreme Court or any Court of Summary Jurisdiction or Justice, and any person gives information on oath to a Justice of any facts which raise a probable presumption that it is the intention of the defendant not to surrender himself in accordance with the recognizance, that Justice or any other Justice may issue a warrant for the apprehension of the defendant and may by the warrant commit him to gaol to be there safely kept, notwithstanding that he has been released under the said recognizance, until he shall thence be delivered by due course of law.

Power to arrest persons on bail suspected of intention to abscond.

10. Section 39 of the principal Act is amended—

(a) by inserting after the word "Jurisdiction" in the seventh line of subsection (2) the words "or before a Justice or Justices for the purpose of a preliminary examination under Part V. of this Act; and

Amendment of principal Act, s. 39—  
Enforcement of recognizances.

(b) by inserting after the word "Court" in the same line the words "or Justice or Justices".

11. Part III. of the principal Act is amended by inserting therein a new section as follows:—

New section 39A—

39A. Upon proof of any breach of a condition binding a person discharged upon recognizance to appear before the Court or a Justice, the Court or any Justice may issue a warrant to apprehend the said person whether the matter of the information or complaint has been substantiated on oath or not.

Arrest of persons guilty of breach of condition to appear.

12. Section

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Amendment of  
principal Act,  
s. 42—

Deputy clerks.

**12.** Section 42 of the principal Act is amended by inserting therein the following subsection :—

(3) The Governor may appoint any fit and proper person to be the deputy of any clerk. A deputy so appointed may, whenever directed by the clerk to whom he is deputy, and subject to any limitations imposed by the Governor at the time of his appointment, do anything which the said clerk might do, and anything done by a deputy shall be of the same validity and effect as if done by the said clerk.

Amendment of  
principal Act,  
s. 60 (2).

**13.** Subsection (2) of section 60 of the principal Act is amended by inserting after the word "recognizances" in the third line thereof the words "with or without a surety or sureties and".

Amendment of  
principal Act,  
s. 65—

Power to resume  
hearing when  
defendant  
remanded.

**14.** Section 65 of the principal Act is amended by inserting at the end thereof the following subsections :—

(4) The Court or any Justice may, in any case where the defendant has been remanded into custody, order the defendant to be brought before the Court or Justice or any other Court or Justice for the hearing or the continuation of the hearing at any time before the expiration of the period for which the hearing has been adjourned, and any keeper of the gaol or officer in whose custody the defendant is shall duly obey such order.

(5) If a defendant, who has been suffered to go at large or discharged upon recognizance, does not appear at the time and place appointed under subsection (2) the Court then sitting to hear the adjourned complaint or any Justice may issue a warrant for his arrest and further adjourn the case until the defendant is apprehended.

If the defendant is by virtue of the warrant brought before the Court which sat to hear the complaint before the adjournment the Court shall hear the case or continue the hearing as if there had been no adjournment.

If the defendant is arrested by virtue of the warrant but it is impracticable to bring him before the Court which sat to hear the complaint before the adjournment he shall be taken before some other Court and that Court shall proceed to hear and determine the matter of the complaint.

(6) Instead of issuing a warrant as provided in subsection (5) the Court sitting to hear the adjourned complaint or any Justice may issue a summons for the appearance of the defendant at a time and place mentioned in the summons.

If the defendant appears before the Court which sat to hear the complaint before the adjournment the Court shall hear the case or continue hearing as if there had been no adjournment. If it is impracticable to summon the defendant to appear before the Court which sat to hear the case before the adjournment the summons may issue for his appearance before some other Court and the matter of the complaint shall be heard and determined by that Court.

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If a defendant summoned under this subsection fails to appear in obedience to the summons the Court before which he is summoned may proceed in the manner provided by section 62.

15. Section 81 of the principal Act is amended so as to read as follows :—

Amendment of principal Act, s. 81—  
Term of imprisonment when none specially prescribed.

