

**JUSTICES (PENALTIES AND PROCEDURE) AMENDMENT ACT
1985 No. 207**

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

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Act No. 207, 1985

An Act to amend the Justices Act 1902 with respect to the rate at which penalties are reduced by default imprisonment, the imposition and payment of penalties and certain matters of procedure, and for other purposes. [Assented to, 10th December, 1985.]

See also Crimes (Summary Procedure) Amendment Act 1985.

Justices (Penalties and Procedure) Amendment 1985

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the "Justices (Penalties and Procedure) Amendment Act 1985".

Commencement

2. (1) Except as provided by this section, this Act shall commence on the date of assent to this Act.

(2) The several provisions of Schedules 1, 2 and 3 (Schedule 3 (1), (3), (6) and (12) excepted) shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

(3) Schedule 3 (12) shall commence on the day on which Schedule 1 or Schedule 3 (2) commences, whichever is the later day.

(4) Section 5, in its application to a provision of Schedules 1-3, shall commence on the day on which that provision commences.

Principal Act

3. The Justices Act 1902 is referred to in this Act as the Principal Act.

Schedules

4. This Act contains the following Schedules:

SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT
RELATING TO FINE ENFORCEMENT

SCHEDULE 2—AMENDMENTS TO THE PRINCIPAL ACT
RELATING TO ATTENDANCE NOTICES

SCHEDULE 3—MISCELLANEOUS AMENDMENTS TO THE
PRINCIPAL ACT

SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS

Justices (Penalties and Procedure) Amendment 1985

Amendment of Act No. 27, 1902

5. The Principal Act is amended in the manner set forth in Schedules 1-3.

Savings and transitional provisions

6. Schedule 4 has effect.

SCHEDULE 1

(Sec. 5)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINE ENFORCEMENT

(1) Section 80A—

After section 80, insert:

Consideration of defendant's means to pay

80A. In the exercise by a Justice or Justices of a discretion to fix the amount of any fine or monetary penalty, the Justice or Justices shall consider—

- (a) such information regarding the means of the defendant as is reasonably and practicably available to the Justice or Justices for consideration; and
- (b) such other matters as, in the opinion of the Justice or Justices, are relevant to the fixing of that amount.

(2) (a) Section 82 (2)—

Omit “and, if to such Justice or Justices it seems fit, the costs and charges of conveying him to prison”.

(b) Section 82 (2)—

Omit:

Where the said amount does not exceed \$25 such period shall not exceed twenty-four hours.

Where the said amount exceeds \$25 but does not exceed \$50 such period shall be forty-eight hours.

Justices (Penalties and Procedure) Amendment 1985

SCHEDULE 1—*continued*
 AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINE
 ENFORCEMENT—*continued*

Where the said amount exceeds \$50 such period shall be one day for each \$25 of such amount or part thereof,

but in no case shall such period exceed twelve months.

Insert instead:

Where—

- (a) the amount is not more than the prescribed unit, the period shall not exceed 24 hours;
- (b) the amount is more than the prescribed unit but is not more than twice the prescribed unit, the period shall not exceed 48 hours; or
- (c) the amount is more than twice the prescribed unit, the period shall be 1 day for each such unit of the amount or part of such a unit,

but in no case shall the period exceed 3 months.

(c) Section 82 (2D)—

After section 82 (2C), insert:

(2D) In subsection (2)—

“prescribed unit” means—

- (a) except as provided by paragraph (b)—the amount of \$50; or
- (b) where another amount is prescribed for the purposes of this definition—that other amount.

(3) (a) Section 83 (1), (1A), (1B) —

Omit section 83 (1), insert instead:

Justices (Penalties and Procedure) Amendment 1985

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINE
ENFORCEMENT—*continued*

(1) The Justice or Justices by whose conviction or order any amount is adjudged to be paid shall, in and by the conviction or order, allow time for the payment of the amount unless—

- (a) the Justice or Justices is or are satisfied that the person liable to pay the amount has sufficient means to pay the whole amount forthwith;
- (b) the person so liable requests that no time be allowed for payment; or
- (c) there are, in the opinion of the Justice or Justices, special reasons for not allowing any time for payment and the Justice or Justices has or have stated those reasons.

