

**SUPREME COURT (SUMMARY JURISDICTION)
ACT.**

New South Wales



ANNO SEXTO DECIMO

ELIZABETHÆ II REGINÆ

Act No. 72, 1967.

An Act to confer a summary jurisdiction on the Supreme Court of New South Wales; and for purposes connected therewith. [Assented to, 7th December, 1967.]

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
and com-
mencement.

1. (1) This Act may be cited as the "Supreme Court (Summary Jurisdiction) Act, 1967".

(2)

Supreme Court (Summary Jurisdiction).

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette. No. 72, 1967

2. In this Act, unless inconsistent with the context or subject-matter— Interpre-
tation.

“Court” means the Supreme Court of New South Wales.

“Judge” means Judge of the Court.

3. (1) Where, under any Act, proceedings for an offence may be taken before the Court in its summary jurisdiction, the Court shall have jurisdiction to hear and determine those proceedings in a summary manner. Summary
jurisdiction
of the
Supreme
Court.

(2) The summary jurisdiction conferred on the Court by subsection one of this section shall be exercised by a Judge sitting alone, and not otherwise.

4. (1) Upon an application being made by any person (in this Act referred to as the “prosecutor”) in accordance with the rules of court, a Judge may make an order— Orders for
appearance
or appre-
hension of
defendants.

(a) ordering any person alleged in the application to have committed an offence punishable in the Court in its summary jurisdiction to appear at a time and place specified in the order to answer to the offence charged in the order; or

(b) ordering the apprehension of any such person for the purpose of his being brought before a Judge to answer to the offence charged in the order.

(2) An order under subsection one of this section may be made ex parte.

(3) An order in respect of an offence alleged to have been committed by a person may be made under paragraph (b) of subsection one of this section whether or not an order in respect of that offence has been made under paragraph (a) of that subsection.

(4)

Supreme Court (Summary Jurisdiction).

No. 72, 1967

(4) An order under paragraph (b) of subsection one of this section—

- (a) shall be addressed to all members of the police force;
- (b) may be addressed to any other person specified in the order; and
- (c) may be executed by any member of the police force or by any person to whom it is addressed at any place at which, had the offence specified in the order been committed at that place, that offence would be triable in the Court.

Powers of
Judge
where
defendant
appre-
hended.

5. (1) Where any person apprehended pursuant to an order made under paragraph (b) of subsection one of section four of this Act, or by reason of his failure to comply with the conditions of a recognizance previously entered into pursuant to paragraph (b) of this subsection, is brought before a Judge, the Judge shall—

- (a) by warrant commit him to prison and order him to be there detained until he is brought before a Judge at a time and place specified in the order to answer to the offence with which he is charged; or
- (b) order that he be discharged upon his entering into a recognizance, with or without sureties, as the Judge may direct, conditioned for the appearance of that person at such time and place as may be specified in the order to answer to the offence with which he is charged.

(2) The Prothonotary shall, as soon as is practicable after the making of any order under subsection one of this section, cause notice of the order to be given to the prosecutor.

(3) Failure to comply with the conditions of a recognizance entered into pursuant to paragraph (b) of subsection one of this section is punishable as contempt of the Court.

6.

Supreme Court (Summary Jurisdiction).

6. (1) No objection shall be taken or allowed to any application referred to in, or to any order or warrant made or issued under, section four or five of this Act by reason of any alleged defect in it in substance or in form or by reason of any variance between it and the evidence adduced at the proceedings for the offence charged in the application or order.

No. 72, 1967
Defects and
variances
in process.

(2) The Judge hearing the proceedings for any such offence shall—

- (a) where it appears to him that any variance between any such application or order and the evidence adduced in respect of the offence charged in the application or order is such that the defendant has been misled by the variance; and
- (b) the defendant applies for an adjournment of the hearing,

adjourn the hearing.

7. Where the hearing of the proceedings for an offence punishable in the summary jurisdiction of the Court is adjourned, whether under section six of this Act or otherwise, the Judge before whom the proceedings are taken may—

How defend-
ant dealt
with during
adjourn-
ment.

- (a) by warrant commit the defendant to prison and order him to be there detained until he is brought before the Judge at a time and place specified in the order to answer further to the offence with which he is charged; or
- (b) order that the defendant be discharged upon his entering into a recognizance, with or without sureties, as the Judge may direct, conditioned for the appearance of the defendant at such time and place as may be specified in the order to answer further to the offence with which he is charged.

8.

Supreme Court (Summary Jurisdiction).

