

**JUSTICES (PENALTY DEFAULTS) AMENDMENT BILL  
1987**

NEW SOUTH WALES



**EXPLANATORY NOTE**

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

This Bill is cognate with the Motor Traffic (Penalty Defaults) Amendment Bill 1987.

The object of this Bill is to amend the Justices Act 1902 to allow for the enforcement, otherwise than by imprisonment, of penalties imposed by an infringement notice or by a Local Court in relation to certain offences. The offences concerned are mainly driving or traffic offences.

Enforcement of penalties for these offences will at first instance be attempted by the Commissioner for Motor Transport under new powers vested in the Commissioner by the proposed Motor Traffic (Penalty Defaults) Amendment Act 1987 and the proposed Transport (Penalty Defaults) Amendment Act 1987.

Provision for enforcement by imprisonment is, however, retained in the Justices Act for those cases in which the Commissioner's enforcement procedures (involving cancellation of drivers' or riders' licences and vehicle registrations) cannot be brought to bear on a particular defaulter.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on 1 January 1988.

Clause 3 gives effect to Schedule 1 which amends the Principal Act.

Schedule 1 (1) amends section 82 (2) of the Principal Act so that a court imposing a fine on a person convicted of an offence to which the Commissioner for Motor Transport's enforcement procedures apply need not, in the conviction, specify a period of imprisonment to be served by the defendant in default of payment of the fine and any costs.

Schedule 1 (2) amends section 87 of the Principal Act as a consequence of the amendment made by Schedule 1 (1).

*Justices (Penalty Defaults) Amendment 1987*

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Schedule 1 (3) inserts a new section 87A into the Principal Act. It provides for the issue of a warrant of commitment to prison for penalty defaulters in the same way as section 87 of the Principal Act, except that the period of imprisonment is to be specified in the warrant (since it will not, as with offences to which section 87 applies, have been specified in the conviction). It is intended that the warrant under the new section will be issued only where recourse cannot be had to the enforcement procedures available to the Commissioner for Motor Transport.

Schedule 1 (4) inserts a new Division 4 into Part IVB of the Principal Act which makes provision for due process of any valid complaint by an alleged offender that he or she had no reasonable opportunity of a proper hearing in relation to the alleged offence. The new provisions may be explained as follows:

Section 100Y allows a person whose licence, or the registration of whose vehicle, has been cancelled under the Commissioner for Motor Transport's new cancellation powers to approach a Local Court.

Section 100Z allows the Minister to refer to a Local Court any offence that resulted in cancellation of a licence or vehicle registration, if the Minister is of the opinion that some question or doubt has arisen in relation to liability in respect of the offence.

Section 100ZA allows the Clerk of the Local Court to deal with applications under section 100Y and references from the Minister under section 100Z. If satisfied that there are proper grounds for doing so, the Clerk will require the Commissioner of Police to send particulars amounting to an information in relation to the offence concerned.

Section 100ZB applies the provisions of section 100T of the Principal Act to afford a right of appeal against any unfavourable decision of the Clerk of a Court under section 100ZA. The appeal is to a Justice at the Court.

Section 100ZC applies the provisions of section 100TA of the Principal Act to allow postal service of notices for the purposes of the new provisions.

Section 100ZD enables a statement of particulars sent under section 100ZA to be regarded as an information laid so that proceedings may be taken in a Local Court for an offence which has been thought proper, under section 100ZA or 100ZB, to be brought before the Local Court.

Section 100ZE provides for restoration of a cancelled licence or registration, pending a court hearing of the offence that resulted in the cancellation.

Section 100ZF allows a number of offences alleged to have been committed by the same person to be dealt with under the new Division at the same time.

Section 100ZG allows a penalty to be imposed by a Court hearing proceedings under the new Division in the event that the alleged offender fails to appear.

