



ANNO VICESIMO SEXTO

ELIZABETHAE SECUNDAE REGINAE

No. 13 of 1977

**An Act to amend the Justices Act 1886–1975 and The
Criminal Code each in certain particulars**

[ASSENTED TO 14TH APRIL, 1977]

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 and citation. This Act may be cited as the *Justices Act and The Criminal Code Amendment Act 1977*.

2. Commencement. This Act shall commence on a date appointed by Proclamation.

3. Arrangement. This Act is arranged in Parts as follows:—

PART I—PRELIMINARY;

PART II—AMENDMENTS OF THE JUSTICES ACT 1886–1975;

PART III—AMENDMENTS OF THE CRIMINAL CODE.

PART II—AMENDMENTS OF THE JUSTICES ACT 1886–1975

4. Citation. (1) In this Part, the *Justices Act 1886–1975* is referred to as the Principal Act.

(2) The Principal Act as amended by this Part may be cited as the *Justices Act 1886–1977*.

5. Amendment of s. 59. Section 59 of the Principal Act is amended by—

(a) numbering the existing provisions as subsection (1) and omitting from that subsection as so numbered the second paragraph;

(b) inserting after subsection (1) the following subsection:—

“(2) A warrant in the first instance shall not be issued on a complaint of a simple offence (not being an indictable offence) pursuant to subsection (1) unless the Act or law creating the offence authorises—

(a) the arrest of an offender without warrant; or

(b) the issue of a warrant in the first instance.”.

6. New s. 71B. The Principal Act is amended by inserting after section 71A the following section:—

“**71B. Prohibition on taking photographs, producing pictures or other optical effects.** (1) A person who, during the conduct of a proceeding involving the exercise of any jurisdiction of justices or immediately before the commencement of that proceeding or immediately after the conclusion thereof or during an adjournment thereof, by means of a camera or similar apparatus or reproducing equipment, takes a photograph or produces a picture or other optical effect (in any case whether a movie or a still)—

(a) in or of the room or place in which the proceeding is being, is about to be or has been conducted or of a person therein;

(b) in or of the room or place for the time being set apart for a purpose connected with that proceeding or of a person therein;

(c) in or of an entrance or passageway leading to or from any room or place referred to in provision (a) or (b) or of a person therein,

commits an offence against this Act unless he takes the photograph or produces the picture or other optical effect with and in accordance with the consent first had and obtained of the justices who are to conduct, have conducted or, as the case may be, are conducting that proceeding.

Penalty: \$400 or imprisonment for one month.

(2) A person who publishes a photograph taken or picture or other optical effect produced in such circumstances as to constitute an offence defined in subsection (1) commits an offence against this Act.

Penalty: \$400 or imprisonment for one month.”.

7. Amendment of s. 110A. Section 110A of the Principal Act is amended by omitting subsection (15).

8. Repeal of and new s. 123. The Principal Act is amended by repealing section 123 and substituting the following section:—

“**123. Notice to witness.** (1) Where justices commit a defendant for trial for an indictable offence, the clerk of the court at which the defendant has been so committed shall forthwith give to each witness who has been examined before the justices and to each maker of a written statement whose statement was admitted as evidence in accordance with section 110A a notice in the prescribed form requiring each of them to attend at the court to which the defendant has been committed and to give evidence at his trial.

(2) A notice referred to in subsection (1)—

- (a) may be served personally on or sent by post to the person to whom it is addressed at his address last known to the clerk of the court;
- (b) shall have effect as if it were a summons to the witness issued out of the court that the witness is by the notice required to attend.”.

9. Repeal of s. 124. Section 124 of the Principal Act is repealed.

10. Repeal of s. 125. Section 125 of the Principal Act is repealed.

11. Amendment of s. 129. Section 129 of the Principal Act is amended by omitting the second paragraph and substituting the following paragraph:—

“ Where a fresh commitment or remand has been so made, the justices or any other justices or the Court may give fresh notices to the witnesses to appear and give evidence at the Court to which the defendant is so committed or remanded and for that purpose section 123 shall apply as if the notices had been given in accordance with that section.”.

