

**JUSTICES (AMENDMENT) ACT.**

**New South Wales**



ANNO VICESIMO TERTIO

**ELIZABETHÆ II REGINÆ**

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**Act No. 94, 1974.**

An Act to make further provisions with respect to the service of certain summonses by post, the hearing of an information in the absence of the defendant, applications for annulment of convictions and appeals to the District Court; for these and other purposes to amend the Justices Act, 1902, and the Justices (Amendment) Act, 1970; and for purposes connected therewith. [Assented to, 11th December, 1974.]

**BE**

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**No. 94, 1974** **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, 1974".

**Commence-  
ment.** **2.** (1) This section and sections 1 and 9 shall commence on the date of assent to this Act.

(2) Except as provided in subsection (1), the several provisions of this Act shall, subject to subsection (3), commence on 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.

(3) Sections 7 and 8 shall commence on the same day.

**Principal  
Act.** **3.** The Justices Act, 1902, is, in this Act, referred to as the Principal Act.

**Amendment  
of Act No.  
27, 1902.** **4.** The Principal Act is amended—

**Sec. 63.  
(Manner of  
service of  
summons.)** (a) (i) by omitting from section 63 (2) the words "offence punishable on summary conviction under an Act specified in Part I of the Fifth Schedule to this Act, or under a rule, regulation, ordinance, by-law or order made under such an Act, or an offence punishable on summary conviction under a rule, regulation, ordinance, by-law or order specified in Part II of the Fifth Schedule to this Act," and by

inserting

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inserting instead the words “information for No. 94, 1974  
an offence punishable summarily before a  
Justice or Justices laid by a member of the  
police force or a public officer”;

- (ii) by inserting after section 63 (2) the following subsection :—

(2A) In subsection (2), “public officer” means person acting in his official capacity as an officer or employee—

- (a) under the Public Service Act, 1902 ;  
(b) of a corporation that, for the purposes of an Act, is a statutory body representing the Crown ; or  
(c) of a council within the meaning of the Local Government Act, 1919.

- (iii) by omitting from section 63 (6) (c) the words “specified in the Fifth Schedule to this Act”;

- (b) by omitting the Fifth Schedule.

Fifth  
Schedule.

**5. The Principal Act is further amended—**

Further  
amendment  
of Act No.  
27, 1902.

- (a) by omitting section 75B (1) and by inserting instead the following subsection :—

Sec. 75B.  
(Ex parte  
procedure  
for certain  
offences.)

(1) In this section, “public officer” means person acting in his official capacity as an officer or employee—

- (a) under the Public Service Act, 1902 ;  
(b) of a corporation that, for the purposes of an Act, is a statutory body representing the Crown ; or  
(c) of a council within the meaning of the Local Government Act, 1919.

(b)

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(b) by omitting section 75B (2) (a) and by inserting instead the following paragraph :—

(a) an information has been laid under this Division—

(i) by a member of the police force for an offence punishable summarily before a Justice or Justices;

(ii) by a public officer referred to in subsection (1) (a) or (1) (b) for such an offence; or

(iii) by a public officer referred to in subsection (1) (c) for an offence under Ordinance 34, 34A or 34C made under the Local Government Act, 1919.

Further amendment of Act No. 27, 1902.

6. The Principal Act is further amended—

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

(a) (i) by omitting from section 100A (3) the words “and defend” and by inserting instead the words “at the hearing of”;

(ii) by inserting after section 100A (3) the following subsection :—

(3A) Notwithstanding subsection (3), a Justice other than the Justice who ordered the annulment may hear and determine the matter of the information in respect of which the conviction or penalty has been annulled.

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

(b) by inserting after section 100B (2) the following subsection :—

(3) Notwithstanding subsection (2), a Justice other than the Justice who ordered the annulment may hear and determine the matter of the information in respect of which the conviction or penalty has been annulled.

7.

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## 7. The Principal Act is further amended—

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Further  
amendment  
of Act No.  
27, 1902.