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**JUSTICES (PENALTY DEFAULTS) AMENDMENT BILL  
1987**

NEW SOUTH WALES

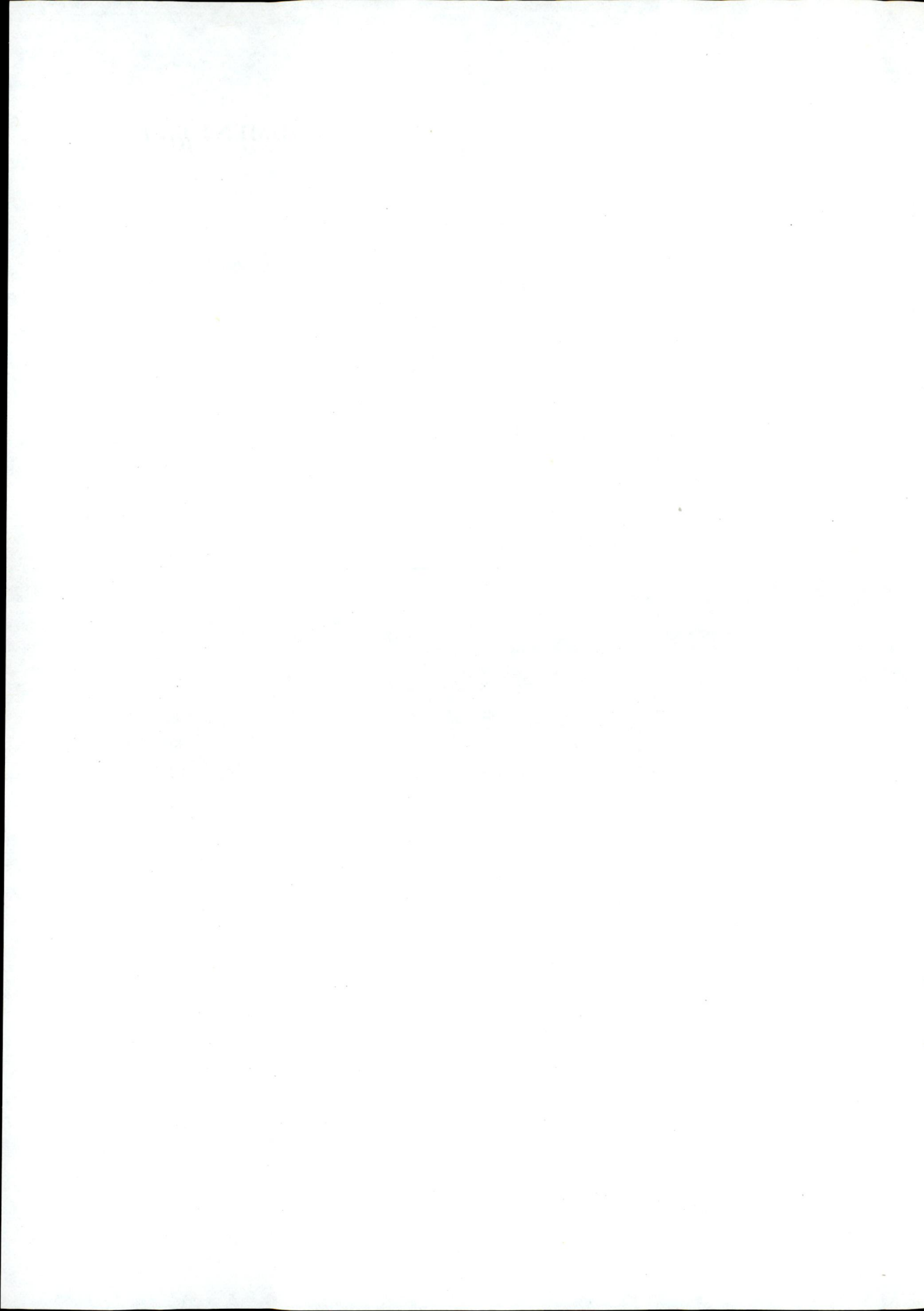


**TABLE OF PROVISIONS**

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

SCHEDULE 1—AMENDMENTS

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**JUSTICES (PENALTY DEFAULTS) AMENDMENT BILL  
1987**

NEW SOUTH WALES



No. , 1987

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**A BILL FOR**

An Act to amend the Justices Act 1902 as a consequence of the enactment of the Motor Traffic (Penalty Defaults) Amendment Act 1987 and the Transport (Penalty Defaults) Amendment Act 1987.

