

**JUSTICES (FURTHER AMENDMENT) ACT.**

**New South Wales**



ANNO VICESIMO

**ELIZABETHÆ II REGINÆ**

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**Act No. 70, 1971.**

An Act to make provision for the continuation of proceedings notwithstanding any alteration of the place at or the district for which a court shall be held; to provide for continuing bail and for the inclusion in a recognizance of certain special conditions; to empower a Justice or Justices to excuse a defendant from attendance during the taking of evidence for the prosecution in committal proceedings; for these and other purposes to amend the Justices Act, 1902, the Crimes Act 1900, and the Courts of Petty Sessions (Civil Claims) Act, 1970; and for purposes connected therewith. [Assented to, 21st December, 1971.]

BE

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No. 70, 1971 **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 commencement. **1.** (1) This Act may be cited as the "Justices (Further Amendment) Act, 1971".

(2) This Act, this section, section two, paragraph (g) of section three and section five excepted, 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.** (1) The Justices Act, 1902, is amended by omitting subsections one and two of section five and by inserting in lieu thereof the following subsections :—

Sec. 5.  
(Establishment, etc., of Courts of Petty Sessions.)

(1) The Governor may, by order published in the Gazette—

(a) establish Courts of Petty Sessions and appoint the place at and the district for which any such court shall be held; and

(b) abolish any court established, or alter any place or district appointed, under paragraph (a) of this subsection.

(1A) All Courts of Petty Sessions existing immediately before the first day of November, one thousand nine hundred and seventy-one, and the places at and the districts for which such courts shall be held, shall be deemed to have been established or appointed under paragraph (a) of subsection one of this section.

(2) Notwithstanding the provisions of any other Act, the alteration of the place at or the district for which a Court of Petty Sessions shall be held shall not affect

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affect any proceedings commenced in the court before the making of the alteration, and the proceedings may be continued and completed, and any judgment or order given or made in respect thereof enforced, as if the alteration had not been made. No. 70, 1971

(2) Subsection one of this section shall be deemed to have commenced on the first day of November, one thousand nine hundred and seventy-one.

3. The Justices Act, 1902, is further amended—

Further amendment of Act No. 27, 1902.

- (a) (i) by omitting from subsection one of section thirty-four the words “or under the last preceding section” and by inserting in lieu thereof the words “, section thirty-three, or section forty-one, of this Act”; Sec. 34. (How defendant to be dealt with during period of adjournment.)
- (ii) by omitting paragraph (c) of the same subsection and by inserting in lieu thereof the following paragraph :—
- (c) discharge the defendant upon his entering into a recognizance :
- (iii) by omitting from the second proviso to the same subsection the words “, with or without sureties, conditioned that he shall appear at the time and place to which the hearing is adjourned”;
- (b) by omitting from subsection one of section thirty-five the words “with or without sureties conditioned that he shall appear at a time and place named in such recognizance to be further dealt with according to law”; Sec. 35. (Where principal witnesses reside at some other place, Justices may order defendant to be taken there.)

(c)

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Sec. 36.  
(How evidence to  
be taken.)

- (c) (i) by omitting from paragraph (a) of subsection four of section thirty-six the words "in the presence of the defendant";
- (ii) by omitting from paragraph (b) of the same subsection the words "in the presence of the defendant";

Sec. 41.  
(Procedure on hearing  
of charge of indict-  
able  
offence.)

- (d) (i) by omitting from subsection one of section forty-one the words ", in the presence of the defendant,";
- (ii) by inserting next after the same subsection the following new subsections :—

(1A) If the informant, having received notice of the time and place, does not appear in person or by his counsel or attorney when the defendant appears or is brought, as provided in subsection one of this section, before the Justice or Justices, the Justice or Justices shall discharge the defendant as to the information under inquiry, unless for some reason he or they think it proper to adjourn the hearing to an appointed time and place :

Provided that unless with the consent of the defendant such adjournment shall not exceed eight clear days.

