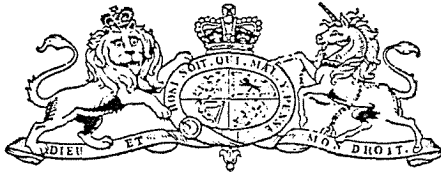


Queensland



ANNO VICESIMO OCTAVO

ELIZABETHAE SECUNDAE REGINAE

No. 43 of 1979

An Act to amend the Justices Act 1886–1979 in certain particulars

[ASSENTED TO 26TH JUNE, 1979]

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. Short title and citation. (1) This Act may be cited as the *Justices Act Amendment Act 1979*.

(2) In this Act the *Justices Act 1886–1979* is referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the *Justices Act 1886–1979*.

2. Repeal of ss. 102A to 102F. The Principal Act is amended by repealing sections 102A to 102F, both inclusive.

3. New ss. 102A to 102H. The Principal Act is amended by inserting immediately under the heading "Procedure for Private Complaint" the following sections:—

"102A. Application of provisions. The provisions of the following sections to and including section 102G apply to and in relation to a private complaint charging a person with an indictable

offence, including an indictable offence a charge of which may be dealt with summarily, other than a private complaint charging a person with an offence of which injury to the person or property of the complainant is an element, and do not apply to or in relation to any other private complaint.

102B. Service of summons and particulars on private complaint.

(1) Proceedings shall not be had upon a private complaint unless the summons issued thereon has been served on the defendant at least 14 days before the date on which it is sought to have the proceedings.

(2) When the matter of a private complaint is first before justices on a date when proceedings thereon may be had in accordance with law, the defendant may apply to the justices for an order that the complainant shall furnish to the defendant in writing particulars of the charge in the complaint whereupon, without prejudice to their exercising the power conferred by section 102G, the justices may make such an order and, if the case require it, shall adjourn the matter of the complaint for a period of 14 days at the least.

If the complainant or his representative is not present when such order is made, an advice thereof signed by the clerk of the court at the place where the order is made shall be sent by post to the complainant at his address last known to the clerk.

(3) If, forthwith upon the making of an order under subsection (2) or within 14 days of the day on which the order is made or within such further time as may be allowed by justices in a particular case, the complainant does not furnish in writing to the defendant particulars that in the justices' opinion are sufficient, the justices shall order that the private complaint be struck out and may award to the defendant such costs as to them seem just.

Such costs awarded shall constitute a debt due and owing by the complainant to the defendant and may be recovered by the defendant by action in a court of competent jurisdiction.

(4) Where a private complaint has been struck out pursuant to subsection (3), no further proceedings shall be had upon a private complaint charging the same offence.

102C. Application for dismissal of frivolous or vexatious complaints. (1) At any time before evidence is led as to the facts of a charge contained in a private complaint the defendant may make application for an order of a Stipendiary Magistrate that the complaint be dismissed on the ground that it is—

- (a) an abuse of process;
- (b) frivolous; or
- (c) vexatious.

Such application may be made orally to the Stipendiary Magistrate before whom is the matter of the complaint, or in writing lodged with the clerk of the court at the place where the complaint is filed.

Upon receipt of such an application the clerk of the court shall refer the same to a Stipendiary Magistrate at the place where the application is lodged or at the nearest place at which a Stipendiary Magistrate attends and shall inform the complainant and the defendant of the place and time appointed for hearing the matter of the application, by advice signed by the clerk and given to each of them or sent by post to the address of each of them last known to the clerk.

Where an application is made orally under this subsection in the absence of the complainant, the clerk of the court at the place where the application is made shall inform the complainant of the place and time appointed for hearing the matter of the application by advice signed by him and given to the complainant or sent by post to the complainant at his address last known to the clerk.

(2) Where an application under subsection (1) is made the complainant shall be required to give security, in such manner and in such amount as the Stipendiary Magistrate to whom the application is made or referred may order, that he will pay to the defendant such costs incurred by the defendant on the application as the Stipendiary Magistrate who determines the matter of the application may order him to pay.

If a complainant ordered to give security for costs does not comply with the order within the time specified therein or, if no time is specified, within a reasonable time the Stipendiary Magistrate before whom the matter of the application is brought shall order that the complaint to which the application relates be struck out.

(3) Upon the hearing of an application made under subsection (1)—

- (a) the matter shall be heard in camera;
- (b) the Stipendiary Magistrate shall consider all relevant evidence led before him, and all relevant written material duly exhibited or otherwise produced before him, and the submissions made before him by the complainant and the defendant or either of them;
- (c) the onus shall be on the defendant to prove on the balance of probabilities the ground on which the application is made.

(4) An application made under subsection (1) may be heard and disposed of in the absence of the complainant or the defendant.

(5) If upon an application made under subsection (1) the Stipendiary Magistrate dismisses a private complaint or orders that a private complaint be struck out pursuant to subsection (2) he may award to the defendant such costs as to him seem just and reasonable but, if he does not dismiss the complaint or order it to be struck out as aforesaid, he may award to the complainant such costs as to him seem just.

Such costs awarded shall constitute a debt due and owing by the person against whom they are awarded to the person to whom they are awarded and may be recovered by action in a court of competent jurisdiction.

102D. Appeal to Supreme Court from Magistrate's decision.

