



ANNO DUODECIMO

ELIZABETHAE SECUNDAE REGINAE

No. 10 of 1963

**An Act to Amend "The Justices Acts, 1886 to 1960," in
certain particulars**

[ASSENTED TO 7TH NOVEMBER, 1963]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. (1) **Short title.** This Act may be cited as "*The Justices Acts Amendment Act of 1963.*"

(2) **Principal Act.** "*The Justices Acts, 1886 to 1960,*" are in this Act referred to as the Principal Act.

(3) **Collective title.** The Principal Act and this Act may be collectively cited as "*The Justices Acts, 1886 to 1963.*"

2. **Amendment of s. 47.** Section forty-seven of the Principal Act is amended by—

(a) renumbering that section as subsection (1) of section forty-seven; and

(b) adding to that section as so renumbered the following subsections:—

“(2) Where a person is convicted of an offence by justices at any court of petty sessions other than a children’s court and it is proved to the satisfaction of the justices on oath or as prescribed by subsection (3) of this section that there has been served upon the defendant with the summons or a reasonable time before the time appointed for the appearance of the defendant a notice specifying any alleged previous summary conviction of the defendant for an offence proposed to be brought to the notice of the justices in the event of his conviction for the offence charged and the defendant is not present in person before the justices, they may take account of any such previous conviction so specified as if the defendant had appeared and admitted it.

(3) A Police Officer who serves such a notice specifying any alleged previous conviction may serve such notice in the same manner as is provided for the service of a summons by this Act and may attend before any justice having jurisdiction in the State or part of the State or part of the Commonwealth in which such notice was served and depose, on oath and in writing endorsed on the notice, to the service thereof.

Such deposition shall upon production to the justices by whom the case is heard and determined be sufficient proof of the service of the notice on the defendant.”

3. Repeal of and new s. 142. The Principal Act is amended by repealing section one hundred and forty-two and inserting in its stead the following section:—

“[142.] **Proceedings in absence of defendant.** (1) If at the time and place so appointed the defendant does not appear when called, and proof is made to the justices upon oath, or by deposition made in manner hereinbefore prescribed, of due service of the summons upon the defendant a reasonable time before the time appointed for his appearance the justices may—

(a) proceed *ex parte* to hear and determine the case as fully and effectually to all intents and purposes as if the defendant had personally appeared before them in obedience to the said summons; or

(b) upon oath being made before them substantiating the matter of the complaint to their satisfaction, issue their warrant to apprehend the defendant and to bring him before justices to answer the complaint and to be further dealt with according to law; or

(c) upon the written plea of guilty of the defendant and upon being satisfied that the requirements of section 146A of this Act have been complied with in all respects, proceed as prescribed by that section.

(2) When the justices proceed as prescribed by subparagraphs (a) or (c) of subsection (1) of this section they shall not—

(a) order that the defendant be disqualified either absolutely or for any period from holding or obtaining any license, registration, certificate, permit or other authority under any Act or order that any license, registration, certificate, permit or other authority held by the defendant under any Act be cancelled or suspended; or

- (b) order that the defendant be imprisoned (not being imprisonment in default of payment of any penalty, compensation, sum of money or costs adjudged to be paid by the decision of the justices),

unless the justices have first adjourned or further adjourned the hearing of the complaint to a time and place appointed by the justices to enable the defendant to appear for the purpose of making submissions on the question of such disqualification, cancellation or suspension or penalty, as the case may be.

(3) The clerk of petty sessions shall forthwith after such adjournment give notice in writing to the defendant informing him of—

- (a) the time and place to which the hearing is adjourned;
 (b) the purpose of the adjournment; and
 (c) his right to be heard at the adjourned hearing.

Such notice may be given by service thereof upon the defendant personally or by post at the address of the defendant last known to the clerk of petty sessions.

(4) If at any time and place to which the hearing is adjourned—

- (a) the defendant appears; or
 (b) the defendant fails to appear and it is proved that the notice in writing prescribed by subsection (3) of this section was given to him a reasonable time before the adjourned hearing,

the justices present at the adjourned hearing may proceed as prescribed by subparagraphs (a) or (c) of subsection (1) of this section as if subsection (2) of this section had not been enacted.

(5) A document purporting to be a duplicate original or a copy of a notice given to the defendant under this section and endorsed with a certificate purporting to be signed by the person by whom the document was served upon the defendant personally or, where the document was served by post, by the clerk of petty sessions to the effect that—

- (a) the document is a duplicate original or copy of the notice given to the defendant named therein; and
 (b) the document was served upon the defendant personally, or, as the case may be, was posted to the address appearing therein which was the address of the defendant last known to the clerk; and
 (c) where the document was served by post, in the ordinary course of post the notice would be delivered on the date specified in such endorsement,

shall be evidence that the notice was given to the defendant named therein according to the certificate so endorsed and, where the document was served by post, that the address appearing therein is the address of the defendant last known to the clerk.”

4. **New s. 146A inserted.** The Principal Act is amended by inserting after section one hundred and forty-six the following section:—

“[146A.] **Proceeding at the hearing on defendant’s confession in absentia.** (1) Subject to subsection (6) of this section, this section shall apply where a summons has been issued requiring a person to appear before justices, at any court of petty sessions other than a children’s court, to answer a complaint other than a complaint of—

- (a) an offence which is also triable on indictment;

- (b) an offence for which the defendant is liable to be sentenced to be imprisoned for a term exceeding twelve months; or
- (c) an offence in respect of which the justices are required by the provisions of some other Act to proceed otherwise than as prescribed by this section.

