

JUSTICES (AMENDMENT) ACT, 1978, No. 63

New South Wales



ANNO VICESIMO SEPTIMO

ELIZABETHÆ II REGINÆ

Act No. 63, 1978.

An Act to amend the Justices Act, 1902. [Assented to, 6th April, 1978.]

Justices (Amendment).

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, 1978".

**Commence-
ment.** 2. (1) Except as provided in subsections (2)–(4), this Act shall commence on the date of assent to this Act.

(2) Section 4 shall, in its application to a provision of Schedule 1, commence on the day on which that provision commences.

(3) The several provisions of Schedule 1 shall 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.

(4) Sections 5 and 6 shall commence on the day on which Schedule 1 (6) commences.

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

**Amendment
of Act No.
27, 1902.** 4. The Principal Act is amended in the manner set forth in Schedule 1.

Justices (Amendment).

5. (1) In subsection (2), "prescribed amount of money", in ^{Transitional} relation to a person, means the amount produced by deducting ^{—where} from the amount of money for the non-payment of which that ^{warrant has} person was committed to prison— ^{been issued.}

- (a) any payment made by way of reduction of the amount for the non-payment of which that person was so committed; and
- (b) in the case of a person referred to in subsection (2) (a), \$5 for any day during which, before the commencement of this section, that person was detained in prison by reason of that non-payment.

(2) Where, by warrant issued under section 87 or 88 (2) of the Principal Act, before the commencement of this section, a Justice committed a person to prison—

- (a) that person, if he was at that commencement being detained in prison pursuant to the warrant, may be so detained after that commencement only for a period not exceeding—
 - (i) a period calculated at the rate of one day for every \$25, or part thereof, of the prescribed amount of money for that person; or
 - (ii) a period that, together with the period for which that person was detained in prison before that commencement pursuant to the warrant, totals 12 months,whichever is the shorter period; or
- (b) that person, if he was not at that commencement being so detained, may be so detained for a period not exceeding—
 - (i) a period calculated at the rate of one day for every \$25, or part thereof, of the prescribed amount of money for that person; or

Justices (Amendment).

(ii) 12 months,
whichever is the shorter period.

Transitional
—where
warrant to
be issued.

6. A Justice shall—

- (a) before he issues a warrant under section 87 or 88 (2) of the Principal Act after the commencement of this section committing a person to prison pursuant to a conviction or order made before that commencement, by order in writing under his hand, revoke the term of imprisonment fixed by the conviction or order and order the person to be imprisoned instead for a period calculated as if the conviction or order had been made at the time when he revokes that term; and
- (b) when he issues the warrant under section 87 or 88 (2) of the Principal Act, by the warrant, commit the person to prison for that period.

Sec. 4.

SCHEDULE 1.

AMENDMENTS TO THE PRINCIPAL ACT.

(1) (a) Section 3 (2) (a)—

Omit “and in the Third Schedule”.

(b) Section 3 (2) (a)—

Omit “referred to in paragraph (b) of subsection (4) of section 36 or paragraph (b) of subsection (4) of section 70”, insert instead “(other than writing) referred to in section 36 (4) or 70 (4)”.

Justices (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) Section 3 (2) (b)—

Omit “referred to in paragraph (b) of subsection (4) of section 70”, insert instead “(other than writing) referred to in section 70 (4)”.

(2) Section 36 (4), (5)—

Omit section 36 (4), insert instead :—

(4) The deposition of every witness shall be recorded by means of writing, shorthand, stenotype machine, sound-recording apparatus or such other means as may be prescribed.

(5) Where, for the purposes of subsection (4), the deposition of a witness is recorded by means of writing, it shall be read over either to or by the witness, as the Justice or Justices may direct, and be signed by him and by the Justice or Justices.

(3) (a) Section 41 (4) (ii)—

Omit the paragraph, insert instead :—

(ii) Whatever the defendant then says shall be recorded by one of the means referred to in section 36 (4).

(b) Section 41 (4) (ii), proviso—

Omit the proviso.

(c) Section 41 (4) (iv) (b)—

Omit “the record made pursuant to the proviso”, insert instead “a record (other than in writing) made pursuant”.

Justices (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) Section 70 (4), (5)—

Omit section 70 (4), insert instead :—

(4) The deposition of every witness shall be recorded by means of writing, shorthand, stenotype machine, sound-recording apparatus or such other means as may be prescribed.

(5) Where, for the purposes of subsection (4), the deposition of a witness is recorded by means of writing, it shall be read over either to or by the witness, as the Justice or Justices may direct, and be signed by him and by the Justice or Justices.

(5) (a) Section 75B (2) (a) (iii)—

Omit "Ordinance 34, 34A or 34C", insert instead "an Ordinance".

(b) Section 75B (4)—

Omit "against a regulation", insert instead "against an instrument".

