

CONCURRENCE COPY

JUSTICES (AMENDMENT) BILL, 1983

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are—

- (a) to amend the Justices Act, 1902—
 - (i) to insert a new Part IVB, which provides for a new system of dealing with minor offences under the Motor Traffic Act, 1909, and various other laws, being offences of the kind for which “penalty notices” may be given (that is, notices which allow the alleged offender to avoid going to court by paying a fixed penalty) (Schedule 1 (1), (2));
 - (ii) to enable regulations to be made prescribing short descriptions for summary offences (Schedule 1 (3)); and
 - (iii) to simplify the arrangement of Part IV (Schedule 2); and
- (b) to make other provisions of a minor, consequential, ancillary or transitional nature.

Under the new system mentioned in paragraph (a) (i) above, an alleged offender who does not respond to a penalty notice is not further dealt with until a second notice (“courtesy letter”) is served on him (proposed section 100J). If he fails to respond to this courtesy letter either by paying the penalty or electing to have the matter dealt with by a court, an order for payment of the penalty, together with an amount for costs, may be made against him by a Justice (proposed section 100L (1)). The order is not a conviction, but to some extent operates and is enforceable in the same way (proposed sections 100L (3), (4) and 100N) and may be set aside by a magistrate in an appropriate case, whereupon the matter is further dealt with judicially (proposed sections 100Q and 100R).

JUSTICES (AMENDMENT) BILL, 1983

No. , 1983.

A BILL FOR

An Act to amend the Justices Act, 1902, so as to provide for the issue of orders for the enforcement of certain penalty notices, and for other purposes.

[MR WALKER—8 *March*, 1983.]

Justices (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

5 Short title.

1. This Act may be cited as the "Justices (Amendment) Act, 1983".

Commencement.

2. (1) Except as provided by subsection (2), this Act shall commence on the date of assent to this Act.
- 10 (2) Section 4, in its application to Schedule 1, and Schedule 1 shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Schedules.

3. This Act contains the following Schedules:—
- 15 SCHEDULE 1.—AMENDMENTS TO THE JUSTICES ACT, 1902.
 - SCHEDULE 2.—AMENDMENTS TO THE JUSTICES ACT, 1902, BY WAY OF STATUTE LAW REVISION.

Amendment of Act No. 27, 1902.

4. The Justices Act, 1902, is amended in the manner set forth in 20 Schedules 1 and 2.

Justices (Amendment).

Transitional provision.

5. The Justices Act, 1902, as amended by this Act, applies to and in relation to penalty notices issued before the day appointed and notified under section 2 (2) as well as to and in relation to penalty notices issued on or after that day.

SCHEDULE 1.

(Sec. 4.)

AMENDMENTS TO THE JUSTICES ACT, 1902.

(1) Section 1—

10 After the matter relating to Part IVA, insert:—

PART IVB.—PENALTY NOTICES—ss. 100I–100X.

DIVISION 1.—*Preliminary*—s. 100I.

DIVISION 2.—*Enforcement orders*—ss. 100J–100P.

15 DIVISION 3.—*Annulment of enforcement orders*—ss. 100Q–100X.

(2) Part IVB—

After Part IVA, insert:—

PART IVB.

PENALTY NOTICES.

20 DIVISION 1.—*Preliminary*.

Interpretation.

100I. (1) In this Part, except in so far as the context or subject-matter otherwise indicates or requires—

25 “appropriate officer”, in relation to a penalty notice, means a person who is authorised to serve penalty notices of the class to which the notice belongs, and includes a prescribed officer;

Justices (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE JUSTICES ACT, 1902—*continued.*

5 “authorised Justice” means a Justice for the time being authorised under section 100K to exercise the powers of a Justice under Division 2 to make enforcement orders;

“courtesy letter” means a courtesy letter referred to in section 100J;

“enforcement order” means an order under section 100L;

“penalty notice” means—

10 (a) a notice under section 18B (1) of the Motor Traffic Act, 1909;

(b) a notice under section 46A (2) of the Forestry Act, 1916;

15 (c) a notice under section 270s (1) or 289c (1) of the Local Government Act, 1919;

(d) a notice under regulations made pursuant to section 265 of the Transport Act, 1930;

(e) a notice under section 30D (1) of the Maritime Services Act, 1935;

20 (f) a notice under section 91A (1) of the Fisheries and Oyster Farms Act, 1935;

(g) a notice under section 160 (2) of the National Parks and Wildlife Act, 1974; or

25 (h) a notice under section 75 (1) of the Transport Authorities Act, 1980,

or any like notice under the prescribed provisions of any Act or instrument made under any Act.

