

JUSTICES (AMENDMENT) BILL, 1985

EXPLANATORY NOTE

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

The objects of this Bill are to amend the Justices Act, 1902, so as—

- (a) to provide that, at the conclusion of the prosecution case in committal proceedings, the Magistrate is to discharge the defendant unless of the opinion that the evidence then before the Magistrate is capable of satisfying a jury beyond reasonable doubt that the defendant has committed an indictable offence (Schedule 1 (1) (a));
- (b) to provide that, where the defendant has not been discharged as referred to in paragraph (a) above, the Magistrate is to discharge the defendant at the conclusion of the taking of all evidence in committal proceedings, unless of the opinion that a jury would be likely to convict the defendant of an indictable offence, and is to commit the defendant for trial if of that opinion (Schedule 1 (1) (c));
- (c) to provide that a person charged with an indictable offence punishable with penal servitude for life may plead guilty to the offence at the committal proceedings, whereupon the Magistrate may commit the defendant to the Supreme Court or the District Court for sentence, but reserving to the defendant, upon changing the plea, the right to have the committal proceedings resumed (Schedule 1 (3));
- (d) to remove the power of Magistrates to require persons committed to prison to pay the whole or part of the expenses of conveyance to prison (Schedule 1 (2), (4), (6)); and
- (e) to bring up to date a reference in section 122 of the Justices Act, 1902, to a superseded procedure in the Supreme Court (Schedule 1 (5)),

and to make other provisions of a minor, consequential or ancillary nature.

JUSTICES (AMENDMENT) BILL, 1985

No. , 1985.

A BILL FOR

An Act to amend the Justices Act, 1902, with respect to committal proceedings and in other respects.

Justices (Amendment) 1985

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, 1985".

Commencement.

2. (1) Except as provided by subsection (2), this Act shall commence on the date of assent to this Act.
- 10 (2) Schedule 1 (1) and (3), and section 3 in its application to those provisions, 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.

Amendment of Act No. 27, 1902.

- 15 3. The Justices Act, 1902, is amended in the manner set forth in Schedule 1.

Application of amendments.

- 20 4. (1) Subject to subsection (2) (c), the amendments made by this Act to section 41 of the Justices Act, 1902, apply in relation to committal proceedings for alleged offences committed whether before or after the commencement of those amendments, and so apply whether or not any evidence has been taken in the proceedings.

- 25 (2) Where in committal proceedings commenced before the commencement of the amendments made by this Act to section 41 of the Justices Act, 1902—

- (a) the opinion that a prima facie case has been made out (as referred to in section 41 (2) (b) of that Act) was formed before that commencement; but
- 30 (b) the defendant has been neither discharged nor committed for trial (as referred to in section 41 (6) of that Act) before that commencement,

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then—

- (c) the provisions of section 41 (4) (i) of that Act apply in relation to the proceedings as if that paragraph had not been amended by this Act; and
- 5 (d) without affecting the generality of subsection (1), the provisions of section 41 (6) of that Act, as amended by this Act, apply in relation to the proceedings.
- (3) The amendments made by this Act to section 51A of the Justices Act, 1902, apply in relation to alleged offences committed whether before or after
- 10 the commencement of those amendments.

SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE JUSTICES ACT, 1902.

- (1) (a) Section 41 (2)—
- 15 Omit the subsection, insert instead:—
- (2) When all evidence for the prosecution has been taken, the Justice or Justices shall, after considering all the evidence before the Justice or Justices—
- 20 (a) if not of the opinion referred to in paragraph (b)—forthwith order the defendant to be discharged as to the information then under inquiry; or
- (b) if of the opinion that, having regard to all the evidence before the Justice or Justices, the evidence is capable of satisfying a jury beyond reasonable doubt that the
- 25 defendant has committed an indictable offence—
- (i) if the defendant is present—proceed as provided by subsections (4), (5) and (6); or
- (ii) if the defendant is not present—proceed as provided by subsection (6).
- 30 (b) Section 41 (4) (i)—
- Omit “Where the evidence for the prosecution has, in the opinion of the Justice or Justices, established a prima facie case, he”, insert instead “Where the Justice or Justices form the

*Justices (Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO THE JUSTICES ACT, 1902—*continued.*

opinion referred to in subsection (2) (b) that the evidence is capable of satisfying a jury beyond reasonable doubt that the defendant has committed an indictable offence, the Justice or Justices”.

5

(c) Section 41 (6)—

Omit the subsection, insert instead:—

10

(6) When all the evidence for the prosecution and any evidence for the defence have been taken, the Justice or Justices shall, after considering all the evidence before the Justice or Justices—

15

(a) if not of the opinion referred to in paragraph (b)—forthwith order the defendant to be discharged as to the information then under inquiry; or

(b) if of the opinion that, having regard to all the evidence before the Justice or Justices, a jury would be likely to convict the defendant of an indictable offence—commit the defendant for trial.

20

(d) Section 41 (8)—

After section 41 (7), insert:—

(8) A reference in this section to a jury is a reference to a reasonable jury properly instructed.

