Queensland

ANNO VICESIMO TERTIO

ELIZABETHAE SECUNDAE REGINAE

No. 25 of 1974

An Act to amend the Justices Act 1886–1973 in certain particulars and to repeal certain provisions of the Decentralization of Magistrates Courts Act 1965–1972

[ASSENTED TO 24TH APRIL, 1974]

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:—

PART I—PRELIMINARY

1. Short title. This Act may be cited as the *Justices Act and Another Act Amendment Act* 1974.

2. Commencement. This Act shall commence on a day to be fixed by Proclamation.

3. Parts of Act. This Act is divided into Parts as follows:—

PART I—PRELIMINARY;

PART II—AMENDMENTS OF THE JUSTICES ACT 1886–1973;

PART III—AMENDMENTS OF THE DECENTRALIZATION OF MAGISTRATES COURTS ACT 1965–1972.

PART II—AMENDMENTS OF THE JUSTICES ACT 1886–1973

4. Citation. (1) In this Part, the *Justices Act* 1886–1973 is referred to as the Principal Act.

(2) The Principal Act as amended by this Part may be cited as the *Justices Act* 1886–1974.

5. Amendment of s. 1. Section 1 of the Principal Act is amended by—

(a) omitting the words "SUMMARY PUNISHMENT OF CERTAIN INDICTABLE OFFENCES;" and substituting the words "RECIPROCAL ENFORCEMENT OF FINES AGAINST BODIES CORPORATE;";

(b) omitting the words "PART VIII—SURETY OF THE PEACE AND FOR GOOD BEHAVIOUR;".

6. New s. 110A. The Principal Act is amended by inserting after section 110 the following section:—

"**110A. Use of tendered statements in lieu of oral testimony in committal proceedings.** (1) The provisions of this section are additional to and not in derogation of any other provisions of this Act in relation to proceedings in the case of indictable offences.

(2) Justices conducting proceedings with a view to determining whether a defendant should be committed for trial or sentence in relation to an indictable offence may, subject to the provisions of this section being satisfied, admit as evidence written statements of witnesses tendered to them by the prosecution or the defence without those witnesses appearing before them to give evidence or make statements.

(3) Written statements so admitted as evidence shall be deemed to be evidence given or statements made upon an examination of witnesses in relation to an indictable offence under section 104 and they shall be admissible as evidence to the like extent as oral evidence to the like effect by the persons making the written statements.

(4) Written statements shall not be admitted where the defendant or, where there is more than one defendant, one of the defendants is not represented by counsel or a solicitor.

(5) A written statement shall not be admitted unless—

(a) the prosecution and the defence agree to its admission;

(b) a copy of it is made available, by or on behalf of the party proposing to tender it, to the other party or parties;

(c) it is signed by the person making it and it contains a declaration by that person under *The Oaths Acts* 1867 *to* 1960 to the effect that it is true to the best of his knowledge and belief and that he made it knowing that, if it were admitted as evidence, he would be liable to prosecution if he stated in it anything that he knew to be false;

(d) the other party does not object or, as the case may be, none of the other parties objects, before the written statement is admitted in evidence, to the statement being so admitted pursuant to this section.

(6) Subject to this section, where—

(a) all the evidence before justices (whether for the prosecution or the defence), without reference to other evidence by way of exhibits, consists of written statements admitted in accordance with this section; and

(b) counsel or the solicitor for the defendant consents to the defendant being committed for trial or, as the case may be, for sentence without consideration of the contents of the written statements,

the justices, without determining whether the evidence is sufficient to put the defendant upon his trial for an indictable offence, shall formally charge him and, with necessary adaptations, the provisions of section 104 shall apply and, subject thereto, the justices shall order the defendant to be committed for trial or, as the case may be, for sentence.

(7) Where some of the evidence before justices consists of written statements admitted in accordance with this section and some of the evidence is evidence given orally by witnesses upon their examination under this Part, the justices shall, when all the evidence to be offered on the part of the prosecution is before them, consider such evidence and determine whether it is sufficient to put the defendant upon his trial for an indictable offence, whereupon the provisions of this Part shall apply as in the case of an examination of witnesses where there are no written statements admitted pursuant to this section.

