

1993—No. 457

JUSTICES ACT 1902—REGULATION

(Justices (General) Regulation 1993)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Justices Act 1902, has been pleased to make the Regulation set forth hereunder.

J.P. HANNAFORD, M.L.C.,
Minister for Justice.

PART 1—PRELIMINARY

Citation

1. This Regulation may be cited as the Justices (General) Regulation 1993.

Commencement

2. This Regulation commences on 1 September 1993.

Definitions

3. (1) In this Regulation:

“the Act” means the Justices Act 1902.

(2) In this Regulation, a reference to a Form is a reference to a Form set out in Schedule 2.

PART 2—FEES**Fees**

4. The fees payable to a Clerk of a Local Court in respect of proceedings before any Justice or Justices are as set out in Schedule 1.

Remission or postponement of fees

5. A Clerk of a Local Court or governor of a prison who is satisfied that a person is unable, for any reason, to pay a fee payable under this Regulation may, conditionally or unconditionally, remit or postpone the fee.

Fee lists to be shown to public on request

6. The list of fees set out in Schedule 1 and any other schedule or list of fees payable under the Act must be kept at each Local Court and shown to members of the public on request.

PART 2—PUBLIC PROSECUTIONS**Definition of “appropriate officer” (sec. 39)**

7. For the purposes of the definition of “appropriate officer” in section 39 (5) of the Act, the appropriate officer in relation to a person committed for trial to the District Court sitting at a proclaimed place under the District Court Act 1973 is the registrar of the District Court in its criminal jurisdiction for that proclaimed place.

Transmission of trial papers to Director of Public Prosecutions (sec. 39)

8. For the purposes of section 39 (4) of the Act, the appropriate officer must, as soon as practicable after receiving any document, transmit a copy of the document to the Director of Public Prosecutions by the most convenient method, having regard to the necessity to maintain the security of the document.

PART 4—USE OF WRITTEN STATEMENTS**Notice specifying where exhibit may be inspected (sec. 48B)**

9. For the purposes of section 48B (1) (a) (ii) of the Act, the notice to be served on the defendant may be in or to the effect of paragraph 3 of Form 1.

Notice to defendants as to rights regarding statements (sec. 48D)

10. For the purposes of section 48D (1) of the Act, Form 1 is the prescribed form of notice to be served on the defendant in any committal proceedings.

Information where defendant unrepresented (sec. 48D)

11. (1) For the purposes of section 48D (2) (a) of the Act, the prescribed form of words is as follows:

“The informant has served you with a number of statements. You have also been given a notice outlining your rights regarding those statements.

*You have not notified the informant that you require the persons who made the statements you were served with to be called to give evidence.

*You have notified the informant that you require only some of the persons who made the statements you were served with to be called to give evidence.

*You have notified the informant that you do not require any of the persons who made the statements you were served with to be called to give evidence.

*(*Omit the statements that do not apply)*

I have to decide whether or not you should be committed for trial or sentence in a higher court. I will make that decision on the basis of all the evidence, whether given from the witness box in person or whether contained in a written statement.

I will now consider any application you wish to make for an adjournment to obtain legal advice. Do you wish to apply for an adjournment?”

(2) If the proceedings are to continue, the prescribed form of words includes the following:

“Do you consent to the statements of witnesses being tendered, or do you require the witnesses to be called to give evidence in person?”

“Do you wish to ask me any questions about this procedure?”

(3) The words “*Do you wish to ask me any questions about this procedure?*” are to be spoken after the defendant has been given an opportunity to respond to the question “*Do you consent to the statements of witnesses being tendered, or do you require the witnesses to be called to give evidence in person?*”.

Manner of identifying inadmissible statements (sec. 48F)

12. (1) In identifying or indicating any part of a statement that has been rejected pursuant to section 48F of the Act, the Justice or Justices must not mark the original statement, but must indicate on a copy the particular part of the statement that has been rejected.

(2) The copy of the statement containing the rejected material is to be annexed to the depositions.

Manner of serving statements or notices (sec. 48GA)

13. For the purposes of section 48GA (3) of the Act, a written statement or other notice under Subdivision 7A of Division 1 of Part 4 of the Act:

- (a) if served on the defendant or the counsel or attorney of the defendant—must be served personally; or
- (b) if served on the informant or the counsel or attorney of the informant—must be served personally or by post,

or must be served in such other manner as the Justice or Justices may determine in a particular case.

PART 5—ENFORCEMENT OF CONVICTIONS AND ORDERS

Prescribed offices (sec. 86A)

14. For the purposes of paragraph (c) of the definition of “authorised justice” in section 86A of the Act, the following offices are prescribed offices:

- (a) the offices of the Liquor Administration Board;
- (b) the offices of the Licensing Court of New South Wales;
- (c) the offices of the Industrial Registrar.

