

JUSTICES AMENDMENT ACT (No. 2) 1986**No. 115 of 1986**

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JUSTICES AMENDMENT ACT (No. 2) 1986

No. 115 of 1986

AN ACT to amend the Justices Act 1959.

[Royal Assent 18 December 1986]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—This Act may be cited as the *Justices Amendment Act (No. 2)* Short title. 1986.

2—This Act shall commence on the day on which it receives the Commence- Royal assent. ment.

3—In this Act, the *Justices Act 1959** is referred to as the Principal Act. Principal Act.

* No. 77 of 1959. For this Act, as amended to 1st May 1982, see the continuing Reprint of Statutes. Subsequently amended by Nos. 33 and 51 of 1982, Nos. 45 and 75 of 1983, Nos. 29, 48, and 55 of 1984, Nos. 9, 51, and 121 of 1985, and No. 45 of 1986.

Insertion in
Principal Act
of new
section 17A.

4—After section 17 of the Principal Act, the following section is inserted:—

Clerk of
petty sessions
to have care
and custody
of records
of court.

17A—(1) A clerk of petty sessions shall have the care and custody of all the records of the court of which he is the clerk.

(2) In subsection (1), “records” includes, without limiting the generality of that expression—

- (a) the complaints and applications lodged with a clerk of petty sessions and any documents filed in connection with those complaints and applications;
- (b) where evidence in proceedings in a court of summary jurisdiction is recorded by mechanical means on to tapes or other apparatus, those tapes or other apparatus; and
- (c) the record of those proceedings that are taken by the justices pursuant to section 50A (1).

Insertion
of new
section 50c in
Principal Act.

5—After section 50B of the Principal Act, the following section is inserted in Part VI:—

Power to
remand in
certain cases.

50c—(1) Where justices find that a person is guilty of an offence, the justices may, instead of sentencing that person for that offence forthwith, remand him for sentencing by themselves or by other justices.

(2) Where justices remand a person under subsection (1), those justices may order that a report or further information be obtained in respect of that person so that they or the other justices to whom that person is remanded to be sentenced, as the case may be, may be better informed as to the sentence that they should impose on him.

(3) Where justices remand a person under subsection (1) to be sentenced by other justices, it is not necessary for those other justices to hear evidence as to the commission of the offence of which that person was found guilty by the first-mentioned justices, except in so far as those other justices may consider that that evidence will assist them in determining the sentence that should be imposed on him.

6—Section 57 (4) of the Principal Act is amended by omitting “ who has not been required to attend an examination of witnesses before justices ”.

Amendment of section 57 of Principal Act (Mode of taking evidence).

7—Section 64 of the Principal Act is amended by omitting “, murder, or a capital offence,” and substituting “ or murder,”.

Amendment of section 64 of Principal Act (Bail after commitment for trial).

8—Section 67 of the Principal Act is amended by omitting “, murder, or a capital offence ” and substituting “ or murder ”.

Amendment of section 67 of Principal Act (Restriction on bail in certain cases).

9—Section 74 of the Principal Act is amended by adding the following subsections after subsection (5):—

Amendment of section 74 of Principal Act (Attempts).

(6) Where, upon the hearing of a complaint for an attempt to commit a simple offence, the evidence establishes that the defendant has completed the commission of the simple offence, he may be convicted of the simple offence.

(7) Where a person has been convicted of an attempt to commit a simple offence, he is not liable to be tried for the simple offence of which he was so convicted of having attempted to commit.

10—Section 74C of the Principal Act is amended as follows:—

Amendment of section 74C of Principal Act (Suspended sentence).

(a) by inserting the following subsection after subsection (2):—

(2A) Section 26 does not apply to the making of a complaint under subsection (2).

(b) by inserting the following subsection after subsection (10):—

(10A) Where a person the execution of the whole or part of whose sentence of imprisonment for an offence has been suspended under subsection (1) is sentenced to imprisonment for an offence not related to the first-mentioned offence, the operation of the suspension is, subject to any order made under subsection (5), deferred until the date on which that person is released from prison.

Amendment of section 76A of Principal Act (Rectification of certain orders).

11—Section 76A (1) of the Principal Act is amended by omitting “ or on the application of a party to the complaint,” and substituting “ within the period of 14 days after the order is made on the complaint or on the application made within that period by a party to the complaint,”.