(1A) The Justice or Justices by whose conviction or order any amount is adjudged to be paid may, in and by the conviction or order, direct payment of the amount to be made by instalments.

(1B) The period of time allowed for the payment of an amount as referred to in subsection (1) or for the payment of instalments as referred to in subsection (1A) shall be not less than 21 days unless—

- (a) the period is a shorter period requested by the person liable to pay the amount; or
- (b) there are, in the opinion of the Justice or Justices, special reasons for allowing a shorter period and the Justice or Justices has or have stated those reasons.

(b) Section 83 (2), (3)—

Omit “any such amount” wherever occurring, insert instead “an amount”.

(c) Section 83 (4)—

Omit the subsection.

(4) Section 84—

Omit the section.

Justices (Penalties and Procedure) Amendment 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINE
ENFORCEMENT—*continued*

(5) Section 86A—

Before section 87, insert:

Interpretation

86A. In this Subdivision—

“authorised justice” means—

- (a) a Magistrate;
- (b) a Justice employed in the Local Courts Administration, Attorney General’s Department; or
- (c) a Justice employed in a prescribed office.

(6) Section 87—

Omit the section, insert instead:

Warrant of commitment for non-payment

87. Where—

- (a) it is adjudged by a conviction or order that a fine, penalty, costs or other amount of money be paid; and
- (b) the person against whom the conviction or order is made does not pay in accordance with the terms of the conviction or order the amount adjudged to be paid as ascertained by the conviction or order,

an authorised justice may, by warrant, commit the person to prison to be kept there according to the terms of the conviction or order unless the person sooner pays the amount together with such further sum for the costs of enforcing the conviction or order as seems just and reasonable to the authorised justice.

(7) (a) Section 88 (1)—

Omit “any Justice”, insert instead “an authorised justice”.

(b) Section 88 (2)—

Omit the subsection, insert instead:

*Justices (Penalties and Procedure) Amendment 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINE
ENFORCEMENT—*continued*

(2) Where—

- (a) it is ordered by a conviction or order referred to in subsection (1) that the defendant shall pay any costs to the prosecutor or complainant; and
- (b) the defendant does not pay those costs in accordance with the terms of the conviction or order,

an authorised justice may, by warrant, commit the defendant to prison to be kept there according to the relevant terms of the conviction or order unless the defendant sooner pays the costs together with such further sum for the costs of enforcing the conviction or order as seems just and reasonable to the authorised justice.

(8) Section 89—

Omit “or hands and seals of the Justice or Justices”, insert instead “of the authorised justice”.

(9) Section 89A—

After section 89, insert:

Non-enforcement of warrants

89A. (1) A constable who is required to convey a person to prison pursuant to a warrant of commitment issued under section 87 or 88 (2) for non-payment of an amount of money shall not be regarded as failing to comply with the terms of the warrant by reason of refraining from doing so in accordance with any direction given by the Commissioner for Police, or, in accordance with such regulations (if any) as may be made under subsection (2), for the purpose of allowing the person to seek the withdrawal and cancellation of the warrant (whether upon payment of the amount or the making of an order under section 90 or otherwise).

(2) Regulations may be made with respect to the exercise by a constable of a discretion to refrain from conveying a person to prison pursuant to a warrant referred to in subsection (1).

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINE
ENFORCEMENT—*continued*

(10) Sections 90, 90A—

Omit section 90, insert instead:

Further time, etc., may be allowed for payment

90. (1) Where an amount is adjudged to be paid by a conviction or order and a warrant of commitment has not been issued for non-payment of the amount, an authorised justice acting at the Local Court in which the conviction or order was made may, at any time, if it appears to the authorised justice expedient to do so, by order—

- (a) allow time or further time for the payment of the whole or any part of the amount; or
- (b) direct that payment of the whole or any part of the amount be made by instalments.