“Cut-out” rate for fine defaulters (sec. 87)

15. For the purposes of the definition of “prescribed unit” in section 87 (3) of the Act, the prescribed amount is \$10.

Issue of warrants in relation to certain traffic offences (sec. 87)

16. For the purposes of section 87 (4) (a) of the Act, the manner in which an authorised justice is to be notified that a warrant may be issued is by means of a notice issued by the Roads and Traffic Authority.

Recovery of amounts payable to “private payees” (sec. 89D)

17. For the purposes of section 89D (3) (a) of the Act, the manner in which a person or body is to be notified is by means of a notice (issued by the Roads and Traffic Authority and served on the person or body) to the effect that the person or body may take action under section 89D (2)

of the Act to enforce payment of the amount concerned as if it were an amount payable by virtue of a judgment for the payment of that amount under the Local Courts (Civil Claims) Act 1970.

PART 6—PENALTY NOTICES

Definition of “appropriate officer” (sec. 100I)

18. For the purposes of the definition of “appropriate officer” in section 100I (1) of the Act, the Director of the Infringement Processing Bureau of the Police Service is prescribed.

Form of courtesy letter (sec. 100J)

19. A courtesy letter referred to in section 100J of the Act is to be in or to the effect of Form 2.

Form of certificate (sec. 100L)

20. A certificate referred to in section 100L of the Act:

- (a) is to be in or to the effect of Form 3; and
- (b) may be given by an appropriate officer in relation to the penalty notice to which the certificate relates.

Refusal to annul enforcement order—time for appeal (sec. 100T)

21. (1) An application under section 100T of the Act by a person aggrieved by a refusal to annul an enforcement order is to be made within 28 days after notice of the refusal is sent to the person under section 100S of the Act.

(2) The date on which that notice was sent is taken to be the date specified in the notice as the date on which it was sent.

PART 7—MISCELLANEOUS

Certification of certain transcripts (secs. 36, 70)

22. The person by whom a transcript is prepared of depositions recorded by one of the means (other than writing) referred to in section 36 (4) or 70 (4) of the Act must certify that the transcript so prepared is a correct transcript of the depositions so recorded.

Summary of rights (secs. 49, 96)

23. For the purposes of sections 49 and 96 of the Act, the following is the prescribed form of the summary of rights conferred by section 6 (1) (b) of the Fines and Forfeited Recognizances Act 1954:

“A person who deposits the amount of a recognizance which is later forfeited may apply for the discharge of the recognizance if the amount of the recognizance does not exceed \$300. The application must be lodged with the Clerk of the Local Court where the recognizance was forfeited within 21 days after the forfeiture.”

Repeals

24. (1) The following Regulations are repealed:

- (a) the Justices Act (Transcripts) Regulation 1976;
- (b) the Justices Act (Use of Written Statements) Regulation 1984;
- (c) the Justices (Penalty Notices) Regulation 1984;
- (d) the Justices (Warrants of Commitment and Fine Enforcement) Regulation 1986;
- (e) the Justices (Public Prosecutions) Regulation 1987;
- (f) the Justices (General) Regulation 1992.

(2) Any act, matter or thing that, immediately before the repeal of a regulation referred to in subclause (1), had effect under such a regulation is taken to have effect under this Regulation.

SCHEDULE 1—FEES

(Cl. 4)

Item	Fee
1. Information or complaint (includes issue and service of summons if required) other than a complaint for an order under Part 15A (Apprehended violence orders) of the Crimes Act 1900.....	\$46.00
2. Complaint for an order under Part 15A (Apprehended violence orders) of the Crimes Act 1900 or application for variation or revocation of such an order	Nil
3. Application of a kind not otherwise provided for in this Schedule (includes issue and service of notice of hearing if required).	\$46.00
4. For each additional respondent in relation to a matter to which item 2 relates.....	\$31.00
5. Deposition under section 26 or 61 of the Act that a person is a material witness or has a material document or writing (includes issue and service of summons or warrant if required).....	\$46.00
6. Issue of subpoena: for each witness to be served.....	\$26.00
7. Service of subpoena: for each witness to be served.....	\$31.00
8. Certificate of conviction, order or dismissal	\$31.00

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Item	Fee
9. Application to Justice to state and sign a case under section 101 of the Act	\$112.00
10. Certificate of refusal of Justice to state a case.....	\$31.00
11. Notice of appeal to District Court: one appellant	\$56.00
12. Further notices of appeal (by the same appellant) in respect of convictions or orders determined together with the conviction or order to which a notice of appeal under item 11 relates.....	\$31.00
13. Copy of any deposition, transcript or diskette (unless otherwise provided for under any other Act):	
(a) if matter being transcribed is under 3 months old	\$55.00
plus, for each page after the first 8 pages	\$6.50
(b) if matter being transcribed is 3 months old or older.....	\$65.00
plus, for each page after the first 8 pages	\$7.50
14. Copy of any document (other than a deposition, transcript or diskette)	\$10.00
plus, for each page after the first 5 pages	\$2.00
15. Duplicate tape recording of sound-recorded evidence: per cassette	\$30.00
16. Filing of a certificate under section 100L of the Act	\$36.00