30 (2) A reference in this Part to the amount payable under a penalty notice is a reference to the amount, specified in the notice or prescribed or fixed by or in accordance with law, payment of which results in there being no further liability for further proceedings for the offence to which the notice relates.

Justices (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE JUSTICES ACT, 1902—*continued.*

5 (3) Division 2 does not apply to or in relation to a penalty notice under section 46A (2) of the Forestry Act, 1916, if the amount payable under the notice includes any royalty as defined in section 46A of that Act.

(4) The regulations may provide that Division 2 does not apply to or in relation to any specified class or description of penalty notices.

10

DIVISION 2.—*Enforcement orders.***Courtesy letters.**

15 100J. (1) Where it appears to an appropriate officer that the amount payable under a penalty notice has not been paid before the expiration of the time specified in the notice as the time within which the amount is payable, the officer may serve on the person on whom the penalty notice was served a notice (referred to in this Part as a "courtesy letter") to the effect that—

- 20 (a) the person has a further 21 days in which to make the payment; and
- (b) in default of payment, the person may be dealt with under this Division.

25 (2) Where a courtesy letter is served on a person on whom a penalty notice was served in relation to the same offence, the time for payment of the amount payable under the penalty notice is extended until the expiration of the period of 21 days after the courtesy letter was served, and payment of that amount may accordingly be made in pursuance of the penalty notice and of the relevant provisions of the law under which the notice was served.

30 (3) A person alleged to have committed or to be guilty of the offence to which a penalty notice relates shall have the right to decline to be dealt with under this Division.

Justices (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE JUSTICES ACT, 1902—*continued.*

5 (4) A person declines to be dealt with under this Division in relation to an offence if, within 21 days after a courtesy letter was served on him in relation to the offence, he serves on an officer or person, specified in the letter, a written statement that he declines to be so dealt with.

10 (5) A person shall be deemed to have declined to be dealt with under this Division in relation to an offence if, within 21 days after a penalty notice was served on him in relation to the offence, he serves on an officer or person, specified in the notice, a written statement that he declines to be dealt with under the relevant provisions of the law under which the notice was served.

15 (6) A courtesy letter or a statement under subsection (4) or (5) may be served personally or by post, or in any prescribed manner.

Authorised Justices.

20 100k. (1) The Minister may, by order published in the Gazette, authorise a Justice named therein to exercise the powers of a Justice to make enforcement orders under this Division.

(2) Nothing in this Act prevents an authorised Justice who is not a Stipendiary Magistrate from exercising the powers of a Justice under this Division, and a Stipendiary Magistrate may exercise those powers only if he is an authorised Justice.

25 (3) An authorisation under this section may be general or may be limited by reference to specified exceptions or factors, and may relate to one or more Justices.

Justices (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE JUSTICES ACT, 1902—*continued.***Orders to enforce penalty notices.**

5 100L. (1) Where, by a certificate given in accordance with the regulations and produced before him, it is made to appear to an authorised Justice that—

- 10 (a) a penalty notice has been served on a person in relation to a particular offence referred to in the certificate;
- 15 (b) a courtesy letter has been served on the person after the expiration of the time specified in the penalty notice as the time within which the amount payable under the notice may be paid;
- (c) a period of at least 21 days has elapsed since the courtesy letter was so served;
- (d) the amount payable under the penalty notice had not been paid before the certificate was executed;
- (e) the person has not, in accordance with section 100J, declined to be dealt with under this Division;
- 20 (f) an information in relation to the offence has not been laid; and
- (g) an information may, having regard to the time when the offence was committed or is alleged to have been committed, be laid in relation to the offence,

25 the Justice may, if he is satisfied that the facts as alleged in or in an annexure to the certificate constitute such an offence and that reasonably sufficient particulars of those facts are set out therein, make an order that the person on whom the penalty notice was served shall pay to the clerk of a specified court of petty sessions an amount equal to the amount payable under the notice, together with a specified amount for costs.

30

(2) An enforcement order shall be deemed to have been made in the court of petty sessions specified in the order.

Justices (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE JUSTICES ACT, 1902—*continued.*

5 (3) If an authorised Justice makes an enforcement order against a person, a minute or memorandum of the order shall be made at the same time, and no fee is payable for any such minute or memorandum.

