Queensland

ANNO SEPTIMO DECIMO

ELIZABETHAE SECUNDAE REGINAE

No. 14 of 1968

An Act to Amend "The Justices Acts, 1886 to 1965," "The Recording of Evidence Act of 1962," and "The Decentralization of Magistrates Courts Act of 1965," each in certain particulars

[ASSENTED TO 19TH APRIL, 1968]

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 Acts and Other Acts Amendment Act of* 1968."

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

PART I—PRELIMINARY;

PART II—AMENDMENTS TO "THE JUSTICES ACTS, 1886 TO 1965";

PART III—AMENDMENTS TO "THE RECORDING OF EVIDENCE ACT OF 1962";

PART IV—AMENDMENTS TO "THE DECENTRALIZATION OF MAGISTRATES COURTS ACT OF 1965";

PART V—PROVISIONS RELATING TO MAGISTRATES COURTS DISTRICTS.

PART II—AMENDMENTS TO "THE JUSTICES ACTS, 1886 TO 1965"

3. (1) **Principal Act.** "*The Justices Acts*, 1886 *to* 1965," are in this Part called the Principal Act.

(2) **Collective title.** The Principal Act and this Part may be collectively cited as "*The Justices Acts*, 1886 *to* 1968."

4. **Amendment to s. 54.** Section fifty-four of the Principal Act is amended by, in subsection (2), omitting the words "a copy of".

5. **Amendments to s. 56.** Section fifty-six of the Principal Act is amended by—

(*a*) omitting subsection (1) and inserting in its stead the following subsection:—

"(1) A summons shall be properly served upon the person to whom it is directed if it is served in accordance with this subsection, that is to say—

(*a*) in the case of a summons directed to a person to appear to answer a complaint of a simple offence or breach of duty, by posting (by means of registered A.R. post) a copy thereof addressed to him at his place of business or residence last known to the complainant at least twenty-one days before the date on which the defendant is, by the summons, required to appear; or

(*b*) in all cases (including the case referred to in subparagraph (*a*) of this subsection), by delivering a copy thereof to him personally or, if he cannot reasonably be found, by leaving a copy thereof with some person for him at his usual place of business or residence or place of business or residence last known to the person who serves the summons.";

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

"(2) Save where it appears that the person to whom a copy of a summons was posted addressed to him at an address in this subsection specified was not, to the knowledge of the complainant, at the time of posting, residing or carrying on business at such address, it shall be sufficient compliance with the provisions of subparagraph (*a*) of subsection (1) of this section if the copy summons is addressed to an address as follows:—

(*a*) in the case of an offence arising out of the driving or use of a motor vehicle or an attempt so to do, the address appearing as the address of the person on a driver's licence produced by him at or about the time of the alleged offence or upon the investigation thereof;

(*b*) in the case of an offence alleged against a person as owner of a motor vehicle, the address appearing in the current certificate of registration of the motor vehicle under "*The Main Roads Acts*, 1920 *to* 1965," as the address of that person;

(*c*) in the case of any other offence or breach of duty, the address appearing as the address of the person in any licence or registration for the time being in force pertaining to such person or to any property of which he appears to be the owner or occupier and which licence or registration such person holds or has effected under the Act against or under a provision of which the offence or breach is alleged to have been committed.";

(*c*) renumbering subsection (2) as subsection (3) and in that subsection,—

(i) inserting in the general words preceding subparagraph (*a*) after the words " endorse on " the words " a copy of ";

(ii) inserting in subparagraph (*b*) after the words " endorsed on " the words " a copy of ";

(*d*) inserting after subsection (3) the following subsection:—

" (4) Where a summons is served as prescribed by subparagraph (*a*) of subsection (1) of this section,—

(*a*) the person who serves the summons shall, in his endorsement and in his deposition as to service endorsed on a copy of the summons under subsection (3) of this section, state the time and place at which he posted the copy of the summons;

(*b*) the complainant shall depose, on oath and in writing endorsed on the copy of the summons endorsed under subsection (3) of this section, that the address to which a copy of the summons was posted is (if such be the case) the defendant's address last known to him and as to his means of knowledge.";

(*e*) renumbering subsection (3) as subsection (5) and, in that subsection,—

(i) inserting after the words " by which " the words " or to the Stipendiary Magistrate by whom ";

(ii) inserting before the words " be sufficient proof " the words " be evidence of the matters contained therein and ";

(*f*) adding the following subsection:—

" (6) Where proof is required in any proceeding of the service of a document which—

(*a*) pursuant to any enactment or rule of law may be served in the same manner as a summons may be served under this Act; or

(*b*) is served at the same time as, and in connection with a summons served under this Act,

the provisions of subsection (1) of this section shall apply and be construed as if a reference in that subsection to a summons were a reference to such a document.