(1B) (a) Subject to this section, the evidence for the prosecution shall be taken in the presence of the defendant.

(b) Upon application made by a defendant appearing before the court together with one or more other defendants, or made by his counsel or attorney on his behalf, to be excused from attendance during the taking of any evidence for the prosecution the Justice or

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Justices, if satisfied that during his absence the defendant will be represented during the taking of that evidence by counsel or attorney, may discharge the defendant upon his entering into a recognizance. No. 70, 1971

(c) The discharge under paragraph (b) of this subsection of a defendant shall render void any recognizance entered into by him before the discharge which would have the effect of requiring him to attend at the taking of evidence for the prosecution during the period for which he is discharged.

- (iii) by omitting from subparagraph (a) of paragraph (i) of subsection four of the same section the words "Having heard the evidence, do" and by inserting in lieu thereof the word "Do";
- (e) (i) by inserting in subsection one of section forty-nine after the word "recognizance" where thirdly occurring the words "; or at every time and place to which, during the course of the proceedings, the hearing of an information may be from time to time adjourned, as the Justice or Justices may direct"; Sec. 49.  
(Discharge  
on recog-  
nizance.)

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

(2A) (a) The conditions of a recognizance on which a person is discharged may include special conditions appearing to a Justice or Justices likely to result in his appearance at the time and place required by the recognizance or to be necessary in the interests of justice or for the prevention of crime.

(b)

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(b) A Justice or Justices shall not require a person to find a surety or sureties in respect of any special condition included in a recognizance under paragraph (a) of this subsection.

(c) Where a recognizance is conditioned that a person shall appear at every time and place to which, during the course of the proceedings, the hearing of the information may be from time to time adjourned, the Justice or Justices further adjourning the hearing may—

(i) notwithstanding that the recognizance is so conditioned, exercise any power conferred by section thirty-four of this Act; or

(ii) respite the recognizance without the further consent of any surety or sureties.

(iii) by inserting next after subsection four of the same section the following new subsection :—

(5) If a Justice or Justices is or are prepared to discharge a person upon his entering into a recognizance but the person is unable then and there to satisfy the conditions of the recognizance or to produce the surety or sureties required, the Justice or Justices shall certify on the back of the warrant of commitment his or their consent that the person be admitted to bail, the amount of bail that ought to be required and any other condition of the recognizance.

New sec.  
49A.

(f) by inserting next after section forty-nine the following new section :—

Arrest, etc.,  
of defendant  
released on  
bail.

49A. (1) A Justice may issue his warrant for the apprehension of any person discharged on recognizance upon the oath of a police officer that he has reasonable

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reasonable grounds for believing that the person is likely to break the condition that he will appear at the time and place required by the recognizance or any special condition of the recognizance, or has reasonable grounds for believing that the defendant is breaking or has broken any such special condition. No. 70, 1971

(2) If it is proved to the satisfaction of the Justice or Justices before whom a person is brought following his apprehension on a warrant issued under subsection one of this section that the person is likely to break or is breaking or has broken any condition or special condition of the recognizance the Justice or Justices may—

- (a) remand him to a prison, watch-house or lock-up and order that he be brought up at the place and time required by the recognizance;
- (b) in the case of a person discharged under subsection (1B) of section forty-one of this Act, order that he remain or be taken before the court hearing evidence of the offence with which he is charged; or
- (c) discharge him on a new recognizance.

(3) If the Justice or Justices is or are not satisfied as provided in subsection two of this section he or they shall release the person apprehended on his original recognizance.

- (g) (i) by omitting from subsection two of section sixty-three the words "ordinary prepaid post" and by inserting in lieu thereof the words "prepaid letter post"; Sec. 63.  
(Manner of service of summons.)

