

FINES AND FORFEITED RECOGNIZANCES ACT.

Act No. 25, 1954.

An Act to make provision for and with respect to the forfeiture of certain recognizances and the recovery of certain fines and forfeited recognizances; to repeal the Fines and Forfeited Recognizances Recovery Act, 1902; to amend the Justices Act, 1902, and certain other Acts; and for purposes connected therewith. [Assented to, 29th April, 1954.]

Elizabeth II,
No. 25, 1954.

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:—

1. (1) This Act may be cited as the "Fines and Forfeited Recognizances Act, 1954."

Short title,
citation and
commence-
ment.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. (1) The Acts mentioned in the First Schedule hereto are, to the extent therein expressed, hereby repealed.

Repeals
and
savings.

(2) All orders of any Court of Quarter Sessions, and all rolls, writs, lists, processes, levies, securities, bonds, returns, and discharge warrants made or issued under the authority of any enactment repealed by this Act and in force at the commencement of this Act, shall be deemed to have been made or issued under the authority of this Act.

(3) All persons lawfully in custody at the commencement of this Act under the provisions of any enactment repealed by this Act shall be deemed to be in lawful custody under the provisions of this Act, and may be dealt with accordingly.

3. In this Act, unless the context or subject-matter otherwise indicates or requires—

Interpreta-
tion.

“Justice” means a Justice of the Peace.

4.

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Forfeiture
of certain
recog-
nizances.

4. (1) "Recognizance to which this section applies" means a recognizance the amount of which, if the conditions of the recognizance are not complied with, can, apart from this section, be recovered only as a debt due to Her Majesty in a court of competent jurisdiction.

(2) Subject to subsection three of this section, any court may, on due proof that the conditions of any recognizance to which this section applies have not been complied with, forfeit the recognizance and transmit it, together with the certificate referred to in subsection five of this section, to the Clerk of the Peace to be proceeded upon according to law.

(3) A court shall not forfeit any recognizance to which this section applies unless the person bound by the recognizance who has therein made default is present before the court or a notice in or to the effect of the prescribed form to show cause why the recognizance should not be forfeited has first been served on that person.

(4) Any notice to be served pursuant to subsection three of this section on any person shall be in writing and shall be sufficiently served—

- (a) by delivering the notice to him personally; or
- (b) by forwarding the notice by post in a registered letter addressed to him at his address as shown in the recognizance concerned; and such service shall be deemed to have been effected at the time at which the registered letter would be delivered in the ordinary course of post.

(5) Where any recognizance to which this section applies is forfeited under this section by any court, the court shall certify in what respects the conditions thereof have not been complied with.

Such certificate shall be prima facie evidence of the matters stated therein.

Procedure
after
forfeiture
of certain
recog-
nizances.

5. Where any Act makes provision for a court, judge, justice or justices to forfeit a recognizance but does not provide for certifying in what respects the conditions of any recognizance forfeited pursuant to that provision have not been complied with or for transmitting the
forfeited

forfeited recognizance to the Clerk of the Peace to be proceeded upon according to law then the following provisions of this section shall apply in respect of any recognizance so forfeited, namely—

The court, judge, justice or justices shall certify in what respects the conditions of the recognizance have not been complied with and transmit the recognizance, together with the certificate, to the Clerk of the Peace to be proceeded upon according to law.

Such certificate shall be prima facie evidence of the matters stated therein.

6. (1) Where a recognizance entered into after the commencement of this Act for the due appearance of any person—

- (i) before a court of summary jurisdiction; or
- (ii) before a stipendiary or special magistrate or a justice or justices in proceedings to determine whether that person should be committed for trial,

Enforce-
ment
of certain
recog-
nizances
where
amount
thereof has
been
deposited.

to answer, or to answer further, to any charge has been forfeited and the amount of the recognizance, not exceeding fifty pounds, has been deposited by that person or his surety, then—

- (a) notwithstanding anything contained in this or any other Act, the forfeited recognizance shall not be transmitted to the Clerk of the Peace and shall not be entered on any Estreat Roll;
- (b) that person if he deposited the amount of the recognizance or his surety if the surety deposited the amount of the recognizance may, within the prescribed period from the date on which the recognizance was forfeited, lodge with the clerk of the court of summary jurisdiction by, at or nearest to the place at which the recognizance was forfeited an application for the discharge of the forfeited recognizance;
- (c) the amount so deposited shall, if no application is lodged pursuant to paragraph (b) of this subsection within the prescribed period, be paid to the Consolidated Revenue Fund upon the expiration of that period;

(d)

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- (d) the amount so deposited shall, if an application is lodged pursuant to paragraph (b) of this subsection within the prescribed period, be held by the person with whom it was deposited until the application is determined.