(4) Subject to Division 3, where an enforcement order is made in relation to an offence alleged to have been committed by a person—

10 (a) the person shall not thereby be taken to have been convicted of the offence;

(b) no person shall be liable for any further proceedings for the alleged offence;

15 (c) the making of the order does not in any way affect or prejudice any civil claim, action or proceeding arising out of the same occurrence; and

20 (d) payment pursuant to the order is not an admission of liability for the purpose of and does not in any way affect or prejudice any civil claim, action or proceeding arising out of the same occurrence.

(5) Any amount recovered in consequence of the making of an enforcement order shall be dealt with in the same way as if the amount had been recovered in consequence of a conviction.

25 (6) This Division applies, notwithstanding anything in the Child Welfare Act, 1939, or the Community Welfare Act, 1982, but subject to section 100N (2), to a person of any age, but does not apply to a person who has not attained the age of 10 years or who, though having attained that age, had not attained it at the time he is alleged to have committed the act or omission constituting the offence to which the relevant penalty notice relates.

Costs.

100M. The amount for costs to be specified in an enforcement order shall be—

(a) the prescribed amount; or

Justices (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE JUSTICES ACT, 1902—*continued.*

- (b) if no amount is prescribed, such amount as to the authorised Justice seems just and reasonable.

5 **Default imprisonment.**

100N. (1) In section 82, “order” includes an enforcement order.

10 (2) Where an enforcement order is made against a person who has not attained the age of 21 years and who had not attained the age of 18 years at the time the alleged offence to which the order relates was committed, then, in the application of section 82 (2) to that person, a requirement under that subsection that the person be imprisoned and kept for a period calculated in accordance with the provisions of that subsection shall be construed as a requirement that, instead of being imprisoned, the person be detained in—

- 15 (a) an institution referred to in section 49 (b) of the Child Welfare Act, 1939; or
- 20 (b) a training centre within the meaning of the Community Welfare Act, 1982,
- for the period so calculated.

25 (3) Nothing in section 100L (4) shall be construed as affecting the operation of any provisions of this or any other Act relating to the imprisonment or detention of a person, for a period calculated in accordance with the provisions of section 82 (2), in default of payment of an amount ordered to be paid under an enforcement order.

Parking offences.

30 100o. (1) In this section, “parking offence” means any offence of standing or parking a vehicle or of causing or permitting a vehicle to stand, wait or be parked in contravention of any law.

Justices (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE JUSTICES ACT, 1902—*continued.*

5 (2) Where a courtesy letter is served on a person in relation to a parking offence, the person is not guilty of the offence if he—

10 (a) within 21 days after service on him of the courtesy letter, supplies by statutory declaration to an appropriate officer in relation to the penalty notice to which the courtesy letter relates, the name and address of some other person who was in charge of the vehicle concerned at all relevant times relating to the offence; or

(b) satisfies such an officer that he did not know and could not with reasonable diligence have ascertained that name and address.

15 (3) A statutory declaration under subsection (2) if produced in any proceedings against the person named therein and in respect of the parking offence concerned shall be prima facie evidence that the person was in charge of the vehicle at all relevant times relating to the offence.

20 (4) A statutory declaration that relates to more than one parking offence shall be deemed not to be a statutory declaration under, or for the purposes of, subsection (2).

Other provisions not affected.

25 100P. Except as provided by section 100L (4), the provisions of this Division 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 that are or may be the subject of enforcement orders.

Justices (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE JUSTICES ACT, 1902—*continued.*DIVISION 3.—*Annulment of enforcement orders.***Annulment of enforcement orders following application to court.**

5 100Q. (1) Subject to this section, application may be made by or
on behalf of any person against whom an enforcement order has been
made (who is in this Division referred to as “the applicant”) for the
annulment of that order.

10 (2) An application under subsection (1) shall be made
in writing, within 12 months after the making of the enforcement
order, to the court in which the order was made and may be lodged
with the clerk of that or any other court of petty sessions.

15 (3) Where an application under subsection (1) is lodged
with a clerk of petty sessions, other than the clerk of the court to
which the application is being made, the clerk with whom the applica-
tion is lodged shall forthwith forward the application to the clerk
of the court to which the application is being made.

(4) An application under this section shall be dealt with
by—

- 20 (a) a Justice at the court to which the application was made;
or
(b) if the clerk of that court deems it expedient that it be
dealt with in another court of petty sessions—a Justice
at that other court.

25 (5) Where a Justice hearing an application under this
section is satisfied that there are proper grounds for so doing, he may
order that the order appealed against be annulled and, either forth-
with or at a subsequent sitting of the court, proceed with the matter
in accordance with section 100U.

30 (6) Notwithstanding subsection (5), a Justice other than
the Justice who ordered the annulment may proceed with the matter
as referred to in that subsection.

