

**JUSTICES (PENALTIES AND PROCEDURE)
AMENDMENT BILL 1985**

EXPLANATORY NOTE

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

The Crimes (Summary Procedure) Amendment Bill 1985 is cognate with this Bill.

The object of this Bill is to amend the Justices Act 1902—

- (a) in relation to the imposition and enforcement of fines, so as—
 - (i) to increase the rate at which fines are “cut out” by a period of imprisonment;
 - (ii) to require a defendant’s means to be taken into account in the fixing of a fine or penalty;
 - (iii) to provide for time to be allowed for payment of a fine; and
 - (iv) to facilitate the withdrawal of warrants of commitment in appropriate cases;
- (b) so as to provide for the issue of an attendance notice requiring the person to whom it is directed to appear at a Local Court in any case in which an information may be laid for an indictable offence or an offence punishable upon summary conviction, as an alternative to the present procedure which would require the arrest of the person or the issue of a summons requiring the person’s appearance at a Local Court; and
- (c) in relation to the procedure prescribed by that Act, so as—
 - (i) to permit a Magistrate to award costs to a defendant who is committed for trial for a different offence from that with which the defendant was charged;
 - (ii) to confirm that certain provisions of the Principal Act apply in respect of indictable offences disposed of summarily by a Magistrate;
 - (iii) to declare that a defendant shall not be sentenced to imprisonment by a Local Court in the person’s absence;

- (iv) to extend the time within which an application may be made to a Magistrate to state a case for the opinion of the Supreme Court on a point of law; and
- (v) to enable an appeal to be made to the District Court against an order awarding costs to a defendant,

and to make other minor or consequential provisions.

The Bill also contains certain savings and transitional provisions.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 is a formal provision dealing with references to the Justices Act 1902.

Clause 4 lists the Schedules to the proposed Act.

Clause 5 is a formal provision that gives effect to the Schedules of amendments.

Clause 6 is a formal provision that gives effect to the Schedule of savings and transitional provisions.

Schedule 1 (1) inserts a provision (section 80A) into the Principal Act to require a Justice fixing a fine or monetary penalty to take into account any available information as to the means of the defendant and any other matters that, in the opinion of the Justice, are relevant.

Schedule 1 (2) amends section 82 of the Principal Act by increasing the rate at which fines are "cut out" by a period of imprisonment from \$25 to \$50 (or such amount as may be prescribed by regulation) per day and by reducing the maximum period of default imprisonment from 12 months to 3 months.

Schedule 1 (3) (a) and (b) amend section 83 of the Principal Act by restating the power of a Justice to direct payment by instalments and providing for a minimum period of 21 days to be allowed by a Justice for payment of a fine or penalty imposed except where the defendant has sufficient means to pay or requests that no time (or a shorter time) be allowed or there are other special reasons.

Schedule 1 (3) (c) and (4) omit sections 83 (4) and 84 of the Principal Act and thereby remove the power of a Justice to require security to be lodged for payment of a fine.

Schedule 1 (5) inserts an interpretation provision (section 86A) into the Principal Act defining an "authorised justice" for the purpose of the provisions of the Act dealing with warrants of commitment. (An authorised justice is a Magistrate, a Justice employed in the Local Courts Administration Branch of the Attorney General's Department or a Justice employed in an office prescribed by regulation.)

Schedule 1 (6)–(8) amend provisions of the Principal Act dealing with warrants of commitment so as to restrict the power to issue those warrants on non-payment of a fine to authorised justices.

Schedule 1 (9) inserts a provision (section 89A) into the Principal Act which makes it clear that a constable may refrain from executing a warrant issued for non-payment of a fine or penalty to allow the defendant to apply for further time to pay the amount or to pay the amount by instalments.

Schedule 1 (10) replaces section 90 of the Principal Act (which presently allows a Justice to postpone the issue of a warrant of commitment for non-payment of a fine or penalty to permit a person further time to pay and makes provision for the issue of warrants where part payment has been made). The section is replaced by 2 sections, as follows:

- (a) proposed section 90 provides that—
 - (i) an authorised justice at a court where a conviction or order has been made imposing a fine or penalty may order that time (or further time) be allowed for payment or that payment be made by instalments; and
 - (ii) any authorised justice may, where appropriate, make an order referred to in subparagraph (i) where a warrant of commitment has been issued and, upon making such an order or for any other proper reason, may withdraw and cancel the warrant; and
- (b) proposed section 90A will facilitate the issue of warrants where part payment has been made by no longer requiring the default imprisonment period fixed by the conviction or order to be revoked but allowing the warrant simply to order imprisonment for the period calculated on the unsatisfied balance.

Schedule 1 (11) and (12) make amendments which are similar to those made by Schedule 1 (6)–(8) relating to authorised justices.

Schedule 1 (13) (a) makes an amendment to section 121B (a) of the Principal Act consequentially to the amendments made by Schedule 1 (3) (c) and (4).

Schedule 1 (13) (b) amends section 121B of the Principal Act to prevent appeals being made in relation to the making under section 90 of the Principal Act of orders allowing time for payment or payment by instalments.

Schedule 1 (14) inserts a provision (section 155) into the Principal Act to give effect to the Second Schedule inserted by Schedule 1 (15).

Schedule 1 (15) inserts a Second Schedule into the Principal Act which contains provisions of a savings or transitional nature. Part I of the Second Schedule contains a saving provision relating to the repeal of the provisions of the Principal Act dealing with the lodgment of security for payment of a fine. Part II of the Second Schedule contains provisions (dealing, for example, with persons currently in detention) which are necessary as a consequence of the alteration by the proposed Act of the rate at which fines are “cut out” by default imprisonment. Part III of the Second Schedule contains similar provisions which will be necessary as a consequence of any alteration of that rate by a regulation made under the Principal Act.

Schedule 2 (1) amends section 3 (1) of the Principal Act so as to insert a definition of "Attendance notice" into that Act.

Schedule 2 (2) amends section 68 (b) of the Principal Act to enable a Justice to adjourn the hearing of an offence to which an attendance notice relates where the defendant has failed to appear and a warrant has been issued for the defendant's arrest.

Schedule 2 (3) (a)-(c) amend section 75 of the Principal Act to enable a Justice either to proceed with the hearing of a case or to adjourn the case and issue a warrant for the arrest of the defendant, where a defendant has failed to appear at a Local Court as required to do by an attendance notice.

Schedule 2 (4) amends section 75A of the Principal Act to enable a Justice, in the circumstances in which section 75 applies, to hear in the absence of a defendant more than one charge, including a charge or charges to which an attendance notice relates or attendance notices relate.

Schedule 2 (5) (a)-(d) amend section 75B of the Principal Act so as to enable a Magistrate to deal, in the manner provided by that section, with such offences to which attendance notices relate as are offences for which summonses could have been issued under section 60 of that Act.

Schedule 2 (6) inserts proposed Division 3 into Part IV of the Principal Act, which Division contains proposed sections 100AA-100AG of which:

Section 100AA is an interpretation provision which defines "prescribed member of the police force" to mean a member of or above the rank of sergeant and, if an attendance notice is to be issued at a police station where the member in charge holds a lower rank, the member in charge.

Section 100AB provides that a prescribed member of the police force may authorise the issue of an attendance notice in any case in which an information might be laid under section 21 or 52 of the Principal Act.

Section 100AC sets out the information which is required to appear in an attendance notice and requires it to be signed by the person to whom it is directed and the member of the police force who authorised its issue.

Section 100AD requires an attendance notice to be served personally on the person to whom it is directed by a member of the police force. That member is required to explain, at the time of service, the effect of failure to comply with the notice.

Section 100AE is an evidentiary provision. Where an attendance notice purports to have been signed by the person to whom it is directed or by whom it was authorised, it shall be treated as having been duly signed and authorised in the absence of evidence to the contrary. Certificate evidence may also be given under this proposed section of due service of the notice.

Section 100AF states the effect of an attendance notice when tendered in a Local Court. The notice is deemed to be an unsworn information, the person to whom it is directed is deemed to be the defendant to which the information relates and the person named in the notice as the informant for the purposes of the notice is deemed to be the informant for the purposes of the information.

Section 100AG empowers a Justice constituting a Local Court to issue or authorise the issue of a warrant for the arrest of a person who fails to appear as required by an attendance notice, but only where the notice has been served a reasonable time before the time at which the person was required to appear.

Schedule 2 (7) amends section 100A of the Principal Act so as to enable a Local Court to annul a conviction or penalty made or imposed because an attendance notice did not come to the notice of the defendant.

Schedule 3 (1) amends section 1 of the Principal Act by omitting the matter relating to the division of that Act into Parts, Divisions and Subdivisions.

Schedule 3 (2) repeals and replaces section 41A of the Principal Act so as to permit a Magistrate, when committing a defendant for trial for an indictable offence which is not identical in all respects to the offence with which the defendant was charged, to order the informant to pay the defendant's costs. The proposed section 41A also applies certain provisions of the Principal Act to and in respect of orders to be made under the proposed section, including provisions additional to those formerly applied to and in respect of orders made under the present section 41A of that Act.

Schedule 3 (3) amends the Principal Act by inserting proposed Subdivision 10 into Division 1 of Part IV of that Act. The Subdivision will consist of proposed section 51B which confirms that sections 81-95 of the Principal Act apply and have always applied in respect of indictable offences disposed of summarily by Magistrates.