No. 72, 1967 8. Subject to this Act and the rules of court, the practice and procedure of the Court in relation to the taking and receiving of evidence at the trial of accused persons on indictment apply to the taking and receiving of evidence in proceedings in the summary jurisdiction of the Court.

Practice and procedure for taking and receiving evidence.

9. If, upon the day and at the time and place appointed by an order made in respect of a defendant under paragraph (a) of subsection one of section four, or under subsection one of section five, of this Act, the prosecutor does not appear in person or by his counsel or attorney, but the defendant attends in accordance with the order and, in the case of an order under subsection one of section five of this Act, the prosecutor has received notice of the order, the Judge shall dismiss the charge unless for some reason he thinks it proper to adjourn the hearing.

Procedure where prosecutor does not, but defendant does appear.

10. If, upon the day and at the time and place appointed by an order made in respect of a defendant under paragraph (a) of subsection one of section four of this Act, the defendant does not appear, then upon proof of the due service, in accordance with the rules of court, of the order upon him at a reasonable time before the time appointed for his appearance the Judge may either—

Procedure where defendant does not obey order to appear.

- (a) proceed to hear and determine the case and adjudicate thereon in the absence of the defendant; or
- (b) adjourn the hearing and make an order for the apprehension of the defendant as provided in paragraph (b) of subsection one of section four of this Act.

11. If, upon the day at the time and place to which the hearing or further hearing of a charge has been adjourned, either or both of the parties does not, or do not, appear in person or by his or their counsel or attorney, the Judge then and there present may proceed with the hearing as if that party or those parties were present, and in a case where it is the prosecutor who does not so appear may dismiss the charge with or without costs.

Procedure where either party does not appear at adjourned hearing.

12.

Supreme Court (Summary Jurisdiction).

12. If, upon the day and at the time and place appointed for hearing or to which the hearing or further hearing has been adjourned, both parties appear in person or by their respective counsel or attorneys the Judge shall proceed to hear the case.

No. 72, 1967
Where both parties appear Judge to hear and determine the case.

13. (1) Where a defendant is charged with two or more offences punishable in the summary jurisdiction of the Court, whether of a like or different nature, the Judge shall have jurisdiction to hear and determine the charges together.

Provision for hearing cases together.

(2) Where two or more defendants are separately charged with any such offences, whether of a like or different nature, alleged to have been committed at the same time and place, the Judge shall have jurisdiction to hear and determine the charges together.

14. (1) Where a Judge—

- (a) convicts any person of an offence punishable in the summary jurisdiction of the Court;
- (b) makes an order dismissing the charge for any such offence; or
- (c) makes an order under subsection one of section 556A of the Crimes Act 1900, as amended by subsequent Acts, in respect of any such offence,

Judge may order payment of costs.

he may, in and by the conviction or order, order the defendant, in the case of a conviction or order referred to in paragraph (a) or (c) of this subsection, to pay to the prosecutor, or, in the case of an order referred to in paragraph (b) of this subsection, order the prosecutor to pay to the defendant, such costs as to the Judge seem just and reasonable.

(2) The amount so ordered to be paid for costs shall in all cases be specified in the conviction or order.

15.

Supreme Court (Summary Jurisdiction).

No. 72, 1967 **15.** The payment of any moneys ordered to be paid by a Judge exercising the summary jurisdiction of the Court or by the Court of Appeal exercising its jurisdiction under this Act, may be enforced—

Enforce-
ment of
fines and
orders for
payment of
moneys.

- (a) in the case of a penalty, as if the order were a judgment of the Court signed in favour of Her Majesty; and
- (b) in the case of costs, as if the order were a judgment of the Court signed in favour of the person to whom the costs were ordered to be paid.

Payment
by instal-
ments,
or security
taken for
payment of
money.

16. (1) The Judge by whose conviction or order any moneys are ordered to be paid may in and by such conviction or order do all or any of the following things, namely,—

- (a) allow time for the payment of the moneys;
- (b) direct payment to be made of the moneys by instalments;
- (c) direct that the person liable to pay the moneys may give to the satisfaction of the Judge security, with or without a surety or sureties, for the payment of the moneys or of any instalment thereof.

(2) A security referred to in paragraph (c) of subsection one of this section shall be in such form and may be enforced in such manner as may be prescribed by the rules of court.

(3) Where any such moneys are directed to be paid by instalments, and default is made in the payment of any one instalment, the same proceedings may be taken as if default had been made in payment of all the instalments then remaining unpaid.