(ii)

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(ii) by omitting paragraph (b) of subsection six of the same section and by inserting in lieu thereof the following paragraph :—

(b) in relation to a person alleged to have committed an offence as owner of a motor vehicle—the address appearing on or from the records kept by the Commissioner for Motor Transport in pursuance of subsection one of section twelve of the Motor Traffic Act, 1909, in respect of the registration of motor vehicles, or on or from records of a like nature kept by any authority under any law of a State or of a Territory of the Commonwealth that corresponds to that Act, as the last known address of the person in whose name the motor vehicle was registered under that Act or law on the date of the alleged offence; or;

New sec.  
75A.

(h) by inserting next after section seventy-five the following new section :—

Procedure  
where  
defendant  
does not  
appear to  
summonses.

75A. Without prejudice to the operation of section seventy-five of this Act, if a defendant charged with two or more offences, whether of a like or different nature, does not appear at the time and place appointed for the hearing of the charges by the summonses relating thereto, the Justice or Justices upon proof in the manner prescribed by this Act of the due service of the summonses upon him a reasonable time before the time appointed for his appearance, may proceed to hear and determine all or any of the charges together and adjudicate thereon in the absence of the defendant.

Sec. 96.  
(General  
condition  
of recog-  
nizances.)

(i) (i) by inserting in subsection one of section ninety-six after the word “recognizance” where thirdly occurring the words “, or at every time  
and



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and place to which, during the course of the proceedings, the hearing of any information or complaint may be from time to time adjourned, as the Justice or Justices may direct”;

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

(2A) (a) The conditions of a recognizance on which a person is discharged may include special conditions appearing to a Justice or Justices likely to result in his appearance at the time and place required by the recognizance or to be necessary in the interests of justice or for the prevention of crime.

(b) A Justice or Justices shall not require a person to find a surety or sureties in respect of any special condition included in a recognizance under paragraph (a) of this subsection.

(c) Where a recognizance is conditioned that a person shall appear at every time and place to which, during the course of the proceedings, the hearing of the information or complaint may be from time to time adjourned, the Justice or Justices further adjourning the hearing may—

- (i) notwithstanding that the recognizance is so conditioned, exercise any power conferred by section sixty-nine of this Act; or
- (ii) respite the recognizance without the further consent of any surety or sureties.

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(iii) by inserting next after subsection four of the same section the following new subsection :—

(5) If a Justice or Justices is or are prepared to discharge a person upon his entering into a recognizance but the person is unable then and there to satisfy the conditions of the recognizance or to produce the surety or sureties required, the Justice or Justices shall certify on the back of the warrant of commitment his or their consent that the defendant be admitted to bail, the amount of the bail that ought to be required and any other condition of the recognizance.

New sec.  
96A.

(j) by inserting next after section ninety-six the following new section :—

Arrest, etc.,  
of defendant  
released on  
bail.

96A. (1) A Justice may issue his warrant for the apprehension of any person discharged on a recognizance upon the oath of a police officer that he has reasonable grounds for believing that the person is likely to break the condition that he will appear at the time and place required by the recognizance or any special condition of the recognizance, or has reasonable grounds for believing that the person is breaking or has broken any such special condition.

(2) If it is proved on oath to the satisfaction of the Justice or Justices before whom a person is brought following his apprehension on a warrant issued under subsection one of this section that the person is likely to break or is breaking or has broken any condition or special condition of the recognizance the Justice or Justices may—

(a) remand him to a prison, watch-house or lock-up and order that he be brought up at the place and time required by the recognizance; or

(b) discharge him on a new recognizance.

(3)

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(3) If the Justice or Justices is or are not satisfied as provided in subsection two of this section he or they shall release the person apprehended on his original recognizance. No. 70, 1971

- (k) (i) by inserting in paragraph (a) of subsection one of section 100A after the word "seventy-five" the words "or section 75A"; Sec. 100A.  
(Court may annul certain convictions and penalties.)
- (ii) by omitting subsection three of the same section and by inserting in lieu thereof the following subsections :—

(3) Where a Justice hearing an application under this section is satisfied that a defendant was unable to appear and defend the proceedings by virtue of which the conviction was made or the penalty was imposed—

- (a) because the summons issued in respect of the proceedings did not come to the notice of the defendant; or
- (b) where the hearing of the information was adjourned, because the defendant was not aware 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 the information in respect of which the conviction was made or the penalty was imposed as though no conviction had been made or no penalty imposed.