Schedule 3 (4) amends section 66 (2) of the Principal Act so that the powers of Justices which may be exercised when defendants are brought before them pursuant to warrants issued under section 61 may be exercised when defendants are brought before them pursuant to proposed section 80AA.

Schedule 3 (5) inserts proposed section 80AA into the Principal Act which provides that a defendant is not to be sentenced to imprisonment by a Local Court unless the defendant is present. The only exception is where imprisonment is imposed under section 82 of that Act as a punishment for default in paying a fine or another amount of money or costs. The proposed section also empowers a Justice who convicts an absent defendant to issue a warrant for the arrest of the defendant so that the defendant may be brought before a Local Court for sentencing.

Schedule 3 (6) amends section 100A of the Principal Act so that a person who is, while absent, convicted at an adjourned hearing under section 76 of that Act may apply to have the conviction annulled by a Local Court.

Schedule 3 (7) amends section 101 of the Principal Act to provide that any party dissatisfied with a determination made by a Justice may apply to the Justice to state a case for the opinion of the Supreme Court on a point of law within 35 days (or such longer period as may be allowed under proposed section 102A (1)) following the determination, instead of within 21 days, as presently provided.

Schedule 3 (8) amends section 102 of the Principal Act to provide that an appellant shall have 42 days (or such longer period as may be fixed under proposed section 102A (2)) after the date of the determination appealed from to enter into a recognizance to prosecute an appeal pursuant to section 101 of that Act, instead of 28 days, as presently provided.

Schedule 3 (9) inserts proposed section 102A into the Principal Act which empowers a Magistrate to extend the periods fixed in sections 101 and 102 of that Act.

Schedule 3 (10) amends section 122 of the Principal Act so as to provide that an appeal to the District Court may be made by a person who has been ordered by a Justice to pay the costs of a defendant.

Schedule 3 (11) repeals section 147 of the Principal Act as a consequence of the intended enactment of proposed section 51B.

Schedule 3 (12) amends the Second Schedule to the Principal Act (intended to be inserted into that Act by Schedule 1 (15)) so as to save orders made under section 41A of that Act before the substitution of that section by this Act takes effect. That section, as in force before its substitution, will apply to and in respect of any such order.

Schedule 4 makes certain savings and transitional provisions as a consequence of the amendments intended to be made to the Principal Act by Schedules 2 and 3.

**JUSTICES (PENALTIES AND PROCEDURE)
AMENDMENT BILL 1985**

No. , 1985

A BILL FOR

An Act to amend the Justices Act 1902 with respect to the rate at which penalties are reduced by default imprisonment, the imposition and payment of penalties and certain matters of procedure, and for other purposes.

See also Crimes (Summary Procedure) Amendment Bill 1985.

Justices (Penalties and Procedure) 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 (Penalties and Procedure) Amendment Act 1985".

Commencement

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

(2) The several provisions of Schedules 1, 2 and 3 (Schedule 3 (1), (3), (6) and (12) excepted) shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

15 **(3)** Schedule 3 (12) shall commence on the day on which Schedule 1 or Schedule 3 (2) commences, whichever is the later day.

(4) Section 5, in its application to a provision of Schedules 1-3, shall commence on the day on which that provision commences.

Principal Act

20 **3.** The Justices Act 1902 is referred to in this Act as the Principal Act.

Schedules

4. This Act contains the following Schedules:

SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT
RELATING TO FINE ENFORCEMENT

25 SCHEDULE 2—AMENDMENTS TO THE PRINCIPAL ACT
RELATING TO ATTENDANCE NOTICES

SCHEDULE 3—MISCELLANEOUS AMENDMENTS TO THE
PRINCIPAL ACT

SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS

*Justices (Penalties and Procedure) Amendment 1985***Amendment of Act No. 27, 1902**

5. The Principal Act is amended in the manner set forth in Schedules 1-3.

Savings and transitional provisions

5 6. Schedule 4 has effect.

SCHEDULE 1

(Sec. 5)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINE ENFORCEMENT

10 (1) Section 80A—

After section 80, insert:

Consideration of defendant's means to pay

15 80A. In the exercise by a Justice or Justices of a discretion to fix the amount of any fine or monetary penalty, the Justice or Justices shall consider—

- (a) such information regarding the means of the defendant as is reasonably and practicably available to the Justice or Justices for consideration; and
- 20 (b) such other matters as, in the opinion of the Justice or Justices, are relevant to the fixing of that amount.

(2) (a) Section 82 (2)—

Omit "and, if to such Justice or Justices it seems fit, the costs and charges of conveying him to prison".

(b) Section 82 (2)—

25 Omit:

Where the said amount does not exceed \$25 such period shall not exceed twenty-four hours.

Where the said amount exceeds \$25 but does not exceed \$50 such period shall be forty-eight hours.

Justices (Penalties and Procedure) Amendment 1985

SCHEDULE 1—*continued*
 AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINE
 ENFORCEMENT—*continued*

Where the said amount exceeds \$50 such period shall be one day for each \$25 of such amount or part thereof,

but in no case shall such period exceed twelve months.

Insert instead:

5 Where—

(a) the amount is not more than the prescribed unit, the period shall not exceed 24 hours;

10 (b) the amount is more than the prescribed unit but is not more than twice the prescribed unit, the period shall not exceed 48 hours; or

(c) the amount is more than twice the prescribed unit, the period shall be 1 day for each such unit of the amount or part of such a unit,

but in no case shall the period exceed 3 months.

15 (c) Section 82 (2D)—

After section 82 (2C), insert:

(2D) In subsection (2)—

“prescribed unit” means—

20 (a) except as provided by paragraph (b)—the amount of \$50; or

(b) where another amount is prescribed for the purposes of this definition—that other amount.

(3) (a) Section 83 (1), (1A), (1B) —

Omit section 83 (1), insert instead:

*Justices (Penalties and Procedure) Amendment 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINE
ENFORCEMENT—*continued*

(1) The Justice or Justices by whose conviction or order any amount is adjudged to be paid shall, in and by the conviction or order, allow time for the payment of the amount unless—

- 5 (a) the Justice or Justices is or are satisfied that the person liable to pay the amount has sufficient means to pay the whole amount forthwith;
- (b) the person so liable requests that no time be allowed for payment; or
- 10 (c) there are, in the opinion of the Justice or Justices, special reasons for not allowing any time for payment and the Justice or Justices has or have stated those reasons.

(1A) The Justice or Justices by whose conviction or order any amount is adjudged to be paid may, in and by the conviction or order, direct payment of the amount to be made by instalments.

- 15 (1B) The period of time allowed for the payment of an amount as referred to in subsection (1) or for the payment of instalments as referred to in subsection (1A) shall be not less than 21 days unless—

- 20 (a) the period is a shorter period requested by the person liable to pay the amount; or
- (b) there are, in the opinion of the Justice or Justices, special reasons for allowing a shorter period and the Justice or Justices has or have stated those reasons.

(b) Section 83 (2), (3)—

- 25 Omit “any such amount” wherever occurring, insert instead “an amount”.

(c) Section 83 (4)—

Omit the subsection.

(4) Section 84—

- 30 Omit the section.

*Justices (Penalties and Procedure) Amendment 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINE
ENFORCEMENT—*continued*

(5) Section 86A—

Before section 87, insert:

Interpretation

86A. In this Subdivision—

5 “authorised justice” means—

- (a) a Magistrate;
- (b) a Justice employed in the Local Courts Administration, Attorney General’s Department; or
- (c) a Justice employed in a prescribed office.

10 (6) Section 87—

Omit the section, insert instead:

Warrant of commitment for non-payment

87. Where—

- 15 (a) it is adjudged by a conviction or order that a fine, penalty, costs or other amount of money be paid; and
- (b) the person against whom the conviction or order is made does not pay in accordance with the terms of the conviction or order the amount adjudged to be paid as ascertained by the conviction or order,

20 an authorised justice may, by warrant, commit the person to prison to be kept there according to the terms of the conviction or order unless the person sooner pays the amount together with such further sum for the costs of enforcing the conviction or order as seems just and reasonable to the authorised justice.

25 (7) (a) Section 88 (1)—

Omit “any Justice”, insert instead “an authorised justice”.

(b) Section 88 (2)—

Omit the subsection, insert instead:

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINE
ENFORCEMENT—*continued*

(2) Where—

(a) it is ordered by a conviction or order referred to in subsection (1) that the defendant shall pay any costs to the prosecutor or complainant; and

5 (b) the defendant does not pay those costs in accordance with the terms of the conviction or order,

an authorised justice may, by warrant, commit the defendant to prison to be kept there according to the relevant terms of the conviction or order unless the defendant sooner pays the costs together with such further sum for the costs of enforcing the conviction or order as seems just and reasonable to the authorised justice.

10

(8) Section 89—

15 Omit “or hands and seals of the Justice or Justices”, insert instead “of the authorised justice”.

(9) Section 89A—

After section 89, insert:

Non-enforcement of warrants

20 89A. (1) A constable who is required to convey a person to prison pursuant to a warrant of commitment issued under section 87 or 88 (2) for non-payment of an amount of money shall not be regarded as failing to comply with the terms of the warrant by reason of refraining from doing so in accordance with any direction given by the Commissioner for Police, or, in accordance with such regulations (if any) as may be made under subsection (2), for the purpose of allowing the person to seek the withdrawal and cancellation of the warrant (whether upon payment of the amount or the making of an order under section 90 or otherwise).