(2) Where a warrant of commitment has been issued for non-payment of an amount adjudged to be paid by a conviction or order, the authorised justice who issued the warrant or any other authorised justice may, if it appears to the authorised justice expedient to do so—

- (a) where appropriate, make an order referred to in subsection (1); and
- (b) upon the making of such an order or otherwise, withdraw and cancel the warrant.

(3) Notwithstanding anything in subsections (1) and (2), an authorised justice shall, in exercising or performing powers, authorities, duties or functions under those subsections, comply with such guidelines (if any) and have regard to such matters (if any) as may be prescribed.

*Justices (Penalties and Procedure) Amendment 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINE
ENFORCEMENT—*continued***Warrant where part payment made**

90A. Where, upon an application to an authorised justice to issue a warrant of commitment for non-payment of an amount adjudged to be paid by a conviction or order, it appears to the authorised justice that part of the amount has been paid, whether by instalments or otherwise, or has been remitted by the Governor pursuant to the Fines and Penalties Act 1901, the authorised justice shall, by the warrant, order the defendant to be imprisoned for a period calculated in accordance with section 82 (2), having regard to the unsatisfied balance, whether or not that period is the same as that fixed by the conviction or order.

(11) Section 91 (2)—

Omit “the Justice or Justices”, insert instead “the authorised justice”.

(12) Section 94 (2)—

Omit “the Justice or Justices issuing the warrant of commitment usually act”, insert instead “the authorised justice issuing the warrant usually acts”.

(13) (a) Section 121B (a)—

Omit “, for the entering into of recognizances or for the giving of security; and”, insert instead “or for the entering into of recognizances;”.

(b) Section 121B (b), (c)—

At the end of section 121B (b), insert:

; and

- (c) nothing in that section shall give any right of appeal against an order under section 90 allowing time or further time for the payment of the whole or any part of an amount or directing payment of the whole or any part of an amount to be made by instalments, or against a refusal to make such an order.

Justices (Penalties and Procedure) Amendment 1985

SCHEDULE 1—*continued*
AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINE
ENFORCEMENT—*continued*

(14) Section 155—

After section 154, insert:

Savings, transitional and other provisions

155. The Second Schedule has effect.

(15) Second Schedule—

After the First Schedule, insert:

SECOND SCHEDULE

(Sec. 155)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

PART I

SAVING PROVISION CONSEQUENT UPON THE JUSTICES
(PENALTIES AND PROCEDURE) AMENDMENT ACT 1985

Securities currently lodged for payment of fine, etc.

1. This Act, as in force immediately before the commencement of Schedule 1 to the Justices (Penalties and Procedure) Amendment Act 1985, applies in respect of a security directed to be paid under section 83 before that commencement as if that Act had not been enacted.

PART II

TRANSITIONAL PROVISIONS CONSEQUENT UPON VARIATION OF
RATE OF DEFAULT IMPRISONMENT BY JUSTICES (PENALTIES AND
PROCEDURE) AMENDMENT ACT 1985

*Justices (Penalties and Procedure) Amendment 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINE
ENFORCEMENT—*continued***Warrant issued before Justices (Penalties and Procedure) Amendment Act 1985**

2. (1) Where, by warrant issued under section 87 or 88 (2) before the commencement of Schedule 1 to the Justices (Penalties and Procedure) Amendment Act 1985 in respect of the non-payment by a person of an amount of money, a Justice committed a person to prison, the person may be so detained after that commencement only for a period not exceeding—

- (a) a period calculated at the rate of one day for every \$50, or part thereof, of the balance owing after that commencement; or
- (b) a period that, together with any period for which the person was detained in prison before that commencement pursuant to a warrant issued for that non-payment, totals 3 months,

whichever is the shorter period.

(2) In subclause (1)—

“balance owing”, in relation to a person who, at the commencement of Schedule 1 to the Justices (Penalties and Procedure) Amendment Act 1985, has been committed to prison for non-payment of an amount of money, means the balance of that amount after deduction of—

- (a) any payment made by way of reduction of the amount; and
- (b) \$25 for any day during which the person was detained in prison by reason of that non-payment before that commencement.