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*Justices (Penalty Defaults) Amendment 1987***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Justices (Penalty Defaults) Amendment Act 1987.

**5 Commencement**

2. This Act shall commence on 1 January 1988.

**Amendment of Act No. 27, 1902**

3. The Justices Act 1902 is amended as set out in Schedule 1.

**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

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(1) Section 82 (**Abolition in all cases of recovery of fine etc. by levy and distress**)—

Section 82 (2)—

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Omit “except where the conviction or order is made against a corporate body, therein and thereby”, insert instead:

except—

(a) in the case of a conviction or order made against a corporate body; or

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(b) in the case of a conviction or order to which section 87A applies,

in and by the conviction or order

(2) Section 87 (**Warrant of commitment for non-payment**)—

Section 87 (a)—

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After “order”, insert “(not being a conviction or order to which section 87A applies)”.

(3) Section 87A—

After section 87, insert:

**Warrant of commitment in respect of certain traffic and other offences**

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87A. (1) This section applies to—

(a) a conviction of a person (whether a natural person or a corporate body) for an offence under the Motor Traffic Act 1909 (or an offence prescribed for the purposes of section 18B of that Act) or an offence under the Transport Act 1930 (or an offence prescribed for the purposes of section 265 of that Act); or

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*Justices (Penalty Defaults) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

(b) any order ancillary to such a conviction,

by which it is adjudged that any fine or penalty, or any sum of money, or costs, shall be paid.

5 (2) In default of payment, in accordance with the terms of the conviction or order, of an amount adjudged payable by a conviction or order to which this section applies, an authorised justice may, by warrant, commit the convicted person to prison to be kept there for a period specified in the warrant unless the person sooner pays the amount together with such further sum for 10 the costs of enforcing the conviction or order as seems just and reasonable to the authorised justice.

(3) The period to be specified in the warrant shall be calculated in the same way as a period of imprisonment is calculated in relation to a conviction or order to which section 82 (2) applies.

15 (4) Part IVB, Division 4—

After Division 3, insert:

**Division 4—Bringing before court of matters dealt with under Motor Traffic Act 1909 or Transport Act 1930**

**Application to have offence dealt with by court**

20 100Y. (1) If—

(a) a person's licence, or the registration of a person's vehicle, has been cancelled under section 18C of the Motor Traffic Act 1909, or under regulations made for the purposes of section 265 (3) of the Transport Act 1930, as a result of 25 non-payment of the penalty imposed by a penalty notice for a particular offence; and

(b) the person desires to have the offence dealt with by a court, the person may make an application to have the matter dealt with by a Local Court.

30 (2) The application shall be made in writing, within 12 months after the cancellation of the licence or registration, and may be lodged with the Clerk of any Local Court.

35 (3) In the application, the applicant (having regard to the provisions of section 100ZA) shall set out the grounds on which the applicant relies.

**Reference of matter by Minister**

100Z. If—

*Justices (Penalty Defaults) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

5 (a) a person's licence, or the registration of a person's vehicle, has been cancelled under section 18c of the Motor Traffic Act 1909, or under regulations made for the purposes of section 265 (3) of the Transport Act 1930, as a result of non-payment of the penalty imposed by a penalty notice for a particular offence; and

(b) the Minister, on application made by the person at any time, is satisfied that any question or doubt has arisen as to the liability of the person for the penalty,

10 the Minister may refer the matter to the Clerk of any Local Court.

**Consideration of applications**

15 100ZA. (1) An application under section 100y, or a reference from the Minister under section 100z, in relation to an offence shall be dealt with by the Clerk of the Local Court nearest to the place where the offence was allegedly committed.