(2) Section 43 (2)—

25

Omit the subsection.

(3) (a) Section 51A (1)—

Omit “not punishable with penal servitude for life”.

(b) Section 51A (1) (f)—

After section 51A (1) (e), insert:—

30

(f) Paragraph (e) does not apply in relation to an offence punishable with penal servitude for life.

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SCHEDULE 1—*continued.*

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

(4) Sections 87, 88 (2)—

5 Omit “, including the costs and charges of conveying such person to prison as to such Justice may seem just and reasonable” wherever occurring.

(5) Section 122 (1)—

10 Omit “a rule or order has been granted or made under or by virtue of section 112 in respect of the conviction or order, within seven days from the date upon which proceedings consequent thereon concluded”, insert instead “proceedings for relief under section 112 have been commenced in respect of the conviction or order, within 7 days from the date on which the proceedings were determined”.

(6) Section 153A (2) (b)—

15 Omit the paragraph.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1985

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, March, 1985.*

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

Act No. , 1985

An Act to amend the Justices Act, 1902, with respect to committal proceedings and in other respects.

Justices (Amendment) 1985

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, 1985".

Commencement.

2. (1) Except as provided by subsection (2), this Act shall commence on the date of assent to this Act.
- 10 (2) Schedule 1 (1) and (3), and section 3 in its application to those provisions, 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.

Amendment of Act No. 27, 1902.

- 15 3. The Justices Act, 1902, is amended in the manner set forth in Schedule 1.

Application of amendments.

- 20 4. (1) Subject to subsection (2) (c), the amendments made by this Act to section 41 of the Justices Act, 1902, apply in relation to committal proceedings for alleged offences committed whether before or after the commencement of those amendments, and so apply whether or not any evidence has been taken in the proceedings.

- 25 (2) Where in committal proceedings commenced before the commencement of the amendments made by this Act to section 41 of the Justices Act, 1902—

- (a) the opinion that a prima facie case has been made out (as referred to in section 41 (2) (b) of that Act) was formed before that commencement; but
- 30 (b) the defendant has been neither discharged nor committed for trial (as referred to in section 41 (6) of that Act) before that commencement,

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then—

- (c) the provisions of section 41 (4) (i) of that Act apply in relation to the proceedings as if that paragraph had not been amended by this Act; and
- 5 (d) without affecting the generality of subsection (1), the provisions of section 41 (6) of that Act, as amended by this Act, apply in relation to the proceedings.
- (3) The amendments made by this Act to section 51A of the Justices Act, 1902, apply in relation to alleged offences committed whether before or after
- 10 the commencement of those amendments.

SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE JUSTICES ACT, 1902.

- (1) (a) Section 41 (2)—
- 15 Omit the subsection, insert instead:—
- (2) When all evidence for the prosecution has been taken, the Justice or Justices shall, after considering all the evidence before the Justice or Justices—
- 20 (a) if not of the opinion referred to in paragraph (b)—forthwith order the defendant to be discharged as to the information then under inquiry; or
- (b) if of the opinion that, having regard to all the evidence before the Justice or Justices, the evidence is capable of satisfying a jury beyond reasonable doubt that the
- 25 defendant has committed an indictable offence—
- (i) if the defendant is present—proceed as provided by subsections (4), (5) and (6); or
- (ii) if the defendant is not present—proceed as provided by subsection (6).
- 30 (b) Section 41 (4) (i)—
- Omit “Where the evidence for the prosecution has, in the opinion of the Justice or Justices, established a prima facie case, he”, insert instead “Where the Justice or Justices form the

*Justices (Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO THE JUSTICES ACT, 1902—*continued.*

5 opinion referred to in subsection (2) (b) that the evidence is capable of satisfying a jury beyond reasonable doubt that the defendant has committed an indictable offence, the Justice or Justices”.

(c) Section 41 (6)—

Omit the subsection, insert instead:—

10 (6) When all the evidence for the prosecution and any evidence for the defence have been taken, the Justice or Justices shall, after considering all the evidence before the Justice or Justices—

15 (a) if of the opinion that, having regard to all the evidence before the Justice or Justices, a jury would not be likely to convict the defendant of an indictable offence—forthwith order the defendant to be discharged as to the information then under inquiry; or

20 (b) if not of that opinion—commit the defendant for trial.

(d) Section 41 (8)—

After section 41 (7), insert:—

(8) A reference in this section to a jury is a reference to a reasonable jury properly instructed.

25 (2) Section 43 (2)—

Omit the subsection.

(3) (a) Section 51A (1)—

Omit “not punishable with penal servitude for life”.

*Justices (Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO THE JUSTICES ACT, 1902—*continued.*

(b) Section 51A (1) (f)—

After section 51A (1) (e), insert:—

- 5 (f) Paragraph (e) does not apply in relation to an offence punishable with penal servitude for life.

(4) Sections 87, 88 (2)—

10 Omit “, including the costs and charges of conveying such person to prison as to such Justice may seem just and reasonable” wherever occurring.