Justices (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE JUSTICES ACT, 1902—*continued.***Annulment of enforcement orders following reference by Minister.**

5 100R. (1) Where the Minister upon application made at any time by or on behalf of any person against whom an enforcement order has been made (who is in this Division referred to as “the applicant”) is satisfied that any question or doubt has arisen as to the liability of the applicant for the penalty or other amount to which the order relates, the Minister may refer the matter to the
10 court in which the order was made.

(2) A matter referred under this section shall be dealt with by—

- (a) a Justice at the court to which the matter was referred; or
15 (b) if the clerk of that court deems it expedient that it be dealt with in another court of petty sessions—a Justice at that other court.

(3) Where the Justice hearing the matter referred under this section is satisfied that there are proper grounds for so doing, he may order that the enforcement order be annulled and, either
20 forthwith or at a subsequent sitting of the court, proceed with the matter in accordance with section 100U.

(4) Notwithstanding subsection (3), a Justice other than the Justice who ordered the annulment may proceed with the matter as referred to in that subsection.

Jurisdiction under sections 100Q and 100R.

25 100S. The jurisdiction of a court of petty sessions under sections 100Q and 100R shall not be exercised except by a Stipendiary Magistrate.

Justices (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE JUSTICES ACT, 1902—*continued.***Notice of hearing.**

5 100T. (1) The clerk of the court to which the application under section 100Q, or a reference under section 100R, is made shall, as soon as possible, give notice of the time and place of the hearing of the application or, as the case may be, the reference to all parties interested or concerned therein.

10 (2) The hearing of the application or reference, as the case may be, may proceed notwithstanding any omission or error in a notice under subsection (1) or the non-service thereof, provided the court is satisfied that the applicant and the parties interested or concerned had knowledge of the time and place of hearing and were not prejudiced by the omission, error or non-service.

15 (3) Where, but for the provisions of this subsection, the hearing of an application or a reference may not proceed by reason only that—

(a) the applicant was not served with a notice of the time and place of hearing of the application or reference; and

20 (b) the Justice exercising jurisdiction under this Division is not satisfied that—

(i) the applicant had knowledge of the time and place; or

25 (ii) where the Justice is satisfied that the applicant had that knowledge, the applicant would not be prejudiced by the non-service,

30 the hearing of the application or reference may nevertheless proceed if the Justice exercising jurisdiction under this Division is satisfied that the applicant is avoiding service of the notice or cannot, after reasonable search and inquiry, be found.

Justices (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE JUSTICES ACT, 1902—*continued.*

(4) Notices of hearing and all other notices authorised or required under this Division to be given may be sent by post and where any such notice is so sent, it shall be addressed—

(a) in the case of the applicant, to his address as given by him in his application unless—

(i) he has informed the clerk of the court, either in his application or otherwise, of some other address for the purpose, in which case it shall be sent to that address; or

(ii) no such address has been so given or notified, in which case it shall be sent to the address shown on the relevant penalty notice or, if the penalty notice was served by leaving it on, or attaching it to, a vehicle, to the address of the person who was (at the time the penalty notice was so served) the owner of the vehicle as shown in records kept in the Department of Motor Transport or in other prescribed records; or

(b) in any other case, to the address notified to the clerk of the court for that purpose by the person to whom the notice is being given.

Procedure after annulment.

100U. If an enforcement order is annulled under this Division—

(a) the certificate (together with any annexure) given under section 100L in relation to the alleged offence shall be deemed—

(i) to be an information in relation to the alleged offence;

Justices (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE JUSTICES ACT, 1902—*continued.*

(ii) to have been laid—

5 (A) except as provided by sub-subparagraph
(B)—at the time the certificate was produced before the authorised Justice for the purposes of section 100L; or

10 (B) for the purposes only of section 132 of the
Community Welfare Act, 1982—at the time the enforcement order is annulled; and

(iii) to have been laid by the person who so produced the certificate; and

15 (b) subject to the Child Welfare Act, 1939, or the Community Welfare Act, 1982, a Justice may hear and determine the matter of the information as though the enforcement order had not been made.

Stay of order, &c.

20 100v. Where an application is made under section 100Q, or a reference is made under section 100R, the Justice exercising jurisdiction under this Division may stay the enforcement of the order in respect of which the application or reference was made subject to such terms and conditions as that Justice thinks fit.

Effect of annulment.

25 100w. An order annulled pursuant to this Division shall cease to have any force or effect as from the making of the order of annulment.

Conviction on hearing.