(1) A person aggrieved by the decision of a Stipendiary Magistrate upon an application made under section 102c to dismiss a private complaint or to refuse the application may appeal from that decision to a Judge of the Supreme Court in Chambers by way of application made by originating summons.

(2) An appeal under subsection (1)—

(a) shall be instituted within 28 days after the date when the Stipendiary Magistrate's decision is pronounced; and

(b) shall be by way of hearing *de novo*,

and the decision of the Judge in such an appeal shall be final.

(3) Where an appeal under subsection (1) is instituted the appellant shall be required to give security, in such manner and in such amount as a Judge of the Supreme Court may order, that he will pay to the respondent such costs incurred by the respondent on the appeal as the Judge who determines the matter of the appeal may order him to pay.

If an appellant ordered to give security for costs does not comply with the order within the time specified therein or, if no time is specified, within a reasonable time the Judge before whom the appeal is brought shall order that the appeal be struck out.

(4) Upon an appeal the Judge may order that the order in respect of which the appeal is made be affirmed or reversed and may make such order as to costs as to him seems just.

Such costs awarded shall constitute a debt due and owing by the person against whom they are awarded to the person to whom they are awarded and may be recovered by action in a court of competent jurisdiction.

(5) Save as is prescribed by this section no appeal shall lie in respect of any order made in any proceeding relating to a private complaint pursuant to section 102B or 102C or this section.

102E. Further proceedings on a dismissed or struck out complaint prohibited.

(1) If there is made, upon an application made under section 102c (1) or upon an appeal from a decision therein duly instituted under section 102D, an order having the effect that a private complaint be dismissed or if a Stipendiary Magistrate orders that a private complaint be struck out pursuant to section 102c (2), the complaint shall be taken to be dismissed at the time when the order takes effect as prescribed by subsection (2) or, as the case may be, shall be taken to be struck out, and no further proceedings shall be had upon a private complaint charging the same offence by the same defendant.

(2) An order referred to in subsection (1) having the effect that a private complaint be dismissed—

(a) if it be that of a Stipendiary Magistrate and no appeal is duly instituted under section 102D, shall take effect upon the expiration of the time limited by that section for instituting an appeal;

(b) if it be that of a Stipendiary Magistrate and an appeal is duly instituted under section 102D, shall abide the determination of the appeal or, as the case may be, shall take effect upon the appeal being struck out, whichever event occurs;

(c) if it be that of a Judge of the Supreme Court, shall take effect according to The Rules of the Supreme Court.

102F. Publication prohibited. (1) A person shall not allude to the making or existence of a private complaint against any person or to any proceeding taken or to be taken in relation to a private complaint against any person in—

- (a) any newspaper, magazine, book, pamphlet, or other paper intended for public distribution; or
- (b) any report, commentary or speech broadcast publicly by radio, television or other means; or
- (c) any speech delivered publicly,

until it is established that the complaint will not be dismissed on a ground referred to in section 102C (1).

Penalty:—

- (a) in the case of a contravention committed by a corporation, a fine not exceeding \$1 000; and
- (b) in the case of a contravention committed by an individual, a fine not exceeding \$200 or imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(2) Where a contravention against subsection (1) is committed by a corporation, a person who at the time of the contravention is a director or member of the governing body of the corporation or the manager or an officer concerned in the management of the business in Queensland of the corporation (including, where the publication in question is in a newspaper or magazine, the editor thereof) shall be deemed to have committed a like contravention and shall be liable therefor unless he proves that the contravention occurred without his knowledge and that he exercised all due diligence to prevent the contravention.

(3) Nothing in subsection (1) shall render any person liable to a penalty on account of the publication of matter referred to therein in a recognized series of Law Reports.

102G. Dismissal for want of prosecution. (1) If the complainant under a private complaint does not proceed with due diligence to prosecute the complaint, the justices may order that the complaint be struck out for want of prosecution and may award to the defendant such costs as to them seem just and reasonable.

Such costs awarded shall constitute a debt due and owing by the complainant to the defendant and may be recovered by the defendant by action in a court of competent jurisdiction.

(2) Where a private complaint has been struck out pursuant to subsection (1), no further proceedings shall be had upon a private complaint charging the same offence.

102H. Meaning of expression “private complaint”. In sections 102A to 102G, both inclusive, the expression “private complaint” means a complaint made by a person other than—

- (a) a police officer, a member of the Commonwealth Police Force, an officer of the Public Service of Queensland or of the Commonwealth, in each case acting in the execution of his duty; or

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- (b) a person who, in making the complaint, is acting in the execution of a duty imposed on him by law or in the due administration of any Act or an Act of the Commonwealth.”.

4. Retrospective presumption as to operation of s. 102A in certain cases. For the purpose of hearing and determining a private complaint within the meaning of section 102F of the Principal Act (inserted therein by section 12 of the *Criminal Law Amendment Act 1979*), made before the date of commencement of this Act and containing a charge that may be dealt with summarily pursuant to chapter XXXI or XLVII of *The Criminal Code* it shall be deemed that section 102A of the Principal Act (inserted therein by section 12 of the *Criminal Law Amendment Act 1979*) had not been enacted and that section 102A of the *Justices Act 1886-1979* (inserted therein by section 3 of this Act) had been enacted and had commenced on 6 April 1979 in its stead and proceedings may be had upon such private complaint accordingly.