(5) Section 122 (1)—

15 Omit “a rule or order has been granted or made under or by virtue of section 112 in respect of the conviction or order, within seven days from the date upon which proceedings consequent thereon concluded”, insert instead “proceedings for relief under section 112 have been commenced in respect of the conviction or order, within 7 days from the date on which the proceedings were determined”.

(6) Section 153A (2) (b)—

Omit the paragraph.

BY AUTHORITY

D. WEST. GOVERNMENT PRINTER. NEW SOUTH WALES—1985





JUSTICES (AMENDMENT) ACT, 1985, No. 1

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

Act No. 1, 1985.

An Act to amend the Justices Act, 1902, with respect to committal proceedings and in other respects. [Assented to, 12th March, 1985.]

Justices (Amendment) 1985

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:—

Short title.

1. This Act may be cited as the "Justices (Amendment) Act, 1985".

Commencement.

2. (1) Except as provided by subsection (2), this Act shall commence on the date of assent to this Act.

(2) Schedule 1 (1) and (3), and section 3 in its application to those provisions, 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.

Amendment of Act No. 27, 1902.

3. The Justices Act, 1902, is amended in the manner set forth in Schedule 1.

Application of amendments.

4. (1) Subject to subsection (2) (c), the amendments made by this Act to section 41 of the Justices Act, 1902, apply in relation to committal proceedings for alleged offences committed whether before or after the commencement of those amendments, and so apply whether or not any evidence has been taken in the proceedings.

(2) Where in committal proceedings commenced before the commencement of the amendments made by this Act to section 41 of the Justices Act, 1902—

- (a) the opinion that a prima facie case has been made out (as referred to in section 41 (2) (b) of that Act) was formed before that commencement; but
- (b) the defendant has been neither discharged nor committed for trial (as referred to in section 41 (6) of that Act) before that commencement,

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then—

- (c) the provisions of section 41 (4) (i) of that Act apply in relation to the proceedings as if that paragraph had not been amended by this Act; and
- (d) without affecting the generality of subsection (1), the provisions of section 41 (6) of that Act, as amended by this Act, apply in relation to the proceedings.

(3) The amendments made by this Act to section 51A of the Justices Act, 1902, apply in relation to alleged offences committed whether before or after the commencement of those amendments.

SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE JUSTICES ACT, 1902.

(1) (a) Section 41 (2)—

Omit the subsection, insert instead:—

(2) When all evidence for the prosecution has been taken, the Justice or Justices shall, after considering all the evidence before the Justice or Justices—

- (a) if not of the opinion referred to in paragraph (b)—forthwith order the defendant to be discharged as to the information then under inquiry; or
- (b) if of the opinion that, having regard to all the evidence before the Justice or Justices, the evidence is capable of satisfying a jury beyond reasonable doubt that the defendant has committed an indictable offence—
 - (i) if the defendant is present—proceed as provided by subsections (4), (5) and (6); or
 - (ii) if the defendant is not present—proceed as provided by subsection (6).

(b) Section 41 (4) (i)—

Omit “Where the evidence for the prosecution has, in the opinion of the Justice or Justices, established a prima facie case, he”, insert instead “Where the Justice or Justices form the

*Justices (Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO THE JUSTICES ACT, 1902—*continued.*

opinion referred to in subsection (2) (b) that the evidence is capable of satisfying a jury beyond reasonable doubt that the defendant has committed an indictable offence, the Justice or Justices”.

(c) Section 41 (6)—

Omit the subsection, insert instead:—

(6) When all the evidence for the prosecution and any evidence for the defence have been taken, the Justice or Justices shall, after considering all the evidence before the Justice or Justices—

- (a) if of the opinion that, having regard to all the evidence before the Justice or Justices, a jury would not be likely to convict the defendant of an indictable offence—forthwith order the defendant to be discharged as to the information then under inquiry; or
- (b) if not of that opinion—commit the defendant for trial.

(d) Section 41 (8)—

After section 41 (7), insert:—

(8) A reference in this section to a jury is a reference to a reasonable jury properly instructed.

(2) Section 43 (2)—

Omit the subsection.

(3) (a) Section 51A (1)—

Omit “not punishable with penal servitude for life”.

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

(b) Section 51A (1) (f)—

After section 51A (1) (e), insert:—

- (f) Paragraph (e) does not apply in relation to an offence punishable with penal servitude for life.

(4) Sections 87, 88 (2)—

Omit “, including the costs and charges of conveying such person to prison as to such Justice may seem just and reasonable” wherever occurring.

(5) Section 122 (1)—

Omit “a rule or order has been granted or made under or by virtue of section 112 in respect of the conviction or order, within seven days from the date upon which proceedings consequent thereon concluded”, insert instead “proceedings for relief under section 112 have been commenced in respect of the conviction or order, within 7 days from the date on which the proceedings were determined”.

(6) Section 153A (2) (b)—

Omit the paragraph.

In the name and on behalf of Her Majesty I assent to this Act.

J. A. ROWLAND,
Governor.

*Government House,
Sydney, 12th March, 1985.*