(c) Section 75B (4) (a)—

Omit "or a provision thereof, or a regulation made thereunder", insert instead "provision or instrument, as the case may be"

(6) (a) Section 82 (2)—

Omit "five dollars" wherever occurring, insert instead "\$25".

Justices (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 82 (2)—

Omit “ten dollars” wherever occurring, insert instead “\$50”.

(7) (a) Section 94 (1)—

Omit “, and the keeper”, insert instead “or to a member of the police force at any police station, and the keeper or member”.

(b) Section 94 (1) (a)—

After “keeper”, insert “, upon receipt of that sum or upon being satisfied that the sum has been received by a member of the police force,”.

(c) Section 94 (1A)—

After section 94 (1), insert :—

(1A) Where any sum referred to in subsection (1) (a) or (b) is paid to a member of the police force who is not the keeper of the prison in which the person by whom or on whose behalf it is paid is imprisoned, the member shall pay the sum to that keeper forthwith after that member has received it.

(8) (a) Section 100A (2)—

Omit “made, within six”, insert instead “made in writing, within 12”.

(b) Section 100A (2)—

After “imposed”, insert “and may be lodged with the clerk of that or any other court of petty sessions”.

Justices (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) Section 100A (2A)—

After section 100A (2), insert :—

(2A) Where an application under subsection (1) is lodged with a clerk of petty sessions, other than the clerk of the court to which the application is being made, the clerk with whom the application is lodged shall forthwith forward the application to the clerk of the court to which the application is being made.

(9) Section 121B—

After section 121A, insert :—

121B. Notwithstanding section 122—

- (a) there shall be no appeal against an adjudication to imprisonment for failure to comply with an order for the payment of money, for the finding of sureties, for the entering into of recognizances or for the giving of security; and
- (b) nothing in that section shall give any right of appeal against an order for the payment of wages, or of any sum recoverable in the same manner as wages, under the Seamen's Act, 1898, or against a conviction for an offence under Part IX of the said Act.

No appeal
in certain
cases.

(10) (a) Section 122 (1)—

Omit "of such notice:", insert instead "of such notice."

(b) Section 122 (1), proviso—

Omit the proviso.

Justices (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) Section 122 (1A)–(1C)—

After section 122 (1), insert :—

(1A) Where a person who is entitled under subsection (1) to give a notice referred to in that subsection within 21 days from the making of a conviction or order against him fails to give the notice in accordance with that subsection within that period, he may apply, within 3 months from the making of the conviction or order, to the District Court for leave to appeal against that conviction or order.

(1B) An application made by a person under subsection (1A) shall—

- (a) state the reasons for his failure to comply with subsection (1);
- (b) be accompanied by a notice in writing stating his intention to appeal and the general grounds of the appeal; and
- (c) be lodged by him or on his behalf with the clerk of the Court where the conviction or order was made, the clerk of any court of petty sessions or the gaoler or officer by whom the firstmentioned person is then held in custody.

(1C) The person who receives an application under subsection (1B) (c) in respect of a conviction or order 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, a copy of the application and the notice accompanying it under subsection (1B).

Justices (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(d) Section 122 (2), (2AA)—

Omit section 122 (2), insert instead :—

(2) Subject to this section—

- (a) an appeal referred to in subsection (1);
- (b) an application referred to in subsection (1A); and
- (c) where an application referred to in subsection (1A) is granted—the appeal in respect of which the application was made,

shall be heard and determined by the District Court sitting at the nearest appointed place to the Court where the conviction or order, to which the appeal or application, as the case may be, relates, was made.

(2AA) An appeal or application referred to in subsection (2) shall be set down for hearing—

- (a) at the sitting of the District Court commencing not less than 14 days after—
 - (i) in the case of an appeal referred to in subsection (1)—the day on which the notice of appeal was given; or
 - (ii) in the case of an application referred to in subsection (1A)—the day on which the application was lodged; or
- (b) 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 the appointed place where the appeal or application is to be heard and determined.

Justices (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(e) Section 122 (2A)—

Omit “referred to in subsection (1)”, insert instead “or application referred to in subsection (2)”.

(f) Section 122 (2A)—

After “the appeal” wherever occurring, insert “or application”.

(g) Section 122 (2B)—

After “an appeal”, insert “or application”.

(h) Section 122 (2c)—

After “notice of appeal”, insert “pursuant to subsection (1) or an application for leave to appeal accompanied by a notice of appeal pursuant to subsection (1c)”.

(i) Section 122 (2c)—

After “in the appeal”, insert “or application, as the case may be,”.

(j) Section 122 (2c)—

After “of the appeal” wherever occurring, insert “or application”.

(k) Section 122 (2c) (b)—

After “appellant”, insert “or applicant, as the case may be,”.

