

JUSTICES (AMENDMENT) ACT.

New South Wales



ANNO SEXTO DECIMO

ELIZABETHÆ II REGINÆ

Act No. 28, 1967.

An Act to make further provisions with respect to the service of certain summonses; to alter the basis of imprisonment for non-payment of a fine; to provide for the annulment of a conviction and the re-hearing of an information in certain circumstances; for these and other purposes to amend the Justices Act, 1902, as amended by subsequent Acts; and for purposes connected therewith. [Assented to, 30th March, 1967.]

BE

Justices (Amendment).

No. 28, 1967 **B**E 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, citation and commencement.

1. (1) This Act may be cited as the "Justices (Amendment) Act, 1967".

(2) The Justices Act, 1902, as amended by subsequent Acts and by this Act, may be cited as the Justices Act, 1902-1967.

(3) Sections three and five of this Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment of Act No. 27, 1902.

2. The Justices Act, 1902, as amended by subsequent Acts, is amended—

Sec. 63.
(Manner of service of summons.)

(a) by omitting from subsection one of section sixty-three the word "Every" and by inserting in lieu thereof the words "Subject to this section, every";

(b) by inserting next after the same subsection the following new subsections :—

(1A) Subject to subsection (1B) of this section, where a summons in respect of an offence punishable on summary conviction under any Act is directed to the holder of a license issued under the authority of that Act, the summons may be served by forwarding it—

(a) by post to the address specified by that person in his application for grant or, as the case may be, renewal of the license as his address for the service of notices; or

(b) where no such address has been so specified by that person or where no such address is required to be specified by or under the Act under

Justices (Amendment).

under the authority of which the license was issued, by certified or registered post to the address appearing in the license in force at the time the summons is forwarded. **No. 28, 1967**

(1B) The Justice or Justices at the hearing or adjourned hearing of the information in respect of which the summons has been issued may, notwithstanding service in the manner provided by subsection (1A) of this section, order that a copy of the summons be served in the manner provided by subsection one of this section, and may adjourn or further adjourn the hearing for that purpose.

(c) by inserting next after subsection two of the same section the following new subsections :—

(3) A certificate purporting to be signed by a prescribed officer certifying that on any date or during any period specified in the certificate the particulars set forth in the certificate as to any or all of the matters specified in paragraphs (a) and (b) of subsection (1A) of this section appeared on or from the records kept pursuant to the Act under the authority of which the license referred to in that subsection was issued, shall, without proof of the signature or of the official character of the person purporting to have signed the certificate and without the production of any record or document upon which the certificate is founded, be prima facie evidence of the particulars certified in and by the certificate.

(4) In any certificate referred to in subsection three of this section, a statement to the effect that the person signing the same ordinarily has the custody of the records or documents referred to in the certificate shall be evidence of that fact.

(5) In this section "prescribed officer" means—

(a) where the license referred to in subsection (1A) of this section was issued under the authority

Justices (Amendment).

No. 28, 1967

authority of the Motor Traffic Act, 1909, as amended by subsequent Acts, a person prescribed for the purposes of subsection two of section twelve of that Act; and

- (b) in any other case, the person ordinarily having the custody of the records referred to in subsection three of this section or, where by the Act under the authority of which the license referred to in subsection (1A) of this section was issued, or the regulations made thereunder, a person is authorised to issue a certificate as prima facie evidence of the facts contained therein, that person so authorised.

Further amendment of Act No. 27, 1902.

Sec. 82.
(Imprisonment to be alternative of non-payment, &c. and to be adjudged in all cases in the same conviction or order.)

3. The Justices Act, 1902, as amended by subsequent Acts, is further amended—

- (a) by omitting from subsection two of section eighty-two the words "one dollar" wherever occurring and by inserting in lieu thereof the words "two dollars";
- (b) by omitting from the same subsection the words "two dollars" wherever occurring and by inserting in lieu thereof the words "four dollars".

Further amendment of Act No. 27, 1902.

Sec. 1.
(Short title and division into Parts.)

4. The Justices Act, 1902, as amended by subsequent Acts, is further amended—

- (a) by inserting in section one after the matter relating to Part IV the following new matter :—

PART IVA.—ANNULMENT OF CONVICTIONS—
ss. 100A–100H.

(b)

Justices (Amendment).

(b) by inserting next after section one hundred the following new Part :—

No. 28, 1967
New Part
IVA.

PART IVA.

ANNULMENT OF CONVICTIONS.

100A. (1) Subject to this section, application may be made by or on behalf of any person (in this Part referred to as "the applicant")—

Court may
annul
certain
convictions
and
penalties.

- (a) against whom, in his absence, a conviction has been made upon the hearing and determination of his case under section seventy-five of this Act; or
- (b) upon whom a penalty under section 18c of the Motor Traffic Act, 1909, as amended by subsequent Acts, has been imposed,

for the annulment of that conviction or penalty.

(2) An application under subsection one of this section shall be made, within ~~three~~ ^{three} months after the making of the conviction or, as the case may be, the imposition of the penalty, to the court in which the conviction was made or the penalty imposed.

(3) Where the Justice hearing an application under this section is satisfied that the summons issued in respect of the proceedings by virtue of which the conviction was made or the penalty was imposed did not come to the notice of the defendant and that he was unable to appear and defend the proceedings because he was not aware of the return date of the summons or, where the hearing of the information was adjourned, of the adjourned date, he may order that the conviction or penalty, as the case may be, be annulled and either forthwith or at a subsequent sitting of the court, proceed to hear and determine the matter

of

Justices (Amendment).

