

**JUSTICES (PROCEDURE) FURTHER AMENDMENT ACT,
1983, No. 169**

New South Wales



ANNO TRICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

Act No. 169, 1983.

An Act to amend the Justices Act, 1902, so as to make further provisions with respect to the procedure in committal proceedings; to amend the Justices (Amendment) Act, 1983, with respect to the power to make regulations under the Justices Act, 1902; and for other purposes. [Assented to, 31st December, 1983.]

See also Crimes (Procedure) Amendment Act, 1983.

Justices (Procedure) Further 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 (Procedure) Further Amendment Act, 1983".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Schedules.

3. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE JUSTICES ACT, 1902.

SCHEDULE 2.—AMENDMENTS TO THE JUSTICES (AMENDMENT) ACT, 1983.

SCHEDULE 3.—TRANSITIONAL PROVISIONS.

Amendment of Act No. 27, 1902.

4. The Justices Act, 1902, is amended in the manner set forth in Schedule 1.

Amendment of Act No. 32, 1983.

5. The Justices (Amendment) Act, 1983, is amended in the manner set forth in Schedule 2.

Justices (Procedure) Further Amendment.

Transitional provisions.

6. Schedule 3 has effect.

SCHEDULE 1.

(Sec. 4.)

AMENDMENTS TO THE JUSTICES ACT, 1902.

- (1) Section 1—

After the matter relating to Subdivision 7 of Division 1 of Part IV, insert:—

*Subdivision 7A.—Written statements in committal proceedings—
ss. 48–48I.*

- (2) (a) Section 3 (1), definition of “Committal proceedings”—

Before the definition of “Justice”, insert:—

“Committal proceedings” means a hearing before a Justice or Justices for the purpose of deciding whether a person charged with an offence should be committed for trial or for sentence, and includes any proceedings that are preliminary thereto or ancillary thereto.

- (b) Section 3 (2) (c)—

After section 3 (2) (b), insert:—

(c) Except in so far as the context or subject-matter otherwise indicates or requires, any reference in this Act (except in section 36 and in any other prescribed provision)—

(i) to a deposition includes a reference to a written statement; and

(ii) to the taking of a deposition includes a reference to the admission of a written statement,

admitted as evidence under section 48A.

Justices (Procedure) Further Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE JUSTICES ACT, 1902—*continued.*

(3) Part IV, Division 1, Subdivision 7A—

After section 47, insert:—

Subdivision 7A.—Written statements in committal proceedings.

Interpretation.

48. (1) In this Subdivision, except in so far as the context or subject-matter otherwise indicates or requires—

- (a) a reference, in relation to any committal proceedings, to the Justice or Justices is a reference to the Justice or Justices before whom the proceedings are held;
- (b) a reference to the defendant includes a reference to the counsel or attorney of the defendant;
- (c) a reference to the informant includes a reference to the counsel, attorney or other person who appears on behalf of the informant; and
- (d) a reference to a proposed exhibit is a reference to a document or other thing identified in a written statement, as referred to in section 48A (2).

(2) Where in any committal proceedings there are 2 or more defendants, the provisions of this Subdivision—

- (a) apply in relation to each such defendant to the extent only that a written statement referred to in this Subdivision is sought to be admitted as evidence against that defendant; and
- (b) so apply in relation to each such defendant as if that defendant were the only defendant.

and references in this Subdivision to the defendant shall be construed accordingly.

Justices (Procedure) Further Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE JUSTICES ACT, 1902—*continued.*

Evidence in the form of written statements in committal proceedings.

48A. (1) Notwithstanding any other provision of this Act, but subject to this Subdivision, a written statement by any person is, if tendered by the informant, admissible in committal proceedings as evidence to the same extent as if it were oral evidence to the like effect given in those proceedings by that person.

(2) Any document or other thing identified in any written statement admitted as evidence under this section shall, if the document or other thing is produced as an exhibit in the committal proceedings, be treated as if it had been identified before the Justice or Justices by the person who made the statement.

(3) A written statement that is inadmissible as evidence under this section by virtue of any provision of this Subdivision may nevertheless be admitted as evidence in accordance with any rule or law of evidence, as if this Subdivision were not in force.

Copies of statements to be given, etc.

48B. (1) A written statement is not admissible as evidence under section 48A in any committal proceedings if—

- (a) the informant has not served, or caused to be served, before the expiry of such period as the Justice or Justices may direct, on the defendant—
 - (i) a copy of the statement, together (where relevant) with a copy of the translation of the statement referred to in section 48C or of so much of the statement as is not in the English language; and

Justices (Procedure) Further Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE JUSTICES ACT, 1902—*continued.*

- (ii) a copy of the proposed exhibits (if any) identified in the statement or, in the case of a proposed exhibit which it is impossible or impracticable to copy, a notice specifying a time and place at which the proposed exhibit may reasonably be inspected;
- (b) where a notice referred to in paragraph (a) (ii) has been served on the defendant, the defendant has not been afforded a reasonable opportunity to inspect each proposed exhibit referred to in the notice;
- (c) the date of birth of the person who made the statement is not specified in the statement; and
- (d) such other requirements (whether of the same or of a different kind) as may be prescribed by the regulations have not been complied with.