25

30 (2) Regulations may be made with respect to the exercise by a constable of a discretion to refrain from conveying a person to prison pursuant to a warrant referred to in subsection (1).

*Justices (Penalties and Procedure) Amendment 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINE
ENFORCEMENT—*continued*

(10) Sections 90, 90A—

Omit section 90, insert instead:

Further time, etc., may be allowed for payment

5 90. (1) Where an amount is adjudged to be paid by a conviction or order and a warrant of commitment has not been issued for non-payment of the amount, an authorised justice acting at the Local Court in which the conviction or order was made may, at any time, if it appears to the authorised justice expedient to do so, by order—

10 (a) allow time or further time for the payment of the whole or any part of the amount; or

(b) direct that payment of the whole or any part of the amount be made by instalments.

15 (2) Where a warrant of commitment has been issued for non-payment of an amount adjudged to be paid by a conviction or order, the authorised justice who issued the warrant or any other authorised justice may, if it appears to the authorised justice expedient to do so—

20 (a) where appropriate, make an order referred to in subsection (1); and

(b) upon the making of such an order or otherwise, withdraw and cancel the warrant.

25 (3) Notwithstanding anything in subsections (1) and (2), an authorised justice shall, in exercising or performing powers, authorities, duties or functions under those subsections, comply with such guidelines (if any) and have regard to such matters (if any) as may be prescribed.

*Justices (Penalties and Procedure) Amendment 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINE
ENFORCEMENT—*continued***Warrant where part payment made**

90A. Where, upon an application to an authorised justice to issue a warrant of commitment for non-payment of an amount adjudged to be paid by a conviction or order, it appears to the
 5 authorised justice that part of the amount has been paid, whether by instalments or otherwise, or has been remitted by the Governor pursuant to the Fines and Penalties Act 1901, the authorised justice shall, by the warrant, order the defendant to be imprisoned for a period calculated in accordance with section
 10 82 (2), having regard to the unsatisfied balance, whether or not that period is the same as that fixed by the conviction or order.

(11) Section 91 (2)—

Omit “the Justice or Justices”, insert instead “the authorised justice”.

15 (12) Section 94 (2)—

Omit “the Justice or Justices issuing the warrant of commitment usually act”, insert instead “the authorised justice issuing the warrant usually acts”.

(13) (a) Section 121B (a)—

20 Omit “, for the entering into of recognizances or for the giving of security; and”, insert instead “or for the entering into of recognizances;”.

(b) Section 121B (b), (c)—

At the end of section 121B (b), insert:

25 ; and

(c) nothing in that section shall give any right of appeal
 30 against an order under section 90 allowing time or further time for the payment of the whole or any part of an amount or directing payment of the whole or any part of an amount to be made by instalments, or against a refusal to make such an order.

Justices (Penalties and Procedure) Amendment 1985

SCHEDULE 1—*continued*
AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINE
ENFORCEMENT—*continued*

(14) Section 155—

After section 154, insert:

Savings, transitional and other provisions

155. The Second Schedule has effect.

5 (15) Second Schedule—

After the First Schedule, insert:

SECOND SCHEDULE

(Sec. 155)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

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PART I

SAVING PROVISION CONSEQUENT UPON THE JUSTICES
(PENALTIES AND PROCEDURE) AMENDMENT ACT 1985

Securities currently lodged for payment of fine, etc.

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1. This Act, as in force immediately before the commencement of Schedule 1 to the Justices (Penalties and Procedure) Amendment Act 1985, applies in respect of a security directed to be paid under section 83 before that commencement as if that Act had not been enacted.

PART II

20

TRANSITIONAL PROVISIONS CONSEQUENT UPON VARIATION OF
RATE OF DEFAULT IMPRISONMENT BY JUSTICES (PENALTIES AND
PROCEDURE) AMENDMENT ACT 1985

Warrant issued before Justices (Penalties and Procedure) Amendment Act 1985

*Justices (Penalties and Procedure) Amendment 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINE
ENFORCEMENT—*continued*

2. (1) Where, by warrant issued under section 87 or 88 (2) before the commencement of Schedule 1 to the Justices (Penalties and Procedure) Amendment Act 1985 in respect of the non-payment by a person of an amount of money, a Justice committed a person to prison, the person may be so detained after that commencement only for a period not exceeding—

- (a) a period calculated at the rate of one day for every \$50, or part thereof, of the balance owing after that commencement; or
- (b) a period that, together with any period for which the person was detained in prison before that commencement pursuant to a warrant issued for that non-payment, totals 3 months,

whichever is the shorter period.

(2) In subclause (1)—

“balance owing”, in relation to a person who, at the commencement of Schedule 1 to the Justices (Penalties and Procedure) Amendment Act 1985, has been committed to prison for non-payment of an amount of money, means the balance of that amount after deduction of—

- (a) any payment made by way of reduction of the amount; and
- (b) \$25 for any day during which the person was detained in prison by reason of that non-payment before that commencement.

Warrant to be issued after Justices (Penalties and Procedure) Amendment Act 1985

3. A Justice issuing a warrant after the commencement of Schedule 1 to the Justices (Penalties and Procedure) Amendment Act 1985, being a warrant under section 87 or 88 (2) committing a person to prison pursuant to a conviction or order made before that commencement shall, by the warrant, order the person to be imprisoned for a period calculated in accordance with section 82 (2) as at the time of issue, having regard to the amount adjudged by the conviction or order to be paid or such part thereof as is unsatisfied, instead of for the period fixed by the conviction or order.

PART III

TRANSITIONAL PROVISIONS CONSEQUENT UPON VARIATION OF
RATE OF DEFAULT IMPRISONMENT BY REGULATION

*Justices (Penalties and Procedure) Amendment 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINE
ENFORCEMENT—*continued***Interpretation**

4. In this Part—

“balance owing”, in relation to a person who, at a variation date, has been committed to prison for non-payment of an amount of money, means the balance of that amount after deduction of—

- (a) any payment made by way of reduction of the amount; and
- (b) the former amount for any day during which the person was detained in prison by reason of that non-payment before the variation date;

“former amount”, in relation to a variation date, means—

- (a) where an amount was not prescribed by regulation for the purposes of the definition of “prescribed unit” in section 82 (2D) immediately before the variation date, the amount of \$50; or
- (b) in any other case, the amount prescribed by regulation for the purposes of that definition immediately before the variation date;

“new amount”, in relation to a variation date, means the amount prescribed by regulation for the purposes of the definition of “prescribed unit” in section 82 (2D) on and from the variation date;

“variation date” means the date on and from which an amount (or another amount) is prescribed by regulation for the purposes of the definition of “prescribed unit” in section 82 (2D).

Warrant issued before regulation varying rate

5. Where, by warrant issued under section 87 or 88 (2) before a variation date in respect of the non-payment by a person of an amount of money, a Justice committed a person to prison, the person may be detained after that date pursuant to that warrant only for a period not exceeding—

- (a) a period calculated at the rate of one day for every new amount, or part thereof, of the balance owing on or after that variation date; or
- (b) a period that, together with any period for which the person was detained in prison before that date pursuant to a warrant issued for that non-payment, totals 3 months,

whichever is the shorter period.

Warrant to be issued after regulation varying rate

*Justices (Penalties and Procedure) Amendment 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINE
ENFORCEMENT—*continued*

- 5 6. A Justice issuing a warrant on or after a variation date, being a warrant under section 87 or 88 (2) committing a person to prison pursuant to a conviction or order made before that variation date shall, by the warrant, order the person to be imprisoned for a period calculated in accordance with section 82 (2) as at the time of issue, having regard to the amount adjudged by the conviction or order to be paid or such part thereof as is unsatisfied, instead of for the period fixed by the conviction or order.

SCHEDULE 2

(Sec.5)

10 AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ATTENDANCE NOTICES

- (1) Section 3 (1), definition of "Attendance notice"—
 After the definition of "Accused person", insert:
 "Attendance notice" means a notice authorised to be issued
 15 under section 100AB.
- (2) Section 68 (b)—
 After "summons", insert "or attendance notice".
- (3) (a) Section 75—
 After "summons" wherever occurring, insert "or attendance
 20 notice".
- (b) Section 75—
 Omit "in manner hereinbefore prescribed".
- (c) Section 75 (b)—
 Omit "hereinbefore provided", insert instead "provided by this
 25 Act".

*Justices (Penalties and Procedure) Amendment 1985*SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ATTENDANCE NOTICES—*continued*

(4) Section 75A (2)—

At the end of section 75A, insert:

(2) In subsection (1), a reference to summonses includes—

(a) a reference to attendance notices; and

5 (b) a reference to a summons or summonses and an attendance notice or attendance notices.

(5) (a) Section 75B (2A)—

After section 75B (2), insert:

(2A) Where—

10 (a) an attendance notice has been issued for an offence punishable summarily before a Justice or Justices, being an offence in respect of which a summons could have been issued under section 60 if an information had been laid under this Division for the offence;

15 (b) a copy of the attendance notice has been served on the person to whom the notice is directed; and

(c) the person does not appear at the time and place at which the person is required by the notice to appear,

20 the court before which the person is required by the notice to appear may, on having the notice tendered to it and if it is satisfied that the facts as alleged in the notice constitute such an offence and that reasonably sufficient particulars thereof are set out in the notice, thereupon make an order imposing on the defendant a penalty to be paid within such time as is specified in the order, being a penalty of an amount not exceeding the amount of the pecuniary penalty that might have been imposed had the defendant been convicted of the offence.