(a) by omitting from the matter relating to Division 4 of Part V in section 1 the words "*Quarter Sessions*—*ss. 122*" and by inserting instead the words "*the District Court—ss. 121A*";

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

(b) by omitting from the short heading to Division 4 of Part V the words "*Quarter Sessions*" and by inserting instead the words "*the District Court*";

Part V,  
Div. 4:  
Short  
heading.

(c) by inserting before section 122 the following section :—

Sec. 121A.

121A. (1) In this Division and in Divisions 5 and 6, "District Court" means the District Court of New South Wales in its criminal and special jurisdiction.

Interpreta-  
tion: Part  
V, Divisions  
4, 5 and 6.

(2) In this Division (except as provided in section 127A) "Judge" means a Judge of the District Court.

(3) In this Division "appointed place" has the meaning ascribed thereto in section 165 of the District Court Act, 1973.

(d) (i) by omitting from section 122 (1) the words "a Court of Quarter Sessions" and by inserting instead the words "the District Court";

Sec. 122.  
(Appeal  
allowed in  
every case  
of con-  
viction  
or order  
made by  
Justices.)

(ii) by inserting in section 122 (1) after the words "conviction or order was made" the words ", the clerk of any court of petty sessions or the gaoler or officer by whom the person against whom the conviction or order was made is then held in custody";

(iii)

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(iii) by omitting from section 122 (1) the words "said clerk shall at once send to the Clerk of the Peace and to the prosecutor, or other party" and by inserting instead the words "person who receives the notice shall forthwith forward to the Clerk of the Peace and to the prosecutor or other party, and if the person who receives the notice is not the clerk of the Court where the conviction or order was made, to the clerk of the Court where the conviction or order was made";

(iv) by omitting section 122 (2) and (2A) and by inserting instead the following subsections:—

(2) Subject to this section, an appeal referred to in subsection (1) shall be heard and determined by the District Court sitting at the nearest appointed place to the Court where the conviction or order was made and shall be set down for hearing at the sitting of the District Court commencing not less than fourteen days after the day on which notice of the appeal was given or, where the Attorney-General so directs by instrument in writing served on the Clerk of the Peace, at some other sitting of the District Court at that appointed place.

(2A) Notwithstanding subsection (2), before the hearing of an appeal referred to in subsection (1) commences—

(a) where he thinks fit, the Attorney-General may by instrument in writing served on the Clerk of the Peace direct; or

(b)

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- (b) where it thinks fit, and if all parties interested or concerned in the appeal consent, the District Court may by instrument in writing order, No. 94, 1974

that the appeal be heard by the District Court sitting at a place other than the appointed place at which it would, but for this subsection, be heard.

(2B) The District Court may, in an order under subsection (2A), specify the sitting at which an appeal shall be set down for hearing.

(2C) The Clerk of the Peace shall, as soon as practicable after the receipt by him of a notice of appeal, give to all parties interested or concerned in the appeal notice of the time and place fixed for the hearing of the appeal and, notwithstanding any error in, or non-service of, that notice of hearing the District Court may proceed to hear and determine or otherwise dispose of the appeal if it is satisfied—

- (a) that each party had knowledge of the time and place fixed for the hearing and was not prejudiced by the error or non-service; or
- (b) that the appellant is avoiding service of the notice of hearing or cannot, after diligent search and inquiry, be found.

(2D) Where after a notice of hearing referred to in subsection (2C) is given the Attorney-General gives a direction under subsection (2) or (2A), the provisions of subsection (2C) apply as if the receipt by the Clerk of the Peace of an instrument referred to in subsections (2) and (2A) were the receipt by him of a notice of appeal.

(2E)

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(2E) Where the hearing of an appeal referred to in subsection (1) commences before a Judge sitting at an appointed place the Judge may, if he thinks fit and all parties interested or concerned in the appeal consent, adjourn the hearing and order that the hearing be continued before him at another appointed place at which he is, under section 174 (1) (b) of the District Court Act, 1973, authorised to sit.

