

**CRIMINAL PROCEDURE (POLICE CUSTODY OF  
PROPERTY) AMENDMENT ACT 1991 No. 44**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
  2. Commencement
  3. Amendment of Criminal Procedure Act 1986 No. 209
  4. Repeal of Crimes Act 1900 No. 40, s. 358A (Disposal of property in custody of police)
  5. Transitional provision
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**CRIMINAL PROCEDURE (POLICE CUSTODY OF  
PROPERTY) AMENDMENT ACT 1991 No. 44**

NEW SOUTH WALES



Act No. 44, 1991

An Act to amend the Criminal Procedure Act 1986 with respect to police custody of property held in connection with an offence and to repeal section 358A of the Crimes Act 1900. [Assented to 27 November 1991]

*Criminal Procedure (Police Custody of Property) Amendment 1991*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Criminal Procedure (Police Custody of Property) Amendment Act 1991.

**Commencement**

2. This Act commences on a day to be appointed by proclamation.

**Amendment of Criminal Procedure Act 1986 No. 209**

3. The Criminal Procedure Act 1986 is amended by inserting at the end of that Act the following Part:

**PART 13—POLICE CUSTODY OF PROPERTY**

**Division 1—General**

**Application of this Part**

61. (1) This Part applies to property that is in police custody in connection with an offence whether punishable on indictment or summarily.

(2) This Part does not apply to livestock to which section 19 of the Stock Diseases Act 1923 (Power to seize stock) applies.

**Disposal of property on application**

62. A court may, on the application of any person, make an order that any property to which this Part applies be delivered to the person who appears to it to be lawfully entitled to the property.

**Disposal of property after determination of proceedings**

63. (1) Property to which this Part applies that has not been delivered to the person lawfully entitled to it (by virtue of an order under section 62 or otherwise) within 1 month after determination of proceedings against a person for an offence concerning the property:

(a) in the case of money, is to be paid to the Treasurer for payment into the Consolidated Fund; or

(b) in any other case, may be sold at public auction.

(2) Expenses incurred in keeping the property in police custody may be deducted from the proceeds of sale of the property and paid to the Commissioner of Police.

*Criminal Procedure (Police Custody of Property) Amendment 1991*

(3) The proceeds of sale of the property (after making any deductions under subsection (2)) are to be forwarded to the Treasurer for payment into the Consolidated Fund.

Application to Treasurer for recovery of money or proceeds of sale

64. A person who is lawfully entitled to any property that has been dealt with in accordance with section 63 may recover from the Treasurer the money or proceeds of sale held by the Treasurer. This Act authorises the Treasurer to pay the amount out of the Consolidated Fund (which is appropriated to the necessary extent).

**Which is the appropriate court for the purposes of this Part?**

65. The court to which an application under this Part may be made is:

- (a) a Local Court, constituted by a Magistrate sitting alone, for the district in which the property is held, if the estimated value of the property (or the amount of the money) does not exceed \$25,000; or
- (b) the District Court, if the estimated value of the property (or the amount of the money) exceeds \$25,000 but does not exceed \$250,000; or
- (c) the Supreme Court, if the estimated value of the property (or the amount of the money) exceeds \$250,000.

**No restriction on other orders of a court**

66. Except as provided by this Part, nothing in this Part prevents a court (on an application under this Part or in any other proceedings) from making a finding or order as to the ownership and delivery of property or as to the liability for and payment of expenses incurred in keeping property in police custody.

**Division 2—Livestock**

**Definitions**

67. In this Division:

- “**livestock**” means animals (including birds and fish);
- “**ownership**” includes any form of lawful entitlement.

*Criminal Procedure (Police Custody of Property) Amendment 1991*

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**What procedure applies if there is no dispute as to the ownership of the livestock and the owner is known?**

68. (1) A police officer may deliver livestock at any time before the determination of proceedings against a person for an offence concerning the livestock to a person who the officer believes on reasonable grounds is the owner of the livestock if there does not appear to the officer to be any dispute as to ownership of the livestock.

(2) Livestock must not be delivered until a suitable record of the livestock has been made for evidentiary purposes. The record is to include a valuation of the livestock made by a competent valuer.

(3) Expenses incurred in keeping the livestock in police custody, in making the record and in obtaining the valuation under subsection (2) are to be borne by the Commissioner of Police.

**What procedure applies if there is no dispute as to the ownership of the livestock but the owner is not known?**

69. (1) A police officer may apply to a court at any time before the determination of proceedings against a person for an offence concerning livestock for an order to sell the livestock at public auction if, after making reasonable inquiries, there does not appear to the officer to be any dispute as to the ownership of the livestock but the officer does not know who or where the owner is.