The person who serves the document may attend before any justice having jurisdiction in the State or part of the State or part of the Commonwealth in which such document was served and depose on oath and in writing endorsed on the document to the service thereof.

Such deposition shall, upon production to the court by which or to the Stipendiary Magistrate by whom the proceeding is heard and determined, be evidence of the matters contained therein and be sufficient proof of the service of the document on the defendant."

6. Amendments to s. 63. Section sixty-three of the Principal Act is amended by—

(*a*) omitting the mark "," after the words " who issued it ";

(*b*) omitting all words from and including the words " or in case " to the end of the section.

7. Amendment to s. 71A. Section 71A of the Principal Act is amended by, in subsection (1), omitting the words " State Children Department " and inserting in their stead the words " Department of Children's Services ".

8. Amendment to s. 72. Section seventy-two of the Principal Act is amended by omitting the marks and words ", subject to the provisions of the last preceding section,".

9. Repeal of s. 80. The Principal Act is amended by repealing section eighty.

10. Amendment to s. 81. Section eighty-one of the Principal Act is amended by omitting the marks and words ", which, if necessary, may be backed as aforesaid ".

11. Amendments to s. 92. Section ninety-two of the Principal Act is amended by—

(*a*) in the first paragraph, adding the words " and in the case of a defendant, if the justices so order, further conditioned in such manner as the justices think fit ";

(*b*) in the second paragraph, omitting the brackets and words " (in lieu of being conditioned as hereinbefore in this section prescribed) ".

12. Amendments to s. 93. Section ninety-three of the Principal Act is amended by—

(*a*) adding to the note appearing in and at the beginning of the section the words " or non-compliance ";

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

" (1A) If at any time it is made to appear to a justice that a defendant has failed to comply with any condition of his recognizance (other than a condition that he appear at the time and place to which the hearing is adjourned, or which is named in the recognizance, or which is to be determined or that he appear at all times and places to which the hearing is adjourned from time to time or which are named in the recognizance) such justice may issue a warrant for his apprehension and for his being brought before justices to answer the complaint in relation to which his recognizance was entered into and to be dealt with according to law.";

(*c*) in subsection (2), adding to paragraph (*b*) the words " whereupon, in such lastmentioned case, should that person fail to appear at the time and place to which the hearing is adjourned the justice or justices then present may order such bail to be forfeited ";

(*d*) in subsection (3), adding to the first paragraph the words " and if the justice or justices so require, further conditioned in such manner as the justice or justices think fit ".

13. Amendments to s. 142. Section one hundred and forty-two of the Principal Act is amended by—

(*a*) in subsection (3), omitting the words " such adjournment " and inserting in their stead the words " any adjournment under subsection (2) of this section ";

(*b*) omitting subsection (4) and inserting in its stead the following subsection:—

"(4) If at any time and place to which the hearing is adjourned pursuant to subsection (2) of this section—

(*a*) the defendant does not appear; and

(*b*) it is proved that the notice in writing prescribed by subsection (3) of this section was given to him a reasonable time before the adjourned hearing,

the justices then present may proceed as prescribed by subparagraph (*a*) or (*c*) of subsection (1) of this section as if subsection (2) of this section had not been enacted.".

14. New s. 154. The Principal Act is amended by repealing section one hundred and fifty-four and inserting in its stead the following section:—

"[154.] **Copies of record.** When in any proceeding before justices an order is made, or the justices commit the defendant to be tried or for sentence, or discharge the defendant, the person having custody of the record of the proceeding shall upon—

(*a*) the application in writing of any person who, in his opinion, has a sufficient interest in the proceeding or in securing a copy of the record thereof or of the part of such record applied for; and

(*b*) payment of the amount ot the prescribed fee,

subject to this section, supply to the applicant a copy of the complaint relevant to the proceeding, the depositions taken therein, any order made therein (including an order for the committal or discharge of the defendant), any documentary exhibit therein other than a photograph, or, as the case may require, a copy of such of them as the applicant applies for.

