



ANNO DECIMO OCTAVO

**ELIZABETHAE II REGINAE**

**A.D. 1969**

\*\*\*\*\*

**No. 75 of 1969**

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

[Assented to 11th December, 1969.]

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 (No. 2), 1969".
- (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".
- Commence-  
ment.**                **2.** This Act shall come into operation on a day to be fixed by proclamation.
- Amendment of  
long title of  
principal Act.**      **3.** The long title of the principal Act is amended by inserting after the passage "justices of the peace" the passage " , and for other purposes".
- Amendment of  
principal Act,  
s. 4—  
Interpretation**      **4.** Section 4 of the principal Act is amended—
- (a) by inserting after the definition of "defendant" in subsection (1) the following definitions :—
- "district" means district, as defined by subsection (3) of section 4 of the Local and District Criminal Courts Act, 1926-1969 :

“District Criminal Court” means District Criminal Court, as defined by subsection (3) of section 4 of the Local and District Criminal Courts Act, 1926-1969 ; ;

(b) by inserting after the definition of “gaol” in subsection (1) the following definitions :—

“group I offence” means group I offence, as defined by subsection (3) of section 4 of the Local and District Criminal Courts Act, 1926-1969 :

“group II offence” means group II offence, as defined by subsection (3) of section 4 of the Local and District Criminal Courts Act, 1926-1969 :

“group III offence” means group III offence, as defined by subsection (3) of section 4 of the Local and District Criminal Courts Act, 1926-1969 ; ;

(c) by inserting after the definition of “minor indictable offence” in subsection (1) the following definitions :—

“Recorder” means Recorder within the meaning of section 4 of the Local and District Criminal Courts Act, 1926-1969 :

“Senior Judge” means Senior Judge within the meaning of the Local and District Criminal Courts Act, 1926-1969 ; ;

and

(d) by inserting after the definition of “Special Act” in subsection (1) the following definition :—

“special justice” means a justice who is appointed and holding office as a special justice by virtue of this Act .:

5. Section 5 of the principal Act is amended by inserting after the present contents thereof (which are hereby designated subsection (1) thereof) the following subsections :—

(2) Subject to subsections (3), (4) and (5) of this section, a special justice shall have, when sitting alone and constituting a court of summary jurisdiction, all the powers and jurisdiction capable of being exercised under this Act by two or more justices when constituting such a court ; but, except when so sitting, a special justice shall have the same powers and jurisdiction as a justice who is not a special justice.

Amendment of principal Act, s. 5—  
Interpretation with respect to powers of a single justice.

(3) Where a special justice is sitting alone and constituting a court of summary jurisdiction, and a defendant appearing before him charged with a simple offence pleads not guilty, that defendant, or the complainant, may request that the case be heard and determined by a court of summary jurisdiction constituted by a special magistrate or by two or more justices, whereupon the special justice shall—

(a) forthwith desist from proceeding further with the hearing ;

and

(b) adjourn the hearing to such time and place as he deems fit, then and there to be heard before a special magistrate, or two or more justices.

(4) Where—

(a) a special justice is sitting alone and constituting a court of summary jurisdiction ;

(b) a defendant appears before him charged with a minor indictable offence ;

and

(c) it appears to the special justice that the alleged offence is cognizable by him under section 120 of this Act,

the special justice shall, before proceeding with the hearing inquire of the informant and of the defendant whether, in the event of his determining to hear and determine the case in a summary way and of the defendant's pleading not guilty, the informant and the defendant agree that he should so hear and determine the case, and, unless they then and there intimate that they would agree to his doing so, he shall—

(d) forthwith desist from proceeding further with the hearing ;

and

(e) adjourn the hearing to such time and place as he deems fit, then and there to be heard before a special magistrate or two or more justices, as the case may require.

(5) An intimation given by the informant and the defendant pursuant to subsection (4) of this section that they agree to the special justice hearing and determining the matter in a summary way shall be irrevocable.

6. Section 10 of the principal Act is amended by inserting after subsection (3) the following subsection :—

Amendment of principal Act, s. 10—  
Oaths to be taken by justices, etc.

(4) The Attorney-General shall keep, as part of the Roll of Justices, a roll of the special justices appointed and holding office under this Act.

7. The following sub-heading and section are enacted and inserted in the principal Act immediately after section 10 thereof :—

Enactment of s. 10a and sub-heading of principal Act—

*Special Justices.*

10a. (1) The Governor may, on the recommendation of the Attorney-General, from time to time by proclamation appoint as special justices persons qualified to be so appointed as provided by this section.

Appointment of special justices.

(2) A person shall be qualified to be appointed a special justice if—

(a) his name is on the Roll of Justices ;  
and

(b) he is, in the opinion of the Attorney-General, by reason of his experience and knowledge of the law, a fit and proper person to be so appointed.

(3) A special justice shall be entitled for the performance of his judicial duties to receive such remuneration as, from time to time, is fixed by the Governor.

(4) The Governor may, by proclamation, revoke or vary an appointment made under this section.