- (v) by omitting from section 122 (3) the words "any Court of Quarter Sessions" and by inserting instead the words "the District Court";
- (vi) by omitting from section 122 (5) the words "such notice of appeal, the clerk of the Court" and by inserting instead the words "a notice of appeal, the person who receives the notice";
- (vii) by omitting from section 122 (5) the words "and his surety or sureties" and by inserting instead the words "is and, if determined by that Justice or those Justices, the amount in which any surety or sureties is or";
- (viii) by omitting from section 122 (5) the word "he" where secondly occurring and by inserting instead the words "the appellant";
- (ix) by omitting from section 122 (5) the words "the next following section" and by inserting instead the matter "section 123";
- (x) by omitting from section 122 (5) the words "such clerk" and by inserting instead the words "the person who receives the notice";

(xi)



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(xi) by omitting from section 122 (5) the words No. 94, 1974 "and shall also transmit the conviction or order to the Clerk of the Peace to be kept among the records of such Court";

(xii) by inserting at the end of section 122 the following subsection :—

(6) The clerk of the Court where the conviction or order was made shall, as soon as practicable after the receipt by him of a notice of appeal, transmit the conviction or order to the Clerk of the Peace to be kept among the records of the District Court.

(e) by inserting after section 122 the following Sec. 122A. section :—

122A. Where—

(a) a conviction or order is made against a person on the same day as some other conviction or order is made against that person;

(b) that person, within the time specified in section 122 (1), gives notice of appeal against any conviction or order referred to in paragraph (a) but not against all of those convictions or orders;

(c) notice of appeal is, after the expiration of that time, given by that person against any conviction or order referred to in paragraph (a) in respect of which notice of appeal has not previously been given; and

(d) the Court is satisfied that it was through inadvertence or error that the notice referred to in paragraph (c) was not given within the time specified in section 122 (1),

the appeal the subject of the notice in respect of which the Court is so satisfied may be heard and determined as if the notice had been given within the time specified in section 122 (1).

(f)

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- No. 94, 1974  
 Sec. 123.  
 (Conditions on which execution of conviction or order stayed.)
- (f) (i) by omitting from section 123 (b) (ii) the words "subsection five of the preceding section" and by inserting instead the matter "section 122 (5)";
- (ii) by inserting in section 123 (b) (ii) after the word "with" the words "or without";
- (iii) by omitting from section 123 (b) (ii) the words "Court of Quarter Sessions" and by inserting instead the words "District Court";
- (iv) by inserting in section 123 (b) (iii) after the word "made," the words "or with any other person to whom the notice of appeal might have been given,";
- Sec. 124.  
 (Conditions on which appellant may be liberated.)
- (g) by omitting from section 124 the words "the last preceding section" and by inserting instead the matter "section 123";
- Secs. 125A,  
 125B.
- (h) by inserting after section 125 the following sections :—
- 125A. (1) Where the hearing of an appeal is adjourned under section 122 (2E) or 125 (1) and the appellant is bound by a recognizance referred to in section 123 (b) (ii) the Court shall, if it proposes to act as provided in subsection (2), discharge the appellant and any sureties in respect of that recognizance.
- (2) The Court by which an appeal is adjourned may—
- (a) commit the appellant to a place of safe custody there to be kept until the hearing of the appeal; or
- (b) discharge the appellant upon his entering into a recognizance referred to in section 123 (b) (ii).

(3)

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(3) A recognizance referred to in sub-**No. 94, 1974** section (2) (b) may include special conditions appearing to the Court likely to result in the appearance of the appellant at the time and place required by the recognizance or necessary in the interests of justice or for the prevention of crime.

(4) The Court shall not require the appellant to find a surety or sureties in respect of any special condition included in a recognizance under subsection (3).

(5) Notwithstanding subsection (2) (a) where the appellant remains in custody during the period of an adjournment any Judge may at any time order that the appellant be brought before him or any other Judge before the expiration of that period and the gaoler or officer in whose custody the appellant then is shall duly obey that order.

(6) The Judge before whom the appellant is brought pursuant to an order under subsection (5) may exercise, with respect to any further adjournment of the hearing of the appeal or the liberty of the appellant during the period of any adjournment, all the powers that the Judge having jurisdiction to hear and determine the appeal might exercise.

(7) Where the appellant is committed to a place of safe custody pursuant to subsection (2) (a), the warrant of commitment may be signed by any Justice.