(2) The Clerk, if satisfied that—

20 (a) a courtesy letter in relation to the offence was not received by the person concerned before the expiry of the time within which the person might have taken action under section 100j (4) to have the offence dealt with by a court;

(b) the person was otherwise hindered by accident, illness, misadventure or other cause from taking that action; or

25 (c) having regard to the circumstances of the case, there is other just cause for having the offence dealt with by a Local Court,

may issue to—

(d) the person concerned; and

(e) the Commissioner of Police and any other interested parties,

30 a notification that the offence is to be dealt with by the Local Court.

35 (3) The Commissioner of Police, on being so notified by the Clerk of the Local Court, shall cause a statement of particulars of the offence to be sent to the Local Court at which the matter is to be heard.

(4) If not of the opinion that a particular offence the subject of an application under section 100y or a reference under section 100z should be dealt with by the Court, the Clerk of the Local Court shall accordingly notify all parties interested or concerned.



*Justices (Penalty Defaults) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued***Appeal**

5 100ZB. (1) The provisions of section 100T apply to the decision of the Clerk of a Local Court under section 100ZA in the same way as they apply to the decision of such a Clerk under section 100S, and so apply as if the reference in section 100T (6) to the annulment of an enforcement order were a reference to a determination that the relevant offence should be dealt with by the Local Court.

10 (2) A Justice acting in pursuance of this section has the same powers, discretions and duties as the Clerk of the Local Court under section 100ZA.

**Service of notices**

15 100ZC. The provisions of section 100TA apply to any notice required to be given under this Division, and so apply as if a reference to an applicant were a reference to a person—

- (a) making an application under section 100Y; or
- (b) the subject of a reference under section 100Z.

**Procedure after matter referred to Local Court**

20 100ZD. (1) If an offence is to be dealt with by a Local Court pursuant to the decision, in accordance with this Division, of the Clerk of the Court or a Justice at that Court—

- (a) the statement of particulars furnished under section 100ZA (3) shall be deemed to be an information laid by the person who furnished it; and
- 25 (b) subject to any Act, a Justice may hear and determine the matter of the information.

(2) A person who is deemed by this section to have laid an information shall be regarded as an informant.

30 (3) Section 56 does not apply to a statement deemed by this section to be an information.

**Interim restoration of licence by order**

35 100ZE. (1) If the person for whose benefit a notification under section 100ZA or 100ZB, stating that an offence allegedly committed by that person is to be dealt with by a Local Court, has been issued produces the notification at a district motor registry, the proper officer at the registry shall issue the person with a licence or certificate of registration, as the case requires, by way of restoration of a licence or registration cancelled in respect of the alleged offence.

SCHEDULE 1—AMENDMENTS—*continued*

(2) A licence or registration so restored has effect, subject to the Motor Traffic Act 1909 and the Transport Act 1930, until the date on which it would have expired if it had not been cancelled.

**Multiplicity of matters**

5           100ZF. Any order, notification or process that may be made, given or issued under this Division may be validly made, given or issued in relation to one offence or more than one offence, but section 57 extends to apply to a statement deemed by section 100ZD to be an information.