(8) A written statement may be admitted as evidence by justices pursuant to this section subject to agreement between the prosecution and the defence that the person making the statement shall be present when the written statement is tendered to be cross-examined by the other party or parties, as the case requires, and in any such case the justices shall consider both the written and the oral evidence in respect of that person.

(9) Notwithstanding that a written statement made by any witness is admissible by virtue of this section as part of the prosecution case or as part of the defence case, whether it has been admitted in the proceedings before justices or not, the justices may require that witness to attend before them and to give evidence, and in respect of those proceedings the justices shall consider all the evidence, oral and written (and exhibits if any), whether counsel or the solicitor for the defendant has consented to a committal for trial or sentence or not, and determine whether such evidence is sufficient to put the defendant upon his trial for an indictable offence, whereupon the provisions of this Part shall apply as in the case of an examination of witnesses where there are no written statements admitted pursuant to this section.

(10) Where all the evidence before justices consists of written statements admitted in accordance with this section and counsel or the solicitor for the defendant does not consent to the defendant being committed for trial or for sentence, the justices, after hearing any submissions the prosecution and the defence desire to make, shall determine whether the evidence is sufficient to put the defendant upon his trial for an indictable offence, whereupon

the provisions of this Part shall apply as in the case of an examination of witnesses where there are no written statements admitted pursuant to this section.

(11) A written statement admitted in accordance with this section shall, on being so admitted by the justices, be signed by the justices.

(12) A written statement admitted in accordance with this section shall have effect as if it is the deposition of the witness whose statement it is, and it may be used at the trial of the defendant in the same manner, to the same extent and for the same purpose as a deposition may be used.

(13) A written statement admitted in accordance with this section may, when the defendant has been committed by justices to be tried for an indictable offence, without further proof be read as evidence on the trial of the defendant, whether for the offence for which he has been committed for trial or for any other offence for which an indictment shall be presented, arising out of the same transaction or set of circumstances as the offence for which he has been committed for trial, and whether or not combined with other circumstances, if—

(a) the written statement purports to be signed in manner prescribed by the person making it and by the justices before whom it purports to have been tendered as evidence; and

(b) condition (a) of the third paragraph of section 111, read with the words " written statement " substituted for the word " deposition " where twice occurring, is satisfied.

The provisions of section 4 of *The Criminal Law Amendment Act*, 1892 apply for the purposes of this subsection as though the reference to " depositions " or " deposition " therein is a reference to " written statements " or " written statement " referred to in this section.

(14) (a) If a written statement admitted in accordance with this section refers to any other document as an exhibit, the copy given to any other party to the proceedings under subsection (5) shall be accompanied by a copy of that document or by such information as may be necessary in order to enable the party to whom it is given to inspect that document or a copy thereof.

(b) Any document or object referred to as an exhibit and identified in a written statement admitted in accordance with this section shall be treated as if it had been produced as an exhibit and identified during the proceedings by the maker of the statement.

(15) The maker of a written statement admitted in accordance with this section shall, for all purposes in relation to the entering into a recognizance and obligations and liability in respect thereof, be deemed to be a witness giving evidence upon an examination of witnesses by justices in relation to an indictable offence in accordance with this Part.".

