

**MISCELLANEOUS ACTS (FINE DEFAULT) 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 Community Service Orders (Fine Default) Amendment Bill 1987.

The object of this Bill is to amend certain Acts as a consequence of the enactment of the proposed Community Service Orders (Fine Default) Amendment Act 1987 and the proposed Children (Community Service Orders) (Fine Default) Amendment Act 1987.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a proclaimed day or days.

Clause 3 gives effect to the Schedule of amendments.

Clause 4 provides for the construction of references to certain provisions of the Justices Act 1902 amended by the proposed Act. The clause also provides that section 91A of the Justices Act 1902, as amended by the proposed Act, does not apply to a warrant to commit a person to prison which was issued before the commencement of the proposed section.

Schedule 1 contains amendments to certain Acts. The Acts amended and the effect of the amendments are as follows:

Children (Criminal Proceedings) Act 1987

Section 23 (Detention in default of payment of fines etc.) is omitted to remove the provision that an order of a court imposing a fine on a person under the age of 18 becomes, in default of payment of the fine, an order for committal to a detention centre.

Justices Act 1902

Section 80AA is amended as a consequence of the amendment made to section 82.

Miscellaneous Acts (Fine Default) Amendment 1987

Section 82 is amended to remove the requirement that a Justice make a default order at the time a fine is imposed specifying that the offender will be imprisoned for non-payment.

Section 87 is amended to provide that a warrant issued for non-payment of a fine must specify the term of imprisonment to be served by the offender.

Section 87A (Warrant of commitment in respect of certain traffic and other offences) is omitted as a consequence of the amendments made to sections 82 and 87.

Section 90A is amended as a consequence of the amendments made to sections 82 and 87.

A new section 91A is inserted which provides that—

- (a) terms of imprisonment to which persons are committed by a default warrant are to be served (with respect to one another) consecutively; and
- (b) any such terms, however, may be served concurrently with imprisonment resulting otherwise than from a default warrant.

Sections 100N and 131 are amended as a consequence of the amendment made to section 82.

Periodic Detention of Prisoners Act 1981

Section 34 is amended to enable regulations to be made by the Governor-in-Council with respect to the preparation and contents of reports by governors of prisons under proposed section 26A (Community service work in default of payment of fine) of the Community Service Orders Act 1979.