No. 28, 1967

Minister
may refer
question
or doubt as
to guilt or
liability for
penalty.

of the information in respect of which the conviction was made or the penalty was imposed, as the case may be, as though no conviction had been made or penalty imposed.

100B. (1) Where the Minister upon application made at any time by or on behalf of any person (in this Part referred to as "the applicant")—

(a) against whom a conviction has been made;
or

(b) upon whom a penalty under section 18C of the Motor Traffic Act, 1909, as amended by subsequent Acts, has been imposed,

is satisfied that any question or doubt has arisen as to the guilt of that person or, as the case may be, his liability for that penalty, the Minister may refer the matter to the court in which the conviction was made or the penalty was imposed.

(2) Where the Justice hearing a matter referred under this section is satisfied that there are proper grounds for so doing, he may order that the conviction or penalty be annulled and either forthwith or at a subsequent sitting of the court, proceed to hear and determine the matter of the information in respect of which the conviction was made or the penalty was imposed, as the case may be, as though no conviction had been made or penalty imposed.

Jurisdiction
under this
Part.

100C. The jurisdiction of a court of petty sessions under this Part shall not be exercised except by a Stipendiary Magistrate.

Depositions
as evidence.

100D. The deposition of any witness called and examined before the Justice or Justices who made the conviction or imposed the penalty the subject of an application under section 100A or 100B of this Act may be read as evidence at the hearing of the application or reference, as the case may be,
and

Justices (Amendment).

and at the rehearing, if any, of the matter of the information in respect of which the conviction was made or the penalty was imposed, if it is proved on oath that the witness—

- (a) is dead, or so ill as to be unable to travel;
or
- (b) cannot, after such search or for such reason as to the Court seems sufficient, be produced by the party tendering the deposition.

100E. (1) The clerk of the court to which an application under section 100A, or a reference under section 100B, of this Act is made shall, as soon as possible, give notice of the time and place of the hearing of the application or, as the case may be, the reference, to all parties interested or concerned therein. ^{Notice of hearing.}

(2) The hearing of the application or reference, as the case may be, may proceed notwithstanding any omission or error in a notice under subsection one of this section or the non-service thereof, provided the court is satisfied that the applicant and the parties interested or concerned had knowledge of such time and place of hearing and were not prejudiced by such omission, error or non-service.

(3) Where, but for the provisions of this subsection, the hearing of an application or a reference may not proceed by reason only that—

- (a) the applicant was not served with notice of the time and place of hearing of the application or reference; and
- (b) the Justice exercising jurisdiction under this Part is not satisfied that—
 - (i) the applicant had knowledge of such time and place; or

(ii)

Justices (Amendment).

No. 28, 1967

- (ii) where that Justice is satisfied that the applicant had such knowledge, the applicant would not be prejudiced by the non-service,

the hearing of the application or reference may nevertheless proceed if the Justice exercising jurisdiction under this Part is satisfied that the applicant is evading service of the notice or cannot, after reasonable search and inquiry, be found.

(4) Notices of hearing and all other notices authorised or required under this Part to be given may be sent by registered or certified post and where any such notice is so sent, it shall be addressed—

- (a) in the case of the applicant, to his address as given by him in his application unless—

(i) he has notified the clerk of the court, either in his application or otherwise, of some other address for the purpose, in which case it shall be sent to that address; or

(ii) no such address has been so given or notified, in which case it shall be sent to the address given by the applicant at the hearing of the information; or

- (b) in any other case—

(i) to the address notified to the clerk of the court for that purpose by the person to whom the notice is to be given; or

(ii) where no such address has been so notified, to the address given by that person at the hearing of the information.

Justices (Amendment).

100F. Where an application is made under **No. 28, 1967** section 100A, or referred under section 100B, of this Act the Justice exercising jurisdiction under this Part may stay the execution of the conviction or order in respect of which the application or reference was made subject to such terms and conditions as the Justice exercising jurisdiction under this Part thinks fit. **Stay of conviction, &c.**

100G. A conviction or penalty annulled pursuant to this Part shall cease to have any force or effect as from the making of the order of annulment. **Effect of annulment.**

100H. A conviction, or an order imposing a penalty under section 18C of the Motor Traffic Act, 1909, as amended by subsequent Acts, made upon the rehearing of an information in respect of which an order of annulment has been made pursuant to section 100A or 100B of this Act may be enforced in the same manner in all respects as if no prior conviction had been made or penalty imposed in respect of that information. **Conviction, &c., on rehearing.**

5. Where in pursuance of section eighty-seven or subsection two of section eighty-eight of the Justices Act, 1902, as amended by subsequent Acts and by this Act, a Justice commits a person to prison after the commencement of section three of this Act in respect of any conviction or order made prior to that commencement, the Justice shall, by his warrant of commitment, revoke the term of imprisonment to which that person is liable under such conviction or order, and order the person so committed to be imprisoned in lieu thereof for a period calculated in accordance with the provisions of subsection two of section eighty-two of the Justices Act, 1902, as amended by subsequent Acts and by this Act. **Transitional.**

6.

Justices (Amendment).

No. 28, 1967 **6.** The Justices Act, 1902, as amended by subsequent
Statute law Acts, is further amended by omitting from subsection two of
revision. section ninety the word "in" where firstly occurring and by
 inserting in lieu thereof the word "to".