(2) Where the clerk of petty sessions receives a notification in writing purporting to be given by the defendant or by a solicitor acting on his behalf that the defendant wishes to plead guilty without appearing before the court and the defendant does not appear at the time and place appointed for the hearing or adjourned hearing of the complaint, then—

- (a) the justices may proceed to hear and determine the case in the absence of the defendant in like manner as if the defendant had appeared and pleaded guilty; or
- (b) if the justices decide not to proceed as aforesaid, they shall adjourn or further adjourn the hearing for the purpose of dealing with the complaint as if the notification aforesaid had not been given:

Provided that—

- (i) if at any time before the hearing the clerk of petty sessions receives an intimation in writing purporting to be given by or on behalf of the defendant that he wishes to withdraw the notification aforesaid, the justices shall deal with the complaint as if this section had not been passed;
- (ii) before accepting the plea of guilty and convicting the defendant in his absence under this subsection, the justices shall cause the aforesaid notification, including any submission received with the notification which the defendant wishes to be brought to the attention of the justices with a view to mitigation of penalty, to be read out before the court and shall require a statement with respect to the facts relating to the offence to be made by or on behalf of the complainant.

(3) Paragraph (b) of subsection (1) of section one hundred and forty-two of this Act shall not apply to an adjournment by reason of the requirements of paragraph (b) of subsection (2) of this section.

In relation to such an adjournment, the adjourned hearing shall not be resumed at the appointed time and place unless the justices are satisfied that the defendant has had adequate notice thereof.

The defendant shall be deemed to have had adequate notice of the adjourned hearing if notice thereof has been given to him as a notice of adjournment may be given for the purposes of section one hundred and forty-two of this Act under subsection (3) of that section, and subsections (3) and (5) of that section shall, with and subject to all necessary adaptations, apply accordingly.

(4) Where justices convict a person in his absence under subsection (2) of this section for an offence upon conviction wherefor the justices may, whether or not they impose a penalty, order the defendant to pay any fee, charge or other sum of money whatsoever to any person or authority, then—

- (a) upon proof to the satisfaction of the justices, on oath or in the prescribed manner, that there has been served upon the defendant with the summons, or a reasonable time before the time appointed for the appearance of the defendant, a notice

informing the defendant that if he is convicted of the offence referred to in the summons application will be made to the court to order him to pay the amount stated in the notice of such fee, charge or other sum of money; and

- (b) upon being satisfied that the amount or any part of the amount stated in such notice, should have been, but has not been, paid by the defendant to such person or authority in respect of such fee, charge or other sum of money,

the justices may, in addition to the penalty, if any, imposed for the offence, order the defendant to pay such unpaid amount or part.

(5) A Police Officer who serves a notice referred to in subsection (4) of this section may serve such notice in the same manner as is provided for the service of a summons by this Act and may attend before any justice having jurisdiction in the State or part of the State or part of the Commonwealth in which such notice was served, and depose, on oath and in writing endorsed on the notice, to the service thereof.

Such deposition shall upon production to the justices by whom the case is heard and determined be sufficient proof of the service of the notice on the defendant."

(6) The Governor in Council may by Order in Council published in the *Gazette* provide that this section shall not apply in relation to such offences, in addition to those specified in subsection (1) of this section, as may be specified in the Order in Council.

Any such Order in Council—

- (a) may vary or revoke any previous Order in Council made under this subsection; and
- (b) shall be laid before the Legislative Assembly within fourteen sitting days after the publication thereof in the *Gazette* if the Legislative Assembly is then sitting for the despatch of business or, if not, then within fourteen sitting days after the commencement of the next ensuing session.

If the Legislative Assembly passes a resolution of which notice has been given at any time within fourteen sitting days after any such Order in Council has been laid before the Legislative Assembly disallowing such Order in Council, that Order in Council shall thereupon cease to have effect, but without prejudice to the validity of anything done in the meantime or to the making of a further Order in Council.

5. Section 146A renumbered. Section 146A of the Principal Act is renumbered section 146B.

6. Saving. In respect of any summons issued before the date of the passing of this Act, and whether served upon the defendant before or after that date, if the defendant is not present at the hearing or adjourned hearing subsequent to such date and a notification in writing purporting to be given by the defendant or by a solicitor acting on his behalf that the defendant wishes to plead guilty without appearing before the court is produced to the justices then present, such justices may proceed as prescribed by subsection (2) of section 146A of "*The Justices Acts, 1886 to 1963.*"

The justices may adjourn or further adjourn the hearing for the purpose of enabling the defendant to be served with a notice as prescribed by subsection (2) of section forty-seven or subsection (4) of section 146A of "*The Justices Acts, 1886 to 1963,*" or both such notices.

Such service shall be effected a reasonable time before the time appointed for the adjourned hearing and may be effected without again serving the summons and by a Police Officer other than the Police Officer who served the summons.

Subject to proof of service of the prescribed notice, on oath or in the manner prescribed by "*The Justices Acts, 1886 to 1963*," in relation thereto, to the satisfaction of the justices present at the time and place to which the hearing has been so adjourned, such justices may, where subsection (2) of section forty-seven or subsection (4) of section 146A of "*The Justices Acts, 1886 to 1963*," or both those subsections, are applicable in the case, proceed as prescribed thereby.