(2) In any committal proceedings, the Justice or Justices may and, on the application of or with the consent of the defendant, shall dispense with all or any of the requirements of subsection (1), on such terms and conditions as appear just and reasonable, and accordingly those requirements shall, to the necessary extent, not be applicable in relation to those proceedings.

(3) Subsection (2) does not apply to such of the requirements referred to in subsection (1) (d) as are declared by the regulations to be requirements that may not be dispensed with under subsection (2).

(4) In any committal proceedings, it shall, for the purposes of this Subdivision, be presumed, in the absence of evidence to the contrary, that a date specified in a statement purporting or appearing to be the date of birth of the person who made the statement is in fact the date of birth of that person.

Justices (Procedure) Further Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE JUSTICES ACT, 1902—*continued.*

Requirements as to statements.

48C. (1) A written statement is not admissible as evidence under section 48A in any committal proceedings if—

- (a) the statement does not contain an endorsement at its commencement in or to the effect of the following form:—

I am aware that if I sign this statement and any part of this statement is untrue to my knowledge, I may be liable to punishment.

- (b) the statement does not contain an endorsement at its conclusion in or to the effect of the following form:—

I declare that no part of this statement is untrue to my knowledge. I know that it may be used in legal proceedings. It accurately sets out the evidence which I would be prepared, if necessary, to give in Court as a witness.

- (c) the statement or such an endorsement is not written in a language of which the person who made the statement has a reasonable understanding;

- (d) where the statement is written, wholly or in part, in a language other than English, there is not annexed to it a document purporting to contain a translation of the statement, or so much of the statement as is not in the English language, into the English language;

- (e) the statement is not signed by the person who made the statement; or

- (f) the statement is not signed by another person as a witness, who attested the signing of the statement by the person who made it.

Justices (Procedure) Further Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE JUSTICES ACT, 1902—*continued.*

(2) In any committal proceedings, it shall, for the purposes of this Subdivision, be presumed, in the absence of evidence to the contrary, that—

- (a) the language in which a statement or endorsement is written, as referred to in subsection (1) (c), is a language of which the person who made the statement has a reasonable understanding; or
- (b) a signature on a statement purporting or appearing to be that of—
 - (i) the person who made the statement, as referred to in subsection (1) (e), is in fact the signature of that person; or
 - (ii) a person who signed the statement as a witness, as referred to in subsection (1) (f), is in fact the signature of a person who attested the signing of the statement by the person who made it.

Information as to rights of defendant.

48D. (1) A written statement is not admissible as evidence under section 48A in any committal proceedings if the informant has not served, or caused to be served, before the expiry of such period as the Justice or Justices may direct, on the defendant a notice in or to the effect of the prescribed form explaining the effect of this Subdivision and the rights of the defendant in relation thereto.

(2) Where in any committal proceedings the defendant is not represented by counsel or an attorney, a written statement is not admissible as evidence under section 48A in those proceedings if the Justice or Justices—

- (a) has or have not addressed the defendant in or to the effect of the prescribed form of words; or
- (b) is or are not satisfied that the defendant understands the defendant's rights under this Subdivision.

Justices (Procedure) Further Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE JUSTICES ACT, 1902—*continued.*

Witnesses may be called.

48E. (1) Where in any committal proceedings—

- (a) the defendant has been served with a copy of a written statement, as referred to in section 48B, and serves on the informant, within such period as the Justice or Justices may direct, a notice to the effect that the defendant desires the attendance at those proceedings of the person who made the statement; or
- (b) the Justice or Justices, on his, her or their own motion, or on the application of the defendant, gives or give a direction requiring the attendance at those proceedings of the person who made a written statement tendered as evidence under this Subdivision,

the statement, if not already admitted as evidence in those proceedings, is not admissible as evidence under section 48A in those proceedings if—

- (c) in a case to which paragraph (a) applies—the defendant, after serving the notice referred to in that paragraph, does not consent to the admission in evidence of the statement; or
- (d) in the case to which paragraph (b) applies—the Justice or Justices, after giving the direction referred to in that paragraph, does not or do not withdraw the direction.

(2) Where in any committal proceedings the defendant applies to the Justice or Justices for a direction to be given as referred to in subsection (1) (b), the Justice or Justices may give the direction, and shall do so if the written statement has not already been admitted as evidence in those proceedings.