25

(b) Section 75B (3)—

30 Omit “charged”, insert instead “to which the information relates”.

*Justices (Penalties and Procedure) Amendment 1985*SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ATTENDANCE NOTICES—*continued*

(c) Section 75B (4)—

Omit “with the matter of an information for an”, insert instead “or (2A) with an alleged”.

(d) Section 75B (7)—

5 Omit the subsection, insert instead:

(7) A reference in subsection (2) (c) or (2A) (c) to a time and place includes, where the hearing of the matter has been adjourned, a reference to the time and place to which the hearing has been adjourned.

10 (6) Part IV, Division 3—

After Division 2 of Part IV, insert:

DIVISION 3—*Attendance notices for indictable or summary offences*

Subdivision 1—Interpretation

15 **Interpretation**

100AA. In this Division—

“prescribed member of the police force”, in relation to the issue of an attendance notice, means—

- 20
- (a) a member of the police force of or above the rank of sergeant; and
 - (b) a member of the police force for the time being in charge of a police station of a lower rank, if the notice is issued at that police station.

Subdivision 2—Issue and service of attendance notices

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ATTENDANCE NOTICES—*continued***Issue of attendance notices**

100AB. Where an information may be laid before a Justice against any person—

- 5 (a) under section 21, for an indictable offence; or
 (b) under section 52, for an offence for which the person is liable to be punished upon summary conviction,

a prescribed member of the police force may authorise the issue of a notice for the attendance of the person.

Form of attendance notice

10 100AC. An attendance notice shall—

- (a) be directed to the person to whom it relates;
 (b) name the person who is to be the informant for the purposes of the notice;
 15 (c) describe the offence to which it relates and state shortly particulars of the offence;
 (d) require the person to whom it is directed to appear at a certain time and place before a Local Court to be dealt with according to law;
 20 (e) state that failure to so appear may result in the arrest of the person to whom it is directed or in the matter being dealt with in the absence of that person; and
 (f) be signed by—
 (i) the person to whom it is directed; and
 25 (ii) the prescribed member of the police force who authorised its issue.

Service of attendance notice

100AD. (1) A copy of an attendance notice shall be served personally by a member of the police force upon the person to whom it is directed.

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ATTENDANCE NOTICES—*continued*

5 (2) A member of the police force, when serving a copy of an attendance notice on a person, shall explain to the person that failure to appear as required by the notice may result in the arrest of the person or in the matter to which the notice relates being dealt with in the absence of the person.

(3) A failure to comply with subsection (2) shall not invalidate service of a copy of an attendance notice if the notice complies with section 100AC (a)–(e).

10 (4) The issue of an attendance notice or the service of a copy of an attendance notice does not render unlawful the arrest, before or after the issue of the notice, of the person to whom the notice is directed for the offence to which the notice relates or for any other offence or the detention of the person pursuant to any such arrest.

15 **Presumptions**

100AE. In any proceedings it shall be presumed, in the absence of evidence to the contrary—

20 (a) that the person to whom an attendance notice is directed has signed the notice, if the notice purports to have been signed by that person;

25 (b) that a prescribed member of the police force authorised the issue of and signed an attendance notice, if the notice purports to have been issued under the authority of and to have been signed by a prescribed member of the police force; and

(c) that a copy of an attendance notice has been served by a member of the police force on the person to whom the notice is directed, if the notice bears a certificate to that effect purporting—

30 (i) to specify the time and place at which the copy was so served; and

*Justices (Penalties and Procedure) Amendment 1985*SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ATTENDANCE NOTICES—*continued*

- (ii) to be signed by the member of the police force who served the notice.

*Subdivision 3—Effect of attendance notice***Attendance notice deemed to be an information**

5 100AF. (1) Where an attendance notice, a copy of which has
been served in accordance with section 100AD, is tendered to a
Justice or Justices constituting a Local Court, the notice shall be
10 deemed to be an information laid under section 21 or 52, as the
case may require, being an information which is not
substantiated by the oath of the informant or a witness.

(2) Where an attendance notice is, under subsection (1),
deemed to be an information—

15 (a) the person to whom the notice was directed shall be
deemed to be the defendant to whom the information
relates; and

(b) the person who is named in the notice as the informant
for the purposes of the notice shall be deemed to be the
informant for the purposes of the information.

Warrant for apprehension

20 100AG. (1) Whenever any person for whose appearance an
attendance notice has been issued does not appear at the time
and place appointed by the notice, a Justice or Justices
constituting a Local Court may, upon proof of the due service
25 of a copy of the notice upon the person at a reasonable time
before the time so appointed, issue or make an order authorising
the issue of a warrant for the apprehension of the person.

(2) A warrant authorised to be issued under subsection (1)
may be signed by any Justice.

*Justices (Penalties and Procedure) Amendment 1985*SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ATTENDANCE NOTICES—*continued*

(3) Whenever any person is apprehended under any such warrant, the Justice or Justices before whom the person is brought shall—

(a) subject to the Bail Act 1978, commit the person—

5 (i) by warrant to a prison, or some lock-up or place of security; or

(ii) verbally to such safe custody as the Justice or Justices may think fit,

10 and order the person to be brought up at a time and place to be appointed by the Justice or Justices; and

(b) give due notice of the time and place so appointed to the person named in the attendance notice as the informant.

15 (4) Sections 64 and 65 apply to and in respect of a warrant issued under this section in the same way as they apply to and in respect of a warrant issued under Division 2.

(7) Section 100A (3) (a)—

After “summons”, insert “or attendance notice”.

SCHEDULE 3

(Sec.5)

20 MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

(1) Section 1—

Omit the section, insert instead:

Short title

1. This Act may be cited as the “Justices Act 1902”.

SCHEDULE 3—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(2) Section 41A—

Omit the section, insert instead:

Payment of costs by informant

41A. (1) The Justice or Justices—

5 (a) when making an order discharging a defendant as to the information then under inquiry; or

(b) when committing a defendant for trial for an indictable offence which is not identical in all respects to the indictable offence with which the defendant was charged,

10 may, in and by an order made by the Justice or Justices (which, in the circumstances referred to in paragraph (a), may be the same order as the order discharging the defendant) adjudge that the informant shall pay to the clerk of the court to be paid to the defendant such costs as to the Justice or Justices seem just and reasonable.

15 (2) The amount so allowed for costs shall in all cases be specified in the order requiring payment.

20 (3) Sections 82, 83, 86A, 87, 89, 89A and 90–95 apply to and in respect of orders for the payment of costs made under this section.

(3) Part IV, Division 1, Subdivision 10—

After section 51A, insert:

Subdivision 10—Procedure where indictable offences dealt with summarily

Application of Division 2 to indictable offences

25 51B. (1) This section applies to indictable offences disposed of summarily by a Magistrate whether with or without the consent of the defendant.

SCHEDULE 3—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

5 (2) Without affecting the generality of section 548 or 549 of the Crimes Act 1900 or of section 4, sections 81–95 apply and shall be deemed to have always applied to and in respect of indictable offences to which this section applies as if references in those sections to informations laid under section 52 included references to informations laid under section 21.

(4) Section 66 (2)—

After “section 61”, insert “or 80AA”.

(5) Section 80AA—

10 Before section 81, insert:

Absent defendant not to be imprisoned

15 80AA. (1) A Justice or Justices shall not (except pursuant to section 82), by any conviction, order that the defendant be imprisoned unless the defendant is present at the time the order for imprisonment is made.

20 (2) Where a Justice or Justices convicts or convict a defendant who is not present, the Justice or Justices may issue a warrant for the apprehension of the defendant for the purpose of the defendant’s being brought before a Justice or Justices for sentencing.

(6) Section 100A (1) (a)—

Omit “or section 75A”, insert instead “, 75A or 76”.

(7) Section 101 (1)—

25 Omit “twenty-one days”, insert instead “35 days (or such longer period as may be fixed under section 102A (1) in respect of the party)”.

*Justices (Penalties and Procedure) Amendment 1985*SCHEDULE 3—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(8) Section 102 (1)—

Omit “twenty-eight days”, insert instead “42 days (or such longer period as may be fixed under section 102A (2) in respect of the appellant)”.

5 (9) Section 102A—

After section 102, insert:

Extension of periods

10 102A. (1) A Justice may, by order made within 35 days after the determination of any information or complaint by any Justice or Justices exercising summary jurisdiction, fix a period of more than 35 days for an application to be made under section 101 (1) by a party, in relation to that determination.

15 (2) A Justice may, by order made within 42 days after the determination of any information or complaint by any Justice or Justices exercising summary jurisdiction, fix a period of more than 42 days for a recognizance to be entered into under section 102 (1) by an appellant, in relation to that determination.

(3) No Justice other than a Magistrate shall exercise the power conferred by subsection (1) or (2).

20 (10) (a) Section 122 (1)—

After “money”, insert “(whether for costs or otherwise), every person who has, by the order of a Justice or Justices, been adjudged to pay any costs of a defendant”.

(b) Section 122 (1A)—

25 Omit “against”, insert instead “affecting”.

(c) Section 122 (1C)—

Omit “or other party”, insert instead “, defendant or other party, as the case may require”.