Save where the application is made by or on behalf of a person who feels aggrieved by a conviction or order of any justice or justices in connection with the institution of an appeal against that conviction or order, or where the Minister otherwise determines, a person shall not be entitled under this section to a copy of—

(*a*) any part of the record of a proceeding in a Children's Court; or

(*b*) any part of the record of a proceeding which has been made whilst persons have been excluded from the court, room or place wherein the proceeding was conducted by order of justices under section seventy, seventy-one or 71A of this Act.

The provisions of this section shall not be construed to prejudice the provisions of sections seven hundred and five and seven hundred and six of "*The Criminal Code*"."

15. Repeal of and new s. 156. The Principal Act is amended by repealing section one hundred and fifty-six and inserting in its stead the following section:—

"[156.] **Imposition of imprisonment.** (1) A Magistrates Court may direct that a sentence of imprisonment imposed upon a defendant by its decision shall commence at the expiration of a term of imprisonment which the defendant is serving when such decision is made.

(2) If a defendant is ordered to serve more than one sentence of imprisonment either by the decision of a Magistrates Court or by two or more decisions of the same Magistrates Court made at the same sitting then, whether or not the Court has directed pursuant to subsection (1) of this section with respect to any one of those sentences, the Court may direct that such sentences be concurrent or cumulative.

(3) When two or more sentences of imprisonment are directed to be cumulative they shall take effect one after the other in accordance with the order in which the decisions whereby they are imposed are recorded or as the Court directs.

(4) Subject to section twenty-six of "*The Prisons Acts*, 1958 *to* 1964," a sentence of imprisonment imposed by a decision of a Magistrates Court shall take effect from the commencement of the defendant's custody under that sentence.

(5) A sentence of imprisonment ordered to be served in default of payment of a fine or sum of money or in default of doing any other act shall be deemed to be a sentence of imprisonment within the meaning of this section."

16. Amendment to s. 213. Section two hundred and thirteen of the Principal Act is amended by, in subsection (1), omitting paragraph (iii) and inserting in its stead the following paragraph:—

"(iii) Increase, reduce or vary any penalty imposed by the said conviction or order and, in doing so, may substitute wholly or partly a penalty of a kind different from that imposed by the said conviction or order;".

17. Amendment to s. 215. Section two hundred and fifteen of the Principal Act is amended by omitting the brackets and numeral "(1)".

PART III—AMENDMENTS TO "THE RECORDING OF EVIDENCE ACT OF 1962"

18. (1) **Principal Act.** "*The Recording of Evidence Act of* 1962," is in this Part called the Principal Act.

(2) **Collective title.** The Principal Act and this Part may be collectively cited as "*The Recording of Evidence Acts*, 1962 *to* 1968."

19. Amendments to s. 4. Section four of the Principal Act is amended by—

(*a*) inserting after the definition "Court" the following definition:—

"" Dictation-tape "—A tape (other than a master-tape) containing the record or any part of the record made under this Act by mechanical means of a legal proceeding;";

(*b*) inserting after the definition "Legal proceeding" the following definition:—

"" Master-tape "—The tape containing a complete record made under this Act by mechanical means of a legal proceeding;";

(*c*) inserting after the definition "Shorthand reporter" the following definition:—

"" Tape "—A tape or other item from which a record made under this Act by mechanical means may be reproduced;".

20. Amendments to s. 11. Section eleven of the Principal Act is amended by—

(*a*) in subsection (1), omitting all words from and including the words " and there is made " to the end of the subsection;

(*b*) in subsection (2), adding the following paragraph:—

" A transcription (certified as aforesaid) made under this Act of such a record need not be signed by the witness or by the Court or judicial person in or before whom the deposition, evidence or other matter is taken or given.";

(*c*) adding the following subsections:—

" (3) The record on a master-tape shall not be destroyed—

(*a*) within the time allowed by law for instituting any appeal or application for a re-hearing or review in relation to the legal proceeding in question; or

(*b*) where an appeal or application for a re-hearing or review or otherwise in relation to the legal proceeding in question is instituted, until that appeal or application is finally determined or otherwise terminated.

(4) The Court or judicial person who directs that any legal proceeding be recorded by a mechanical device or who is hearing or may hear an appeal or application for a re-hearing or review or otherwise in relation to such legal proceeding or who rehears or reviews or may rehear or review such legal proceeding may at any time—

(*a*) make such order for the retention of the record made on the master-tape for such period and subject to such conditions as the Court or judicial person thinks fit;

(*b*) if a transcription (certified in accordance with section ten of this Act) of the record has been made under this Act, whether an order has been made under subparagraph (*a*) of this subsection or not, by order authorize the destruction of the record on the master-tape.