(5) The remuneration referred to in subsection (3) of this section shall be paid by the Treasurer out of moneys provided by Parliament for the purpose.

8. Section 11 of the principal Act is amended by striking out subsection (2) and inserting in lieu thereof the following subsection :—

Amendment of principal Act, s. 11—  
Appointment and dismissal of special magistrates.

(2) After the commencement of the Justices Act Amendment Act (No. 2), 1969, no special magistrate shall be appointed except on the recommendation of the Public Service Board endorsed by the Chief Justice of the Supreme Court, and no special magistrate (whether appointed before or after the commencement of that Act) shall be dismissed or reduced in status except on the recommendation of the Chief Justice of the Supreme Court : But this section shall not affect the application to special magistrates of sections 106 and 107 of the Public Service Act, 1967-1968, as amended.

Enactment of  
s. 13a and  
sub-heading of  
principal Act.

9. The following sub-heading and section are enacted and inserted in the principal Act immediately after section 13 thereof :—

*Senior Special Magistrates.*

Appointment  
of Senior  
Special  
Magistrate.

13a. (1) The Governor may, on the recommendation of the Attorney-General from time to time, by proclamation confer on a special magistrate of at least five years' standing the title of Senior Special Magistrate.

(2) The conferring of the title of Senior Special Magistrate upon a special magistrate does not in any respect vary his power or authority at law ; but it shall be proper to have regard (together with all other relevant matters) to the title of Senior Special Magistrate, either generally or in any particular case—

(a) in the determination of the respective salaries for special magistrates ;

and

(b) in the assignment, by the person having the administrative authority to do so, of special magistrates to the hearing and determination of cases.

Amendment of  
principal Act,  
s. 112—  
When examina-  
tion completed,  
justice to  
consider  
whether  
evidence  
sufficient to  
put defendant  
on trial for  
indictable  
offence.

10. Section 112 of the principal Act is amended by striking out subsection (3) and inserting in lieu thereof the following subsections :—

(3) If, in the opinion of the justice, the evidence is so sufficient, he shall—

(a) after making a determination in accordance with subsection (4) and giving a direction in accordance with subsection (5) of this section, by his warrant commit the defendant to prison or the place to which by law he may be committed, to be there safely kept until he shall be thence delivered by due course of law, or admit him to bail as provided by Division IV of this Part ;

and

(b) cause a record containing a statement of the offence or offences upon which the defendant is to be put on trial and of the committal or the admission to bail, to be put into writing in a form prescribed by rules made under section 203 of this Act.

(4) Before so committing the defendant or admitting him to bail or causing the record to be put into writing in accordance with subsection (3) of this section, the justice shall determine whether the defendant shall be put on trial, for the offence or offences specified in the statement contained in the record, in a District Criminal Court or in the Supreme Court and such determination shall be made according to the following rules :—

- (a) Where the offence is, or, if more than one, all the offences are, a group III offence or group III offences, the justice shall determine that the defendant shall be put on trial in a District Criminal Court :
- (b) Where the offence is, or, if more than one, the offences include, a group I offence, the justice shall determine that the defendant shall be put on trial in the Supreme Court :
- (c) Where the offence is a group II offence, or, if more than one, the offences include, a group II offence, but do not include a group I offence, the justice shall determine whether, in his discretion, the defendant shall be put on trial in the Supreme Court or in a District Criminal Court, and, in exercising that discretion, shall have regard to—
  - (i) the gravity of the offence or offences ;
  - (ii) the complexity or otherwise of the evidence tendered ;
  - (iii) the difficulty or uncertainty of the law involved or likely to be involved ;
  - (iv) the respective requests (if any) of the defendant and informant ;and
  - (v) the circumstances of the case generally.

(5) The justice shall include in the record referred to in subsection (3) of this section a direction in conformity with the determination made by him under subsection (4) of this section, and that direction shall have effect, subject to anything done or ordered under section 335 of the Local and District Criminal Courts Act, 1926-1969.

(6) The statement of the offence or offences contained in the record referred to in subsection (3) of this section shall be deemed, in all respects, to be an information duly filed in the court in which the defendant is directed to be put on trial, and shall continue to have effect accordingly

unless and until an information is filed by the Attorney-General or a certificate is filed by him declining to file an information, whereupon the statement in the record shall cease to be deemed to be, and to have effect as, an information.

(7) Where the justice has determined that a defendant shall be put on trial in a District Criminal Court, he shall, in the record referred to in subsection (3) of this section, direct the defendant to be tried in a District Criminal Court, to be constituted in the district in which the preliminary hearing was conducted, not less than fourteen days after the date appearing on the record, and the defendant shall, subject to any order made by the Senior Judge under section 337 of the Local and District Criminal Courts Act, 1926-1969, be tried accordingly.

Amendment of  
principal Act,  
s. 116—  
Depositions,  
etc. to be  
delivered to  
court in which  
trial to be had.

11. Section 116 of the principal Act is amended—

(a) by inserting after the passage “information (if any),” in subsection (1) the passage “the record,” ;

and

(b) by inserting after the word “judge” in subsection (2) the passage “or Recorder”.