*Justices (Penalties and Procedure) Amendment 1985*SCHEDULE 3—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(11) Section 147—

Omit the section.

(12) Second Schedule—

After clause 1, insert:

5 **Orders under section 41A**

1A. This Act, as in force immediately before the commencement of Schedule 3 (2) to the Justices (Penalties and Procedure) Amendment Act 1985, applies in respect of an order made under section 41A before that commencement as if that Act had not been enacted.

SCHEDULE 4

(Sec.6)

SAVINGS AND TRANSITIONAL PROVISIONS

Savings

15 1. (1) An order made under section 41A of the Principal Act before the commencement of Schedule 3 (2) shall have the same force and effect as it would have had if this Act had not been enacted.

20 (2) Sections 101 and 102 of the Principal Act, as in force immediately before the commencement of Schedule 3 (7), (8) and (9), apply to and in respect of a determination made before that commencement by any Justice or Justices in the exercise of summary jurisdiction as if this Act had not been enacted.

Transitional provisions

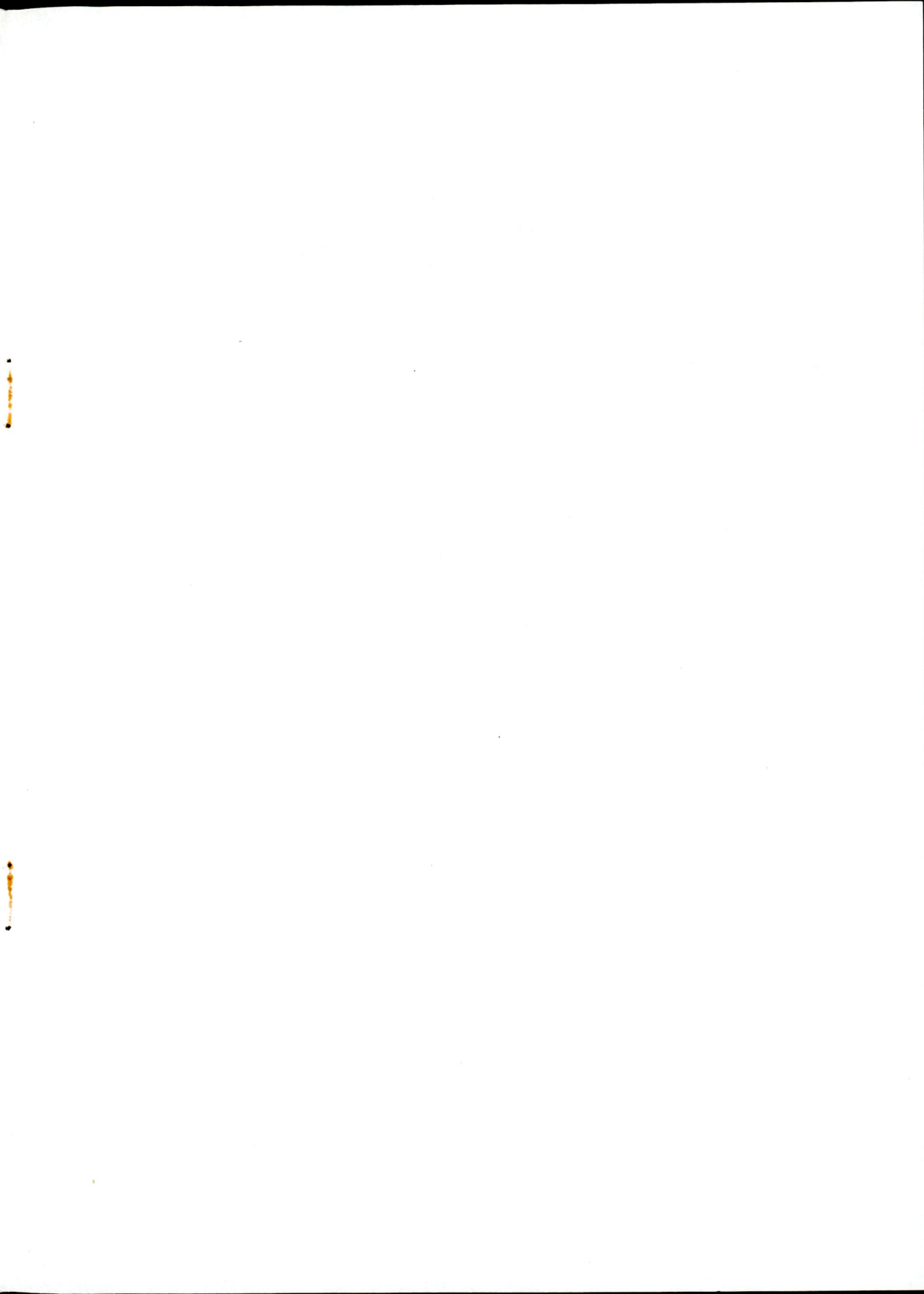
25 2. (1) The Principal Act, as amended by Schedule 2, applies to and in respect of an indictable offence or an offence for which a person is liable to be punished upon summary conviction committed before the commencement of that Schedule in the same way as that Act, as so amended, applies to and in respect of any such offence committed after that commencement.

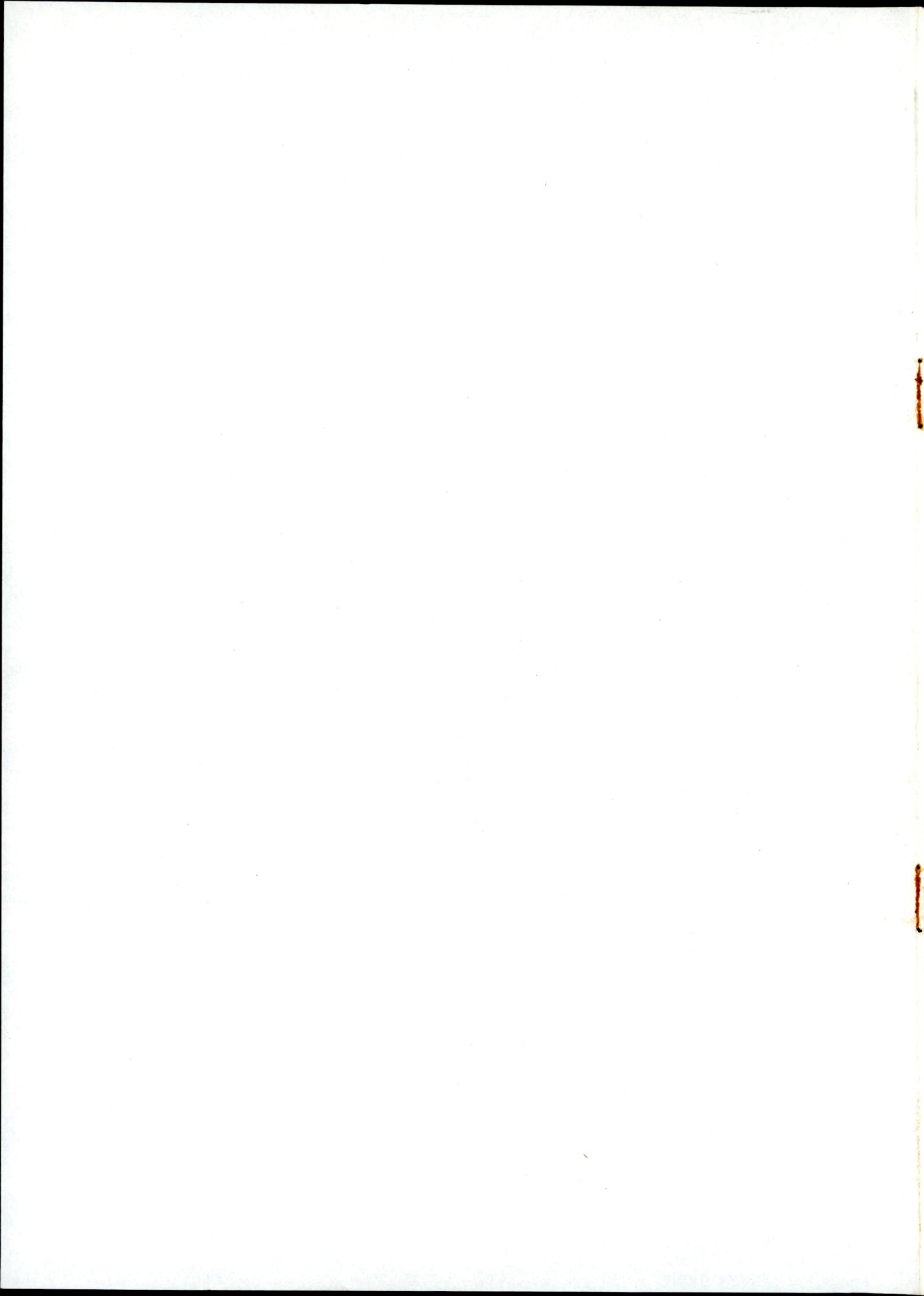
Justices (Penalties and Procedure) Amendment 1985

SCHEDULE 4—*continued*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

- (2) Section 41A of the Principal Act, as amended by Schedule 3 (2), applies to and in respect of a defendant committed for trial on or after the commencement of that item for an indictable offence which is not identical in all respects to an indictable offence with which the defendant was charged before that commencement.
- 5 (3) Section 100A of the Principal Act, as amended by Schedule 3 (6), applies to and in respect of a conviction made before the commencement of that item upon the hearing and determination of a case under section 76 of the Principal Act in the same way as section 100A of that Act, as so amended, applies to and in respect of a conviction so made after that commencement.
- 10 (4) Sections 101, 102 and 102A of the Principal Act, as amended by Schedule 3 (7), (8) and (9), apply only to and in respect of a determination made by a Justice or Justices after the commencement of those items.
- (5) Section 122 of the Principal Act, as amended by Schedule 3 (10), applies to and in respect of an order for the payment of costs of a defendant made by a Justice or
15 Justices before the commencement of that item in the same way as that section, as so amended, applies to and in respect of any such order made after that commencement.