(2) The court may make an order for the sale of the livestock at public auction but must not make such an order unless it is satisfied that 28 days' notice of the intention to make the application for the order has been given:

- (a) to any person who, in the court's opinion, may be an owner of the livestock; and
- (b) in a newspaper circulating throughout the State.

(3) In making an order for the sale of the livestock, the court must specify the amount which is to be deducted from the proceeds of sale and paid to the Commissioner of Police in reimbursement of the expenses incurred by the Commissioner in keeping the livestock in police custody. Expenses incurred in keeping the livestock in police custody for the first 28 days are to be borne by the Commissioner of Police.

(4) Livestock must not be sold following an order of the court until a suitable record of the livestock has been made for evidentiary purposes. The record need not include a valuation of the livestock.

*Criminal Procedure (Police Custody of Property) Amendment 1991*

(5) The proceeds of sale of the livestock (after deducting, to the extent of the funds available, and paying to the Commissioner of Police any amount specified by the court under subsection (3)) together with a copy of the record made under subsection (4) are to be forwarded to the Treasurer and the proceeds are to be paid into the Consolidated Fund.

**What procedure applies if there is a dispute as to the ownership of the livestock?**

70. (1) A police officer may apply to a court at any time before the determination of proceedings against a person for an offence concerning livestock for an order to sell the livestock at public auction if there is a dispute as to the ownership of the livestock and:

- (a) no party to the dispute undertakes to pay the expenses of keeping the livestock in police custody; or
- (b) a party who has given such an undertaking fails to comply with the undertaking.

(2) The court may make an order for the sale of the livestock at public auction or it may make an order that one or more of the parties disputing ownership pay the expenses of keeping the livestock in police custody in such proportions as it determines.

(3) The court must not make an order for the sale of the livestock at public auction unless it is satisfied that 28 days' notice of the intention to make the application for the order has been given:

- (a) to any person who, in the court's opinion, may be an owner of the livestock; and
- (b) in a newspaper circulating throughout the State.

(4) In making an order for the sale of the livestock, a court must specify the amount which is to be deducted from the proceeds of sale and paid to the Commissioner of Police in reimbursement of the expenses incurred by the Commissioner in keeping the livestock, in police custody.

(5) Livestock must not be sold following an order of the court until a suitable record of the livestock has been made for evidentiary purposes. The record need not include a valuation of the livestock.

(6) The owner of the livestock is (except in so far as a court otherwise determines) entitled to recover, jointly or severally, from the other parties to the dispute the expenses incurred by the owner in keeping the livestock in police custody.

*Criminal Procedure (Police Custody of Property) Amendment 1991*

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(7) The proceeds of sale of the livestock (after deducting, to the extent of the funds available, and paying to the Commissioner of Police any amount specified by the court under subsection (4)) together with a copy of the record made under subsection (5) are to be forwarded to the Treasurer and the proceeds are to be paid into the Consolidated Fund.

**Disposition of benefit derived from livestock**

71. Any income or benefit derived from livestock while in police custody (such as offspring born during custody or, in the case of poultry, eggs) is to be held or applied on behalf of the owner of the livestock.

**Notification of right to recover proceeds of sale**

72. If, at the time at which livestock are sold in accordance with this Part:

- (a) the parties disputing ownership of the livestock have not resolved their dispute; and
- (b) a court has not determined who the owner of the livestock is,

a police officer is required to notify each such party of the rights of the owner under section 73.

**Application to Treasurer for recovery of proceeds of sale**

73. A person who was the owner of livestock immediately before they were sold under this Division may recover from the Treasurer the amount held by the Treasurer in respect of the proceeds of sale. This Act authorises the Treasurer to pay the amount out of the Consolidated Fund (which is appropriated to the necessary extent).

**Relationship with Division 1**

74. The provisions of this Division are in addition to the provisions of Division 1.

**Repeal of Crimes Act 1900 No. 40, s. 358A (Disposal of property in custody of police)**

4. Section 358A of the Crimes Act 1900 is repealed.

*Criminal Procedure (Police Custody of Property) Amendment 1991*

**Transitional provision**

5. The amendments made by this Act apply in relation to property (including livestock) which, on the commencement of this Act, is in police custody in connection with an offence.

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*[Minister's second reading speech made in—  
Legislative Assembly on 2 July 1991  
Legislative Council on 19 November 1991]*