12. New section 147A. The Principal Act is amended by inserting after section 147 the following section:—

“ **147A. Power of justices to re-open proceedings and rectify orders.** (1) Where justices convict a defendant and—

- (a) impose a penalty that is contrary to law; or
- (b) fail to impose a penalty that is in conformity with the law,

they may, of their own motion or on the application of a party to the proceedings or a clerk of the court re-open the proceedings and after giving the parties an opportunity of being heard, amend the order made on the complaint and impose a penalty that is in accordance with the law.

(2) Where justices record a conviction or make an order that is based on or contains an error of fact, those justices or any other justices may, on the application of a party to the proceedings or a clerk of the court re-open the proceedings and after giving the parties an opportunity of being heard, set aside the conviction or vacate or vary the order in either case to conform with the facts.

(3) The powers conferred by subsection (2) include power to set aside a conviction or vacate or vary an order where the justices are satisfied that—

- (a) the conviction or order has been recorded or made against the wrong person;
- (b) the summons issued upon the complaint originating the proceedings that resulted in the conviction or order did not come to the knowledge of the defendant;
- (c) the defendant in the proceedings that resulted in the conviction or order has been previously convicted of the offence the subject of the complaint originating those proceedings.

(4) The justices may, upon the hearing of an application pursuant to this section, take evidence orally or by affidavit.

(5) An application pursuant to subsection (1) or (2) shall be made within 28 days after the date of the conviction or order or such further time as the justices allow upon application made at any time in that behalf.

(6) In this section “penalty” includes a forfeiture, disqualification, cancellation, loss or suspension of a licence or privilege.”.

13. Amendment of s. 231. Section 231 of the Principal Act is amended by adding at the end thereof the following subsection:—

“(3) Notwithstanding subsections (1) and (2), where an appellant is required consequent upon the order of the Judge to serve a term of imprisonment or the unexpired portion of a term of imprisonment, the Judge shall, as part of his order upon the appeal, direct that a warrant be issued to arrest the appellant and commit him to gaol.

A warrant directed to be issued in accordance with this subsection shall be issued by the Registrar of the Court.”.

PART III—AMENDMENTS OF THE CRIMINAL CODE

14. Construction. This Part shall be read as one with *The Criminal Code*.

15. Amendment of s. 415. Section 415 of *The Criminal Code* is amended by—

(a) omitting from subparagraph (1) of the first paragraph the words “any property or benefit or the performance of services be procured to be done” and substituting the words “anything be done or omitted to be done or procured to be done”;

(b) omitting from subparagraph (2) of the first paragraph the words “any property or benefit or the performance of services be procured to be done” and substituting the words “anything be done or omitted to be done or procured to be done”.

16. Amendment of s. 559. Section 559 of *The Criminal Code* is amended by omitting the last two paragraphs and substituting the following paragraph:—

“Notices given to persons who are bound to attend as witnesses are in like manner deemed to be enlarged to the same time and place and notice of that time and place shall be given to those persons.”.

17. Amendment of s. 593A. Section 593A of *The Criminal Code* is amended by, in subsection (1), in subparagraph (b), omitting the words “recognizance of” and substituting the words “notice given to”.

18. Amendment of s. 593B. Section 593B of *The Criminal Code* is amended by—

(a) omitting the words “of a witness” and substituting the words “a notice to a witness”;

(b) inserting after the words “entering into fresh recognizances” the words “or being given a fresh notice”;

(c) inserting after the words “their recognizances” the words “or the notice”.

19. Notes to sections of Code deemed to be headings. Where, in the form in which a section inserted by way of amendment in *The Criminal Code* was enacted, there appears a note in and at the beginning of the section it shall be deemed that such note is and was enacted as a heading appearing immediately above the section in and at the beginning of which it appears.