

FIRST PRINT

JUSTICES (AMENDMENT) BILL 1986

NEW SOUTH WALES



EXPLANATORY NOTE

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

The object of this Bill is to amend the Justices Act 1902 so as to empower Magistrates to reopen proceedings to correct a penalty or order that has been imposed contrary to law.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on a day to be appointed by the Governor-in-Council.

Clause 3 is a formal provision which gives effect to the Schedule of amendments.

Clause 4 is a transitional provision which provides that the power of a Magistrate to reopen proceedings applies to a conviction or order made before, on or after the commencement of the proposed Act.

Schedule 1 (1) amends the heading to Part IVA of the Principal Act as a consequence of the insertion into that Part, by Schedule 1 (2), of proposed section 100HA.

Schedule 1 (2) inserts proposed section 100HA in the Principal Act. The proposed section empowers a Magistrate to reopen proceedings where a Justice has convicted or made an order against a person and has imposed a penalty that is contrary to law or has failed to impose a penalty that is in conformity with the law. Either the Magistrate may reopen proceedings, or a party to the proceedings may apply to have the proceedings reopened. After the parties have been heard, the Magistrate may amend the conviction or order and impose a penalty in accordance with the law. This power to reopen proceedings does not affect rights of appeal under the Principal Act except that, for the purpose of an appeal from reopened proceedings, the time limit shall run from the date of the amended penalty (if any) imposed under the new provision. Finally, the new provision defines "penalty" to include a forfeiture, disqualification and loss or suspension of a licence or privilege.

JUSTICES (AMENDMENT) BILL 1986

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Act No. 27, 1902
4. Transitional provision

SCHEDULE 1—AMENDMENTS TO THE JUSTICES ACT 1902

JUSTICES (AMENDMENT) BILL 1986

NEW SOUTH WALES



No. , 1986

A BILL FOR

An Act to amend the Justices Act 1902 to enable Magistrates to reopen proceedings in certain circumstances.

Justices (Amendment) 1986

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 1986".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

- 10 (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and 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 15 1.

Transitional provision

4. Section 100HA of the Justices Act 1902, as amended by this Act, applies to and in respect of a conviction or order of a Justice, whether made before, on or after the day appointed and notified under section 2 (2).

20

SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE JUSTICES ACT 1902

- (1) Part IVA, heading—

Omit the heading, insert instead:

25

**ANNULMENT OF CONVICTIONS AND
REOPENING OF PROCEEDINGS**

*Justices (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE JUSTICES ACT 1902—*continued*

(2) Section 100HA—

After section 100H, insert:

Magistrate may reopen proceedings

5 100HA. (1) Where a Justice has convicted or made an order against a person and has—

- (a) imposed a penalty that is contrary to law; or
- (b) failed to impose a penalty that is in conformity with the law,

a Magistrate may—

- 10 (c) on the Magistrate's own motion; or
- (d) on the application of a party to the proceedings,

reopen the proceedings and, after giving the parties an opportunity of being heard, amend the conviction or order and impose a penalty that is in accordance with the law.

15 (2) Subject to subsection (3), nothing in this section affects the operation of Part V.

20 (3) For the purpose of an appeal under this Act in respect of an amended penalty imposed under subsection (1), the time within which the appeal is required to be made shall commence from the date on which that penalty is imposed.

(4) In this section, "penalty" includes a forfeiture, disqualification and loss or suspension of a licence or privilege.