(l) Section 122 (2D)—

Omit “(2)” wherever occurring, insert instead “(2AA)”.

Justices (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(m) Section 122 (2E)—

Omit “referred to in subsection (1)”, insert instead “or application referred to in subsection (2)”.

(n) Section 122 (4)—

After “of appeal”, insert “, an application for leave to appeal”.

(o) Section 122 (4)—

After “be given”, insert “or lodged”.

(p) Section 122 (5)—

After “of appeal”, insert “given in accordance with subsection (1)”.

(11) Section 122A—

Omit the section, insert instead :—

122A. Where—

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

(b) that person—

(i) 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 and notice of appeal

Saving of
certain
notices and
applications.

Justices (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

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

- (ii) within the time specified in section 122 (1A), lodges an application for leave to appeal accompanied by notice of appeal against any conviction or order referred to in paragraph (a) but not against all of those convictions or orders, and the application for leave to appeal accompanied by notice of appeal is, after the expiration of that time, lodged by that person in respect of any conviction or order referred to in paragraph (a) in respect of which an application for leave to appeal accompanied by notice of appeal has not previously been lodged; and
- (c) the District Court is satisfied that it was through inadvertence or error that the notice referred to in paragraph (b) (i) was not given within the time specified in section 122 (1), or that the application and notice referred to in paragraph (b) (ii) were not lodged within the time specified in section 122 (1A), as the case may be,

the appeal or application the subject of the notice or application and notice in respect of which the District Court is so satisfied may be heard and determined as if the notice or the application had been given or lodged within the time specified in respect of it.

Justices (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(12) (a) Section 123 (a)—

Omit “as hereinbefore provided”, insert instead “within the time specified in section 122 (1)”.

(b) Section 123 (b) (ii)—

Omit “within eight days after the determination mentioned in section 122 (5)”, insert instead “after the determination mentioned in section 122 (5) but before the District Court has commenced to hear the appeal”.

(c) Section 123 (b) (ii)—

Omit “the Court”, insert instead “the District Court”.

(d) Section 123 (b) (ii)—

Omit “such Court”, insert instead “the District Court”.

(13) Section 124—

After “appeal”, insert “has been duly given within the time specified in section 122 (1)”.

(14) Section 124A—

After section 124, insert :—

**Disposal of
application
for leave to
appeal.**

124A. (1) The Court before which an application for leave to appeal is set down for hearing may adjourn the application at any time.

(2) The Court, after hearing an application for leave to appeal may—

(a) dismiss the application; or

Justices (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) where, in the opinion of the Court—

(i) the appellant has shown sufficient cause for his failure to give notice of appeal within the time specified in section 122 (1); and

(ii) it is in the interests of justice to do so, grant the application.

(3) Where, pursuant to subsection (2) (b), the Court grants an application for leave to appeal, it may—

(a) forthwith proceed to hear and determine the appeal in accordance with section 125; or

(b) adjourn the appeal.

(4) Where, under subsection (2) (a), the Court dismisses an application, it may make such order as to costs as to it seems just.

(15) Section 125 (1)—

Omit “the appeal”, insert instead “any appeal under this Division”.

(16) (a) Section 125A (2)—

Omit “an appeal”, insert instead “any appeal under this Division”.

Justices (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 125A (2) (b)—

Omit the paragraph, insert instead :—

(b) discharge the appellant upon his entering into a recognizance, with or without a surety, or sureties, in such sum as the Court determines, being a recognizance that contains conditions requiring him—

(i) to appear before the District Court in accordance with the terms of the recognizance;

(ii) to prosecute the appeal;

(iii) to abide the judgment of the District Court on the appeal; and

(iv) to pay such costs as may be awarded by the District Court.

(c) Section 125A (8)—

Omit “(b)”.

(d) Section 125A (9)—

After section 125A (8), insert :—

(9) Where the Court adjourns an appeal against a conviction or order the execution of which is not stayed, execution of the conviction or order shall be stayed upon—

(a) committal of the appellant to a place of safe custody pursuant to subsection (2) (a); or

(b) discharge of the appellant pursuant to subsection (2) (b).

Justices (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(17) Section 126 (2) (a) (ii)—

Omit “referred to in paragraph (b) of subsection (4) of section 70”, insert instead “(other than writing) referred to in section 70 (4)”.

(18) (a) Section 127A (2) (b)—

Omit “twenty-one days”, insert instead “3 months”.

(b) Section 127A (4)—

Omit “(b)”, insert instead “or 125A (9)”.

(19) Section 131 (1) (a)—

After “the appeal”, insert “or the application for leave to appeal”.

(20) (a) Section 131B (5)—

Omit “or 123 (b) (ii)”, insert instead “, 123 (b) (ii) or 125A (2) (b)”.

(b) Section 131B (6)—

Omit “(b)”, insert instead “or 125A (9)”.
