

JUSTICES (AMENDMENT) ACT 1993 No. 45

NEW SOUTH WALES



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JUSTICES (AMENDMENT) ACT 1993 No. 45

NEW SOUTH WALES



Act No. 45, 1993

An Act to amend the Justices Act 1902 to make provision with respect to the issue of court attendance notices and appeals to the District Court.
[Assented to 15 June 1993]

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

1. This Act may be cited as the Justices (Amendment) Act 1993.

Commencement

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

Amendment of Justices Act 1902 No. 27

3. The Justices Act 1902 is amended as set out in Schedule 1.

Explanatory notes

4. The matter appearing under the heading “Explanatory note” in Schedule 1 does not form part of this Act.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

- (1) Part 4, Division 3, Subdivision 1 (**Interpretation**):
Omit the Subdivision.
- (2) Section 100AB (**Issue of attendance notice**):
Omit “prescribed member of the police force may authorise the issue of”, insert instead “member of the police force may issue”.
- (3) Section 100AC (**Form of attendance notice**):
Omit section 100AC (f) (ii), insert instead:
(ii) the member of the police force who issued it.
- (4) Section 100AE (**Presumptions**):
Omit section 100AE (b), insert instead:
(b) that a member of the police force issued and signed an attendance notice, if the notice purports to have been issued and signed by a member of the police force; and

SCHEDULE 1—AMENDMENTS—continued

Explanatory note

Currently a court attendance notice requiring the attendance at court of a person against whom an information for an indictable or summary offence has been laid may be authorised and issued only by a police officer who is of or above the rank of sergeant or in charge of a police station. The amendments remove this requirement and enable police officers of all ranks to issue such notices, rather than having to take an offender to a police station.

(5) Section 122 (**Appeal allowed in every case of conviction or order made by Justices**):

Omit section 122 (2C), insert instead:

(2C) The registrar for the proclaimed place at which the appeal or application is to be heard and determined must, as soon as practicable after receiving a notice of appeal pursuant to subsection (1) or an application for leave to appeal accompanied by a notice of appeal pursuant to subsection (1C), give notice of the time and place fixed for the hearing of the appeal or application to all parties interested or concerned in the appeal or application.

(2CA) If a notice of hearing has not been given personally or in accordance with this section or any other permitted manner, the District Court may proceed to hear and determine or otherwise dispose of the appeal or application despite any error in, or non-service of, a notice of hearing if it is satisfied that each party had knowledge of the time and place fixed for the hearing and was not prejudiced by the error or non-service.

Explanatory note

Currently the hearing of an appeal, or an application for leave to appeal, to the District Court from a decision of a Local Court may proceed in the absence of the appellant or applicant, even if there is an error in, or non-service of, a notice of hearing, if the Court is satisfied that the appellant or applicant is avoiding service or cannot, after diligent search and inquiry, be found.

The amendment removes the requirement for diligent search and inquiry and provides that, if a party has not been given notice of the hearing personally or in accordance with the section or any other permitted manner, the Court may proceed if

SCHEDULE 1—AMENDMENTS—*continued*

there is an error in, or non-service of, a notice of hearing only if satisfied that each party had knowledge of the time and place fixed for the hearing and was not prejudiced by the error or non-service.

(6) Section 123 (**Conditions on which execution of conviction or order stayed**):

(a) From section 123 (1) (b) (ii), omit “and abide the judgment of the District Court thereon and”, insert instead “to notify the registrar for the proclaimed place at which the appeal is to be heard of any change in the appellant’s address, to abide the judgment of the District Court on the appeal and to”.

(b) Omit section 123 (3), insert instead:

(3) If, in the case of an appellant who is an accused person and who is in custody:

(a) notice of appeal has been duly given within the time specified in section 122 (1); and

(b) the appellant is granted bail in accordance with the Bail Act 1978,

the appellant must not be released on bail unless, in the appellant’s bail undertaking, the appellant undertakes to appear at the District Court and prosecute the appeal, to notify the registrar for the proclaimed place at which the appeal is to be heard of any change in the appellant’s address, to abide the judgment of the District Court on the appeal and to pay such costs as may be awarded by the District Court.

Explanatory note

Section 123 sets out the conditions on which the execution of a conviction or order of a Local Court which is subject to an appeal to the District Court will be stayed. One of the conditions is that an appellant who is not in custody enters into a recognizance for a specified sum of costs that is also subject to conditions.

Item (6) (a) makes it a condition of the recognizance that the appellant notify the registrar of the court of any change in address.

Item (6) (b) makes it a condition of the bail undertaking of an appellant who is released from custody before the hearing of an appeal that the appellant notify the registrar of the court of any change in address.