**JUSTICES (PENALTIES AND PROCEDURE) AMENDMENT ACT
1985 No. 207**

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

* * * * *

Act No. 207, 1985

An Act to amend the Justices Act 1902 with respect to the rate at which penalties are reduced by default imprisonment, the imposition and payment of penalties and certain matters of procedure, and for other purposes. [Assented to, 10th December, 1985.]

See also Crimes (Summary Procedure) Amendment Act 1985.

Justices (Penalties and Procedure) 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 (Penalties and Procedure) Amendment Act 1985".

Commencement

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

(2) The several provisions of Schedules 1, 2 and 3 (Schedule 3 (1), (3), (6) and (12) excepted) shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

(3) Schedule 3 (12) shall commence on the day on which Schedule 1 or Schedule 3 (2) commences, whichever is the later day.

(4) Section 5, in its application to a provision of Schedules 1-3, shall commence on the day on which that provision commences.

Principal Act

3. The Justices Act 1902 is referred to in this Act as the Principal Act.

Schedules

4. This Act contains the following Schedules:

SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT
RELATING TO FINE ENFORCEMENT

SCHEDULE 2—AMENDMENTS TO THE PRINCIPAL ACT
RELATING TO ATTENDANCE NOTICES

SCHEDULE 3—MISCELLANEOUS AMENDMENTS TO THE
PRINCIPAL ACT

SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS

Justices (Penalties and Procedure) Amendment 1985

Amendment of Act No. 27, 1902

5. The Principal Act is amended in the manner set forth in Schedules 1-3.

Savings and transitional provisions

6. Schedule 4 has effect.

SCHEDULE 1

(Sec. 5)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINE ENFORCEMENT

(1) Section 80A—

After section 80, insert:

Consideration of defendant's means to pay

80A. In the exercise by a Justice or Justices of a discretion to fix the amount of any fine or monetary penalty, the Justice or Justices shall consider—

- (a) such information regarding the means of the defendant as is reasonably and practicably available to the Justice or Justices for consideration; and
- (b) such other matters as, in the opinion of the Justice or Justices, are relevant to the fixing of that amount.

(2) (a) Section 82 (2)—

Omit "and, if to such Justice or Justices it seems fit, the costs and charges of conveying him to prison".

(b) Section 82 (2)—

Omit:

Where the said amount does not exceed \$25 such period shall not exceed twenty-four hours.

Where the said amount exceeds \$25 but does not exceed \$50 such period shall be forty-eight hours.

Justices (Penalties and Procedure) Amendment 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINE
ENFORCEMENT—*continued*

Where the said amount exceeds \$50 such period shall be one day for each \$25 of such amount or part thereof,

but in no case shall such period exceed twelve months.

Insert instead:

Where—

- (a) the amount is not more than the prescribed unit, the period shall not exceed 24 hours;
- (b) the amount is more than the prescribed unit but is not more than twice the prescribed unit, the period shall not exceed 48 hours; or
- (c) the amount is more than twice the prescribed unit, the period shall be 1 day for each such unit of the amount or part of such a unit,

but in no case shall the period exceed 3 months.

(c) Section 82 (2D)—

After section 82 (2C), insert:

(2D) In subsection (2)—

“prescribed unit” means—

- (a) except as provided by paragraph (b)—the amount of \$50; or
- (b) where another amount is prescribed for the purposes of this definition—that other amount.

(3) (a) Section 83 (1), (1A), (1B) —

Omit section 83 (1), insert instead:

Justices (Penalties and Procedure) Amendment 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINE
ENFORCEMENT—*continued*

(1) The Justice or Justices by whose conviction or order any amount is adjudged to be paid shall, in and by the conviction or order, allow time for the payment of the amount unless—

- (a) the Justice or Justices is or are satisfied that the person liable to pay the amount has sufficient means to pay the whole amount forthwith;
- (b) the person so liable requests that no time be allowed for payment; or
- (c) there are, in the opinion of the Justice or Justices, special reasons for not allowing any time for payment and the Justice or Justices has or have stated those reasons.

(1A) The Justice or Justices by whose conviction or order any amount is adjudged to be paid may, in and by the conviction or order, direct payment of the amount to be made by instalments.

(1B) The period of time allowed for the payment of an amount as referred to in subsection (1) or for the payment of instalments as referred to in subsection (1A) shall be not less than 21 days unless—

- (a) the period is a shorter period requested by the person liable to pay the amount; or
- (b) there are, in the opinion of the Justice or Justices, special reasons for allowing a shorter period and the Justice or Justices has or have stated those reasons.

(b) Section 83 (2), (3)—

Omit “any such amount” wherever occurring, insert instead “an amount”.

(c) Section 83 (4)—

Omit the subsection.

(4) Section 84—

Omit the section.

Justices (Penalties and Procedure) Amendment 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINE
ENFORCEMENT—*continued*

(5) Section 86A—

Before section 87, insert:

Interpretation

86A. In this Subdivision—

“authorised justice” means—

- (a) a Magistrate;
- (b) a Justice employed in the Local Courts Administration, Attorney General’s Department; or
- (c) a Justice employed in a prescribed office.

(6) Section 87—

Omit the section, insert instead:

Warrant of commitment for non-payment

87. Where—

- (a) it is adjudged by a conviction or order that a fine, penalty, costs or other amount of money be paid; and
- (b) the person against whom the conviction or order is made does not pay in accordance with the terms of the conviction or order the amount adjudged to be paid as ascertained by the conviction or order,

an authorised justice may, by warrant, commit the person to prison to be kept there according to the terms of the conviction or order unless the person sooner pays the amount together with such further sum for the costs of enforcing the conviction or order as seems just and reasonable to the authorised justice.

(7) (a) Section 88 (1)—

Omit “any Justice”, insert instead “an authorised justice”.

(b) Section 88 (2)—

Omit the subsection, insert instead:

Justices (Penalties and Procedure) Amendment 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINE
ENFORCEMENT—*continued*

(2) Where—

- (a) it is ordered by a conviction or order referred to in subsection (1) that the defendant shall pay any costs to the prosecutor or complainant; and
- (b) the defendant does not pay those costs in accordance with the terms of the conviction or order,

an authorised justice may, by warrant, commit the defendant to prison to be kept there according to the relevant terms of the conviction or order unless the defendant sooner pays the costs together with such further sum for the costs of enforcing the conviction or order as seems just and reasonable to the authorised justice.

(8) Section 89—

Omit “or hands and seals of the Justice or Justices”, insert instead “of the authorised justice”.

(9) Section 89A—

After section 89, insert:

Non-enforcement of warrants

89A. (1) A constable who is required to convey a person to prison pursuant to a warrant of commitment issued under section 87 or 88 (2) for non-payment of an amount of money shall not be regarded as failing to comply with the terms of the warrant by reason of refraining from doing so in accordance with any direction given by the Commissioner for Police, or, in accordance with such regulations (if any) as may be made under subsection (2), for the purpose of allowing the person to seek the withdrawal and cancellation of the warrant (whether upon payment of the amount or the making of an order under section 90 or otherwise).

(2) Regulations may be made with respect to the exercise by a constable of a discretion to refrain from conveying a person to prison pursuant to a warrant referred to in subsection (1).

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINE
ENFORCEMENT—*continued*

(10) Sections 90, 90A—

Omit section 90, insert instead:

Further time, etc., may be allowed for payment

90. (1) Where an amount is adjudged to be paid by a conviction or order and a warrant of commitment has not been issued for non-payment of the amount, an authorised justice acting at the Local Court in which the conviction or order was made may, at any time, if it appears to the authorised justice expedient to do so, by order—

- (a) allow time or further time for the payment of the whole or any part of the amount; or
- (b) direct that payment of the whole or any part of the amount be made by instalments.

(2) Where a warrant of commitment has been issued for non-payment of an amount adjudged to be paid by a conviction or order, the authorised justice who issued the warrant or any other authorised justice may, if it appears to the authorised justice expedient to do so—

- (a) where appropriate, make an order referred to in subsection (1); and
- (b) upon the making of such an order or otherwise, withdraw and cancel the warrant.

(3) Notwithstanding anything in subsections (1) and (2), an authorised justice shall, in exercising or performing powers, authorities, duties or functions under those subsections, comply with such guidelines (if any) and have regard to such matters (if any) as may be prescribed.

