



New South Wales

Justices Amendment (Procedure) Act 1997 No 107

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New South Wales

Justices Amendment (Procedure) Act 1997 No 107

Act No 107, 1997

An Act to amend the *Justices Act 1902* in relation to *ex parte* proceedings and review procedures, and to enable written pleas to be entered in summary proceedings; and for other purposes. [Assented to 9 December 1997]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Justices Amendment (Procedure) Act 1997*.

2 Commencement

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

3 Amendment of Justices Act 1902 No 27

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

4 Amendment of other Acts

The Acts set out in Schedule 2 are amended as set out in that Schedule.

Schedule 1 Amendment of Justices Act 1902

(Section 3)

[1] Section 22A

Insert after section 22:

22A Information taken to be laid

- (1) Without limiting the operation of this Subdivision and Subdivision 2, an information is taken to have been laid before a Justice, and a summons issued and served, in respect of a person if
 - (a) the person has been charged with an offence and served with a copy of a charge sheet containing details of the offence, and
 - (b) the person has been subsequently released on bail, and
 - (c) a copy of the charge sheet or other document setting out the details of the offence, and a bail undertaking under the *Bail Act 1978*, have been lodged in respect of the person with the clerk of a Local Court or given to a Magistrate.
- (2) For the purposes of this Act:
 - (a) the copy of the charge sheet or other document setting out the details of the offence lodged with the clerk of a Local Court or given to a Magistrate is taken to be an information that is not substantiated by the oath of the informant or witness, and
 - (b) the bail undertaking is taken to be a summons.

[2] Section 52A

Insert after section 52:

52A Information taken to be laid

- (1) Without limiting the operation of this Subdivision and Subdivision 2, an information is taken to have been laid before a Justice, and a summons issued and served, in respect of a person if:

- (a) the person has been charged with an offence and served with a copy of a charge sheet containing details of the offence, and
 - (b) the person has been subsequently released on bail, and
 - (c) a copy of the charge sheet or other document setting out the details of the offence, and a bail undertaking under the *Bail Act 1978*, have been lodged in respect of the person with the clerk of a Local Court or given to a Magistrate.
- (2) For the purposes of this Act:
- (a) the copy of the charge sheet or other document setting out the details of the offence lodged with the clerk of a Local Court or given to a Magistrate is taken to be an information that is not substantiated by the oath of the informant or witness, and
 - (b) the bail undertaking is taken to be a summons.

[3] Section 62 Form of summons

Insert after section 62 (d):

and

- (e) set out the right under section 75 to notify a plea in writing.

[4] Sections 75–75F

Omit sections 75–75B. Insert instead:

75 Written pleas

- (1) A defendant who is issued a summons or an attendance notice may lodge with the clerk of a Local Court a notice in writing that the defendant will plead guilty or not guilty to the offence or offences the subject of the information concerned.

- (2) The notice is to be in the prescribed form and, in the case of a guilty plea, may be accompanied by additional written material containing matters in mitigation of the offence.
- (3) If a defendant lodges a notice with the clerk of the Local Court under this section not later than 5 days before the day appointed by the summons or attendance notice for the hearing of the matter (the *first return date*), the defendant is not required to attend the court on the first return date.
- (4) On the first return date of a matter in which a plea of not guilty has been notified in accordance with this section, the Magistrate or an authorised justice must appoint a day and a time for the matter to be heard. The clerk of the Local Court must notify the defendant in writing, at the defendant's last known address, of the day and time appointed by the Magistrate or authorised justice.
- (5) On the first return date of a matter in which a plea of guilty has been notified under this section, the Magistrate may:
 - (a) proceed to deal with the matter under sections 75A–75F, or
 - (b) adjourn the matter to another day for mention or hearing if of the opinion that the plea of guilty should not be accepted or that the matter should not proceed without the defendant.
- (6) If a defendant fails to appear on the day and at the time appointed for a hearing under subsection (4) or (5), the Magistrate may proceed to deal with the matter under sections 75A–75F.
- (7) This section does not apply to a defendant who has been granted bail or who is in custody.
- (8) In this section:

authorised justice means a Justice employed in the Attorney General's Department.