81. Whenever the payment of any fine or sum of money adjudged to be paid by any conviction or order is by this or any other Act authorised to be enforced by imprisonment with or without distress, but no term of imprisonment is prescribed by any special Act, such imprisonment shall be for such period as the Court or Justice issuing the warrant of commitment in its or his discretion thinks fit, within the limits fixed by the following scale :—

Where the sum adjudged to be paid excluding the costs—	The said period shall be—
Does not exceed One Pound .....	Not more than seven days
Exceeds One Pound but does not exceed Ten Pounds	Not less than three nor more than fourteen days
Exceeds Ten Pounds but does not exceed Fifty Pounds	Not less than seven days nor more than three months
Exceeds Fifty Pounds .....	Not less than one month nor more than six months

16. Section 91 of the principal Act is amended by inserting after the words “ costs and charges of ” in the fifth line the words “ the warrant of commitment and of ”.

Amendment of principal Act, s. 91—  
Enforcement of payment of costs of commitment.

17. Section 92 of the principal Act is amended by striking out the words “ conviction or order directs ” at the end of subsection (1) thereof, and inserting in lieu thereof the words “ conviction directs or for such time as the order directs unless the order is sooner obeyed ”.

Amendment of principal Act, s. 92—  
Warrants of committal.

18. Division VI. of Part IV. of the principal Act is amended by inserting therein after section 93 the following section :—

New section 93A—

93A. A warrant of commitment, notwithstanding that it is addressed to the keeper of some particular gaol, shall be deemed to be lawfully executed if the defendant is taken and conveyed to any other gaol, and there received into custody, and kept to hard labor or otherwise for the time mentioned in the warrant, and the keeper of any such other gaol to which the defendant is conveyed shall have the same power and authority under the warrant as if he were the keeper of the gaol named therein.

Power to imprison person arrested under warrant of commitment in any gaol.

19. Section

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- Amendment of principal Act, s. 99—** **19.** Section 99 of the principal Act is amended by inserting at the end thereof the following passage:—
- Recognizance to keep the peace.** “with or without hard labor. The recognizance if entered into forthwith upon the making of the order may be taken by the Court or any Justice or if entered into subsequently may be taken by any Justice”.
- New section 101A—** **20.** Part V. of the principal Act is amended by inserting therein after section 101 the following section:—
- Joinder of charges.** 101A. (1) Charges for any offences, whether felonies or misdemeanours, may be joined in the same information if the charges are founded on the same facts or form or are part of a series of offences of the same or a similar character.
- (2) The Justice may, if he thinks just, deal with any charge so joined separately.
- New section 108A—** **21.** Part V. of the principal Act is amended by inserting after section 108 therein the following section:—
- Contemptuous behaviour on preliminary examination.** 108A. Section 46 of this Act shall apply in relation to the preliminary examination before a Justice in the same way as it applies to proceedings before a Court of Summary Jurisdiction, and shall be read and construed with all such modifications as are necessary to give effect to this section.
- Amendment of principal Act, s. 109—** **22.** Section 109 of the principal Act is amended by inserting after the word “trial” at the end of subsection (1) thereof the words “for any indictable offence”.
- Duty of Justice as to evidence on preliminary hearing.**
- Amendment of principal Act, s. 112—** **23.** Section 112 of the principal Act is amended by inserting after the word “trial” at the end of subsection (1) thereof the words “for any indictable offence”.
- Duty of Justice as to committal for trial.**
- Amendment of principal Act, s. 117—** **24.** Section 117 of the principal Act is amended by adding at the end thereof the following subsection:—
- Power to bind witness by recognizance before committal.** (3) Any recognizance under this section may be entered into at any stage of the examination although the defendant has not then been committed for trial. A recognizance so entered into before committal shall be void if the defendant is not committed for trial.
- Amendment of principal Act, s. 120—** **25.** (1) Subsection (1) of section 120 is amended—
- Minor offences cognizable by Special Magistrate.** (a) by striking out paragraph III. thereof and inserting in lieu thereof the following paragraph:—
- III. Obtaining or attempting to obtain money or goods or any valuable security by false pretences when the property obtained or attempted to be obtained is of the value of Five Pounds or less;
- (b) by