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINE
ENFORCEMENT—*continued***Warrant where part payment made**

90A. Where, upon an application to an authorised justice to issue a warrant of commitment for non-payment of an amount adjudged to be paid by a conviction or order, it appears to the authorised justice that part of the amount has been paid, whether by instalments or otherwise, or has been remitted by the Governor pursuant to the Fines and Penalties Act 1901, the authorised justice shall, by the warrant, order the defendant to be imprisoned for a period calculated in accordance with section 82 (2), having regard to the unsatisfied balance, whether or not that period is the same as that fixed by the conviction or order.

(11) Section 91 (2)—

Omit “the Justice or Justices”, insert instead “the authorised justice”.

(12) Section 94 (2)—

Omit “the Justice or Justices issuing the warrant of commitment usually act”, insert instead “the authorised justice issuing the warrant usually acts”.

(13) (a) Section 121B (a)—

Omit “, for the entering into of recognizances or for the giving of security; and”, insert instead “or for the entering into of recognizances;”.

(b) Section 121B (b), (c)—

At the end of section 121B (b), insert:

; and

(c) nothing in that section shall give any right of appeal against an order under section 90 allowing time or further time for the payment of the whole or any part of an amount or directing payment of the whole or any part of an amount to be made by instalments, or against a refusal to make such an order.

Justices (Penalties and Procedure) Amendment 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINE
ENFORCEMENT—*continued*

(14) Section 155—

After section 154, insert:

Savings, transitional and other provisions

155. The Second Schedule has effect.

(15) Second Schedule—

After the First Schedule, insert:

SECOND SCHEDULE

(Sec. 155)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

PART I

SAVING PROVISION CONSEQUENT UPON THE JUSTICES
(PENALTIES AND PROCEDURE) AMENDMENT ACT 1985

Securities currently lodged for payment of fine, etc.

1. This Act, as in force immediately before the commencement of Schedule 1 to the Justices (Penalties and Procedure) Amendment Act 1985, applies in respect of a security directed to be paid under section 83 before that commencement as if that Act had not been enacted.

PART II

TRANSITIONAL PROVISIONS CONSEQUENT UPON VARIATION OF
RATE OF DEFAULT IMPRISONMENT BY JUSTICES (PENALTIES AND
PROCEDURE) AMENDMENT ACT 1985

Warrant issued before Justices (Penalties and Procedure) Amendment Act 1985

*Justices (Penalties and Procedure) Amendment 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINE
ENFORCEMENT—*continued*

2. (1) Where, by warrant issued under section 87 or 88 (2) before the commencement of Schedule 1 to the Justices (Penalties and Procedure) Amendment Act 1985 in respect of the non-payment by a person of an amount of money, a Justice committed a person to prison, the person may be so detained after that commencement only for a period not exceeding—

- (a) a period calculated at the rate of one day for every \$50, or part thereof, of the balance owing after that commencement; or
- (b) a period that, together with any period for which the person was detained in prison before that commencement pursuant to a warrant issued for that non-payment, totals 3 months,

whichever is the shorter period.

(2) In subclause (1)—

“balance owing”, in relation to a person who, at the commencement of Schedule 1 to the Justices (Penalties and Procedure) Amendment Act 1985, has been committed to prison for non-payment of an amount of money, means the balance of that amount after deduction of—

- (a) any payment made by way of reduction of the amount; and
- (b) \$25 for any day during which the person was detained in prison by reason of that non-payment before that commencement.

Warrant to be issued after Justices (Penalties and Procedure) Amendment Act 1985

3. A Justice issuing a warrant after the commencement of Schedule 1 to the Justices (Penalties and Procedure) Amendment Act 1985, being a warrant under section 87 or 88 (2) committing a person to prison pursuant to a conviction or order made before that commencement shall, by the warrant, order the person to be imprisoned for a period calculated in accordance with section 82 (2) as at the time of issue, having regard to the amount adjudged by the conviction or order to be paid or such part thereof as is unsatisfied, instead of for the period fixed by the conviction or order.

PART III

TRANSITIONAL PROVISIONS CONSEQUENT UPON VARIATION OF
RATE OF DEFAULT IMPRISONMENT BY REGULATION

*Justices (Penalties and Procedure) Amendment 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINE
ENFORCEMENT—*continued***Interpretation**

4. In this Part—

“balance owing”, in relation to a person who, at a variation date, has been committed to prison for non-payment of an amount of money, means the balance of that amount after deduction of—

- (a) any payment made by way of reduction of the amount; and
- (b) the former amount for any day during which the person was detained in prison by reason of that non-payment before the variation date;

“former amount”, in relation to a variation date, means—

- (a) where an amount was not prescribed by regulation for the purposes of the definition of “prescribed unit” in section 82 (2D) immediately before the variation date, the amount of \$50; or
- (b) in any other case, the amount prescribed by regulation for the purposes of that definition immediately before the variation date;

“new amount”, in relation to a variation date, means the amount prescribed by regulation for the purposes of the definition of “prescribed unit” in section 82 (2D) on and from the variation date;

“variation date” means the date on and from which an amount (or another amount) is prescribed by regulation for the purposes of the definition of “prescribed unit” in section 82 (2D).

Warrant issued before regulation varying rate

5. Where, by warrant issued under section 87 or 88 (2) before a variation date in respect of the non-payment by a person of an amount of money, a Justice committed a person to prison, the person may be detained after that date pursuant to that warrant only for a period not exceeding—

- (a) a period calculated at the rate of one day for every new amount, or part thereof, of the balance owing on or after that variation date; or
- (b) a period that, together with any period for which the person was detained in prison before that date pursuant to a warrant issued for that non-payment, totals 3 months,

whichever is the shorter period.

Warrant to be issued after regulation varying rate

Justices (Penalties and Procedure) Amendment 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO FINE
ENFORCEMENT—*continued*

6. A Justice issuing a warrant on or after a variation date, being a warrant under section 87 or 88 (2) committing a person to prison pursuant to a conviction or order made before that variation date shall, by the warrant, order the person to be imprisoned for a period calculated in accordance with section 82 (2) as at the time of issue, having regard to the amount adjudged by the conviction or order to be paid or such part thereof as is unsatisfied, instead of for the period fixed by the conviction or order.

SCHEDULE 2

(Sec.5)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ATTENDANCE NOTICES

(1) Section 3 (1), definition of "Attendance notice"—

After the definition of "Accused person", insert:

"Attendance notice" means a notice authorised to be issued under section 100AB.

(2) Section 68 (b)—

After "summons", insert "or attendance notice".

(3) (a) Section 75—

After "summons" wherever occurring, insert "or attendance notice".

(b) Section 75—

Omit "in manner hereinbefore prescribed".

(c) Section 75 (b)—

Omit "hereinbefore provided", insert instead "provided by this Act".

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ATTENDANCE NOTICES—*continued*

(4) Section 75A (2)—

At the end of section 75A, insert:

- (2) In subsection (1), a reference to summonses includes—
 - (a) a reference to attendance notices; and
 - (b) a reference to a summons or summonses and an attendance notice or attendance notices.

(5) (a) Section 75B (2A)—

After section 75B (2), insert:

- (2A) Where—
 - (a) an attendance notice has been issued for an offence punishable summarily before a Justice or Justices, being an offence in respect of which a summons could have been issued under section 60 if an information had been laid under this Division for the offence;
 - (b) a copy of the attendance notice has been served on the person to whom the notice is directed; and
 - (c) the person does not appear at the time and place at which the person is required by the notice to appear,

the court before which the person is required by the notice to appear may, on having the notice tendered to it and if it is satisfied that the facts as alleged in the notice constitute such an offence and that reasonably sufficient particulars thereof are set out in the notice, thereupon make an order imposing on the defendant a penalty to be paid within such time as is specified in the order, being a penalty of an amount not exceeding the amount of the pecuniary penalty that might have been imposed had the defendant been convicted of the offence.

(b) Section 75B (3)—

Omit “charged”, insert instead “to which the information relates”.

Justices (Penalties and Procedure) Amendment 1985

SCHEDULE 2—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ATTENDANCE NOTICES—*continued*

(c) Section 75B (4)—

Omit “with the matter of an information for an”, insert instead “or (2A) with an alleged”.

(d) Section 75B (7)—

Omit the subsection, insert instead:

(7) A reference in subsection (2) (c) or (2A) (c) to a time and place includes, where the hearing of the matter has been adjourned, a reference to the time and place to which the hearing has been adjourned.

(6) Part IV, Division 3—

After Division 2 of Part IV, insert:

DIVISION 3—*Attendance notices for indictable or summary offences*

Subdivision 1—Interpretation

Interpretation

100AA. In this Division—

“prescribed member of the police force”, in relation to the issue of an attendance notice, means—

- (a) a member of the police force of or above the rank of sergeant; and
- (b) a member of the police force for the time being in charge of a police station of a lower rank, if the notice is issued at that police station.

Subdivision 2—Issue and service of attendance notices

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ATTENDANCE NOTICES—*continued***Issue of attendance notices**

100AB. Where an information may be laid before a Justice against any person—

- (a) under section 21, for an indictable offence; or
- (b) under section 52, for an offence for which the person is liable to be punished upon summary conviction,

a prescribed member of the police force may authorise the issue of a notice for the attendance of the person.

Form of attendance notice

100AC. An attendance notice shall—

- (a) be directed to the person to whom it relates;
- (b) name the person who is to be the informant for the purposes of the notice;
- (c) describe the offence to which it relates and state shortly particulars of the offence;
- (d) require the person to whom it is directed to appear at a certain time and place before a Local Court to be dealt with according to law;
- (e) state that failure to so appear may result in the arrest of the person to whom it is directed or in the matter being dealt with in the absence of that person; and
- (f) be signed by—
 - (i) the person to whom it is directed; and
 - (ii) the prescribed member of the police force who authorised its issue.