10           **Ex parte procedure**

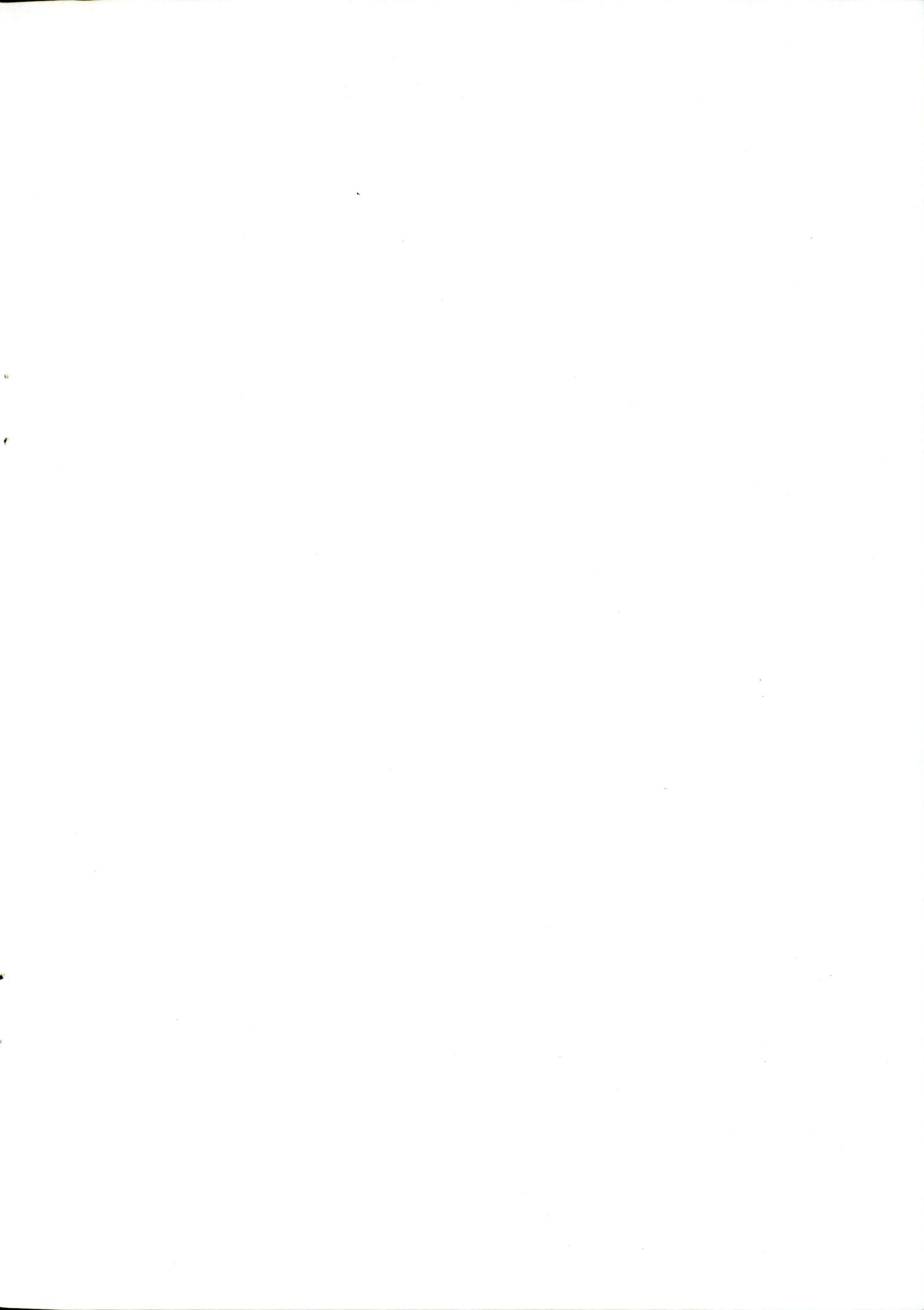
100ZG. (1) If—

- 15           (a) an offence is to be dealt with by a Local Court pursuant to the decision, in accordance with this Division, of the Clerk of the Court or a Justice;
- (b) by the operation of section 100ZD, an information is deemed to have been laid in respect of the offence;
- (c) notice of the hearing of the matter of the information has been given to the defendant; and
- 20           (d) the defendant does not appear at the time and place fixed for the hearing,

the Court before which the matter of the information comes for hearing may, if it is satisfied that—

- (e) the facts as alleged in the information constitute the alleged offence; and
- 25           (f) reasonably sufficient particulars of those facts are set out in the information or in an annexure to the information,
- 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
- 30           convicted of the offence.

(2) Subsections (3)–(11) of section 75B apply to proceedings at a hearing described in this section in the same way as they apply to proceedings conducted in accordance with that section.