(5) Subject to subsection (3) of this section and to an order made under subsection (4) of this section a record on a master-tape may be destroyed at any time—

(*a*) after a transcription (certified in accordance with section ten of this Act) of the record has been made;

(*b*) before such a transcription has been made if—

(i) the legal proceeding so recorded is not one in or before a Court of Record; or

(ii) the record is of a hearing *ex parte* by a Magistrates Court of a simple offence or breach of duty or is of some other prescribed class of legal proceeding in respect of a simple offence or breach of duty.

(6) A record on a dictation-tape may be destroyed at any time—

(*a*) after a transcription (certified in accordance with section ten of this Act) of the record has been made; or

(*b*) as prescribed.

21. Amendment to s. 13. Section thirteen of the Principal Act is amended by, in subsection (2), inserting in subparagraph (*e*) after the words " regulating and controlling the " the words " making and "

PART IV—AMENDMENTS TO "THE DECENTRALIZATION OF MAGISTRATES COURTS ACT OF 1965"

22. Collective title. "*The Decentralization of Magistrates Courts Act of* 1965," and this Part may be collectively cited as "*The Decentralization of Magistrates Courts Acts,* 1965 *to* 1968."

23. Amendments to Part VI. "*The Decentralization of Magistrates Courts Act of* 1965," is amended by—

(*a*) repealing section fourteen;

(*b*) renumbering section fifteen as section fourteen and in that section,—

(i) omitting from subsection (2) the second paragraph and the last paragraph and inserting in their stead the following paragraphs:—

"The copy of such summons served upon the defendant shall be accompanied by or have endorsed thereon or on the back thereof—

(*a*) a statement of the alleged facts of the offence or breach in question sworn to by the complainant;

(*b*) a notice in or to the effect of the prescribed form to the defendant that—

(i) if he does not admit the offence or breach alleged he is requested to inform the clerk of the court for the place where he is required by the summons to appear, not later than seven days before the date on which he is so required to appear, by notification (in this section referred to as "an election to plead not guilty") that he does not admit the offence or breach alleged;

(ii) if he does so inform the clerk of the court that he does not admit the offence or breach alleged, he is not obliged to appear at the time and place referred to in the summons but a time and place will be appointed by the clerk of the court for the hearing and determination of the complaint which time will be other than the time referred to in the summons and of which time and place he will receive reasonable notice in writing; and

(iii) if he does not so inform the clerk of the court that he does not admit the offence or breach alleged, he is liable to be convicted of the offence or breach alleged in the complaint and to be further dealt with according to law in proceedings under this section,

and shall be accompanied by a prescribed form of an election to plead not guilty.

A statement of alleged facts sworn to by a complainant shall, for the purpose and to the extent prescribed by this section, be evidence of the facts alleged therein notwithstanding that the complainant swears only to his belief that the alleged facts are as set forth therein but the complainant shall, in such a case, disclose therein the source of his information.";

(ii) omitting subsection (3) and inserting in its stead the following subsection:—

"(3) If an election to plead not guilty is received by the clerk of the court concerned within the time prescribed—

(*a*) the defendant so pleading shall not be obliged to appear at the time and place referred to in the summons;

(*b*) the clerk of the court shall appoint a time and place for the hearing of the complaint and give reasonable notice in writing of that time and place to the complainant and to the defendant;

(*c*) upon receipt by the defendant of that notice of appointment the summons shall thenceforth be read and construed as if the time and place so appointed were the time and place at which the defendant is by the summons required to appear; and

(*d*) the matter of the complaint shall thenceforth be dealt with and disposed of as prescribed by " *The Justices Acts*, 1886 *to* 1965," and the provisions (other than of this section) of this Act.";

(iii) omitting subsection (4) and inserting in its stead the following subsection:—

" (4) If, upon the matter of complaint being called in a Magistrates Court at the time when and place where the defendant is required to appear, there is no appearance by or on behalf of the defendant and the clerk of the court concerned has not received, in respect of the defendant, an election to plead not guilty or any notification in writing that the defendant pleads guilty the presiding justice, being a Stipendiary Magistrate, may adjourn the matter to chambers and may, upon being satisfied that the summons was properly served according to law and upon reading—

(*a*) the complaint and summons in question;

(*b*) the deposition of service endorsed on a copy of the summons which deposition includes a statement that the copy of the summons served on the defendant was accompanied by or endorsed with the statement, notice and form prescribed by subparagraphs (*a*) and (*b*) of subsection (2) of this section;