(8) A stay of execution of a conviction or order effected by section 123 (b) is not affected by reason of the operation of any of the provisions of this section.

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Orders in respect of penalty where conviction or order confirmed.

125B. (1) The Court by which an appeal is determined may order that a conviction or order confirmed by it, or any part of any such conviction or order, shall take effect on and from a day specified in the order, being a day that is earlier than the day on which the conviction or order is confirmed.

(2) Where—

- (a) a person is, by a conviction or order, required to enter into a recognizance and duly enters into that recognizance;
  - (b) that person subsequently appeals against the conviction or order; and
  - (c) at the hearing of the appeal the conviction or order is confirmed and any penalty imposed upon that person is confirmed,
- the recognizance entered into by that person and any sureties shall, except to the extent that the Court otherwise directs, have effect according to its terms.

(3) An order under subsection (1) and a recognizance continued in force pursuant to subsection (2) shall have effect notwithstanding that a stay of execution may have been in force in respect of the conviction or order appealed against.

Sec. 127A.

Vacating order of dismissal of appeal.

- (i) by inserting after section 127 the following section:—

127A. (1) In this section, "Judge" means any Judge of the District Court of New South Wales.

(2) Where—

- (a) an appeal to the District Court is dismissed upon the failure of an appellant to appear and prosecute the appeal; and

(b)

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- (b) within twenty-one days after that dismissal No. 94, 1974 the appellant shows to a Judge sufficient cause for his failure to appear and prosecute the appeal,

that Judge may, where in his opinion it is in the interests of justice to do so, by order vacate the order dismissing the appeal and any other order made as a consequence of the failure of the appellant to appear or the dismissal of the appeal.

(3) A Judge who makes an order under subsection (2) may make the order subject to such conditions as he sees fit and specifies in the order and the provisions—

- (a) of section 125A (3) and (4) apply in respect of any recognizance that the Judge directs the appellant to enter as if a reference in section 125A (3) and (4) to the Court were a reference to the Judge by whom the order is vacated;
- (b) of section 125A (5) and (6) apply in respect of an appellant who remains in custody; and
- (c) of section 125A (7) apply in respect of a warrant committing an appellant to a place of safe custody.

(4) Where an order is made under subsection (2), unless the Judge otherwise orders, any stay of execution of the conviction or order against which the appeal was made effected by section 123 (b) and in force immediately before the appeal was dismissed shall continue from the time the appeal was dismissed until the appeal is heard and determined, but no action lies against any person for anything done by that person acting bona fide and without notice of the making of an order under subsection (2) to enforce the conviction or order in respect of which the appeal was dismissed.

(j)

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Sec. 131A.  
(Cases  
stated from  
District  
Court.)

- (j) (i) by omitting from section 131A (1) the words "chairman of quarter sessions" and by inserting instead the word "Judge";
- (ii) by omitting from section 131A (1) the words "appeal to quarter sessions" and by inserting instead the words "appeal to the District Court";
- (iii) by omitting from section 131A (1) the words "court of quarter sessions" and by inserting instead the words "District Court";

Sec. 131B.  
(Apprehen-  
sion of  
absconding  
appellants  
under  
recog-  
nizance.)

- (k) (i) by omitting from section 131B (1) the words "of this Act" where firstly occurring and by inserting instead the words "or of section 125A";
- (ii) by omitting from section 131B (1) the words "of this Act" where secondly occurring and by inserting instead the words "or under section 125A";
- (iii) by omitting section 131B (2), (3), (4) and (5) and by inserting instead the following subsections :—

(2) A Justice may issue his warrant for the apprehension of an appellant to whom this section applies if it is made to appear to the Justice—

- (a) by the oath of a member of the police force, that the appellant; or
- (b) by the oath of a person who is surety for an appellant, that the appellant for whom he is a surety,

is not likely to appear and prosecute his appeal in terms of the recognizance entered into by the appellant or to comply with any condition included in a recognizance by virtue of section 125A (3).