7. Amendment of s. 111. Section 111 of the Principal Act is amended by—

(a) in the first paragraph—

(i) inserting after the words " taken before justices " the words ", or the transcription of the record of evidence given by any person before justices where the evidence is recorded under *The Recording of Evidence Acts* 1962 *to* 1968 and the transcription is certified to as correct in accordance with those Acts,";

(ii) inserting after the words " hereinafter set out are satisfied " the words " in the case of the deposition and if conditions (a) and (b) hereinafter set out are satisfied in the case of the transcription ";

(b) in the second paragraph—

(i) inserting after the words " any other child under the age of twelve years " the words ", or the transcription of the record of the evidence or statement given or made by such child or of any other child under the age of twelve years where the evidence or statement is recorded under *The Recording of Evidence Acts* 1962 *to* 1968 and the transcription is certified to as correct in accordance with those Acts,";

(ii) inserting after the words " in this section set out are satisfied " the words " in the case of the deposition and if condition (b) hereinafter in this section set out is satisfied in the case of the transcription ";

(c) in condition (a) of the third paragraph, inserting after the word " deposition " where twice occurring the words " or the transcription of the record of evidence ";

(d) in condition (b) of the third paragraph—

(i) inserting after the words " purports to have been taken " the words " or before whom the evidence or statement was given or made ";

(ii) inserting after the words " the deposition was taken " the words " or the evidence or statement was given or made ";

(iii) inserting after the words " such deposition was taken " the words " or such evidence or statement was given or made ".

8. Amendment of s. 139. Section 139 of the Principal Act is amended by, in subsection (2),—

(a) omitting the first two paragraphs and substituting the following paragraphs:—

" (a) Where a complaint for a simple offence or breach of duty is before a Magistrates Court at any place at which that complaint may lawfully be heard and determined and it appears to the court, either of its own motion or upon the submission of the complainant or defendant made in writing to or by appearance before the court, that the hearing would more conveniently take place at another place in Queensland, the court may, before any evidence is adduced, adjourn the hearing to such other place and to a time to be then stated or to be determined as hereinbefore in this Act provided.

The resumed hearing may proceed and the complaint may be heard and determined before a Magistrates Court at such other place constituted in accordance with this Act by such justices as may then be there.

(b) Where a complaint for a simple offence or breach of duty is partly heard before a Magistrates Court at any place at which that complaint may lawfully be heard and determined, the court

may adjourn the hearing to such other place in Queensland as shall be consented to by the complainant and the defendant and to such time as it thinks fit.

The hearing of the complaint may continue and the complaint determined before a Magistrates Court at such other place constituted in accordance with this Act.

The court, on adjourning the hearing as aforesaid, may commit the defendant in the meantime or discharge him upon recognizances conditioned for his appearance at the time and place to which the hearing is adjourned.

Upon such adjournment, the defendant and every witness summoned to give evidence and who has not been discharged by the court from further attendance, shall be bound to attend at such time and place accordingly.";

(b) lettering the third and final paragraph as paragraph (c).

9. Amendment of s. 140. Section 140 of the Principal Act is amended by—

(a) numbering the existing provisions (not including the note to the section) as subsection (1);

(b) inserting in subsection (1) as so numbered, after the words " it appears to the justices ", the words ", either of their own motion or upon the submission of the complainant or defendant made in writing to or by appearance before the justices,";

(c) inserting after subsection (1) as so numbered the following subsections:—

" (2) Where two or more places are appointed for holding Magistrates Courts in a district and the clerk of the court at one such place receives a notification in writing purporting to be given by a defendant or by a solicitor acting on his behalf that the defendant wishes to plead guilty in respect of a complaint of a simple offence or breach of duty appointed by the summons to be heard at that place 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, that clerk of the court, if he considers that the hearing of the complaint would more conveniently take place at another place for holding a court in that district, shall refer the matter to justices constituting a court in that district, and the justices may proceed to hear and determine the case in another such place in the district in the absence of the defendant in like manner as if the defendant had appeared and pleaded guilty.

The clerk of the court receiving the notification in the first instance shall, on the decision being made by justices and communicated to him to hear and determine the case at another place in the district, forthwith transmit such notification together with the complaint, the summons issued thereon and all other documents relevant to the complaint that he has in his possession to the clerk of the court at such other place.

Sections 142 and 146A apply subject to this subsection in a case to which this subsection applies.