(3) A direction given as referred to in subsection (1) (b) on application by the defendant may not be withdrawn except on application by or with the consent of the defendant.

Justices (Procedure) Further Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE JUSTICES ACT, 1902—*continued.***Rejection of whole or part of statement.**

48F. (1) Where in any committal proceedings it appears to the Justice or Justices that the whole or any part of a written statement tendered as evidence under this Subdivision is inadmissible, the Justice or Justices shall reject the statement or that part, as the case may be, as evidence.

(2) Where a part of a written statement is rejected under subsection (1), the Justice or Justices shall, by one of the means referred to in section 36 (4), make a record identifying the part that has been rejected and indicating that it has been rejected.

(3) The regulations may, for the purposes of subsection (2), prescribe the manner of identifying a part of a statement that has been rejected and of indicating that it has been rejected.

Adjournments.

48G. Without limiting the powers of the Justice or Justices to adjourn committal proceedings, the Justice or Justices shall grant such adjournments as appear to be just and reasonable as a consequence of any of the provisions of this Subdivision.

False statements.

48H. (1) Where a written statement made by any person is tendered in evidence for the purposes of this Subdivision, the person is guilty of an offence if the statement contains any matter—

- (a) that, at the time the statement was made, the person knew to be false, or did not believe to be true, in any material respect; and
- (b) that was inserted or caused to be inserted by the person in the statement.

Justices (Procedure) Further Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE JUSTICES ACT, 1902—*continued.*

(2) An offence under this section may be dealt with summarily or on indictment.

(3) A person guilty of an offence under this section is liable—

- (a) where the offence is dealt with summarily—to a penalty not exceeding \$2,000 or to imprisonment for a term not exceeding 12 months, or both; or
- (b) where the offence is dealt with on indictment—to a penalty not exceeding \$5,000 or to imprisonment for a term not exceeding 5 years, or both.

(4) Proceedings for an offence under this section, when dealt with summarily, shall be disposed of by a court of petty sessions constituted by a stipendiary magistrate sitting alone.

Death of person making statement.

48i. (1) A written statement that, but for this subsection, would be admissible as evidence under section 48A is not so admissible if, on evidence produced during the committal proceedings, the Justice or Justices is or are satisfied that the person who made the statement is dead.

(2) Where, after a written statement has been admitted as evidence under section 48A, it transpires that the person who made the statement died before its admission, the statement shall be deemed not to have been so admitted.

(4) (a) Section 51A (1) (d) (i)—

Omit "the accused or".

Justices (Procedure) Further Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE JUSTICES ACT, 1902—*continued.*

(b) Section 51A (1) (e)—

After section 51A (1) (d), insert:—

- (e) Notwithstanding paragraph (d), where the accused is, in accordance with this section, brought before a Judge and changes to not guilty the plea to the charge on which the accused was committed under paragraph (c)—
- (i) the Judge shall, unless the Judge is of the opinion that an order should be made under paragraph (d) (i), direct that the accused be put on trial for the offence charged;
 - (ii) upon the giving of the direction, the committal under paragraph (c) shall be deemed to be a committal of the accused for trial for that offence; and
 - (iii) the Judge may make such orders (including orders binding persons by recognizance in the same way as they may be bound under section 38), may do such other things that the Justice or Justices could have done on a committal for trial, and may give such directions with respect to matters preliminary to the trial, as to the Judge seems to be just.

SCHEDULE 2.

(Sec. 5.)

AMENDMENTS TO THE JUSTICES (AMENDMENT) ACT, 1983.

(1) Section 2 (1)—

Omit "subsection (2)", insert instead "subsections (2) and (3)".

Justices (Procedure) Further Amendment.

SCHEDULE 2—*continued.*

AMENDMENTS TO THE JUSTICES (AMENDMENT) ACT, 1983—*continued.*

(2) Section 2 (2)—

Omit "Section", insert instead "Except as provided by subsection (3), section".

(3) Section 2 (3)—

After section 2 (2), insert:—

(3) Section 4, in its application to Schedule 1 (4) (b), and Schedule 1 (4) (b) shall commence on the date of assent to the Justices (Procedure) Further Amendment Act, 1983, if those provisions have not commenced before that date.

SCHEDULE 3.

(Sec. 6.)

TRANSITIONAL PROVISIONS.

Interpretation.

1. In this Schedule, "appointed day" means the day appointed and notified under section 2 (2).

Written statements by witnesses.

2. The provisions of Subdivision 7A of Division I of Part IV of the Justices Act, 1902, as amended by this Act, apply to and in respect of alleged offences committed before, on or after the appointed day, whether or not proceedings for those offences have been commenced, but do not apply to or in respect of written statements referred to in those provisions made before that day.
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