**JUSTICES (PENALTY DEFAULTS) AMENDMENT ACT  
1987 No. 253**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

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

**SCHEDULE 1—AMENDMENTS**

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**JUSTICES (PENALTY DEFAULTS) AMENDMENT ACT 1987 No. 253**

**NEW SOUTH WALES**



**Act No. 253, 1987**

An Act to amend the Justices Act 1902 as a consequence of the enactment of the Motor Traffic (Penalty Defaults) Amendment Act 1987 and the Transport (Penalty Defaults) Amendment Act 1987. [Assented to 16 December 1987]

*Justices (Penalty Defaults) Amendment 1987*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Justices (Penalty Defaults) Amendment Act 1987.

**Commencement**

2. This Act shall commence on 1 January 1988.

**Amendment of Act No. 27, 1902**

3. The Justices Act 1902 is amended as set out in Schedule 1.

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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

(1) Section 82 (**Abolition in all cases of recovery of fine etc. by levy and distress**)—

Section 82 (2)—

Omit “except where the conviction or order is made against a corporate body, therein and thereby”, insert instead:

except—

(a) in the case of a conviction or order made against a corporate body; or

(b) in the case of a conviction or order to which section 87A applies,

in and by the conviction or order

(2) Section 87 (**Warrant of commitment for non-payment**)—

Section 87 (a)—

After “order”, insert “(not being a conviction or order to which section 87A applies)”.

(3) Section 87A—

After section 87, insert:

**Warrant of commitment in respect of certain traffic and other offences**

87A. (1) This section applies to—

(a) a conviction of a person (whether a natural person or a corporate body) for an offence under the Motor Traffic Act 1909 (or an offence prescribed for the purposes of section 18B of that Act) or an offence under the Transport Act 1930 (or an offence prescribed for the purposes of section 265 of that Act); or



**SCHEDULE 1—AMENDMENTS—*continued***

(b) any order ancillary to such a conviction, by which it is adjudged that any fine or penalty, or any sum of money, or costs, shall be paid.

(2) In default of payment, in accordance with the terms of the conviction or order, of an amount adjudged payable by a conviction or order to which this section applies, an authorised justice may, by warrant, commit the convicted person to prison to be kept there for a period specified in the warrant 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.

(3) The period to be specified in the warrant shall be calculated in the same way as a period of imprisonment is calculated in relation to a conviction or order to which section 82 (2) applies.

**(4) Part IVB, Division 4—**

After Division 3, insert:

**Division 4—Bringing before court of matters dealt with under Motor Traffic Act 1909 or Transport Act 1930****Application to have offence dealt with by court**

100Y. (1) If—

- (a) a person's licence, or the registration of a person's vehicle, has been cancelled under section 18C of the Motor Traffic Act 1909, or under regulations made for the purposes of section 265 (3) of the Transport Act 1930, as a result of non-payment of the penalty imposed by a penalty notice for a particular offence; and
  - (b) the person desires to have the offence dealt with by a court,
- the person may make an application to have the matter dealt with by a Local Court.

(2) The application shall be made in writing, within 12 months after the cancellation of the licence or registration, and may be lodged with the Clerk of any Local Court.

(3) In the application, the applicant (having regard to the provisions of section 100ZA) shall set out the grounds on which the applicant relies.

**Reference of matter by Minister**

100Z. If—

*Justices (Penalty Defaults) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

- (a) a person's licence, or the registration of a person's vehicle, has been cancelled under section 18c of the Motor Traffic Act 1909, or under regulations made for the purposes of section 265 (3) of the Transport Act 1930, as a result of non-payment of the penalty imposed by a penalty notice for a particular offence; and
- (b) the Minister, on application made by the person at any time, is satisfied that any question or doubt has arisen as to the liability of the person for the penalty,

the Minister may refer the matter to the Clerk of any Local Court.

**Consideration of applications**

100ZA. (1) An application under section 100Y, or a reference from the Minister under section 100Z, in relation to an offence shall be dealt with by the Clerk of the Local Court nearest to the place where the offence was allegedly committed.