(4) A conviction made in respect of a charge heard together with other charges under section 75A of this Act may be annulled under subsection three of this section, but such annulment shall be without prejudice to a conviction made in respect of any other charge.

(1)

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Subst.  
sec. 131.Recovery of  
costs of  
appeal.

(1) by omitting section one hundred and thirty-one and by inserting in lieu thereof the following section :—

131. (1) Where the Court orders either party to pay costs the order shall—

- (a) direct that the costs be paid to the Clerk of Petty Sessions at the Court of Petty Sessions where the matter which is the subject of the appeal was originally heard;
- (b) state a time within which the costs shall be paid;
- (c) adjudge that, in default of payment of the costs, the person against whom the order is made shall be imprisoned and so kept for a period calculated in accordance with subsection two of section eighty-two of this Act, unless the costs be sooner paid; and
- (d) specify whether any such imprisonment shall be with hard labour or light labour.

(2) Where a corporate body is ordered to pay costs the order shall operate, and be enforceable in the same manner, as an order for the payment of money under the Small Debts Recovery Act, 1912.

(3) If the costs are not paid within the time stated in the order directing their payment, whether the party ordered to pay the same is or is not bound by recognizance to pay the same, a Justice may by warrant commit the person ordered to pay the costs to prison there to be kept, according to the terms of the order, unless the costs together with such further sum for the costs of enforcing

the

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the order, including the costs and charges of No. 70, 1971 conveying such person to prison as to such Justice may seem just and reasonable, be sooner paid.

(4) The provisions of sections eighty-nine to ninety-four, both inclusive, of this Act apply to and in respect of an order made under subsection one, and an application made and a warrant of commitment issued under subsection three, of this section in the same way as they apply to and in respect of an order, application and warrant of commitment to which they refer.

- (m) by inserting next after subsection one of section one hundred and fifty-three the following new subsections :—
- Sec. 153.  
(Certain persons authorised to grant bail.)

(1A) The conditions of a recognizance on which a person is discharged under subsection one of this section shall not include any special condition which may be included in a recognizance pursuant to subsection (2A) of section forty-nine, or subsection (2A) of section ninety-six, of this Act.

(1B) Where a Justice or Justices under subsection five of section forty-nine, or subsection five of section ninety-six, of this Act, certifies or certify his or their consent on the back of a warrant of commitment to a defendant being admitted to bail, any officer of police referred to in subsection one of this section or any gaoler shall have power to discharge the defendant upon his entering into a recognizance conditioned on the terms certified by the Justice or Justices on the back of the warrant of commitment.

**No. 70, 1971 4. The Crimes Act 1900, is amended—**

Amendment  
of Act No.  
40, 1900.

Sec. 409.  
(Depositions may  
be read  
as evidence  
for prosecution.)

- (a) by inserting in subparagraph (i) of paragraph (b) of subsection one of section four hundred and nine after the word “accused” the words “or during any period when the accused, having been discharged under subsection (1B) of section forty-one of the Justices Act, 1902, was absent”;
- (b) by inserting in subparagraph (ii) of the same paragraph after the word “accused” the words “or during any period when the accused, having been discharged under subsection (1B) of section forty-one of the Justices Act, 1902, was absent”;
- (c) by inserting in paragraph (c) of the same subsection after the word “witness” the words “, or the accused, having been discharged under subsection (1B) of section forty-one of the Justices Act, 1902, was absent when the deposition was taken and was not represented by counsel or attorney”.

Amendment  
of Act No.  
11, 1970.  
(Amendment of  
Act No.  
27, 1902,  
etc.)

**5. (1) The Courts of Petty Sessions (Civil Claims) Act, 1970, is amended by omitting section eighty-five.**

(2) Subsection one of this section shall be deemed to have commenced on the first day of November, one thousand nine hundred and seventy-one.

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