75A Scheme for ex parte proceedings where defendant fails to attend

- (1) Sections 75B–75F constitute a scheme for the determination of matters in the absence of a defendant where the defendant fails to appear on a day, and at the time or place, specified by a summons or attendance notice.
- (2) The provisions of this section and sections 75B–75F are supplemental to, and do not derogate from, the provisions of any Act that relate to proceedings that may be taken in respect of offences punishable summarily before a Justice or Justices.

75B Procedure if defendant does not appear

- (1) If a defendant who has been served with a summons or attendance notice does not appear on the day and at the time and place specified by the summons or attendance notice and has not notified a plea of not guilty under section 75, the Magistrate may proceed to hear and determine the matter in accordance with this section and sections 75C–75F.
- (2) If:
 - (a) a penalty notice enforcement order is annulled under Division 5 of Part 3 of the *Fines Act 1996* and the order (together with any annexure) is taken to be an information in relation to the alleged offence, and
 - (b) the defendant has been given notice of the hearing of the matter of the information, and
 - (c) the defendant does not appear on the day and at the time and place specified by the information,the Magistrate may proceed to hear and determine the matter in accordance with this section and sections 75C–75F.
- (3) The Magistrate may not proceed to hear and determine a matter under this section unless satisfied that the defendant had reasonable notice of the date, time and place of the hearing.

- (4) If a defendant is charged with 2 or more offences for which the hearing or hearings have been listed on the same date, time and place, the Magistrate may proceed to hear and determine some or all of the matters together.
- (5) A reference in this section to a time and place includes, if the hearing of the matter has been adjourned, a reference to the time and place to which the hearing has been adjourned.

75C Adjournment of proceedings where defendant fails to appear

- (1) Instead of hearing and determining a matter without the defendant, the Magistrate may, if of the opinion that the matter should not proceed on the specified day or without the defendant, adjourn the matter to another day for mention or for hearing.
- (2) The Magistrate may, on adjourning the hearing, on proof of the due service of the summons or attendance notice, issue or make an order authorising the issue of a warrant for the apprehension of the defendant.
- (3) If a warrant is issued for the apprehension of the defendant, the Magistrate or authorised justice before whom the defendant is brought after apprehension may specify the date, time and place to which the proceedings are adjourned.
- (4) Section 69 applies to a person apprehended and brought before a Magistrate or authorised justice after proceedings are adjourned under this section.

75D Material to be considered in ex parte proceedings

- (1) A Magistrate who proceeds to hear and determine a matter without the defendant may determine the matter on the basis of the information without hearing the informant's witnesses or any other additional evidence of the informant, if of the opinion that the matters set out in the information are sufficient to establish the offence.

- (2) Before determining the matter, the Magistrate must consider any written material:
 - (a) given to the Magistrate by the informant, and
 - (b) lodged by the defendant in accordance with section 75.
- (3) The Magistrate may require the informant to provide additional evidence if of the opinion that the matters set out in the information are not sufficient to establish the offence.
- (4) The additional evidence is not admissible unless:
 - (a) it is in the form of written statements that comply with section 48C, and
 - (b) a copy of any such statement has been given to the defendant a reasonable time before consideration of the additional evidence by the Magistrate.
- (5) The Magistrate must reject a written statement, or any part of a written statement, tendered in proceedings if the statement or part is inadmissible because of this section.
- (6) Despite subsection (4), the Magistrate may require evidence to be given orally if it is not practicable to comply with that subsection or if the Magistrate thinks it necessary in the particular case.

75E Determination of ex parte proceedings

- (1) A Magistrate who proceeds to hear and determine a matter without the defendant may determine the matter by convicting the defendant, by making an order as to the defendant or by dismissing the information.
- (2) The Magistrate may impose a penalty on the defendant or make any other order or decision about a penalty that the Magistrate may make in proceedings when the defendant and the informant are both present.
- (3) However, a Magistrate must not make any of the following orders or decisions in relation to a defendant unless the defendant is present:
 - (a) an order imposing a sentence of imprisonment or periodic detention on the defendant,

- (b) a community service order,
 - (c) an order or a decision under section 558 (1) of the *Crimes Act 1900*,
 - (d) any other order or decision releasing the defendant subject to conditions.
- (4) The Magistrate may adjourn the proceedings to enable the defendant to appear or be brought before the Magistrate for sentencing.