In this subsection "prescribed period" means twenty-one days or such longer period as may be prescribed in lieu thereof.

(2) (a) An application lodged pursuant to paragraph (b) of subsection one of this section shall be heard and determined by the court of summary jurisdiction with the clerk of which the application was duly lodged or by any other court of summary jurisdiction to which the firstmentioned court may think fit to adjourn the application.

In this paragraph "court of summary jurisdiction" means a court of petty sessions or a children's court holden in either case before a stipendiary or special magistrate.

(b) The court shall, at the hearing of the application, inquire into the circumstances of the case and may—

- (i) confirm the forfeiture; or
- (ii) order the discharge of the whole of the forfeited recognizance or of any part thereof.

(3) Where pursuant to subsection two of this section the court orders the discharge of the whole of the forfeited recognizance or of any part thereof, the person with whom the amount of the recognizance was deposited shall forthwith pay the amount so ordered to be discharged to the person who deposited the amount of the recognizance and pay the balance, if any, to the Consolidated Revenue Fund.

Where pursuant to that subsection the court confirms the forfeiture of the recognizance the person with whom the amount of the recognizance was deposited shall forthwith pay that amount to the Consolidated Revenue Fund.

7. Subject to the provisions of section six of this Act, the Clerk of the Peace shall, after the close of each sittings of every court of Quarter Sessions, enter on a roll, to be called the Estreat Roll—

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Clerk of the Peace to prepare an Estreat Roll at close of every Court of Quarter Sessions. cf. Act. No. 75, 1902, s. 4.

- (a) every fine and forfeited recognizance certified to him as by law provided by any court, judge, justice or coroner, or by the Sheriff, as having been imposed or forfeited within the district for which such court is held;
- (b) every fine and forfeited recognizance imposed or forfeited by or before such court at the sittings then closed;
- (c) every fine and forfeited recognizance entered in any previous roll which the court has during such sittings ordered to be inserted in such roll.

8. The Clerk of the Peace shall—

- (a) make a copy of the Estreat Roll and attach the copy to a writ of distringas and capias or fieri facias and capias in the form and to the effect set out in the Second Schedule to this Act;
- (b) endorse on that writ or copy a statement on oath made before any justice in the form and to the effect set out in the Third Schedule to this Act; and
- (c) send that writ and copy so endorsed to the Sheriff within twenty-one days after the adjournment of the court.

Clerk of the Peace to send copy of the Estreat Roll to the Sheriff with appropriate writ. cf. *Ibid.* s. 6.

9. (1) The Sheriff shall, under the authority of the writ sent to him in accordance with section eight of this Act, proceed forthwith to levy and recover the fines and forfeited recognizances entered on the copy of the Estreat Roll attached to the writ on the goods and chattels of the persons named in that copy or take those persons into custody if sufficient goods and chattels are not found on which distress can be made.

Under authority of such writ Sheriff to levy or in default of goods to take person into custody. cf. *Ibid.* s. 7.

(2) Every person so taken shall be lodged in prison, there to be kept to abide the judgment of the next ensuing Court of Quarter Sessions.

10.

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Security
may
be given to
Sheriff.

cf. Act No.
75, 1902,
s. 8.

10. (1) Any person on whose goods and chattels the Sheriff is required by section nine of this Act to levy and recover any fine or forfeited recognizance may give to the Sheriff security for his appearance at the next sittings of the court then and there to abide the decision of the court, and to pay, if the decision of the court be against him, the fine or forfeited recognizance, together with all such costs and expenses as are ordered by the court to be paid by him.

(2) Upon receipt of such security, the Sheriff shall withdraw from such levy, or if such person is in custody shall discharge him from custody.

Sheriff to
lay copy of
Estreat Roll
and a return
before
Chairman
at each
Court of
Quarter
Sessions.

cf. *Ibid.* s. 10.

11. The Sheriff shall at each sittings of every Court of Quarter Sessions lay before the Chairman the copy of the Estreat Roll sent to him by the Clerk of the Peace in accordance with section eight of this Act after the last preceding sittings of the court, and a return showing what has been done in the matter of every fine and forfeited recognizance appearing in that copy.

Chairman of
Court of
Quarter
Sessions to
order carry-
ing forward
in fresh roll
of cases in
former roll
where no
levy or dis-
charge.
cf. *Ibid.*
s. 11.

