

**JUSTICES (AMENDMENT) ACT.**

**New South Wales**



ANNO VICESIMO SECUNDO

**ELIZABETHÆ II REGINÆ**

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**Act No. 11, 1973.**

An Act to enable bail without a surety to be allowed to a person committed for trial; to enable an information to be dealt with in the absence of the defendant in certain cases; to provide for an increase in the amount of a forfeited recognizance that may be exempted from entry on an Estreat Roll; for these and other purposes to amend the Justices Act, 1902, the Fines and Forfeited Recognizances Act, 1954, and certain other Acts; and for purposes connected therewith. [Assented to, 10th April, 1973.]

BE

*Justices (Amendment).*

**No. 11, 1973** **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 (Amendment) Act, 1973".

**Commence-  
ment.** 2. The several provisions of this Act shall commence upon such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Amendment  
of Act No.  
27, 1902.** 3. The Justices Act, 1902, is amended—

**Subst.  
sec. 40.** (a) by omitting section 40 and by inserting instead the following section :—

**Copies of  
depositions  
may be  
obtained.** 40. (1) A person charged upon an information under section 21 and committed for trial may obtain from the Clerk of the Peace, free of charge, one copy of the depositions taken at the hearing of the matter of the information.

(2) A person charged upon an information under section 21 may (whether or not he has been committed for trial) upon payment of a fee calculated at the rate prescribed by the regulations, obtain from the Clerk of the Peace or from the Clerk to the Justice or Justices who heard the matter of the information, a copy, or copies, of the depositions taken at the hearing of the matter of the information.

(b)

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- (b) by omitting from section 154 (1A) (b) the words “thirty-six and seventy of this Act” and by inserting instead the word and figures “36, 40 and 70”. No. 11, 1973  
Sec. 154.  
(Regulations.)

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

Further  
amendment  
of Act No.  
27, 1902.

- (a) by omitting from section 42 (1) (b) the words “admit him to” and by inserting instead the word “allow”; Sec. 42.  
(Person  
committed  
for trial  
to be  
committed  
to prison  
or allowed  
bail.)

- (b) by omitting from section 44 the words “admitted to” and by inserting instead the word “allowed”; Sec. 44.  
(Justices  
not to  
allow bail  
in cases  
of treason.)

- (c) (i) by omitting from section 45 (1) the words “either (i) if he procures and produces a surety or sureties sufficient, in the opinion of the Justice or Justices, to ensure his appearance at the time and place of trial, admit him to bail, or (ii) if he cannot then and there procure and produce such surety or sureties, certify on the back of the warrant of commitment his or their consent that he be admitted to bail, stating the amount of bail that ought to be required” and by inserting instead the words “allow an amount of bail, with or without a surety or sureties, sufficient in the opinion of the Justice or Justices to ensure his appearance at the time and place of trial”; Sec. 45.  
(When bail  
may and  
when it  
must be  
allowed on  
committal  
for trial.)

(ii)

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(ii) by omitting from section 45 (2) the words "When the committing Justice or Justices admits or admit a person to bail as aforesaid they shall take the recognizance of such person and of the" and by inserting instead the words "Where a person is allowed bail in accordance with this section or section 46, any Justice may take the recognizance of that person, and of any";

(iii) by omitting section 45 (3);

(iv) by omitting section 45 (4);

Sec. 46.

(Allowance of bail where not granted or provided for on committal for trial.)

(d) by omitting from section 46 the words "admit such person to bail in the manner in section forty-five (2) provided" and by inserting instead the words "allow that person bail, with or without a surety or sureties";

Subst.  
sec. 47.

Transmission of recognizance of person in prison.

(e) by omitting section 47 and by inserting instead the following section :—

47. Where a recognizance of bail on committal for trial is entered into by a person in prison, the Justice taking the recognizance shall forthwith transmit it to the committing Justice or Justices who shall transmit it with the depositions to the Attorney-General.

Sec. 48.

(On allowance of bail, warrant of deliverance to be sent to keeper of prison.)

(f) by omitting from section 48 the words "In all cases where a Justice admits to bail any person then in prison, accused of the offence for which he is so admitted to bail, such Justice" and by inserting instead the words "Where a recognizance of bail on committal for trial is entered into by a person in prison in respect of the offence for which he was committed for trial, the Justice who takes the recognizance";

(g)

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- (g) by inserting next after section 49 (5) the following **No. 11, 1973**  
new subsection :—

Sec. 49.

(6) In subsections (1) and (5), a reference to a recognizance does not include a reference to a recognizance of bail on committal for trial. (Discharge on recognizance.)

- (h) by inserting next after section 49A (3) the following **Sec. 49A.**  
new subsection :—

(Arrest, etc., of defendant released on bail.)

(4) In this section, a reference to a recognizance does not include a reference to a recognizance of bail on committal for trial.

- 5.** The Justices Act, 1902, is further amended by inserting in the Fifth Schedule next after the matter relating to the Motor Vehicles (Third Party Insurance) Act, 1942, the following new matter :—

Further amendment of Act No. 27, 1902. Fifth Schedule.

Road Maintenance (Contribution) Act, 1958.

State Transport (Co-ordination) Act, 1931.

- 6.** The Justices Act, 1902, is further amended—

Further amendment of Act No. 27, 1902.