Warrant to be issued after Justices (Penalties and Procedure) Amendment Act 1985

3. A Justice issuing a warrant after the commencement of Schedule 1 to the Justices (Penalties and Procedure) Amendment Act 1985, being a warrant under section 87 or 88 (2) committing a person to prison pursuant to a conviction or order made before that commencement shall, by the warrant, order the person to be imprisoned for a period calculated in accordance with section 82 (2) as at the time of issue, having regard to the amount adjudged by the conviction or order to be paid or such part thereof as is unsatisfied, instead of for the period fixed by the conviction or order.

PART III

TRANSITIONAL PROVISIONS CONSEQUENT UPON VARIATION OF
RATE OF DEFAULT IMPRISONMENT BY REGULATION

*Justices (Penalties and Procedure) Amendment 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINE
ENFORCEMENT—*continued***Interpretation**

4. In this Part—

“balance owing”, in relation to a person who, at a variation date, has been committed to prison for non-payment of an amount of money, means the balance of that amount after deduction of—

- (a) any payment made by way of reduction of the amount; and
- (b) the former amount for any day during which the person was detained in prison by reason of that non-payment before the variation date;

“former amount”, in relation to a variation date, means—

- (a) where an amount was not prescribed by regulation for the purposes of the definition of “prescribed unit” in section 82 (2D) immediately before the variation date, the amount of \$50; or
- (b) in any other case, the amount prescribed by regulation for the purposes of that definition immediately before the variation date;

“new amount”, in relation to a variation date, means the amount prescribed by regulation for the purposes of the definition of “prescribed unit” in section 82 (2D) on and from the variation date;

“variation date” means the date on and from which an amount (or another amount) is prescribed by regulation for the purposes of the definition of “prescribed unit” in section 82 (2D).

Warrant issued before regulation varying rate

5. Where, by warrant issued under section 87 or 88 (2) before a variation date in respect of the non-payment by a person of an amount of money, a Justice committed a person to prison, the person may be detained after that date pursuant to that warrant only for a period not exceeding—

- (a) a period calculated at the rate of one day for every new amount, or part thereof, of the balance owing on or after that variation date; or
- (b) a period that, together with any period for which the person was detained in prison before that date pursuant to a warrant issued for that non-payment, totals 3 months,

whichever is the shorter period.

Justices (Penalties and Procedure) Amendment 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINE
ENFORCEMENT—*continued*

Warrant to be issued after regulation varying rate

6. A Justice issuing a warrant on or after a variation date, being a warrant under section 87 or 88 (2) committing a person to prison pursuant to a conviction or order made before that variation date shall, by the warrant, order the person to be imprisoned for a period calculated in accordance with section 82 (2) as at the time of issue, having regard to the amount adjudged by the conviction or order to be paid or such part thereof as is unsatisfied, instead of for the period fixed by the conviction or order.

SCHEDULE 2

(Sec.5)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ATTENDANCE NOTICES

(1) Section 3 (1), definition of "Attendance notice"—

After the definition of "Accused person", insert:

"Attendance notice" means a notice authorised to be issued under section 100AB.

(2) Section 68 (b)—

After "summons", insert "or attendance notice".

(3) (a) Section 75—

After "summons" wherever occurring, insert "or attendance notice".

(b) Section 75—

Omit "in manner hereinbefore prescribed".

(c) Section 75 (b)—

Omit "hereinbefore provided", insert instead "provided by this Act".

*Justices (Penalties and Procedure) Amendment 1985*SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ATTENDANCE NOTICES—*continued*

(4) Section 75A (2)—

At the end of section 75A, insert:

- (2) In subsection (1), a reference to summonses includes—
 - (a) a reference to attendance notices; and
 - (b) a reference to a summons or summonses and an attendance notice or attendance notices.