(3) Where two or more places are appointed for holding Magistrates Courts in a district and a defendant does not appear at one such place at the time appointed by the summons for

appearance there for the hearing and determining of a complaint of a simple offence or breach of duty, the hearing there may be adjourned pursuant to this Act and thereafter justices may proceed *ex parte* to hear and determine the case at another place in the district appointed for holding a court as fully and effectually as if they were hearing and determining the case at the firstmentioned place in the first instance.

Where the defendant has not so appeared at the firstmentioned place at the time appointed, the justices may proceed *ex parte* as aforesaid without any further notification to the defendant.

The clerk of the court at the firstmentioned place shall, on the decision being made by justices and communicated to him to hear and determine the case at another place in the district, forthwith transmit the complaint, the summons issued thereon and all other documents relevant to the complaint that he has in his possession to the clerk of the court at the other place in the district where the case is to be heard and determined, and any witness summoned to give evidence and who has not been discharged by the court from further attendance shall be bound to attend at such other place at the time appointed accordingly.

Section 142 applies subject to this section and subsection (6) of section 142 applies as if a hearing and determination *ex parte* under this subsection is a hearing and determination *ex parte* under paragraph (a) of subsection (1) of the said section 142.".

10. Amendment of s. 142. Section 142 of the Principal Act is amended by, in subsection (6),—

(a) inserting in paragraph (a), after the words " in that behalf by ", the words " the clerk of the court or the complainant or by ";

(b) omitting from paragraph (c) the word " defendant " and substituting the words " clerk of the court, the complainant or the defendant, as the case may be,".

11. New s. 142A. The Principal Act is amended by inserting after section 142 the following section:—

" **142A. Permissible procedure in absence of defendant in certain cases.** (1) Notwithstanding the provisions of this Act or any other Act it shall be lawful to adopt in respect of a complaint of a simple offence or breach of duty made by a public officer or a member of the police force the procedure prescribed by this section.

(2) Every step or proceeding to be taken in carrying out such procedure and the making of any order in the course thereof shall be subject to the provisions of this Act (other than of this section) and the provisions of the *Decentralization of Magistrates Courts Act* 1965–1974 except so far as the provisions of this section are inconsistent with the other provisions of this Act or, as the case may be, the provisions of that Act.

(3) In this section " public officer " means a person acting in his official capacity as an officer or employee under the *Public Service Act* 1922–1973 or as an officer or employee of a corporation that, for the purposes of any Act, is a statutory body representing the Crown or as an officer or employee of a local authority.

(4) Where—

(a) a complaint of a simple offence or breach of duty is made by a public officer or a member of the police force;

(b) a summons issued upon the complaint is served at least 14 days before the date on which the defendant is required by such summons to appear or a notice of adjournment is given to the defendant a reasonable time before the date fixed for the hearing of the complaint if the hearing is adjourned; and

(c) the defendant does not appear at the time and place fixed for the hearing of the complaint,

the court before which the complaint comes for hearing, whether on the return date or an adjourned date, may, if it is satisfied that the facts as alleged in or annexed to or served with the complaint or summons according to law constitute such a simple offence or breach of duty and that reasonably sufficient particulars thereof are set out in or annexed to or served with the complaint or summons as aforesaid, deal with and determine the matter of the complaint as fully and effectually to all intents and purposes as if the said facts and particulars had been established by evidence under oath before it and as if the defendant had personally appeared before it in obedience to the said summons.

(5) In dealing with and determining a complaint pursuant to subsection (4) the court may take into account any information considered by it to be relevant brought to its notice by or on behalf of the complainant or defendant in relation to the circumstances of the matter of the complaint and the imposition of a penalty.

(6) If in respect of a proceeding under subsection (4) the court considers that—

(a) the defendant should be imprisoned otherwise than by way of default;

(b) any licence, registration, certificate, permit or other authority held by the defendant under any Act should be cancelled or suspended; or

(c) the defendant should be disqualified from holding or obtaining any licence, registration, certificate, permit or other authority under any Act,

it shall not deal further with the complaint in such proceeding unless it has first adjourned or further adjourned the hearing of the complaint to a time and place appointed by it to enable the defendant to appear for the purpose of making submissions on the question of such penalty, disqualification, cancellation or suspension, as the case may be.