75F Application of section 556A of the Crimes Act 1900

The provisions of section 556A of the *Crimes Act 1900* apply to any proceedings under sections 75B–75E as if the defendant had been charged before the court with the offence referred to in the information to which the proceedings relate.

[5] Section 100AC Form of attendance notice

Insert after section 100AC (e):

- (e1) set out the right under section 75 to notify a plea in writing, and

[6] Part 4A

Omit the Part. Insert instead:

Part 4A Review of decisions by Local Courts

Division 1 Applications and referrals for review

100A Outline of Part

- (1) This Part applies to review procedures for convictions, penalties and orders by Magistrates in summary proceedings.
- (2) The steps for review are listed below:
 - (a) **Application to Court**

An application is made for an annulment of a conviction, a penalty or an order to a Local Court. An application may also be made to the Minister to have any such matter and any other conviction referred to a Local Court (see this Division).

(b) **Hearings**

Applications are to be dealt with by Magistrates. Specific grounds are set out for granting applications (see this Division).

(c) **Grant of application**

After a decision to annul a conviction, a penalty or an order, the matter is to be reheard by a Local Court (see Division 2).

- (3) This section does not affect the provisions of this Part that it summarises.

100B Application of Part to sentences

- (1) A provision of this Part, or a right to make an application under this Part, about a sentence applies to any order made by a Magistrate on the conviction (or instead of a conviction) of a person, including (but not limited to) the following orders and decisions:
- (a) an order for compensation or forfeiture or relating to property,
 - (b) an order under section 556A (1) of the *Crimes Act 1900* with respect to a person dealt with for an offence,
 - (c) an order or a decision under section 558 (1) of the *Crimes Act 1900* with respect to a person dealt with for an offence,
 - (d) any other order or decision of any kind whatever made by a Magistrate with respect to a person dealt with for an offence (whether or not the person has been convicted) deferring passing sentence on the person and releasing the person subject to conditions or without conditions,
 - (e) a decision within the meaning of section 42 (3) of the *Children (Criminal Proceedings) Act 1987* made by the Children's Court in respect of an offence committed by a person.
- (2) In this Part, imposing a sentence is taken to include making an order or a decision referred to in subsection (1).

- (3) Subsection (1) (e) does not affect the application of section 27 of the *Children (Criminal Proceedings) Act 1987*.

100C Part does not apply to fines

This Part does not apply to a penalty notice enforcement order to which the *Fines Act 1996* applies but does apply to a conviction or an order made against a person, or a sentence imposed on a person, in proceedings determined by a Local Court after the annulment of such an order.

100D Applications for annulment

- (1) An application may be made by or on behalf of a person for the annulment of any of the following:
- (a) a conviction or an order (other than an interlocutory order) made in respect of the person by a Magistrate that was made in the absence of the person,
 - (b) a sentence imposed on the person by a Magistrate in the absence of the person.
- (2) An application for an annulment of a conviction or an order made by a Magistrate or a sentence imposed by a Magistrate may also be made by or on behalf of any person who is an informant in the proceedings concerned.

100E Form of application

- (1) An application under section 100D must be in writing to a Local Court.
- (2) The application must be lodged with a clerk of a Local court.
- (3) If the application is lodged with a clerk of a Local Court other than the clerk of the Local Court in which the relevant conviction or order was made or sentence imposed, the clerk with whom the application is lodged must forward the application to the clerk of the other Local Court.

- (4) The regulations may prescribe the form for applications.

100F Time limit for application

- (1) An application for an annulment under section 100D must be made within 2 years of the conviction or order being made or the sentence being imposed.
- (2) For the purposes of subsection (1) and section 100Q, time does not run during any period commencing when an application is made under this Part and ending when the relevant application is determined.