SCHEDULE 1—AMENDMENTS—continued

(7) Section 125A (**Further recognizance to prosecute appeal**):

(a) Omit section 125A (2) (b), insert instead:

(b), discharge the appellant on the appellant entering into a recognizance, with or without a surety or sureties in such sum as the Court determines, that contains conditions requiring the appellant:

- (i) to appear before the District Court in accordance with the terms of the recognizance; and
- (ii) to prosecute the appeal; and
- (iii) to notify the registrar for the proclaimed place at which the appeal is to be heard of any change in the appellant's address; and
- (iv) to abide the judgment of the District Court on the appeal; and
- (v) to pay such costs as may be awarded by the District Court.

(b) Omit section 125A (2B), insert instead:

(2B) If the appellant referred to in subsection (2A) is granted bail in accordance with the Bail Act 1978, the appellant must not be released on bail unless, in the appellant's bail undertaking, the appellant undertakes:

- (a) to appear before the District Court and prosecute the appeal; and
- (b) to notify the registrar for the proclaimed place at which the appeal is to be heard of any change in the appellant's address; and
- (c) to abide the judgment of the District Court on the appeal; and
- (d) to pay such costs as may be awarded by the District court.

SCHEDULE 1—AMENDMENTS—*continued***Explanatory note**

Section 125A sets out the actions the District Court may take on the adjournment of an appeal from a Local Court, including releasing an appellant on condition that the appellant enter into a further recognizance.

Item (7) (a) makes it an additional condition of the further recognizance that the appellant notify the registrar of the Court of any change in address.

Item (7) (b) makes it an additional condition of the bail undertaking of an appellant who is released from custody after the adjournment of an appeal that the appellant notify the registrar of the Court of any change in address.

(8) Section 126A:

After section 126, insert:

Notice of dismissal

126A. (1) This section applies to:

- (a) an application for leave to appeal to the District Court which is dismissed because of the failure of the applicant to appear; and
- (b) an appeal to the District Court which is dismissed because of the failure of the appellant to appear and prosecute the appeal.

(2) The registrar for the proclaimed place at which the application or appeal is dismissed must notify the applicant or appellant at his or her last known address of

- (a) the order of the District Court dismissing the application or appeal; and
- (b) the right of the applicant or appellant under section 127A to have the order vacated within 12 months from the dismissal.

(3) The notice may be given in the manner permitted by section 122 (4).

Explanatory note

The amendment inserts proposed section 126A which requires a notice of dismissal to be given to an applicant for leave to appeal, or an appellant, when an application for

SCHEDULE 1—AMENDMENTS—*continued*

leave to appeal or an appeal is dismissed because the applicant or appellant fails to appear. The notice will also set out the grounds for the order of dismissal vacated. The notice may be served by post.

(9) Section 127A (**Vacating order of dismissal**):

(a) Before section 127A (2), insert:

(1) Where:

(a) an application for leave to appeal to the District Court is dismissed on the failure of the applicant to appear; and

(b) within 12 months after that dismissal the applicant shows to a Judge sufficient cause for the applicant's failure to appear,

the Judge may, where in the Judge's opinion it is in the interests of justice to do so, by order vacate the order dismissing the application and any other order made as a consequence of the failure of the applicant to appear or the dismissal of the application.

(b) From section 127A (2) (b), omit "3 months", insert instead "12 months".

Explanatory note

Item (9) (a) enables an order dismissing an application for leave to appeal to be vacated if the order was made because the applicant failed to appear and the applicant shows sufficient cause for that failure to appear. This puts an applicant for leave to appeal in the same position as an appellant in similar circumstances. Item (9) (a) and (9) (b) also provide that such an order, and an order vacating an order dismissing an appeal, may be made up to 12 months after the dismissal.

(10) Second Schedule (**Savings, transitional and other provisions**):

After clause 14, insert:

**PART 5—TRANSITIONAL PROVISIONS
CONSEQUENT ON ENACTMENT OF THE
JUSTICES (AMENDMENT) ACT 1993**

15. A provision of Division 4 of Part 5 applies to and in respect of an appeal or application under that Division by a person against whom a conviction or order was made before

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SCHEDULE 1—AMENDMENTS—*continued*

the commencement of an amendment to that **provision** made by the Justices (Amendment) Act 1993 as if the amendment were not in force.

Explanatory note

The amendment inserts a transitional provision which will have the effect that the amendments to Part 5 of the Act will not apply to an appeal or application in respect of a conviction or order made before the commencement of the relevant amendment.

*[Minister's second reading speech made in—
Legislative Assembly on 21 April 1993
Legislative Council on 18 May 1993]*