12. The Chairman of every Court of Quarter Sessions shall, subject to subsection four of section thirteen of this Act, at each sittings of the court order every fine and forfeited recognizance which, by the return presented to him by the Sheriff at such sittings, appears not to have been duly levied or recovered or properly accounted for by the Sheriff, or discharged by order of the court as hereinafter provided or by authority of the Governor or other officer having lawful authority to remit or dispense with the enforcement of debts due to the Crown in New South Wales, to be inserted in the Estreat Roll to be prepared by the Clerk of the Peace at the close of such sittings, unless and until it has been ascertained that the person in default has no goods or chattels on which a levy can be made, and that he cannot be found or lodged in prison.

Chairman of
Court of
Quarter
Sessions to
inquire into
cases in-
cluded in
Estreat Roll.

13. (1) The Chairman of every Court of Quarter Sessions shall at each sittings of the court inquire into the circumstances of every case included in the copy of the Estreat Roll laid before him, and—

- (a) may confirm the fine or forfeiture and, if a person, having given as such security as is provided

provided for in section ten of this Act a bond ^{No. 25, 1954.} with a surety or sureties, does not appear, may forthwith issue a writ of distringas and capias or fieri facias and capias against such surety or sureties;

- (b) may order the discharge of the whole of the fine or forfeited recognizance or of any part thereof;
- (c) may order such costs, charges, and expenses to be paid by either party as to the court seems just and reasonable.

(2) An order under paragraph (b) of subsection one of this section shall be in or to the effect of the form set out in the Fourth Schedule to this Act, and shall be signed by the Clerk of the Peace.

(3) An order under paragraph (b) of subsection one of this section shall, to the extent that it is a discharge of the fine or forfeited recognizance, be a discharge to the Sheriff on the passing of his accounts before any auditor or person authorised to pass the same.

(4) The Chairman may, in lieu of making an order under subsection one of this section, order that any such fine or forfeited recognizance shall be inserted in the Estreat Roll to be next prepared by the Clerk of the Peace in respect of such other Court of Quarter Sessions as he thinks fit.

A fine or forfeited recognizance the subject of an order under this subsection shall thereafter be dealt with as if it had been imposed or forfeited, as the case may be, within the district for which such other court is held.

14. (1) For the purpose of any inquiry provided for in section twelve or thirteen of this Act the court may ^{On inquiry court may} summon and examine on oath any person as a witness. ^{summon and examine on oath any person.}

(2) Every such examination shall be recorded in order that the Sheriff may be chargeable with all sums ^{cf. Act No. 75, 1902, s. 13.} not satisfactorily accounted for on the final passing of his accounts.

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Preservation
and
continuance
in force of
all writs
and copies
of the
Estreat Roll
sent to
Sheriff.
cf. Act No.
75, 1902,
s. 14.

15. (1) The Sheriff shall keep in his possession all writs, with the copies of the Estreat Rolls attached thereto, sent to him by the Clerk of the Peace pursuant to the provisions of this Act.

(2) Such original writs and rolls shall continue in force and be sufficient authority to the Sheriff, without any further writ or roll in respect of the fines and forfeited recognizances in respect of which they were issued.

(3) The Sheriff shall, on vacating his office, deliver to his successor all such writs and rolls in his possession so that his successor may use every means in his power to recover all sums unpaid and not charged to his predecessor on the passing of his accounts.

Payment in
cases of
recognizance
to secure
performance
of orders
made under the
Deserted Wives
and Children
Act, 1901-1952.
cf. *Ibid.* s.16A.

16. Any moneys recovered by the Sheriff in respect of a recognizance conditioned to secure the due performance of an order made under the Deserted Wives and Children Act, 1901-1952, shall, after deduction therefrom of the fees and expenses of the Sheriff, be paid by him to the person entitled to payment under the order.

Fraudulent
disposal
of assets.

17. Any person who, having been accepted by any court, justice or coroner, by virtue of his ownership of specific property, as a surety for any person entering into a recognizance, afterwards disposes of that property for the purpose of delaying or avoiding the execution of any writ issued pursuant to this Act shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for a term not exceeding two years.

Amendment
of Act No.
27, 1902.
Sec. 49.
(Discharge
on recog-
nizance.)

