



ANNO TRICESIMO SECUNDO

ELIZABETHAE II REGINAE

A.D. 1983

No. 66 of 1983

An Act to amend the Justices Act, 1921.

[Assented to 13 October 1983]

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

Short title.

1. (1) This Act may be cited as the "Justices Act Amendment Act, 1983".

(2) The Justices Act, 1921, is in this Act referred to as "the principal Act".

Commencement.

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

(2) The Governor may, in a proclamation made for the purposes of subsection (1), suspend the operation of any specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

Amendment of
s. 4—
Interpretation.

3. Section 4 of the principal Act is amended by inserting after the definition of "keeper of a gaol" in subsection (1) the following definition:

"major offence" means an indictable offence that is not a minor indictable offence.

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

4. Section 5 of the principal Act is amended by striking out subsection (6) and substituting the following subsections:

(6) Where a court of summary jurisdiction is constituted of justices (not being a special magistrate), the court does not have power to impose a sentence of imprisonment (except a sentence in default of payment of a pecuniary sum) for a term in excess of seven days.

(7) Where—

(a) a court of summary jurisdiction constituted of justices (not being a special magistrate) convicts a person of an offence punishable by imprisonment;

(b) imprisonment is required by law in respect of the offence or is, in the opinion of the court, warranted by the offence;

and

(c) the court is, by virtue of subsection (6), unable to impose an appropriate sentence of imprisonment,

the court shall remand the convicted person in custody or on bail to appear for sentence before a court of summary jurisdiction constituted of a special magistrate.

(8) A person remanded in custody under subsection (7) shall be brought, for sentence, before a court constituted of a special magistrate as soon as reasonably practicable.

5. Section 18 of the principal Act is amended—

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

(1) Where a justice (not being a special magistrate)—

(a) is mentally or physically incapable of carrying out satisfactorily the duties of his office;

(b) is convicted of an offence that, in the opinion of the Governor, shows him to be unfit to hold the office of a justice;

or

(c) is bankrupt, or applies to take the benefit of a law for the relief of bankrupt or insolvent debtors,

the Governor may, by notice published in the *Gazette*, remove him from office.

(1a) The name of a justice removed from office under this section shall be removed from the roll of justices.

Amendment of
s. 18—
Vacation of office
of justice.

6. The following section is inserted after section 105 of the principal Act:

105a. (1) Where a person is charged, upon information, with a minor indictable offence but with no major offence—

(a) the charge shall be dealt with by a court of summary jurisdiction in the manner prescribed by Division II;

and

(b) where he appears before a justice (not being a special magistrate), the justice shall remand him in custody or on bail to appear before a court of summary jurisdiction constituted of a special magistrate.

(2) Where a person is charged, upon information, with a major offence (whether or not he is also charged with a minor indictable offence in the same information) there shall be a preliminary examination in relation to all the charges contained in the information.

Insertion of new
s. 105a.

Manner in which
charges are to be
dealt with.

7. Section 109 of the principal Act is amended by striking out subsections (2) and (3) and substituting the following subsections:

Amendment of
s. 109—
Procedure on
completion of
evidence for
prosecution.

(2) If the justice, after completing his consideration of the evidence, is of the opinion that the evidence is not sufficient to put the defendant upon his trial for any indictable offence, he shall—

(a) dismiss the information;

and

(b) if the defendant is in custody upon the charges contained in the information and upon no other lawful warrant or authority—order that he be discharged from custody.

(3) If, after completing his consideration of the evidence, the justice is of the opinion that the evidence is sufficient to put the defendant on trial for an indictable offence, the justice shall review the charges, as laid in the information, in order to ensure that they properly correspond to the offences for which there is, in the opinion of the justice, sufficient evidence to put the defendant on trial and, in carrying out the review, shall observe the following provisions:

(a) if the justice is of the opinion that the evidence is not sufficient to put the defendant on trial for the indictable offence with which he is charged in the information but is sufficient to put him on trial for some other indictable offence that has not been so charged, the justice shall amend the information by substituting a charge relating to that other indictable offence;

(b) if the justice is of the opinion that the evidence is sufficient to put the defendant on trial for some, but not all, the indictable offences with which he is charged in the information, the justice shall amend the information so that it relates only to the indictable offences for which there is sufficient evidence to put the defendant on trial;

(c) if the justice is of the opinion that the evidence is sufficient to put the defendant on trial for an indictable offence with which he has not been charged in the information, he may (whether or not the information has been, or is to be, amended under any of the preceding paragraphs of this subsection) amend the information by including a charge relating to that offence.

(4) Upon completing the review of the charges, the justice shall proceed as follows:

(a) if the defendant is charged with a major offence and with no minor indictable offence, the justice—

(i) may, in a case not involving a charge of murder, manslaughter or treason, ask the defendant whether he wishes to plead to the charge as provided in Division III and then proceed in accordance with that Division;

or

(ii) shall proceed with the preliminary examination as provided in this Division;

(b) if the defendant is charged with a minor indictable offence and with no major offence, the charge shall be dealt with under the provisions of Division II;

(c) if the defendant is charged with both a major offence and a minor indictable offence (either cumulatively or in the alternative)—

(i) the justice may deal with the matter as if both charges related to major offences;

or

(ii) where the justice is of the opinion that it is just and expedient to do so, he may divide the information into separate informations, one relating to the major offence and the other to the minor indictable offence, and in that event the charge contained in each of the separate informations shall be separately dealt with under whichever of the foregoing provisions is appropriate to the charge.

(5) Where a charge is, in pursuance of this section, to be dealt with under Division II by a court constituted of a special magistrate who also conducted the preliminary examination, a witness for the prosecution who appeared personally to give evidence at the preliminary examination need not be recalled for examination but shall, if the defendant so requests, be recalled for cross-examination or further cross-examination and re-examination.

8. Section 124 of the principal Act is repealed.

Repeal of s. 124.

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

D. B. DUNSTAN, Governor