Amendment of section 78 of Principal Act (Provisions relating to time for payment of fines and enforcement of payment).

12—Section 78 of the Principal Act is amended by inserting the following subsections after subsection (6A):—

(6B) A warrant of commitment may be issued under subsection (6) in the absence of the defendant to whom it relates.

(6C) Section 26 does not apply to—

(a) the issue of a warrant under subsection (4) to apprehend a defendant; or

(b) an application for the issue of a warrant of commitment under subsection (6).

Amendment of section 106A of Principal Act (Domestic restraint orders).

13—Section 106A of the Principal Act is amended as follows:—

(a) by omitting from subsection (1) “ a magistrate is ” and substituting “ justices are ”;

(b) by omitting from that subsection “ the magistrate ” and substituting “ the justices ”;

(c) by omitting from subsection (3) (c) “ the magistrate ” and substituting “ justices ”;

(d) by omitting subsections (4) and (5) and substituting the following subsections:—

(4) Where a complaint under this section is made to a justice, the justice—

(a) shall, if in his opinion it is a case of urgency and in considering the matter of the complaint he sees sufficient cause to do so, issue a warrant for the apprehension of the person against whom the complaint is made; or

(b) may, if he thinks fit and if he is of the opinion that no person or property is in immediate danger from the person against whom the complaint is made, issue a summons to that person,

and, in either case, may exercise the powers referred to in section 23 (c).

(5) If the justices hearing a complaint under this section see sufficient cause to do so, they may make an *ex parte* order under subsection (1) and where justices make such an order, they may give directions with respect to—

- (a) the service of the order and such other documents as they think fit; and
- (b) the further hearing of the complaint.
- (e) by omitting subsection (7);
- (f) by omitting from subsection (8) “A magistrate” and substituting “The justices”;
- (g) by omitting from that subsection “he shall” and substituting “they shall”;
- (h) by omitting from subsections (13), (14), (15), and (16) “a magistrate”, wherever occurring, and substituting “justices”;
- (i) by omitting from subsection (13) “the magistrate” and substituting “the justices”.

14—Section 106B of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) “magistrate” and substituting “justices”;
- (b) by omitting from subsection (2) “magistrate” and substituting “justices hearing the complaint”.

Amendment of section 106B of Principal Act (How application for domestic restraint order to be heard).

15—Section 106C of the Principal Act is amended as follows:—

- (a) by omitting “magistrate” and substituting “justices”;
- (b) by omitting “is” and substituting “are”;
- (c) by omitting “he” and substituting “they”;
- (d) by omitting “him” and substituting “them”.

Amendment of section 106C of Principal Act (Complaint to be dismissed from malice only and without just cause of fear).

16—Section 106D of the Principal Act is amended as follows:—

- (a) by omitting “magistrate”, where twice occurring, and substituting “justices”;
- (b) by omitting from subsection (1) “he thinks” and “he considers” and substituting “they think” and “they consider” respectively.

Amendment of section 106D of Principal Act (Power of justices to order defendant to pay costs).

Amendment of section 106E of Principal Act (Power of justices to prohibit publication of names of parties).

17—Section 106E of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) “ a magistrate ” and substituting “ justices ”;
- (b) by omitting from subsections (1) and (2) “ the magistrate ”, wherever occurring, and substituting “ the justices ”;
- (c) by omitting from subsections (2) and (3) “ a magistrate makes ”, wherever occurring, and substituting “ justices make ”;
- (d) by omitting from subsection (3) “ he ” and “ his ” and substituting “ they ” and “ their ” respectively;
- (e) by omitting from subsection (4) “ a magistrate has ” and substituting “ justices have ”.

Amendment of section 109 of Principal Act (Interlocutory proceedings).

18—Section 109 (2) of the Principal Act is amended by omitting “ who shall ” and substituting “ and shall ”.

Validations.

19—(1) A warrant to apprehend a defendant issued under section 78 (4) of the Principal Act before the commencement of this Act shall be deemed to have been validly and effectually issued, notwithstanding that the time within which the warrant was issued was otherwise than as provided in section 26 of that Act.

(2) An application for the issue of a warrant of commitment made under section 78 (6) of the Principal Act before the commencement of this Act shall be deemed to have been validly and effectually made, and the warrant validly and effectually issued pursuant to the application, notwithstanding that the time within which the application was made was otherwise than as provided in section 26 of that Act.