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(b) by inserting after paragraph III. thereof the following paragraph:—

III.A. Receiving any property stolen, embezzled, or obtained by false pretences knowing the same to have been so stolen, embezzled, or obtained, where the property is of the value of Five Pounds or less.

(2) Subsection (2) of section 120 of the principal Act is amended so as to read as follows:—

(2) A Court of Summary Jurisdiction constituted by a Special Magistrate shall also have such jurisdiction as hereinafter appears to hear and determine in a summary way—

(a) any charge in respect of any offence mentioned in paragraphs I., II., III., and III.A. of subsection (1) hereof where the property stolen, embezzled, obtained, attempted to be obtained, or received does not exceed in value One Hundred Pounds:

(b) any charge for an offence under section 1 of The Criminal Law Amendment Act, 1902 (which section relates to fraudulent conversion) where the property converted does not exceed in value One Hundred Pounds.

(3) Section 120 of the principal Act is further amended by inserting therein the following subsection:—

(3) In this section the term “valuable security” includes any writing entitling or evidencing the title of any person to any share or interest in any public stock, annuity, fund, or debt of any body corporate, company, or society, whether within or without His Majesty’s Dominions, or to any deposit in any bank, and includes any scrip, debenture, bill, note, warrant, order, or other security for payment of money, or any accountable receipt, release or discharge, or any receipt or other instrument evidencing the payment of money or the delivery of any chattel personal, and any document of title to land or goods as hereinafter defined.

The term “document of title to land” includes any deed, map, roll, register, paper, or parchment written or printed or partly written and partly printed being or containing evidence of the title or any part of the title to any real estate or to any interest in or out of any real estate.

The term “document of title to goods” includes any bill of lading, dock warrant, warehouse keeper’s certificate, warrant, or order for the delivery or transfer of any goods or valuable thing, bought or sold note, or any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of such document to transfer or receive any goods thereby represented or therein mentioned or referred to.

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Amendment of  
principal Act,  
s. 122—

Power of Justices to  
deal with minor  
offence without  
consent of  
accused.

**26.** Section 122 of the principal Act is amended so as to read as follows :—

122. The jurisdiction conferred by section 120 may be exercised irrespective of the consent of the accused ; but the Justices or Special Magistrate shall not have jurisdiction to hear and finally determine any charge if it appears to them or him in their or his discretion that the offence, having regard to its seriousness or the intricacy of the facts or the difficulty of any questions of law likely to arise at the trial, or any other relevant circumstances, ought to be tried by the Supreme Court.

Amendment of  
principal Act,  
s. 123—

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

**27.** Section 123 of the principal Act is amended so as to read as follows :—

123. (1) When a defendant appears before any Special Magistrate or Justices charged with any offence cognizable by a Special Magistrate or Justices under section 120, the Court shall when all the evidence offered on the part of the prosecution has been heard, determine whether it will deal with the case in a summary way or not, and inform the defendant of its determination.

(2) If the Court determines not to deal with the case in a summary way it shall complete the preliminary examination.

(3) This section shall not apply where the defendant is a child under the age of eighteen years.

Amendment of  
principal Act,  
s. 124—

Consequential  
amendment.

Amendment of  
principal Act,  
s. 129—

Powers of Court  
as to punishment  
for minor offences.

**28.** Section 124 of the principal Act is amended by striking out the proviso thereto.

**29.** Section 129 of the principal Act is amended so as to read as follows :—

129. (1) Subject to this section, if the defendant is convicted the Court may adjudge him to be punished by fine or imprisonment as he is by law punishable.