Service of attendance notice

100AD. (1) A copy of an attendance notice shall be served personally by a member of the police force upon the person to whom it is directed.

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ATTENDANCE NOTICES—*continued*

(2) A member of the police force, when serving a copy of an attendance notice on a person, shall explain to the person that failure to appear as required by the notice may result in the arrest of the person or in the matter to which the notice relates being dealt with in the absence of the person.

(3) A failure to comply with subsection (2) shall not invalidate service of a copy of an attendance notice if the notice complies with section 100AC (a)–(e).

(4) The issue of an attendance notice or the service of a copy of an attendance notice does not render unlawful the arrest, before or after the issue of the notice, of the person to whom the notice is directed for the offence to which the notice relates or for any other offence or the detention of the person pursuant to any such arrest.

Presumptions

100AE. In any proceedings it shall be presumed, in the absence of evidence to the contrary—

- (a) that the person to whom an attendance notice is directed has signed the notice, if the notice purports to have been signed by that person;
- (b) that a prescribed member of the police force authorised the issue of and signed an attendance notice, if the notice purports to have been issued under the authority of and to have been signed by a prescribed member of the police force; and
- (c) that a copy of an attendance notice has been served by a member of the police force on the person to whom the notice is directed, if the notice bears a certificate to that effect purporting—
 - (i) to specify the time and place at which the copy was so served; and

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ATTENDANCE NOTICES—*continued*

- (ii) to be signed by the member of the police force who served the notice.

*Subdivision 3—Effect of attendance notice***Attendance notice deemed to be an information**

100AF. (1) Where an attendance notice, a copy of which has been served in accordance with section 100AD, is tendered to a Justice or Justices constituting a Local Court, the notice shall be deemed to be an information laid under section 21 or 52, as the case may require, being an information which is not substantiated by the oath of the informant or a witness.

(2) Where an attendance notice is, under subsection (1), deemed to be an information—

- (a) the person to whom the notice was directed shall be deemed to be the defendant to whom the information relates; and
- (b) the person who is named in the notice as the informant for the purposes of the notice shall be deemed to be the informant for the purposes of the information.

Warrant for apprehension

100AG. (1) Whenever any person for whose appearance an attendance notice has been issued does not appear at the time and place appointed by the notice, a Justice or Justices constituting a Local Court may, upon proof of the due service of a copy of the notice upon the person at a reasonable time before the time so appointed, issue or make an order authorising the issue of a warrant for the apprehension of the person.

(2) A warrant authorised to be issued under subsection (1) may be signed by any Justice.

*Justices (Penalties and Procedure) Amendment 1985*SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ATTENDANCE NOTICES—*continued*

(3) Whenever any person is apprehended under any such warrant, the Justice or Justices before whom the person is brought shall—

(a) subject to the Bail Act 1978, commit the person—

(i) by warrant to a prison, or some lock-up or place of security; or

(ii) verbally to such safe custody as the Justice or Justices may think fit,

and order the person to be brought up at a time and place to be appointed by the Justice or Justices; and

(b) give due notice of the time and place so appointed to the person named in the attendance notice as the informant.

(4) Sections 64 and 65 apply to and in respect of a warrant issued under this section in the same way as they apply to and in respect of a warrant issued under Division 2.

(7) Section 100A (3) (a)—

After “summons”, insert “or attendance notice”.

SCHEDULE 3

(Sec.5)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

(1) Section 1—

Omit the section, insert instead:

Short title

1. This Act may be cited as the “Justices Act 1902”.

SCHEDULE 3—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(2) Section 41A—

Omit the section, insert instead:

Payment of costs by informant

41A. (1) The Justice or Justices—

- (a) when making an order discharging a defendant as to the information then under inquiry; or
- (b) when committing a defendant for trial for an indictable offence which is not identical in all respects to the indictable offence with which the defendant was charged,

may, in and by an order made by the Justice or Justices (which, in the circumstances referred to in paragraph (a), may be the same order as the order discharging the defendant) adjudge that the informant shall pay to the clerk of the court to be paid to the defendant such costs as to the Justice or Justices seem just and reasonable.

(2) The amount so allowed for costs shall in all cases be specified in the order requiring payment.

(3) Sections 82, 83, 86A, 87, 89, 89A and 90–95 apply to and in respect of orders for the payment of costs made under this section.

(3) Part IV, Division 1, Subdivision 10—

After section 51A, insert:

Subdivision 10—Procedure where indictable offences dealt with summarily

Application of Division 2 to indictable offences

51B. (1) This section applies to indictable offences disposed of summarily by a Magistrate whether with or without the consent of the defendant.

SCHEDULE 3—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(2) Without affecting the generality of section 548 or 549 of the Crimes Act 1900 or of section 4, sections 81–95 apply and shall be deemed to have always applied to and in respect of indictable offences to which this section applies as if references in those sections to informations laid under section 52 included references to informations laid under section 21.

(4) Section 66 (2)—

After “section 61”, insert “or 80AA”.

(5) Section 80AA—

Before section 81, insert:

Absent defendant not to be imprisoned

80AA. (1) A Justice or Justices shall not (except pursuant to section 82), by any conviction, order that the defendant be imprisoned unless the defendant is present at the time the order for imprisonment is made.

(2) Where a Justice or Justices convicts or convict a defendant who is not present, the Justice or Justices may issue a warrant for the apprehension of the defendant for the purpose of the defendant's being brought before a Justice or Justices for sentencing.

(6) Section 100A (1) (a)—

Omit “or section 75A”, insert instead “, 75A or 76”.

(7) Section 101 (1)—

Omit “twenty-one days”, insert instead “35 days (or such longer period as may be fixed under section 102A (1) in respect of the party)”.

SCHEDULE 3—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(8) Section 102 (1)—

Omit “twenty-eight days”, insert instead “42 days (or such longer period as may be fixed under section 102A (2) in respect of the appellant)”.

(9) Section 102A—

After section 102, insert:

Extension of periods

102A. (1) A Justice may, by order made within 35 days after the determination of any information or complaint by any Justice or Justices exercising summary jurisdiction, fix a period of more than 35 days for an application to be made under section 101 (1) by a party, in relation to that determination.

(2) A Justice may, by order made within 42 days after the determination of any information or complaint by any Justice or Justices exercising summary jurisdiction, fix a period of more than 42 days for a recognizance to be entered into under section 102 (1) by an appellant, in relation to that determination.

(3) No Justice other than a Magistrate shall exercise the power conferred by subsection (1) or (2).

(10) (a) Section 122 (1)—

After “money”, insert “(whether for costs or otherwise), every person who has, by the order of a Justice or Justices, been adjudged to pay any costs of a defendant”.

(b) Section 122 (1A)—

Omit “against”, insert instead “affecting”.

(c) Section 122 (1C)—

Omit “or other party”, insert instead “, defendant or other party, as the case may require”.

*Justices (Penalties and Procedure) Amendment 1985*SCHEDULE 3—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(11) Section 147—

Omit the section.

(12) Second Schedule—

After clause 1, insert:

Orders under section 41A

1A. This Act, as in force immediately before the commencement of Schedule 3 (2) to the Justices (Penalties and Procedure) Amendment Act 1985, applies in respect of an order made under section 41A before that commencement as if that Act had not been enacted.

SCHEDULE 4

(Sec.6)

SAVINGS AND TRANSITIONAL PROVISIONS

Savings

1. (1) An order made under section 41A of the Principal Act before the commencement of Schedule 3 (2) shall have the same force and effect as it would have had if this Act had not been enacted.

(2) Sections 101 and 102 of the Principal Act, as in force immediately before the commencement of Schedule 3 (7), (8) and (9), apply to and in respect of a determination made before that commencement by any Justice or Justices in the exercise of summary jurisdiction as if this Act had not been enacted.

Transitional provisions

2. (1) The Principal Act, as amended by Schedule 2, applies to and in respect of an indictable offence or an offence for which a person is liable to be punished upon summary conviction committed before the commencement of that Schedule in the same way as that Act, as so amended, applies to and in respect of any such offence committed after that commencement.

Justices (Penalties and Procedure) Amendment 1985

SCHEDULE 4—*continued*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

(2) Section 41A of the Principal Act, as amended by Schedule 3 (2), applies to and in respect of a defendant committed for trial on or after the commencement of that item for an indictable offence which is not identical in all respects to an indictable offence with which the defendant was charged before that commencement.

(3) Section 100A of the Principal Act, as amended by Schedule 3 (6), applies to and in respect of a conviction made before the commencement of that item upon the hearing and determination of a case under section 76 of the Principal Act in the same way as section 100A of that Act, as so amended, applies to and in respect of a conviction so made after that commencement.

(4) Sections 101, 102 and 102A of the Principal Act, as amended by Schedule 3 (7), (8) and (9), apply only to and in respect of a determination made by a Justice or Justices after the commencement of those items.

(5) Section 122 of the Principal Act, as amended by Schedule 3 (10), applies to and in respect of an order for the payment of costs of a defendant made by a Justice or Justices before the commencement of that item in the same way as that section, as so amended, applies to and in respect of any such order made after that commencement.