(7) The clerk of the court shall forthwith after any adjournment of a hearing under this section 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 the court.

(8) If at any time and place to which a hearing is adjourned under this section—

(a) the defendant does not appear; and

(b) it is proved that the notice in writing prescribed by subsection (7) was given to him a reasonable time before the adjourned hearing,

the court may proceed as prescribed by subsection (4) and, if the hearing is adjourned pursuant to subsection (6), may proceed as prescribed by subsection (4) as if subsection (6) had not been enacted.

(9) 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 the court 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.

(10) (a) The clerk of the court shall forthwith upon the determination of the matter of a complaint pursuant to this section send by post to the defendant at his address last known to the clerk an advice of the minute or memorandum of the conviction or order made and signed under section 150.

(b) The advice shall set forth a statement to the effect of the provisions of subsections (11) and (12).

(11) A warrant of commitment or execution shall not issue until after the expiration of 28 days from the date of the conviction or order.

(12) (a) Upon the determination of the matter of a complaint in accordance with the provisions of this section, the court at the place of determination, upon application made in that behalf by the clerk of the court or the complainant or by the defendant or on his behalf by counsel or solicitor within 28 days after such determination may, for such reason as it thinks proper, grant a re-hearing of the complaint upon such terms and subject to the payment of such costs as it thinks fit.

(b) When a re-hearing is granted—

(i) the conviction or order made in the first instance shall, subject to paragraph (c), forthwith cease to have effect;

(ii) the court may proceed with the re-hearing forthwith or may set down the re-hearing for a later date;

(iii) on such re-hearing, the court shall have and may exercise all the powers and procedures that it has in the case of an original hearing.

(c) If the clerk of the court, the complainant or the defendant, as the case may be, does not appear at the time and place for which the re-hearing is set down, the court may, if it thinks fit, without re-hearing the case, direct that the original conviction or order be restored whereupon it shall be restored to have effect accordingly and shall be deemed to be of effect on and from the date it was first pronounced.

(13) The jurisdiction of the court under this section other than with respect to an adjournment may be exercised only by a stipendiary magistrate.

(14) For the purposes of this section, a complaint that purports to have been laid by a public officer or by a member of the police force shall, until the contrary is proved, be presumed to have been so laid.".

12. Omission of and new Part VII heading. The Principal Act is amended by omitting the words " PART VII—SUMMARY PUNISHMENT OF CERTAIN INDICTABLE OFFENCES " occurring after section 178 and substituting the words " PART VII—RECIPROCAL ENFORCEMENT OF FINES AGAINST BODIES CORPORATE ".

13. New ss. 179 and 180. The Principal Act is amended by inserting after the new Part VII heading substituted by section 12 the following sections:—

" **179. Meaning of terms.** In this Part—

" fine " includes a pecuniary penalty, pecuniary forfeiture, pecuniary compensation and fees, charges and costs payable under a conviction or order of a court in the exercise of summary jurisdiction;

" reciprocating court " means a court of a reciprocating State or Territory declared by Proclamation under section 180 to be a reciprocating court;

" reciprocating State or Territory " means another State or a Territory of the Commonwealth declared by Proclamation under section 180 to be a reciprocating State or Territory.

180. Proclamation of reciprocating States and Territories and reciprocating courts. (1) The Governor in Council may by Proclamation declare another State or a Territory of the Commonwealth, being a State or Territory having laws providing for enforcement in that State or Territory of a fine payable under a conviction or order of a magistrates court or other court having a summary jurisdiction in Queensland against a body corporate in that State or Territory, to be a reciprocating State or Territory for the purposes of the enforcement in Queensland of a fine payable under a conviction or order of a court having summary jurisdiction in the other State or in the Territory against a body corporate in Queensland.

(2) (a) The Governor in Council may by Proclamation declare a court having summary jurisdiction in a reciprocating State or Territory to be a reciprocating court for the purposes of the enforcement in Queensland of a fine payable under a conviction or order of that court against a body corporate in Queensland.