100G Decisions that may be referred for review

- (1) The Minister may refer any of the following matters to the Local Court, if an application is made by any person to the Minister:
- (a) a conviction or an order (other than an interlocutory order) made against the person by a Magistrate,
 - (b) a sentence imposed on a person by a Magistrate in the absence of the person.
- (2) The Minister must not refer a matter unless the Minister is satisfied that a question or doubt has arisen as to the guilt of the person or the person's liability for a penalty.
- (3) The Local Court to which a matter involving a conviction, an order or a sentence is to be referred is the Local Court in which the conviction or order was made or in which the sentence was imposed.
- (4) A matter referred to a Local Court by the Minister is to be treated as an application for the purposes of this Part.
- (5) The Minister may refer a matter under this section at any time after the conviction or order is made or the sentence imposed.

100H Applicant

For the purposes of this Part, an applicant is a person who has made an application to a Local Court or the Minister under this Part.

100I Who may deal with applications

A Magistrate sitting alone is to exercise the jurisdiction of a Local Court under this Part.

100J Notice of applications

A clerk of a Local Court to which an application is made or referred must, as soon as possible, refer the matter to the Local Court and give notice to the applicant and the parties interested of the date, time and place on or at which the application is to be determined.

100K Grounds for granting applications

- (1) A Local Court must grant an application if the applicant is the informant and if it is satisfied that there is just cause why the application should be granted.
- (2) A Local Court must grant an application if the applicant is a person other than the informant and if it is satisfied that:
 - (a) the defendant was not aware of the relevant proceedings until the proceedings were completed or the sentence was imposed or the other action was taken, or
 - (b) the defendant was otherwise hindered by accident, illness, misadventure or other cause from taking action in relation to the relevant proceedings, or
 - (c) having regard to the circumstances of the case, there is other just cause why the application should be granted.

100L Procedure for Local Courts dealing with applications

- (1) A Local Court may, at its discretion, deal with an application with or without the parties being present and in open court or in chambers.
- (2) The regulations may make provision for or with respect to procedure and evidence for the purposes of the hearing of applications by Local Courts.

100M Effect on application referred to Local Court if notice of referral not served

A Local Court may proceed to determine an application referred to it despite any omission or error in a notice under section 100J or the notice not being served, if

- (a) the Local Court is satisfied that the applicant and the parties interested and concerned had knowledge of the date, time and place on or at which the application was to be determined and were not prejudiced by the omission, error or failure to serve the notice, or
- (b) the Local Court is satisfied that the applicant is avoiding service of the notice or cannot, after reasonable search and inquiry, be found.

100N Stay of order or sentence

A Local Court dealing with an application may stay the execution of the conviction or the enforcement of the order or sentence concerned subject to such terms and conditions as the Court thinks fit.

100O Procedure after decision

- (1) A Local Court must give notice of the Local Court's decision as to an application to all parties interested or concerned.
- (2) If the matter is to be heard by a Local Court the notice must also notify the date, time and place on or at which the matter will be heard.
- (3) If a Local Court grants an application to annul a conviction, an order or a sentence, the procedures in Division 2 must be followed.

100P Appeal against decision of Local Court prohibited if appeal to another court

An application may not be made by a person under section 100D or 100G if an appeal or an application for leave to appeal has been made by the person under this Act to the Supreme Court, the District Court or the Land and Environment Court.

100Q Limit on applications

- (1) A person may not, except with the leave of the Local Court, make more than one application in relation to the same matter.
- (2) A Local Court may grant leave under this section if it is of the opinion that there are sufficient grounds for the application.
- (3) This section does not prevent a person from making an application under section 100D and an application to the Minister under section 100G in relation to the same matter.

100R Notices

- (1) Notices of hearing and all other notices authorised or required to be given under this Part by a Local Court or a clerk of a Local Court may be served on a person:
 - (a) personally, or
 - (b) by post, or
 - (c) by means of a document exchange, or
 - (d) by facsimile transmission or other electronic transmission, or
 - (e) by any other manner prescribed by the regulations.
- (2) The address for service of any such notice includes:
 - (a) in the case of an applicant, the address of the applicant as shown in the application or some other address notified to the clerk of the Local Court for the purpose of service or, if no such address is shown or notified, the address given by the applicant at the hearing of the information, or
 - (b) in the case of any other person, the address notified to the clerk of the Local Court for the purpose of service or, if no such address is notified, the address given by that person at the hearing of the information.