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(3) The Justice or Justices before whom No. 94, 1974 an appellant is brought pursuant to a warrant issued under subsection (2) may, upon being satisfied that the ends of justice would otherwise be defeated—

- (a) commit the appellant to a place of safe custody, there to be kept until the hearing of the appeal; or
- (b) discharge the appellant upon his entering into a recognizance referred to in section 102 or 123 (b) (ii), as the case may require.

(4) The provisions of—

- (a) section 125A (3) and (4) apply in respect of a recognizance under section 123 (b) (ii) that is referred to in subsection (3) (b) as if a reference in section 125A (3) and (4) to the Court were a reference to a Justice or the Justices before whom an appellant is brought;
- (b) section 125A (5) and (6) apply in respect of an appellant to the District Court who remains in custody; and
- (c) section 125A (7) apply in respect of a warrant committing an appellant to a place of safe custody.

(5) Where an appellant is committed to a place of safe custody pursuant to subsection (3) or enters into a recognizance referred to in that subsection, any recognizance entered into under section 102 or 123 (b) (ii) by the appellant and any surety with respect to his appeal and in force immediately before the appellant is committed to a place of safe

custody

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custody or enters into the recognizance referred to in subsection (3) (b) ceases, subject to subsection (6), to have any force or effect.

(6) A stay of execution of a conviction or order effected by section 123 (b) is not affected by reason of the operation of any of the provisions of this section.

(7) Where the Justice or Justices before whom an appellant is brought is or are not satisfied as to the matter specified in subsection (3), the recognizance entered into by the appellant and any sureties shall be of full force and effect.

Sec. 132.  
(Conviction or order not to be quashed, &c., by reason of error in form or in the sentence.)

- (1) (i) by omitting from section 132 the words "Quarter Session" and by inserting instead the words "the District Court";
- (ii) by omitting from section 132 the words "Court of Quarter Sessions" and by inserting instead the words "District Court".

Further amendment of Act No. 27, 1902.  
(Statute law revision.)

**8.** Each provision of the Principal Act specified in column 1 of Schedule 1 is amended in the manner specified opposite that provision in column 2 of that Schedule.

Amendment of Act No. 85, 1970.

**9.** Each provision of the Justices (Amendment) Act, 1970, specified in column 1 of Schedule 2 is amended in the manner specified opposite that provision in column 2 of that Schedule.

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SCHEDULE



*Justices (Amendment).*

SCHEDULE 1.		No. 94, 1974
AMENDMENT OF THE PRINCIPAL ACT.		Sec. 8.
Column 1.	Column 2.	
Provision of Principal Act.	Amendment.	
Section 19 .. ..	Omit "or Quarter".	
Section 25 (1) ..	Omit "at any Court of Oyer and Terminer Gaol Delivery or Quarter Sessions,"; insert "in the Supreme Court or in the District Court in its criminal and special jurisdiction".	
Section 45 (2) ..	Omit the proviso.	
Section 51A (1) (c) ..	Omit "or such Court of Quarter Sessions"; insert ", or such sittings of the District Court in its criminal and special juris- diction,".	
Section 51A (1) (d) ..	Omit "the Chairman of Quarter Sessions"; insert "of the District Court".	
Section 51A (1) (d) (i)	Omit "or Chairman, as the case may be,".	
Section 51A (3) ..	Omit "or Chairman" wherever occurring.	
Section 111 (1) ..	Omit "Court of Quarter Sessions"; insert "District Court in its criminal and special jurisdiction".	
Section 146 .. ..	Omit "a Court of Quarter Sessions"; insert "the District Court in its criminal and special jurisdiction".	
Section 153A (1) ..	Omit "or a Chairman of Quarter Sessions".	

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Sec. 9.

## SCHEDULE 2.

## AMENDMENT OF JUSTICES (AMENDMENT) ACT, 1970.

Column 1.	Column 2.
Provision of Act No. 85, 1970.	Amendment.
Section 4 (1) (c) ..	Omit "and by inserting in lieu thereof the words 'in the form prescribed'".
Section 4 (1) (d) ..	Omit "(1B)" and "(1C)"; insert "(1c)" and "(1D)" respectively.
Section 4 (1) (d) ..	Insert after "forms" "(not being forms for the purposes of section 107)".

LIQUOR