(4) A Judge directing the payment of any such moneys or of an instalment of any such moneys, may direct the payment to be made at such time or times, and in such place or places, and to such person or persons, as may be specified

Supreme Court (Summary Jurisdiction).

specified by the Judge in the direction and every person to whom any such moneys or instalment are or is paid, if he is not the person entitled to enforce the payment, shall, as soon as is practicable, account for and pay the moneys or instalments to that person. No. 72, 1967

17. A person who aids, abets, counsels or procures the commission by another person of an offence punishable in the summary jurisdiction of the Court is guilty of the like offence and may be tried at the same time as or before or after the trial of the principal offender. Aiding, abetting, counselling or procuring the commission of offences.

18. (1) Any party to proceedings in the summary jurisdiction of the Court, if dissatisfied with the determination by any Judge made in those proceedings as being erroneous in point of law may, within twenty-one days after the determination, apply in writing to that Judge to state and sign a special case setting forth the facts and grounds of the determination for the opinion thereon of the Court of Appeal. Party dissatisfied with determination of Judge on point of law may apply to have a case stated for opinion of the Court.

(2) A reference in subsection three of this section or in section nineteen, twenty, twenty-one or twenty-two of this Act—

- (a) to the appellant shall be construed as a reference to the party so applying; or
- (b) to the respondent shall be construed as a reference to the other party to the proceeding.

(3) Written notice that application has been made for a case to be stated and signed pursuant to subsection one of this section shall be given by the appellant to the respondent within the time prescribed by rules of the Court of Appeal.

(4) On the making of an application for a case to be stated and signed pursuant to subsection one of this section in respect of a determination any right of the applicant to appeal against the determination to the Court of Appeal shall cease.

19.

Supreme Court (Summary Jurisdiction).

No. 72, 1967

Appellant to give security and pay fees.

19. (1) An appellant shall not be entitled to have a special case delivered to him unless he has entered into a recognizance, with or without sureties, and in such sum, as the Judge may direct, conditioned to prosecute the appeal without delay, and to submit to the judgment of the Court of Appeal and to pay such costs as may be awarded by that Court, and has paid to the Prothonotary the fees for and in respect of the case and recognizances prescribed by the rules of the Court of Appeal.

(2) If the appellant is in custody he shall be liberated upon the recognizance mentioned in subsection one of this section being further conditioned for his appearance before the same or such other Judge as may then be sitting within ten days after judgment has been given by the Court of Appeal to abide the judgment, unless the determination appealed against is reversed.

Judge may refuse to state case where application frivolous.

20. (1) If the Judge to whom an application to state and sign a special case is made is of opinion that the application is merely frivolous, he may then, but shall not otherwise, refuse to state a case, but shall not refuse to state a case where the application is made by or under the direction of the Attorney-General.

(2) Where the Judge refuses to state a special case he shall, on the request of the appellant, sign and deliver to him a certificate of such refusal.

Where case refused Court of Appeal may direct case to be stated.

21. (1) Where the Judge refuses to state a special case, the appellant may apply to the Court of Appeal upon an affidavit of the facts for a rule calling upon the Judge and the respondent to show cause why the case should not be stated.

(2) The Court of Appeal may make absolute or discharge the rule with or without costs.

(3) Where the rule is made absolute, the Judge, upon being served with a copy thereof, shall state a case accordingly, upon the appellant entering into the recognizance as provided in section nineteen of this Act.

Supreme Court (Summary Jurisdiction).

22. Where the appellant has received the case or has been notified in writing that it has been stated and signed and is available, he shall—

No. 72, 1967

Appellant to transmit case to Prothonotary and give notice.

- (a) within such period thereafter as may be prescribed by rules of the Court of Appeal transmit such case to the Prothonotary; and
- (b) within such period and in such manner as may be prescribed by rules of the Court of Appeal serve the respondent with such number of copies of the case as may be prescribed by those rules.

23. (1) The Court of Appeal shall hear and determine the question or questions of law arising on any case and shall—

Powers of the Court of Appeal in dealing with cases so stated.

- (a) reverse, affirm, or amend the determination in respect of which the case was stated;
- (b) remit the matter to the Judge with the opinion of the Court of Appeal thereon; or
- (c) make such other order in relation to the matter as seems fit.

(2) The Court of Appeal may, before exercising its powers under subsection one of this section, cause the case to be sent back for amendment, and may deliver judgment on the case as amended.

