

[Act 1997 No 107]



New South Wales

# Justices Amendment (Procedure) Bill 1997

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.\*

### Overview of Bill

The objects of this Bill are to amend the *Justices Act 1902*:

- (a) to enable convictions to be made in *ex parte* proceedings and to enable such convictions to be reached on the basis of written evidence, and
- (b) to enable defendants in proceedings for summary offences to notify pleas in writing, and
- (c) to make it clear that certain documents may constitute an information, and
- (d) to re-enact procedures for the review of decisions by Local Courts, and
- (e) to make other consequential amendments.

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\* Amended in committee—see table at end of volume.

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## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the *Justices Act 1902* set out in Schedule 1.

**Clause 4** is a formal provision giving effect to the amendments to other Acts set out in Schedule 2.

**Schedule 1** contains amendments relating to the following matters.

### Information and summons

The amendments make it clear that the giving of a charge sheet, containing details of an alleged offence, to a defendant and the subsequent lodging with a Local Court of a bail undertaking and a copy of the charge sheet will constitute the issuing of an information and the giving of a summons for the purposes of the Principal Act. (See **Schedule 1 [1]** and **[2]**.)

### Written pleas

The amendments enable a defendant in summary proceedings to lodge with a clerk of a Local Court a written notice that he or she will plead guilty or not guilty. A defendant who does so notify a plea is not required to attend the court on the first return date. In the case of a guilty plea, written material in mitigation of the offence may also be presented and the case may be dealt with in the absence of the defendant under the new *ex parte* procedures. In the case of a not guilty plea, the matter will be set down for hearing or adjourned at the first return date. If a defendant who pleads not guilty subsequently fails to appear at the required time for a hearing, the matter may be dealt with under the new procedures for *ex parte* proceedings. (See **Schedule 1 [4]**, proposed section 75.) A reference to the right to notify a plea in writing is to be inserted in summonses and attendance notices. (See **Schedule 1 [3]** and **[5]**.)

### Ex parte proceedings

Currently, the Principal Act provides for matters to be heard and determined in the absence of the defendant but does not enable a defendant to be convicted without the informant and other witnesses being called. It also

provides for a matter to be heard and a penalty to be imposed on a defendant (but does not allow a defendant to be convicted) in the absence of the defendant on the basis of evidence contained in the information and the summons in the case of certain offences.

The amendments replace these procedures with a procedure that allows a Magistrate to hear and determine a matter and proceed to a conviction and impose a penalty in the absence of a defendant who has been notified of a hearing. The Magistrate may determine the matter on the basis of material contained in the information, if that material is sufficient to constitute an offence, and is to take into account any mitigating matters raised by a defendant who has lodged written notification of a guilty plea and any written material given by the informant. If the Magistrate requires additional information from the informant, it is to be given in the form of written statements. A Magistrate may not impose a sentence of imprisonment unless the defendant is present. Section 556A of the *Crimes Act 1900* (which enables a court to find an offence proven but not record a conviction) may apply to these ex parte proceedings. (See **Schedule 1 [4]**, proposed sections 75A–75F.)

### **Review of decisions by Local Courts**

The amendment replaces Part 4A of the Principal Act relating to reviews of decisions by Local Courts. The new provisions re-enact the current right of a defendant to apply to a Local Court for a review of a conviction or order made, or a sentence imposed, in the absence of the defendant. The new Part does not apply to penalty notice enforcement orders, which are dealt with under the *Fines Act 1996*. The time limit for applications is to be extended from 12 months to 2 years after the conviction or order is made or the sentence imposed. The Attorney General may also refer matters to a Local Court for review of a conviction, an order or a sentence. Applications are to be dealt with by Magistrates. The amendment broadens the grounds on which an annulment may be granted to include the situations where a person was not aware of the proceedings before they were completed, was hindered by accident, misadventure, illness or other cause from taking action in relation to the proceedings or where there is other just cause why the application should be granted. Applications may be dealt with in open court or in chambers and notice of the decision must be given to interested parties. Provision is made for an application to be dealt with in cases of non-service and the Local Court is given power to stay the execution of an order or a sentence. A person is prohibited from making an application if an appeal has been made to the

Supreme Court, the District Court or the Land and Environment Court in relation to the matter. A person may not make more than one application for an annulment in relation to the same matter. Provision is made for the service of notices for the purposes of the Part. If a conviction, an order or a sentence is annulled, a Local Court must (either immediately or at a later date) proceed to rehear the matter as if no conviction or order had previously been made or sentence imposed. A conviction, an order or a sentence that is annulled ceases to have effect on annulment. A conviction, an order or a sentence made or imposed on a re-hearing may be enforced as if no previous order, conviction or sentence had been made or imposed. (See **Schedule 1 [6]**, proposed sections 100A-100V.)

### **Transitional provisions**

Transitional provisions making it clear that the amendments (other than those relating to review by a Local Court) apply to proceedings commenced before, on or after the commencement of the amendments are also to be inserted in the Principal Act. The amendment relating to review procedures will only relate to convictions, orders or sentences made or imposed after the amendments commence and the existing review procedures will continue to apply to existing convictions, orders or sentences. (See **Schedule 1 [7]**, proposed Part 9 of the Second Schedule.)

### **Consequential amendments to other Acts**

**Schedule 2** contains amendments to other Acts consequential on the changes in ex parte procedures.