



ANNO SEXTO

## ELIZABETHAE II REGINAE

A.D. 1957.

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### No. 37 of 1957.

An Act to amend the Justices Act, 1921-1956.

[Assented to 14th November, 1957.]

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

1. (1) This Act may be cited as the "Justices Act Amendment Act, 1957". Short titles.
- (2) The Justices Act, 1921-1956, as amended by this Act, may be cited as the "Justices Act, 1921-1957".
- (3) The Justices Act, 1921-1956, is hereinafter called "the principal Act".
2. This Act is incorporated with the principal Act and that Act and this Act shall be read as one Act. Incorporation.
3. This Act shall come into operation on a day to be fixed by proclamation. Commencement of Act.
4. Section 22 of the principal Act is amended by inserting the words "Subject to the provisions of section 57a" before the first word of the section. Amendment of s. 22 of principal Act—  
Form of summons.
5. The following section is enacted and inserted in the principal Act after section 57 thereof— Enactment of s. 57a of principal Act—
  - 57a. (1) Where a member of the police force makes a complaint for a simple offence not punishable by Procedure for plea of guilty to be entered in writing.

imprisonment either for a first or subsequent offence, he may, by using a form of complaint and summons bearing the endorsements prescribed by rules made by the Governor under section 203 of this Act, and causing two copies thereof to be served on the defendant, initiate a procedure whereby the defendant may plead guilty without appearing in court in obedience to the summons.

(2) A defendant upon whom forms of complaint and summons are served pursuant to this section may plead guilty to the charge specified therein by completing the form on one copy thereof and signing his name thereto before a justice of the peace or a solicitor or a police officer, and by serving the completed form as provided by subsection (4) hereof not less than three clear days before the date of hearing specified therein.

(3) A defendant may, if he wishes, complete that part of the form relating to submissions on the question of penalty, but his failure to complete that part of the form shall not be construed as a failure to comply with this section.

(4) (a) The completed form shall be served either personally or by post on the complainant or the clerk of the court of summary jurisdiction specified in the summons as the place of hearing of the complaint :

(b) Service by post shall be deemed to be effected at the time at which the document would in the ordinary course of post be delivered at the address of such complainant or clerk :

(c) Service on a member of the police force at the police station at which the complainant is stationed shall be deemed to be service on the complainant, and service at the office of the clerk of the court of summary jurisdiction specified in the summons on a person apparently employed therein, shall be deemed to be good service on the clerk.

(5) A complainant who is served with a completed form pursuant to this section shall forthwith deliver it to the clerk of the court of summary jurisdiction specified in the summons as the place of hearing of the complaint. Forthwith after receipt of the form the clerk shall file it with the court records, and both he and the complainant shall, by the exercise of reasonable diligence, endeavour to prevent the attendance of any witnesses who have been summoned or warned to attend the hearing.

(6) Any defendant who serves a form pleading guilty which complies with this section need not attend the court as directed by the summons.

(7) Where a defendant who has been served with forms of complaint and summons pursuant to this section fails to serve a form pleading guilty which complies with this section and fails to appear in obedience to the summons, the court may, subject to subsection (7) of section 62b, proceed to exercise its powers under paragraph (a) or (b) of section 62.

(8) Where a complainant uses the form of complaint and summons prescribed by rules made by the Governor under section 203 of this Act he shall be deemed to be a member of the police force within the meaning of subsection (1) hereof unless the defendant satisfies the court to the contrary.

(9) Any defendant who has been charged upon complaint with a simple offence not punishable by imprisonment either for a first or subsequent offence, and who has been served with a summons issued pursuant to section 57, may plead guilty without appearing in court in obedience to the summons by completing and serving the form prescribed by subsection (1) of this section, whereupon the provisions of this section and sections 62b and 62c shall apply.

(10) The provisions of this section shall not apply where the defendant is a child within the meaning of the Juvenile Courts Act, 1941.

**6. Section 62 of the principal Act is amended—**

(a) by inserting after the words "complaint and" in the fourth line of paragraph (b) thereof the words "subject to section 62c";

(b) by adding at the end of paragraph (b) thereof the word "or";

(c) by adding at the end thereof the following paragraph :—

(c) if the defendant has pleaded guilty in writing pursuant to section 57a proceed in the manner provided by sections 62b and 62c.

Amendment of s. 62 of principal Act—  
On non-appearance of defendant, the court may proceed to convict where defendant sends plea of guilty in writing.

**7. The following sections are enacted and inserted in the principal Act after section 62a thereof :—**

62b. (1) Where a defendant fails to appear in obedience to the summons but serves a form pleading guilty which

Enactment of ss. 62b and 62c of principal Act—  
Powers of court where plea of guilty entered in writing.

complies with section 57a, the court shall not have power to issue a warrant for the apprehension of the defendant, on the ground of non-appearance, but may upon proof of service of the complaint and summons and upon production of the form duly completed, convict, and subject to this section, adjudicate thereon as fully and effectually to all intents and purposes as if the defendant had personally appeared before it in obedience to the summons and had pleaded guilty and made the same submissions as to penalty as are set out in the form.

(2) Where the completed form is apparently a genuine document purporting to be signed by the defendant before a justice of the peace, or a solicitor, or a police officer, proof of any of the signatures, or of the official capacity of any witness of the defendant's signature, shall not be required and the court may receive and act upon such document.