(2) The Clerk, if satisfied that—

- (a) a courtesy letter in relation to the offence was not received by the person concerned before the expiry of the time within which the person might have taken action under section 100J (4) to have the offence dealt with by a court;
- (b) the person was otherwise hindered by accident, illness, misadventure or other cause from taking that action; or
- (c) having regard to the circumstances of the case, there is other just cause for having the offence dealt with by a Local Court,

may issue to—

- (d) the person concerned; and
- (e) the Commissioner of Police and any other interested parties,

a notification that the offence is to be dealt with by the Local Court.

(3) The Commissioner of Police, on being so notified by the Clerk of the Local Court, shall cause a statement of particulars of the offence to be sent to the Local Court at which the matter is to be heard.

(4) If not of the opinion that a particular offence the subject of an application under section 100Y or a reference under section 100Z should be dealt with by the Court, the Clerk of the Local Court shall accordingly notify all parties interested or concerned.

*Justices (Penalty Defaults) Amendment 1987***SCHEDULE 1—AMENDMENTS—*continued*****Appeal**

100ZB. (1) The provisions of section 100T apply to the decision of the Clerk of a Local Court under section 100ZA in the same way as they apply to the decision of such a Clerk under section 100S, and so apply as if the reference in section 100T (6) to the annulment of an enforcement order were a reference to a determination that the relevant offence should be dealt with by the Local Court.

(2) A Justice acting in pursuance of this section has the same powers, discretions and duties as the Clerk of the Local Court under section 100ZA.

**Service of notices**

100ZC. The provisions of section 100TA apply to any notice required to be given under this Division, and so apply as if a reference to an applicant were a reference to a person—

- (a) making an application under section 100Y; or
- (b) the subject of a reference under section 100Z.

**Procedure after matter referred to Local Court**

100ZD. (1) If an offence is to be dealt with by a Local Court pursuant to the decision, in accordance with this Division, of the Clerk of the Court or a Justice at that Court—

- (a) the statement of particulars furnished under section 100ZA (3) shall be deemed to be an information laid by the person who furnished it; and
- (b) subject to any Act, a Justice may hear and determine the matter of the information.

(2) A person who is deemed by this section to have laid an information shall be regarded as an informant.

(3) Section 56 does not apply to a statement deemed by this section to be an information.

**Interim restoration of licence by order**

100ZE. (1) If the person for whose benefit a notification under section 100ZA or 100ZB, stating that an offence allegedly committed by that person is to be dealt with by a Local Court, has been issued produces the notification at a district motor registry, the proper officer at the registry shall issue the person

*Justices (Penalty Defaults) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

with a licence or certificate of registration, as the case requires, by way of restoration of a licence or registration cancelled in respect of the alleged offence.

(2) A licence or registration so restored has effect, subject to the Motor Traffic Act 1909 and the Transport Act 1930, until the date on which it would have expired if it had not been cancelled.

**Multiplicity of matters**

100ZF. Any order, notification or process that may be made, given or issued under this Division may be validly made, given or issued in relation to one offence or more than one offence, but section 57 extends to apply to a statement deemed by section 100ZD to be an information.

**Ex parte procedure**

100ZG. (1) If—

- (a) an offence is to be dealt with by a Local Court pursuant to the decision, in accordance with this Division, of the Clerk of the Court or a Justice;
- (b) by the operation of section 100ZD, an information is deemed to have been laid in respect of the offence;
- (c) notice of the hearing of the matter of the information has been given to the defendant; and
- (d) the defendant does not appear at the time and place fixed for the hearing,

the Court before which the matter of the information comes for hearing may, if it is satisfied that—

- (e) the facts as alleged in the information constitute the alleged offence; and
- (f) reasonably sufficient particulars of those facts are set out in the information or in an annexure to the information,

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.

*Justices (Penalty Defaults) Amendment 1987*

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SCHEDULE 1—AMENDMENTS—*continued*

(2) Subsections (3)–(11) of section 75B apply to proceedings at a hearing described in this section in the same way as they apply to proceedings conducted in accordance with that section.