Repeal of  
s. 136 of  
principal Act  
and enactment  
of section in  
its place—

On plea of  
guilty  
defendant to  
be committed  
or admitted  
to bail for  
sentence.

12. Section 136 of the principal Act is repealed and the following section is enacted and inserted in its place :—

136. (1) If the defendant pleads guilty, the justice shall—

(a) after making a determination in accordance with paragraph (c) of this subsection and giving a direction in accordance with subsection (2) of this section, by his warrant commit the defendant to prison or admit him to bail, to appear for sentence as provided in this section ;

(b) cause a record containing a statement of the offence or offences upon which the defendant is to appear for sentence and of the committal or the admission to bail to be put into writing in a form prescribed by rules made under section 203 of this Act ;

and

(c) before so committing the defendant or admitting him to bail or causing the record to be put into writing in accordance with paragraph (b) of this section, the justice shall determine whether

the defendant shall appear for sentence, for the offence or offences to which he has pleaded guilty and which is or are specified in the statement contained in the record, in a District Criminal Court or in the Supreme Court and such determination shall be made according to the following rules :—

- I. Where the offence is, or, if more than one, all the offences are, a group III offence or group III offences, the justice shall determine that the defendant shall appear for sentence in a District Criminal Court :
- II. Where the offence is, or, if more than one, the offences include, a group I offence, the justice shall direct the defendant to appear for sentence in the Supreme Court :
- III. Where the offence is a group II offence, or, if more than one, the offences include, a group II offence, but do not include a group I offence, the justice shall determine whether, in his discretion, the defendant shall appear for sentence in the Supreme Court or in a District Criminal Court and, in exercising that discretion, shall have regard to—
  - (i) the gravity of the offence or offences ;
  - (ii) the complexity or otherwise of the evidence tendered ;
  - (iii) the difficulty or uncertainty of the law involved or likely to be involved ;
  - (iv) the respective requests (if any) of the defendant and the informant ;and
  - (v) the circumstances of the case generally.

(2) The justice shall include in the record referred to in paragraph (b) of subsection (1) of this section a direction in conformity with the determination made by him under paragraph (c) of that subsection, and that direction shall have effect, subject to anything done under section 335 of the Local and District Criminal Courts Act, 1926-1969.



(3) Where the justice has determined that a defendant shall appear for sentence in a District Criminal Court, he shall, in the record referred to in paragraph (b) of subsection (1) of this section direct the defendant to appear for sentence in a District Criminal Court, to be constituted in the district in which the preliminary hearing was conducted, not less than fourteen days after the date appearing on the record, and the defendant shall, subject to any order made by the Senior Judge under section 337 of the Local and District Criminal Courts Act, 1926-1969, appear for sentence accordingly.

Amendment of  
principal Act,  
s. 137—  
Defendant may  
call witnesses  
as to character.

13. Section 137 of the principal Act is amended by striking out the word "Judge" in subsection (3) and inserting in lieu thereof the passage "judge or Recorder".

Repeal of  
s. 140 of  
principal Act  
and enactment  
of section in  
its place—

14. Section 140 of the principal Act is repealed and the following section is enacted and inserted in its place :—

Procedure  
where  
defendant to  
appear for  
sentence in  
Supreme Court  
and District  
Criminal Court.

140. (1) Where the justice has directed the defendant to appear for sentence in the Supreme Court—

(a) if the defendant is committed or admitted to bail by a justice sitting within a circuit district within the meaning of the Supreme Court Act, 1935-1969, as amended, he shall be committed or admitted to bail to appear at the first Court of Oyer and Terminer or General Gaol Delivery to be next held within the circuit district ;

and

(b) if the defendant is committed by a justice sitting at a place that is not within a circuit district, the warrant shall commit the defendant to a prison specified by the justice to appear for sentence before the next Court of Oyer and Terminer or General Gaol Delivery to be held at the place specified in that behalf by the justice, or at such other place as may thereafter be ordered by a Judge of the Supreme Court, and in the meantime to be safely kept in that prison,

and sections 59, 61 and 62 of the Supreme Court Act, 1935-1969, shall apply and have effect, *mutatis mutandis*, in relation to a defendant committed or admitted to bail under this subsection as if the defendant had been committed or admitted to bail for trial.

(2) Where the justice has directed the defendant to appear for sentence in a District Criminal Court, he shall be committed or admitted to bail to appear at the first District Criminal Court to be next held within the District Criminal Court district specified in the record not less than fourteen days after the date of the record.

15. Section 141 of the principal Act is amended by striking out from the proviso to subsection (1) the word "Judge" and inserting in lieu thereof the passage "judge or Recorder".

Amendment of principal Act, s. 141—  
Withdrawal of plea and substitution of plea of not guilty.

16. Section 142 of the principal Act is amended by striking out from the proviso the word "Judge" and inserting in lieu thereof the passage "judge or Recorder".

Amendment of principal Act, s. 142—  
Court to sentence accordingly unless judge or Recorder advises withdrawal of plea.

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

J. W. HARRISON, Governor.