(3) The prosecutor may recite to the court any relevant matters alleged against the defendant in the same way as if the defendant had personally appeared and pleaded guilty.

(4) Nothing herein contained shall prejudice any application by a defendant to withdraw his plea of guilty at any time prior to the hearing and determination of the complaint made against him and the court before whom the defendant appears to answer the complaint may permit a withdrawal of the plea upon such terms as may be just.

(5) Where a defendant in a form under section 57a states matters which, if true, would indicate that he has a valid defence to the complaint, or which differ substantially in relevant particulars from the matters recited to the court by the prosecutor, the court may strike out the plea of guilty, adjourn the hearing of the complaint to a time and place appointed and order that the defendant be served with a summons as provided by section 57. Thereupon the complaint shall be dealt with as though the previous summons had not been issued, and the provisions of this section and section 57a shall no longer apply.

(6) Where a defendant who has served a form pleading guilty which complies with section 57a, is convicted, the court shall not—

(a) impose any sentence of imprisonment on the defendant, other than a term of imprisonment

- in default of the payment of a fine or other sum adjudged to be paid ; or
- (b) disqualify the defendant from holding or obtaining a driving licence as provided by the Road Traffic Act, 1934-1956, unless the procedure prescribed in section 62c is followed ; or
  - (c) treat the offence as other than a first offence unless the complainant proves that the defendant has been previously convicted ; or
  - (d) fail to allow the defendant a reasonable time for payment of any fine or other sum adjudged to be paid ; or
  - (e) subject to subsection (7) hereof, order the defendant to pay witness fees.

(7) Where a defendant serves a form pleading guilty which complies with the provisions of section 57a with one exception, namely that the form is served less than three clear days before the date of hearing, the form shall be deemed to comply with section 57a, and the provisions of this section shall apply, except that the court may order the defendant to pay witness fees.

(8) The clerk of the court of summary jurisdiction before which a defendant is convicted under this section shall forthwith, either personally or by post, give written notice to the defendant informing him of the conviction and order as to penalty and of any fine or other sum adjudged to be paid and of the time allowed for payment of such sum. Service by post under this section may be effected by notice addressed to the defendant at the address shown on the form pleading guilty and shall be deemed to be effected at the time at which such notice would in the ordinary course of post be delivered at the address of the defendant.

(9) The provisions of section 57 of the Road Traffic Act, 1934-1956, shall not apply in relation to any complaint and summons heard and determined in the defendant's absence pursuant to this section and section 57a.

62c. (1) Where a defendant fails to appear in obedience to a summons whether under section 57a or otherwise, and is convicted, whether upon a plea of guilty under section 57a or after an *ex parte* hearing, the court shall not order that the defendant—

- (a) be disqualified from holding or obtaining a driving licence as provided by the Road Traffic Act, 1934-1956 ; or
- (b) be imprisoned,

Power of court in the absence of a defendant to imprison or to suspend driving licence.

unless the court has first adjourned the hearing of the complaint to a time and place appointed and stated by the court in order to enable the defendant to appear for the purpose of making submissions on the question of penalty.

(2) The clerk of the court shall forthwith after such adjournment either personally or by post give written notice to the defendant on the form prescribed by rules made by the Governor under section 203 of this Act, informing him of the purpose for which the hearing of the complaint was adjourned and of his right to be heard at the adjourned hearing.

(3) If at the time and place so appointed—

(a) the defendant appears ; or

(b) the defendant fails to appear and it is proved that the notice in writing was served on him either personally or by post,

the court may, according to the circumstances, order that he be imprisoned or disqualified from holding or obtaining a driving licence, or both.

(4) Service by post under this section may be effected by notice addressed to the defendant at the address shown on the summons or the form pleading guilty under section 57a and shall be deemed to be effected at the time at which such notice would in the ordinary course of post be delivered at the address of the defendant.

(5) The contents of a notice, including the date of postage and service, may be proved by the production of a document purporting to be a copy of the notice and having endorsed thereon a certificate purporting to be signed by the clerk of the court to the effect that the document is a true copy of the notice served on or posted to the defendant named therein at the address and on the day stated therein, and that in the ordinary course of post the notice would be delivered at the defendant's address on the day stated therein.

(6) If on the adjourned hearing it is impracticable for the special magistrate or justices who adjourned the complaint under subsection (1) hereof to continue the hearing of the complaint, the clerk of the court shall, with the approval of a special magistrate, convene another court which may, notwithstanding the provisions of sections 43 and 45, complete the hearing and determination of the complaint.

(10) For the purposes of this section the "hearing" of a complaint means all proceedings in a court of summary jurisdiction arising out of the complaint, including the hearing, determination, judgment, conviction and any adjudication as to penalty or other order.

Power to the court or a justice to adjourn the hearing.

9. Section 120 of the principal Act is amended—

(a) by striking out the word "five" in the—

- (i) last line of paragraph I ;
- (ii) last line of paragraph III ;
- (iii) last line of paragraph IIIa ;
- (iv) fourth line of paragraph IIIb,

of subsection (1) and inserting in lieu thereof the word "ten" ; and

(b) by striking out the word "one" in the—

- (i) last line of paragraph (a) ;
- (ii) last line of paragraph (a1) ;
- (iii) fourth line of paragraph (b),

of subsection (2) and inserting in lieu thereof the word "two".

Amendment of principal Act, s. 120—  
Minor offences cognizable by justices.

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

R. A. GEORGE, Governor.