SCHEDULE 2—FORMS

Form 1

(Cl. 9 and 10)

NOTICE TO DEFENDANTS AS TO RIGHTS REGARDING STATEMENTS

JUSTICES ACT 1902

(Section 48D (1))

THIS DOCUMENT SETS OUT SOME IMPORTANT RIGHTS, YOU SHOULD READ IT CAREFULLY. IF THERE IS ANYTHING YOU DO NOT UNDERSTAND, YOU SHOULD OBTAIN ADVICE FROM A LAWYER

To:

Charge(s):

Date of Hearing:

Court:

..... -v-

*(Informant)

(Defendant)

**State name of informant and rank (if applicable)*

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1. Attached to this form you will find statements made by the following persons:

.....
.....
.....
.....

(If space insufficient, attach separate list)

2. Attached to this form are copies of documents which are referred to in those statements and which are proposed exhibits. If these documents are held to be admissible, they may be admitted as exhibits at the hearing of your case.

3. The following items, which may also be admitted as exhibits in evidence at the hearing of your case, may be inspected by you or your lawyer at:

.....

(location of exhibit)

on:

(specify date and time)

If this arrangement is unsuitable to you, the informant will specify an alternative arrangement if you telephone the informant at:

.....

(location of informant)

Tel:

At this stage, the proceedings against you are committal proceedings, that is, a preliminary hearing before a magistrate who will decide whether or not you should be committed for trial or sentence in a higher court.

The magistrate will make this decision after considering all the evidence at the hearing, which may be given by the person who made the statement appearing in court and giving evidence in the witness box, or by the written statement being admitted in evidence.

If you think that any of the statements contain material which is untrue or misleading and which is important to your case, you should consider notifying the informant that you require the maker(s) of such statement(s) to be at court. Any person you require to attend court will then give oral evidence and you can question him or her about anything he or she says.

In the case of an offence involving violence, your right to require a person to attend court is subject to the discretion of the magistrate hearing the matter. The expression "offence involving violence" is defined in section 48EA of the Justices Act 1902.

The attached statements may be accepted as evidence at the hearing before the magistrate without the person who made the statement being present at the court unless you notify the informant that you require any such person to be at court to give evidence.

Form 2

(Cl. 19)

COURTESY LETTER

JUSTICES ACT 1902

(Section 100J)

To: Date of posting:
.....
.....
(Name and address)

Offence:
Date of offence:
Further particulars:
.....

A penalty notice in respect of the above offence was issued to
and the penalty of \$ remains unpaid.

A further period of 21 days has been allowed to enable you to pay the outstanding penalty.

If you wish to have this matter dealt with by court hearing, please sign in the space provided below and return this letter to
(Name and address of appropriate officer)

If you do not elect to have this matter dealt with by a court hearing, or do not pay the penalty within 21 days of service of this letter, an order may be made requiring payment of the penalty and costs to a court and fixing a period of imprisonment/detention in default of payment.

.....
Appropriate officer

I hereby decline to have this matter dealt with pursuant to Division 2 of Part 4B of the Justices Act 1902 and I elect to have the matter determined by a court.

.....
Signature

.....
Date

Form 3

(Cl. 20)

APPLICATION FOR ENFORCEMENT ORDER
JUSTICES ACT 1902
(Section 100L)

Defendant:
(Name and address of person served with penalty notice)

Offence:

Date of offence:

Further particulars:
.....

I,, being an appropriate officer in relation to
the penalty notice referred to herein,
of
(Name of Department, statutory body, Council, etc.)

of
(Address)

hereby apply for an enforcement order in relation to the above offence and certify that:

- (a) a penalty notice in relation to the offence was served on the defendant
by, on; and
- (b) a courtesy letter relating to the offence was served on the defendant
by, on; and
- (c) the amount payable under the penalty notice has not been paid; and
- (d) the defendant has not, in accordance with section 100J, declined to be dealt
with under Division 2 of Part 4B of the Act; and
- (e) an information has not been laid in relation to this offence; and
- (f) the time in which an information may be laid in respect of this offence has not
expired.

.....
Appropriate officer

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SCHEDULE 1—FEES

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EXPLANATORY NOTE

The object of this Regulation is to repeal and remake, with minor modifications, various regulations under the Justices Act 1902. This Regulation makes provision with regard to the following matters:

- (a) the fees payable with respect to matters heard before a Justice (Part 2);
- (b) the transmission to superior courts of papers relating to persons committed for trial (Part 3);
- (c) the use of written statements in committal proceedings (Part 4);
- (d) the enforcement of convictions and orders (Part 5);
- (e) penalty notices (Part 6);
- (f) other matters of a minor, consequential or ancillary nature (Parts 1 and 7).

This Regulation is made under the Justices Act 1902, including section 154 (the general regulation making power) and various other sections referred to in the Regulation.

This Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.