JUSTICES (AMENDMENT) ACT 1986 No. 113

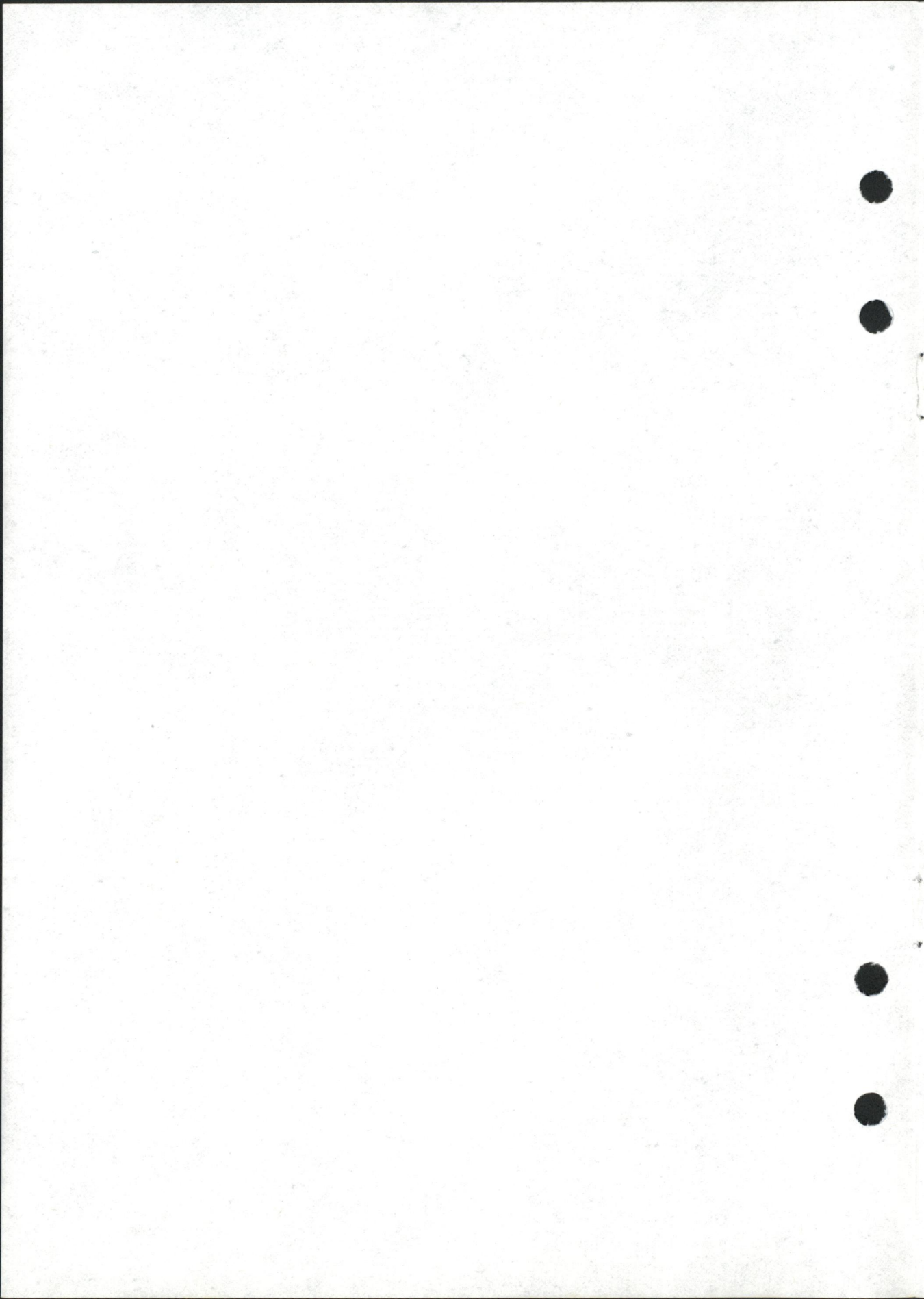
NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Act No. 27, 1902
4. Transitional Provision

SCHEDULE 1—AMENDMENTS TO THE JUSTICES ACT 1902



JUSTICES (AMENDMENT) ACT 1986 No. 113

NEW SOUTH WALES



Act No. 113, 1986

An Act to amend the Justices Act 1902 to enable Magistrates to reopen proceedings in certain circumstances. [Assented to, 27 November 1986]

Justices (Amendment) 1986

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 1986".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and 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.

Transitional provision

4. Section 100HA of the Justices Act 1902, as amended by this Act, applies to and in respect of a conviction or order of a Justice, whether made before, on or after the day appointed and notified under section 2 (2).

SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE JUSTICES ACT 1902

(1) Part IVA, heading—

Omit the heading, insert instead:

**ANNULMENT OF CONVICTIONS AND
REOPENING OF PROCEEDINGS**

(2) Section 100HA—

After section 100H, insert:

Magistrate may reopen proceedings

100HA. (1) Where a Justice has convicted or made an order against a person and has—

- (a) imposed a penalty that is contrary to law; or
- (b) failed to impose a penalty that is in conformity with the law,

a Magistrate may—

- (c) on the Magistrate's own motion; or
- (d) on the application of a party to the proceedings,

reopen the proceedings and, after giving the parties an opportunity of being heard, amend the conviction or order and impose a penalty that is in accordance with the law.

(2) Subject to subsection (3), nothing in this section affects the operation of Part V.

(3) For the purpose of an appeal under this Act in respect of an amended penalty imposed under subsection (1), the time within which the appeal is required to be made shall commence from the date on which that penalty is imposed.

(4) In this section, "penalty" includes a forfeiture, disqualification and loss or suspension of a licence or privilege.