(*c*) a writing verified by certificate of the complainant and purporting to be a true copy of the statement of the alleged facts of the offence or breach in question which statement accompanied or was endorsed on or on the back of the copy of the summons served on the defendant;

(*d*) where the case requires it, a statement in writing purporting to be made pursuant to and which complies with the provisions of subsection (2) of section 44G of " *The Traffic Acts*, 1949 *to* 1967,"

(*e*) where the case requires it, a certificate as to the amount of any fee, charge, or other sum of money owing to any person or authority under any Act which certificate purports to be in accordance with the provisions of the Act under which the fee, charge or other sum of money is owing,

if, sitting as a court at the place where he is conducting the proceeding concerned he would have jurisdiction so to do, determine the matter of the complaint as if the facts set out in the statement of alleged facts of the offence or breach in question had been established by evidence before him constituting a Magistrates Court unless he is required by the provisions of subsection (6) of this section to adjourn and, where he finds the offence or breach in question established, may make in relation to the defendant any order which he could lawfully make if, sitting as a court, he had so found.

Where a proceeding is conducted under this subsection, whether in a courtroom or elsewhere, it shall be conducted in the absence of both the complainant and the defendant.

(iv) inserting after subsection (4) the following subsection:—

" (5) Where a proceeding is conducted under subsection (4) of this section,—

(*a*) the conducting of that proceeding shall be deemed to be a hearing of the matter of complaint by a Magistrates Court *ex parte* under subparagraph (*a*) of subsection (1) of section one hundred and forty-two of "*The Justices Acts,* 1886 *to* 1965" and the Stipendiary Magistrate conducting the same may exercise in relation thereto the powers and authorities conferred on a court under those Acts in respect of such a hearing;

(*b*) a determination made therein shall be deemed to be a determination made *ex parte* under those Acts;

(*c*) an order made therein shall be deemed to be an order of a Magistrates Court; and

(*d*) material before the Stipendiary Magistrate for his use in determining the subject matter of the complaint shall be deemed to have been produced in evidence:

Provided that in applying the provisions of subsection (6) of section one hundred and forty-two of those Acts in respect of such a proceeding the reference in those provisions to "seven days" shall be read and construed as a reference to "twenty-eight days".";

(v) renumbering subsection (5) as subsection (6) and, in that subsection,—

(*a*) omitting the words "the circumstances of an offence or breach are such that";

(*b*) omitting subparagraph (*d*) and inserting in its stead the following subparagraph:—

"(*d*) for any other reason the matter should be dealt with by a Magistrates Court,";

(*c*) inserting after the words "another Stipendiary Magistrate" the words "or by justices";

(vi) omitting subsection (6);

(vii) in subsection (7), omitting the brackets, numeral and word "(5) or";

(viii) in subsection (8),

(*a*) omitting the words "the conviction of a defendant" and inserting in their stead the words "a matter of complaint has been determined";

(*b*) inserting after the words "to the defendant" the words "and to the complainant";

(*c*) omitting the word "sending" and inserting in its stead the word "giving";

(*d*) inserting after the words "person convicted" the words "or against whom an order was made";

(*e*) omitting the words "twenty-one" and inserting in their stead the words "twenty-eight".

24. Amendments to Part VII. "*The Decentralization of Magistrates Courts Act of* 1965" is amended by renumbering sections sixteen, seventeen and eighteen as sections fifteen, sixteen and seventeen respectively.

25. Amendment to Schedule. The Schedule to "*The Decentralization of Magistrates Courts Act of* 1965" is amended by inserting before the words "Part VIA" the words, numerals, letter and brackets "Section 39 (2) (*b*) and".

PART V—PROVISIONS RELATING TO MAGISTRATES COURTS DISTRICTS

26. Exercise of powers under s. 22 of 50 Vic. 17 (as amended) or s. 5 of No. 43 of 1965 not to prejudice hearings, &c. Where the Governor in Council exercises a power conferred on him by section twenty-two of "*The Justices Acts,* 1886 *to* 1965," or by section five of "*The Decentralization of Magistrates Courts Act of* 1965"—

(*a*) a complaint made before the date of the exercise of such power of a simple offence or breach of duty may and always could be heard and determined;

(*b*) any order may and always could be made in relation to such a complaint and enforced; and

(*c*) an order made before the date of the exercise of such power in relation to a complaint of a simple offence or breach of duty may and always could be enforced,

as if that power had not been exercised.