(3) The Court of Appeal may make such order as to costs in the proceedings on any case as to it seems fit.

(4) The decision of the Court of Appeal upon the hearing of any such case shall be binding on the Judge and upon all parties to the proceeding in which the determination was made.

24. (1) A person convicted of an offence punishable in the summary jurisdiction of the Court, a person in respect of whom an order referred to in paragraph (c) of subsection one of section fourteen of this Act or a person ordered to pay any moneys under that section may, within twenty-one days after the conviction or order, appeal to the Court of Appeal against the conviction or order.

Appeals.

(2)

Supreme Court (Summary Jurisdiction).

No. 72, 1967

(2) An appeal under this section shall be by way of rehearing and, on the appeal, the Court of Appeal may by its order confirm, quash or vary the conviction or order appealed against or increase or reduce any penalty imposed or moneys ordered to be paid by or in the conviction or order appealed against.

(3) On an appeal under this section the Court of Appeal shall have and may exercise and perform all the powers and duties that the Judge who made the conviction or order appealed against might have exercised or performed and shall have power to make such order as to the costs of the appeal as to the Court of Appeal seems fit.

Stay of
conviction
or order.

25. Where a special case has been stated for the opinion of the Court of Appeal or an appeal has been lodged as provided by section twenty-four of this Act, the conviction or order, made on the proceedings in respect of which the case was stated, or appealed against, shall be stayed until the decision of the Court of Appeal is given if—

- (a) in the case where upon the conviction the defendant was sentenced to imprisonment, the defendant enters into a recognizance, with or without sureties, as the trial Judge may direct, conditioned for the appearance of the defendant at such time and place as may be directed by that Judge to abide the decision of the Court of Appeal or of the Judge to whom the matter is remitted by the Court of Appeal and deposits with the Prothonotary such sum as may be fixed by the trial Judge as the costs of the proceedings before the Court of Appeal; and
- (b) in the case where the defendant was ordered to pay a sum of money, the defendant deposits with the Prothonotary the sum ordered to be paid, and a further sum in such amount as may be fixed by the trial Judge as the costs of the proceedings before the Court of Appeal.

26.

Supreme Court (Summary Jurisdiction).

26. The deposition of any witness called and examined before the Judge who made the conviction or order against which an appeal is lodged as provided in section twenty-four of this Act may be read as evidence for either party at the hearing of the appeal if—

No. 72, 1967
Conditions
subject to
which
depositions
may be read
as evidence
on appeal.

- (a) the other party consents; or
- (b) it is proved on oath—
 - (i) (a) where the deposition was taken down in writing, that the deposition was taken in the presence of the other party; or
 - (b) where the deposition is in the form of a transcript of the record made by any of the means authorised by rules of the Court of the evidence of the witness, that the record so made is a true record of that evidence and was made in the presence of the other party and that the transcript is a correct transcript of the record so made; and
 - (ii) that the other party or his counsel or attorney had full opportunity of cross-examining the witness; and
 - (iii) that—
 - (a) the witness 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.

27. (1) No appeal under section twenty-four of this Act shall be defeated merely by reason of any defect, whether of substance or of form, in any notice or statement of grounds of appeal.

(2) Appeal not to be defeated for defect in notice, &c., if amendable.

Supreme Court (Summary Jurisdiction).

No. 72, 1967 (2) The Court of Appeal may, if it is of opinion that any such notice or statement is capable of amendment and ought to be amended, amend it accordingly, upon such terms, as to postponement or costs, or both, as to the Court of Appeal seems just.

Appeal to Court of Criminal Appeal excluded. **28.** An appeal does not lie to the Court of Criminal Appeal against any conviction or order made by the Court in its summary jurisdiction.

Rules. **29.** (1) The Judges or any five of them may make general rules for or with respect to the practice and procedure of the Court in the exercise of its summary jurisdiction.

(2) Without limiting the generality of subsection one of this section the rules made under that subsection may make provision for or with respect to—

- (a) the service of orders made under section four of this Act;
- (b) the attendance or apprehension of defendants and witnesses;
- (c) the examination of witnesses on oath, affirmation or declaration;
- (d) the production by witnesses of books, documents and writings;
- (e) the execution of warrants for the apprehension of any person;
- (f) any matter which by this Act is required to be prescribed by rules of the Court or which is necessary or convenient for carrying out or giving effect to the provisions of this Act relating to the summary jurisdiction of the Court.

(3)

Supreme Court (Summary Jurisdiction).

(3) The rules shall—

No. 72, 1967

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

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