(5) (a) Section 75B (2A)—

After section 75B (2), insert:

(2A) Where—

- (a) an attendance notice has been issued for an offence punishable summarily before a Justice or Justices, being an offence in respect of which a summons could have been issued under section 60 if an information had been laid under this Division for the offence;
- (b) a copy of the attendance notice has been served on the person to whom the notice is directed; and
- (c) the person does not appear at the time and place at which the person is required by the notice to appear,

the court before which the person is required by the notice to appear may, on having the notice tendered to it and if it is satisfied that the facts as alleged in the notice constitute such an offence and that reasonably sufficient particulars thereof are set out in the notice, thereupon make an order imposing on the defendant a penalty to be paid within such time as is specified in the order, being a penalty of an amount not exceeding the amount of the pecuniary penalty that might have been imposed had the defendant been convicted of the offence.

(b) Section 75B (3)—

Omit "charged", insert instead "to which the information relates".

Justices (Penalties and Procedure) Amendment 1985

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ATTENDANCE NOTICES—*continued*

(c) Section 75B (4)—

Omit “with the matter of an information for an”, insert instead “or (2A) with an alleged”.

(d) Section 75B (7)—

Omit the subsection, insert instead:

(7) A reference in subsection (2) (c) or (2A) (c) to a time and place includes, where the hearing of the matter has been adjourned, a reference to the time and place to which the hearing has been adjourned.

(6) Part IV, Division 3—

After Division 2 of Part IV, insert:

DIVISION 3—*Attendance notices for indictable or summary offences*

*Subdivision 1—Interpretation***Interpretation**

100AA. In this Division—

“prescribed member of the police force”, in relation to the issue of an attendance notice, means—

(a) a member of the police force of or above the rank of sergeant; and

(b) a member of the police force for the time being in charge of a police station of a lower rank, if the notice is issued at that police station.

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ATTENDANCE NOTICES—*continued**Subdivision 2—Issue and service of attendance notices***Issue of attendance notices**

100AB. Where an information may be laid before a Justice against any person—

- (a) under section 21, for an indictable offence; or
- (b) under section 52, for an offence for which the person is liable to be punished upon summary conviction,

a prescribed member of the police force may authorise the issue of a notice for the attendance of the person.

Form of attendance notice

100AC. An attendance notice shall—

- (a) be directed to the person to whom it relates;
- (b) name the person who is to be the informant for the purposes of the notice;
- (c) describe the offence to which it relates and state shortly particulars of the offence;
- (d) require the person to whom it is directed to appear at a certain time and place before a Local Court to be dealt with according to law;
- (e) state that failure to so appear may result in the arrest of the person to whom it is directed or in the matter being dealt with in the absence of that person; and
- (f) be signed by—
 - (i) the person to whom it is directed; and
 - (ii) the prescribed member of the police force who authorised its issue.

Service of attendance notice

100AD. (1) A copy of an attendance notice shall be served personally by a member of the police force upon the person to whom it is directed.

Justices (Penalties and Procedure) Amendment 1985

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ATTENDANCE NOTICES—*continued*

(2) A member of the police force, when serving a copy of an attendance notice on a person, shall explain to the person that failure to appear as required by the notice may result in the arrest of the person or in the matter to which the notice relates being dealt with in the absence of the person.

(3) A failure to comply with subsection (2) shall not invalidate service of a copy of an attendance notice if the notice complies with section 100AC (a)–(e).

(4) The issue of an attendance notice or the service of a copy of an attendance notice does not render unlawful the arrest, before or after the issue of the notice, of the person to whom the notice is directed for the offence to which the notice relates or for any other offence or the detention of the person pursuant to any such arrest.

Presumptions

100AE. In any proceedings it shall be presumed, in the absence of evidence to the contrary—

- (a) that the person to whom an attendance notice is directed has signed the notice, if the notice purports to have been signed by that person;
- (b) that a prescribed member of the police force authorised the issue of and signed an attendance notice, if the notice purports to have been issued under the authority of and to have been signed by a prescribed member of the police force; and
- (c) that a copy of an attendance notice has been served by a member of the police force on the person to whom the notice is directed, if the notice bears a certificate to that effect purporting—
 - (i) to specify the time and place at which the copy was so served; and

SCHEDULE 2—*continued*
AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ATTENDANCE NOTICES—*continued*

- (ii) to be signed by the member of the police force who served the notice.