Division 2 Procedure if conviction, order or sentence annulled

100S Procedure if Local Court decides to annul conviction, order or sentence

- (1) If a Local Court grants an application to annul a conviction, an order or a sentence, the Local Court must order that the conviction, order or sentence be annulled and proceed (either immediately or at a later date) to hear the matter of the information.
- (2) The Local Court is to hear and determine the matter of the relevant information in accordance with this Act as if no conviction or order had previously been made or no sentence had been previously imposed.
- (3) A Magistrate, other than the Magistrate who ordered the annulment of the conviction, order or sentence, may hear and determine the matter of the information in respect of which the conviction, order or sentence has been annulled.

100T Effect of annulment of conviction, order or sentence

- (1) A conviction or an order made or a sentence imposed in proceedings before a Local Court and annulled under this Division ceases to have any force or effect as from the making of the order of annulment and any enforcement action already taken is to be reversed.
- (2) A conviction for an offence heard together with other offences may be annulled but the annulment is without prejudice to a conviction for any of the other offences heard at the same time.
- (3) If an order or a sentence imposing a fine is annulled, any amount that has been paid under the order or sentence is repayable to the person by whom it was paid.

100U Conviction on rehearing

A conviction, an order or a sentence, made or imposed on the hearing of an information after a previous conviction, order or sentence has been annulled, may be

enforced in the same manner in all respects as if the previous conviction or order had not been made or the previous sentence had not been imposed.

100V One or more offences

Any order, notification or process that may be made, given or issued under this Division may be validly made, given or issued in relation to one offence or more than one offence.

[7] Second Schedule Savings, transitional and other provisions

Insert after Part 8:

Part 9 Provisions consequent on enactment of Justices Amendment (Procedure) Act 1997

25 Informations and summonses

Sections 22A and 52A, as inserted by the *Justices Amendment (Procedure) Act 1997*, apply to proceedings commenced before, on or after the commencement of either of those sections.

26 Written pleas

Section 75, as inserted by the *Justices Amendment (Procedure) Act 1997*, applies to proceedings commenced before, on or after the commencement of that section.

27 Ex parte procedures

Sections 75A–75F, as inserted by the *Justices Amendment (Procedure) Act 1997*, apply to proceedings commenced before, on or after the commencement of any of those provisions.

28 Review of convictions, orders and sentences

- (1) Part 4A, as inserted by the *Justices Amendment (Procedure) Act 1997*, applies only to convictions, orders or sentences made or imposed after the commencement of that Part and so applies whether or not the proceedings concerned commenced before or after that commencement.

Justices Amendment (Procedure) Act 1997 No 107

Schedule 1 Amendment of Justices Act 1902

- (2) Part 4A, as in force immediately before its repeal by the *Justices Amendment (Procedure) Act 1997*, continues to have effect in respect of convictions, orders or sentences made or imposed before that repeal.

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Crown Lands Act 1989 No 6

Section 157 Compensation

Omit “section 75B of the *Justices Act 1902* or” from section 157 (4).

2.2 Fisheries Management Act 1994 No 38

[1] Section 219 Passage of fish not to be blocked

Omit “section 75B of the *Justices Act 1902* or” from section 219 (4).

[2] Section 269 Forfeiture of boats by order of the court

Omit section 269 (1) (b).

[3] Section 271 Conviction to operate as forfeiture of things (other than boats)

Omit section 271 (1) (b).

2.3 Stamp Duties Act 1920 No 47

[1] Section 25 Terms on which instruments may be stamped after execution

Omit section 25 (1C) (b).

[2] Section 129B Offences

Omit “or is charged with such an offence and an order in respect of the offence is made under section 75B (2) of the Justices Act 1902” from section 129B (1A).

[Minister's second reading speech made in—
Legislative Assembly on 15 October 1997
Legislative Council on 19 November 1997]