18. (1) The Justices Act, 1902, as amended by subsequent Acts and by this Act, is amended—

(a) by inserting at the end of section forty-nine the following new subsection:—

(4) Where the recognizance is entered into after the commencement of the Fines and Forfeited Recognizances Act, 1954, pursuant to section thirty-one, thirty-four or thirty-five of this Act and the amount of the recognizance has been deposited, the notice under subsection three

three of this section shall also contain a summary in the prescribed form of the rights conferred by paragraph (b) of subsection one of section six of the Fines and Forfeited Recognizances Act, 1954. No. 25, 1954.

(b) by inserting at the end of section ninety-six the following new subsection:— Sec. 96.
(General condition of recognizance.)

(4) Where the recognizance is entered into after the commencement of the Fines and Forfeited Recognizances Act, 1954, pursuant to section sixty-six or sixty-nine of this Act and the amount of the recognizance has been deposited, the notice under subsection three of this section shall also contain a summary in the prescribed form of the rights conferred by paragraph (b) of subsection one of section six of the Fines and Forfeited Recognizances Act, 1954.

(c) by omitting subsections two and three of section one hundred and ten; Sec. 110.
(Appeal against forfeiture of recognizance.)

(d) by inserting in subsection one of section one hundred and fifty-four next after paragraph (e) the following new paragraph:— Sec. 154.
(Regulations.)

(f) prescribing, for the purposes of sections forty-nine and ninety-six of this Act, the form of summary of the rights conferred by paragraph (b) of subsection one of section six of the Fines and Forfeited Recognizances Act, 1954.

(2) The Justices Act, 1902, as amended by subsequent Acts and by this Act, may be cited as the Justices Act, 1902-1954.

19. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act. Regulations.

(2)

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- (2) The regulations shall—
- (a) be published in the Gazette;
 - (b) take effect from the date of publication or from a later date to be specified in the regulations; and
 - (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

Sec. 2.

SCHEDULES.**FIRST SCHEDULE.**

Reference to Act.	Title.	Extent of repeal.
No. 75, 1902...	Fines and Forfeited Recognizances Recovery Act, 1902.	The whole.
No. 33, 1931...	Deserted Wives and Children (Amendment) Act, 1931.	Section 11.

Sec. 8

SECOND SCHEDULE.*Writ to Sheriff.*

ELIZABETH THE SECOND, by the Grace of God of the United Kingdom, Australia and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith.

To the Sheriff of the State of New South Wales—greeting.

You are hereby required and commanded as you regard yourself and all yours that of all the goods and chattels of all and singular the persons named in the copy Estreat Roll to this writ annexed you cause to be levied all and singular the debts and sums of money upon them severally imposed and charged as by the said copy Estreat Roll appears, so that the money may be ready for payment at the next Court of Quarter Sessions to be paid over in such manner

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as is or shall be lawfully appointed; and if any of the said several **No. 25, 1954.**
debts cannot be levied by reason of no goods or chattels being to
be found belonging to the parties then in all cases that you take
the bodies of the parties refusing to pay the aforesaid debts and
lodge them in the proper gaol, there to await the decision of the
next Court of Quarter Sessions unless the parties shall have given
sufficient security for their appearance at such Sessions for which
you will be held answerable and have you then there this writ.

Witness _____, Esquire, Chairman
of the Court of Quarter Sessions holden at _____,
in the State of New South Wales, the _____ day
of _____, 19 ____ .
Clerk of the Peace.

THIRD SCHEDULE.

Sec. 8.

Certificate on oath of Clerk of the Peace.

I, _____, make oath that
this roll is truly and carefully made up and examined, and that all
recognizances and fines which were forfeited or imposed and in right
and due course of law ought to be levied and paid are to the best
of my knowledge and understanding inserted in the said roll, and
that in the said roll are also contained and expressed all such fines
as have been paid to or received by me either in Court or otherwise
without any wilful or fraudulent discharge, omission, misnomer, or
defect whatever.

So help me God.

FOURTH SCHEDULE.

Sec. 13.

Form of Order discharging forfeited recognizances or fine.

To the Sheriff of the State of New South Wales.

WHEREAS _____ hath appeared
before the Chairman of the Court of Quarter Sessions holden at _____,
having forfeited the sum of _____
(*here describe the nature of the fine or forfeiture*), and having made it appear to the
satisfaction of the said Chairman that he should be relieved from
the payment of the said sum of _____
(*or if the penalty is mitigated state from part thereof*) you are
thereby required to discharge the said sum of _____

from the Estreat Roll delivered to you after
the Quarter Sessions held at _____ on the _____
day of _____,

for which discharge this warrant shall be your authority, and shall
exonerate you from the said charge on the passing of your accounts
before the proper officer.

By Order of the Court,

Clerk of the Peace.

TEXTILE