(2) Except where Justices or a Special Magistrate have or has independently of this Act power to punish by longer imprisonment or higher fine, or where subsection (3) applies, the Court shall not inflict any punishment exceeding in the case of imprisonment, imprisonment for two years, or in the case of a fine, One Hundred Pounds.

(3) If it is proved or admitted that the defendant has previously been convicted and sentenced, whether by a Court of Summary Jurisdiction or the Supreme Court, to a term or terms of imprisonment not less in the aggregate than six months, for any indictable offence or offences, the Court may, on the conviction of the defendant, inflict any punishment not exceeding the maximum fixed by law, although the punishment so inflicted exceeds in the case of imprisonment, imprisonment for two years or in the case of a fine, a fine of One Hundred Pounds.

**30.** Section



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- 30.** Section 130 of the principal Act is amended by inserting after the word "pretences" in the second line the words "or received, embezzled, or converted".
- Amendment of principal Act, s. 130—  
Consequential amendment.
- 31.** Part V. of the Justices Act, 1921, is amended by inserting after section 130 therein the following section:—
- 130A. Section 196, the proviso contained in section 213, section 218 and section 219 of the Criminal Law Consolidation Act, 1876, shall apply on the trial under this Division of any offence to which they relate in the same manner as far as possible as they apply on the trial of similar offences in the Supreme Court.
- Application of Criminal Law Consolidation Act to minor offences.
- 32.** Section 131 of the principal Act is repealed.
- Repeal of s. 131 of principal Act.
- 33.** Paragraph (a) of section 152 of the principal Act is amended by inserting after the word "travel" therein the words "or so ill as not to be able to attend at the trial or to give evidence thereat without danger to his health".
- Amendment of principal Act, s. 152—  
Proceedings on illness of witness.
- 34.** Section 160 of the principal Act is amended by adding at the end thereof the following proviso:—
- Provided that no payment shall be made on any certificate for compensation under either of the last two preceding sections unless the certificate is presented for payment within six months from the date when it was signed by the Justice or Magistrate who granted it.
- Amendment of principal Act, s. 160—  
Limitation of time for claiming witness fees, &c.
- 35.** Section 167 of the principal Act is amended by adding at the end thereof the following:—
- The Justice or Justices taking the recognizance may in their discretion require one or more sureties to be bound by the recognizance for the due performance of the conditions thereof, in such sum or sums as the Justice or Justices think fit.
- Amendment of principal Act, s. 167—  
Sureties for prosecution of appeal.
- 36.** Section 170 of the principal Act is amended by inserting after subsection (1) thereof the following subsection:—
- (1A) If a person convicted and committed to gaol appeals and is liberated upon recognizance on appeal, and the Court on appeal orders that the balance or some part of the balance of his sentence be served, the Justices from whose decision the appeal has been brought or any other Justice may by warrant remand the appellant to his former custody, there to serve the balance of the term to be served by him.
- Amendment of principal Act, s. 170.
- 37.** Part VII. of the principal Act is amended by inserting therein after section 187 the following heading and section:—
- Proof of Convictions and Orders.*
- 187A. (1) Any conviction or order whatsoever made by a Court of Summary Jurisdiction may be proved by a copy of the
- Proof of convictions by minute on complaint.
- New section 187A—

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the information or complaint on which the conviction or order was made, and of the minute or memorandum thereof made by the Court and indorsed on the complaint. The copy must purport to be certified by the person or one of the persons constituting the Court by which the conviction or order was made, or by the Clerk of that Court or by the deputy of the Clerk.

(2) No proof shall be required of the signature or judicial or official character of the person appearing to have signed any such copy as aforesaid.

(3) This section shall apply to any conviction or order whether made before or after the commencement of this Act, and shall be in addition to and not in substitution for any other enactment providing a mode of proving convictions and orders.

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

A. HORE-RUTHVEN, Governor.