Subdivision 3—Effect of attendance notice

Attendance notice deemed to be an information

100AF. (1) Where an attendance notice, a copy of which has been served in accordance with section 100AD, is tendered to a Justice or Justices constituting a Local Court, the notice shall be deemed to be an information laid under section 21 or 52, as the case may require, being an information which is not substantiated by the oath of the informant or a witness.

(2) Where an attendance notice is, under subsection (1), deemed to be an information—

- (a) the person to whom the notice was directed shall be deemed to be the defendant to whom the information relates; and
- (b) the person who is named in the notice as the informant for the purposes of the notice shall be deemed to be the informant for the purposes of the information.

Warrant for apprehension

100AG. (1) Whenever any person for whose appearance an attendance notice has been issued does not appear at the time and place appointed by the notice, a Justice or Justices constituting a Local Court may, upon proof of the due service of a copy of the notice upon the person at a reasonable time before the time so appointed, issue or make an order authorising the issue of a warrant for the apprehension of the person.

(2) A warrant authorised to be issued under subsection (1) may be signed by any Justice.

*Justices (Penalties and Procedure) Amendment 1985*SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ATTENDANCE NOTICES—*continued*

(3) Whenever any person is apprehended under any such warrant, the Justice or Justices before whom the person is brought shall—

(a) subject to the Bail Act 1978, commit the person—

(i) by warrant to a prison, or some lock-up or place of security; or

(ii) verbally to such safe custody as the Justice or Justices may think fit,

and order the person to be brought up at a time and place to be appointed by the Justice or Justices; and

(b) give due notice of the time and place so appointed to the person named in the attendance notice as the informant.

(4) Sections 64 and 65 apply to and in respect of a warrant issued under this section in the same way as they apply to and in respect of a warrant issued under Division 2.

(7) Section 100A (3) (a)—

After “summons”, insert “or attendance notice”.

SCHEDULE 3

(Sec.5)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

(1) Section 1—

Omit the section, insert instead:

Short title

1. This Act may be cited as the “Justices Act 1902”.

SCHEDULE 3—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(2) Section 41A—

Omit the section, insert instead:

Payment of costs by informant

41A. (1) The Justice or Justices—

- (a) when making an order discharging a defendant as to the information then under inquiry; or
- (b) when committing a defendant for trial for an indictable offence which is not identical in all respects to the indictable offence with which the defendant was charged,

may, in and by an order made by the Justice or Justices (which, in the circumstances referred to in paragraph (a), may be the same order as the order discharging the defendant) adjudge that the informant shall pay to the clerk of the court to be paid to the defendant such costs as to the Justice or Justices seem just and reasonable.

(2) The amount so allowed for costs shall in all cases be specified in the order requiring payment.

(3) Sections 82, 83, 86A, 87, 89, 89A and 90–95 apply to and in respect of orders for the payment of costs made under this section.

(3) Part IV, Division 1, Subdivision 10—

After section 51A, insert:

Subdivision 10—Procedure where indictable offences dealt with summarily

Application of Division 2 to indictable offences

51B. (1) This section applies to indictable offences disposed of summarily by a Magistrate whether with or without the consent of the defendant.

Justices (Penalties and Procedure) Amendment 1985

SCHEDULE 3—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(2) Without affecting the generality of section 548 or 549 of the Crimes Act 1900 or of section 4, sections 81–95 apply and shall be deemed to have always applied to and in respect of indictable offences to which this section applies as if references in those sections to informations laid under section 52 included references to informations laid under section 21.

(4) Section 66 (2)—

After “section 61”, insert “or 80AA”.

(5) Section 80AA—

Before section 81, insert:

Absent defendant not to be imprisoned

80AA. (1) A Justice or Justices shall not (except pursuant to section 82), by any conviction, order that the defendant be imprisoned unless the defendant is present at the time the order for imprisonment is made.