30 100x. An order made upon the hearing under section 100U of an information for an offence in relation to which an enforcement order was annulled under this Division may be enforced in the same manner and in all respects as if the enforcement order had not been made.

Justices (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE JUSTICES ACT, 1902—*continued.*

(3) Section 145B—

After section 145A, insert:—

5 **Short description of summary offences.**

145B. (1) In this section, “summary offence” means an offence or act for which a person is liable upon summary conviction before a Justice or Justices to be punished by fine or imprisonment, or otherwise.

10 (2) For the purposes of this or any other Act, a summary offence shall, in any information, complaint, summons, warrant, notice, order or other document, be deemed to be sufficiently stated or described if it is stated or described by the use of—

(a) an expression prescribed in relation to the offence; or

15 (b) an expression that is substantially the same as the prescribed expression,

but nothing in this section affects any other method of stating or describing an offence.

(4) (a) Section 154 (1E)—

20 After section 154 (1D), insert:—

(1E) The Governor may make regulations not inconsistent with this Act for or with respect to—

(a) prescribing the form or contents of courtesy letters and written statements under section 100J; and

25 (b) prescribing the form or contents of certificates under section 100L, the persons who may give any such certificates, the manner of making and executing any such certificates and the time within which any such certificate given may be produced for the purposes of that section.

30

Justices (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE JUSTICES ACT, 1902—*continued.*

(b) Section 154 (2)–(2B)—

Omit section 154 (2), insert instead:—

5 (2) Without affecting the generality of the foregoing provisions of this section, the Governor may make regulations not inconsistent with this Act for or with respect to any matter that by this Act is required or permitted to be prescribed or
10 that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2A) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- 15 (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

20 (2B) Section 41 of the Interpretation Act, 1897, applies in respect of a regulation as if this Act had been passed after the commencement of the Interpretation (Amendment) Act, 1969.

SCHEDULE 2.

(Sec. 4.)

25 AMENDMENTS TO THE JUSTICES ACT, 1902, BY WAY OF STATUTE LAW REVISION.

(1) (a) Section 1—

Omit the matter relating to Part IV, insert instead—

PART IV.—PROCEDURE BEFORE JUSTICES—*ss.* 21–100.

Justices (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE JUSTICES ACT, 1902, BY WAY OF STATUTE LAW
REVISION—*continued.*DIVISION 1.—*Indictable offences—ss. 21–51A.*

- 5 *Subdivision 1.—Informations—ss. 21, 22.*
 Subdivision 2.—Issue of warrants and summonses—ss. 23–26.
 Subdivision 3.—Form and service of summons—ss. 27, 28.
 Subdivision 4.—Form and execution of warrant—s. 29.
 Subdivision 5.—Defects in form and variances—s. 30.
10 *Subdivision 6.—Warrant on default in appearance to summons*
 —s. 31.
 Subdivision 7.—Committal proceedings—ss. 32–47.
 Subdivision 8.—Recognizances—ss. 49–50.
15 *Subdivision 9.—Plea of guilty in committal proceedings—s.*
 51A.

DIVISION 2.—*Offences punishable on summary conviction and com-*
plaints—ss. 52–100.

- Subdivision 1.—Informations and complaints—ss. 52–58.*
 Subdivision 2.—Issue of warrants and summonses—ss. 59–61.
20 *Subdivision 3.—Form and service of summons—ss. 62, 63.*
 Subdivision 4.—Form and execution of warrant—s. 64.
 Subdivision 5.—Defects in form and variances—s. 65.
 Subdivision 6.—Warrant on default in appearance to summons
 —s. 66.
25 *Subdivision 7.—Proceedings on information or complaint—*
 ss. 67–86.
 Subdivision 8.—Enforcement of convictions and orders—ss.
 87–95.
 Subdivision 9.—Recognizances—ss. 96–97.
30 *Subdivision 10.—Miscellaneous—ss. 98, 100.*

Justices (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE JUSTICES ACT, 1902, BY WAY OF STATUTE LAW
REVISION—*continued.*

(5) Heading before section 29—

5 Before section 29, insert:—

Subdivision 4.—Form and execution of warrant.

(6) Section 43 (1)—

Omit “the warrant” where firstly occurring, insert instead “a warrant”.

(7) Heading before section 49—

10 Before section 49, insert:—

Subdivision 8.—Recognizances.

(8) Headings before section 52—

Omit “INFORMATION AND COMPLAINTS.”, insert instead:—

Subdivision 1.—Informations and complaints.

15 (9) Heading before section 64—

Before section 64, insert:—

Subdivision 4.—Form and execution of warrant.

BY AUTHORITY

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