- (a) by inserting next after section 75A the following new section :—

New sec. 75B.

75B. (1) In this section "public officer" means a person acting in his official capacity as an officer or employee under the Public Service Act, 1902, or as an officer or employee of a corporation that, for the purposes of an Act, is a statutory body representing the Crown.

(2)

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(2) Where—

- (a) an information for an offence punishable summarily before a Justice or Justices has been laid under this Division by a member of the police force or a public officer;
- (b) a summons for the appearance of the defendant to answer to the information has been served on the defendant in any manner provided by law for the service of such a summons on that defendant in relation to that offence; and
- (c) the defendant does not appear at the time and place fixed for the hearing of the information,

the court before which the information comes for hearing may, if it is satisfied that the facts as alleged in or annexed to the summons constitute such an offence and that reasonably sufficient particulars thereof are set out in or annexed to the summons, 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.

(3) In proceedings under this section a court may make the same orders—

- (a) under section 81 for the payment by the defendant of costs; and
- (b) for the payment by the defendant of any moneys found by the court to be due and payable by him,

as it could have made had the defendant been convicted of the offence charged.

(4)

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(4) In dealing pursuant to subsection (2) **No. 11, 1973** with the matter of an information for an offence against an Act or a provision of an Act, or against a regulation made under an Act, a court may take into account—

- (a) any report made to it by or on behalf of the informant with respect to any penalties imposed upon the defendant, or previous convictions of the defendant for any offence against that Act, or a provision thereof, or a regulation made thereunder; and
- (b) the circumstances of the offence and any information that the defendant causes to be brought to the notice of the court.

(5) The provisions of section 556A of the Crimes Act 1900 apply to proceedings under this section as if the defendant had been charged before the court with the offence referred to in the information to which the proceedings relate.

(6) For the purposes of this section, an information that purports to have been laid by a member of the police force or by a public officer shall, unless the contrary is proved, be presumed to have been so laid.

(7) A reference in subsection (2) to the time and place fixed for the hearing of an information includes, where the hearing of an information has been adjourned, the time and place to which the hearing has been adjourned.

(8) The jurisdiction of a court under this section may be exercised only by a stipendiary magistrate.

(9) Section 75 does not apply where an information is dealt with under this section.

(10)

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(10) In section 82 "order" includes orders under subsections (2) and (3).

(11) The provisions of this section are supplemental to, and do not derogate from, the provisions of any Act that relate to proceedings that may be taken in respect of offences punishable summarily before a Justice or Justices.

Sec. 100A.  
(Court may annul certain convictions.)

(b) by omitting section 100A (1) (b) and by inserting instead the following paragraph :—

(b) upon whom a penalty has been imposed pursuant to section 75B,;

Sec. 100B.  
(Minister may refer question or doubt as to guilt.)

(c) by omitting section 100B (1) (b) and by inserting instead the following paragraph :—

(b) upon whom a penalty has been imposed pursuant to section 75B,;

Sec. 100H.  
(Conviction on rehearing.)

(d) by omitting from section 100H the words "under section 18C of the Motor Traffic Act, 1909, as amended by subsequent Acts" and by inserting instead the words "pursuant to section 75B".

Amendment of Act No. 5, 1909.

Sec. 18c.

(Ex parte procedure for offences referred to in section 18B.)

**7.** The Motor Traffic Act, 1909, is amended by omitting section 18C.

**8.**



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**8.** The Maritime Services Act, 1935, is amended by omitting section 30E. **No. 11, 1973**

Amendment  
of Act No.  
47, 1935.  
Sec. 30E.  
(Ex parte  
procedure  
for offences  
referred to  
in section  
30D.)

**9.** The National Parks and Wildlife Act, 1967, is amended—

Amendment  
of Act No.  
35, 1967.

(a) by omitting section 41c;

Sec. 41c.  
(Ex parte  
procedure  
for offences  
referred to  
in section  
41B.)

(b) by omitting from section 44 (1) the words “Subject to subsection nine of section 41c of this Act, any penalty” and by inserting instead the words “Any penalty”.

Sec. 44.

(Penalties.)

**10.** (1) Any proceeding under—

Transitional  
provision.

(a) section 18c of the Motor Traffic Act, 1909, instituted before the commencement of section 7;

(b) section 30E of the Maritime Services Act, 1935, instituted before the commencement of section 8;  
or

(c) section 41c of the National Parks and Wildlife Act, 1967, instituted before the commencement of section 9,

may be continued, and any order may be made thereunder, as if this Act had not been enacted.

(2) Part IVA of the Justices Act, 1902, as in force immediately before the commencement of section 6 applies after that commencement to and in respect of penalties

imposed,

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imposed, whether pursuant to subsection (1) or otherwise, under section 18c of the Motor Traffic Act, 1909, as so in force.

Amendment  
of Act No.  
25, 1954.  
**Sec. 6.**  
(Enforce-  
ment of  
certain  
recogni-  
zances  
where  
amount  
thereof  
has been  
deposited.)

**11.** The Fines and Forfeited Recognizances Act, 1954, is amended by omitting from section 6 (1) the words "one hundred dollars" and by inserting instead the words "three hundred dollars".

Validation.

**12.** Anything done before the commencement of section 3 that would have been valid if section 40 of the Justices Act, 1902, as amended by this Act, had been in force when it was done is hereby validated.

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