(2) Where a Justice or Justices convicts or convict a defendant who is not present, the Justice or Justices may issue a warrant for the apprehension of the defendant for the purpose of the defendant’s being brought before a Justice or Justices for sentencing.

(6) Section 100A (1) (a)—

Omit “or section 75A”, insert instead “, 75A or 76”.

(7) Section 101 (1)—

Omit “twenty-one days”, insert instead “35 days (or such longer period as may be fixed under section 102A (1) in respect of the party)”.

SCHEDULE 3—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(8) Section 102 (1)—

Omit “twenty-eight days”, insert instead “42 days (or such longer period as may be fixed under section 102A (2) in respect of the appellant)”.

(9) Section 102A—

After section 102, insert:

Extension of periods

102A. (1) A Justice may, by order made within 35 days after the determination of any information or complaint by any Justice or Justices exercising summary jurisdiction, fix a period of more than 35 days for an application to be made under section 101 (1) by a party, in relation to that determination.

(2) A Justice may, by order made within 42 days after the determination of any information or complaint by any Justice or Justices exercising summary jurisdiction, fix a period of more than 42 days for a recognizance to be entered into under section 102 (1) by an appellant, in relation to that determination.

(3) No Justice other than a Magistrate shall exercise the power conferred by subsection (1) or (2).

(10) (a) Section 122 (1)—

After “money”, insert “(whether for costs or otherwise), every person who has, by the order of a Justice or Justices, been adjudged to pay any costs of a defendant”.

(b) Section 122 (1A)—

Omit “against”, insert instead “affecting”.

(c) Section 122 (1C)—

Omit “or other party”, insert instead “, defendant or other party, as the case may require”.

*Justices (Penalties and Procedure) Amendment 1985*SCHEDULE 3—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(11) Section 147—

Omit the section.

(12) Second Schedule—

After clause 1, insert:

Orders under section 41A

1A. This Act, as in force immediately before the commencement of Schedule 3 (2) to the Justices (Penalties and Procedure) Amendment Act 1985, applies in respect of an order made under section 41A before that commencement as if that Act had not been enacted.

SCHEDULE 4

(Sec.6)

SAVINGS AND TRANSITIONAL PROVISIONS

Savings

1. (1) An order made under section 41A of the Principal Act before the commencement of Schedule 3 (2) shall have the same force and effect as it would have had if this Act had not been enacted.

(2) Sections 101 and 102 of the Principal Act, as in force immediately before the commencement of Schedule 3 (7), (8) and (9), apply to and in respect of a determination made before that commencement by any Justice or Justices in the exercise of summary jurisdiction as if this Act had not been enacted.

Transitional provisions

2. (1) The Principal Act, as amended by Schedule 2, applies to and in respect of an indictable offence or an offence for which a person is liable to be punished upon summary conviction committed before the commencement of that Schedule in the same way as that Act, as so amended, applies to and in respect of any such offence committed after that commencement.

Justices (Penalties and Procedure) Amendment 1985

SCHEDULE 4—*continued*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

(2) Section 41A of the Principal Act, as amended by Schedule 3 (2), applies to and in respect of a defendant committed for trial on or after the commencement of that item for an indictable offence which is not identical in all respects to an indictable offence with which the defendant was charged before that commencement.

(3) Section 100A of the Principal Act, as amended by Schedule 3 (6), applies to and in respect of a conviction made before the commencement of that item upon the hearing and determination of a case under section 76 of the Principal Act in the same way as section 100A of that Act, as so amended, applies to and in respect of a conviction so made after that commencement.

(4) Sections 101, 102 and 102A of the Principal Act, as amended by Schedule 3 (7), (8) and (9), apply only to and in respect of a determination made by a Justice or Justices after the commencement of those items.

(5) Section 122 of the Principal Act, as amended by Schedule 3 (10), applies to and in respect of an order for the payment of costs of a defendant made by a Justice or Justices before the commencement of that item in the same way as that section, as so amended, applies to and in respect of any such order made after that commencement.