(b) For the purposes of paragraph (a), a court may be declared singly or in conjunction with another or others by such description or class and by means of such reference as the Governor in Council thinks fit.".

14. New ss. 181 and 182. The Principal Act is amended by inserting after section 180 as inserted by this Act the following sections:—

"**181. Enforcement by magistrates court.** (1) Where, under a conviction or order of a reciprocating court made in the exercise of its summary jurisdiction, a fine is payable by a body corporate having or appearing to have property in Queensland, and the clerk of a magistrates court at or near to a place where the body corporate has or appears to have property receives a request in writing from the clerk or other corresponding officer of that reciprocating court for the enforcement of the conviction or order accompanied by—

(a) a certified copy of the conviction or order; and

(b) a certificate under the hand of the clerk or corresponding officer making the request certifying the amount of the fine outstanding under the conviction or order,

he shall—

(c) register the conviction or order in the magistrates court by filing in the court a certified copy of the conviction or order; and

(d) note the date of the registration on the copy.

(2) Upon the registration of a conviction or order under subsection (1)—

(a) the conviction or order shall for the purposes of this Part be deemed to be a conviction or order of a magistrates court requiring payment by the body corporate of the amount of the fine stated in the certificate referred to in subsection (1) as outstanding;

(b) the clerk shall for the purposes of this Part issue a warrant of execution for the purpose of recovering the amount of the fine required to be paid by levying against the goods and chattels of the body corporate; and

(c) the warrant so issued shall be deemed to be a warrant of execution issued by a justice under this Act and the provisions of this Act shall, with all necessary adaptations, apply and extend accordingly with respect to the enforcement of that warrant.

(3) Where the clerk receives, subsequent to the request for the enforcement of the conviction or order, a notification from the clerk or other corresponding officer of the reciprocating court of

payment by or on behalf of the body corporate of an amount in satisfaction in whole or in part of the amount of the fine outstanding, he shall—

(a) note the particulars of such payment on the certified copy of the conviction or order filed in the court; and

(b) arrange for the return of the warrant issued pursuant to subsection (2) if it is unexecuted, and—

(i) withdraw it if the amount of the fine has been paid in full; or

(ii) if part of the amount of the fine remains outstanding, amend the amount stated in the warrant to show the amount still outstanding, and thereafter the warrant shall be enforced in respect of such altered amount.

(4) A sum of money paid to or received by a clerk of a magistrates court in satisfaction in whole or in part of a fine payable under a conviction or order enforced under subsection (2) shall be remitted forthwith to the clerk or other corresponding officer of the reciprocating court by which the conviction or order was made.

182. Enforcement by reciprocating court. A sum of money paid to or received by a clerk of a magistrates court in Queensland from a reciprocating court in satisfaction in whole or in part of a fine payable under a conviction or order of the magistrates court enforced by the reciprocating court shall be paid to or received by and applied by the clerk of the magistrates court as if the sum had been paid to the clerk of the magistrates court by the body corporate by which the fine was payable in satisfaction in whole or in part of the fine.".

PART III—AMENDMENTS OF THE DECENTRALIZATION OF MAGISTRATES COURTS ACT 1965–1972

15. Citation. (1) In this Part the *Decentralization of Magistrates Courts Act* 1965–1972 is referred to as the Principal Act.

(2) The Principal Act as amended by this Part may be cited as the *Decentralization of Magistrates Courts Act* 1965–1974.

16. Amendment of s. 3. Section 3 of the Principal Act is amended by omitting—

(a) the words " PART VI—AMENDED PROCEDURE FOR CERTAIN OFFENCES;";

(b) the following:—

" ;

SCHEDULE ".

17. Repeal of Part VI. The Principal Act is amended by repealing Part VI.

18. Repeal of s. 16. The Principal Act is amended by repealing section 16.

19. Repeal of Schedule. The Principal Act is amended by repealing the Schedule thereto.