MISCELLANEOUS ACTS (FINE DEFAULT) AMENDMENT BILL 1987

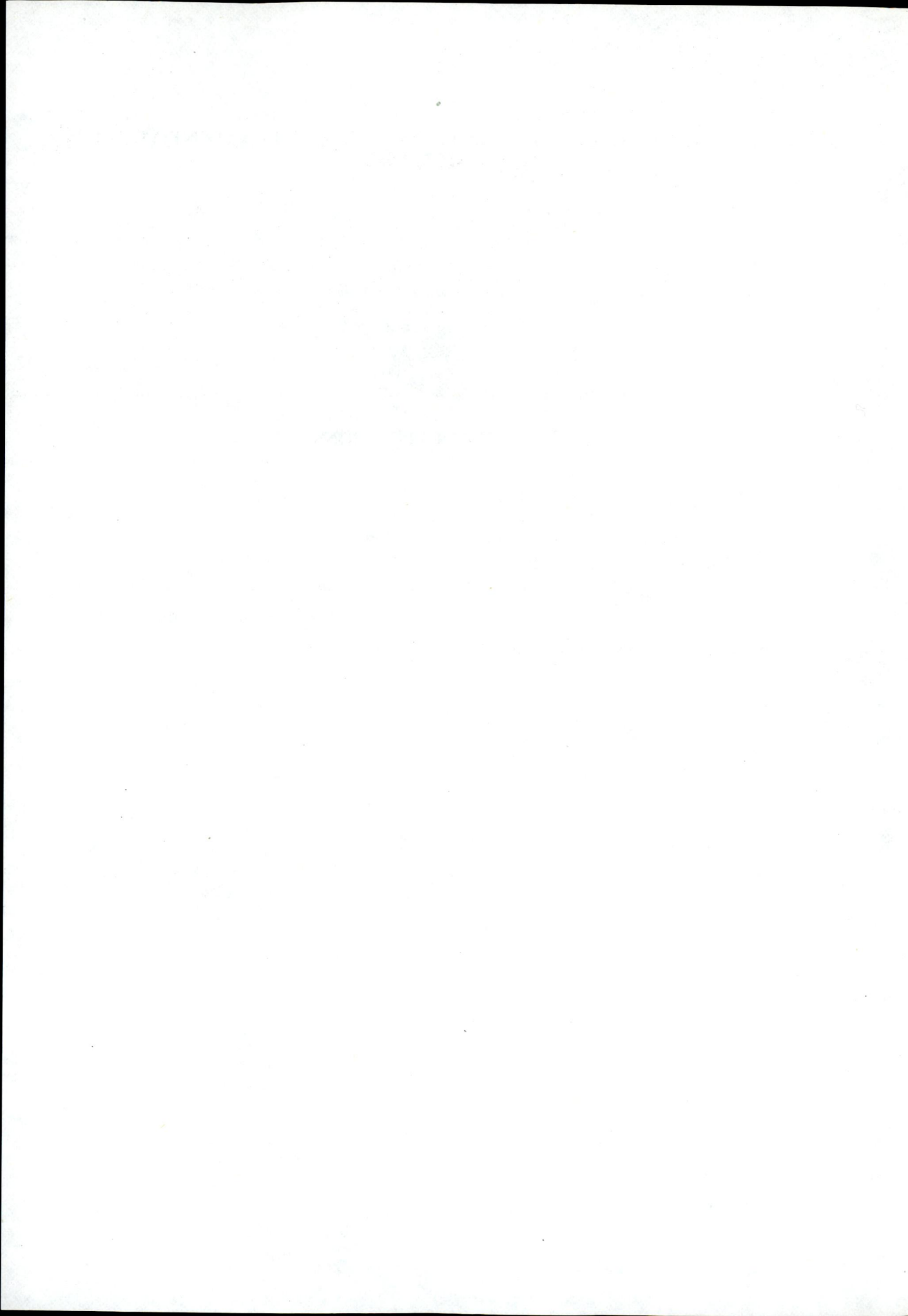
NEW SOUTH WALES



TABLE OF PROVISIONS

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SCHEDULE 1—AMENDMENTS



**MISCELLANEOUS ACTS (FINE DEFAULT) AMENDMENT
BILL 1987**

NEW SOUTH WALES



No. , 1987

A BILL FOR

An Act to amend certain Acts as a consequence of the enactment of the Community Service Orders (Fine Default) Amendment Act 1987 and the Children (Community Service Orders) (Fine Default) Amendment Act 1987.

Miscellaneous Acts (Fine Default) Amendment 1987

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Miscellaneous Acts (Fine Default) Amendment Act 1987.

5 Commencement

2. This Act shall commence on a day or days to be appointed by proclamation.

Amendments

3. Each Act specified in Schedule 1 is amended as set out in that
10 Schedule.

Savings and transitional provisions

4. (1) A reference made before the commencement of this section in any Act, statutory instrument or other document to the provisions of section 82 of the Justices Act 1902, in so far as the reference has the effect of applying
15 or precluding the application of provisions of that section relating to—

(a) the imprisonment of a person for a failure to pay any fine, penalty, costs or other amount of money; or

(b) the manner of calculating a term of imprisonment,

shall be read as a reference to the provisions of section 87 of that Act, as
20 amended by this Act.

(2) Section 91A of the Justices Act 1902, as amended by this Act, does not apply to or in respect of a warrant issued before the commencement of that section.

SCHEDULE 1—AMENDMENTS

25 (Sec. 3)

Children (Criminal Proceedings) Act 1987 No. 55—

Section 23 (Detention in default of payment of fines etc.)—

Omit the section.

Justices Act 1902 No. 27—

30 (1) Section 80AA (Absent defendant not to be imprisoned)—

Section 80AA (1)—

Omit "(except pursuant to section 82)".

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

Section 82 (2), (2D)—

35 Omit the subsections.

*Miscellaneous Acts (Fine Default) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*(3) Section 87 (**Warrant of commitment for non-payment**)—

(a) Section 87 (a)—

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

(b) Section 87—

5 Omit “conviction or order unless”, insert instead “warrant for a period calculated in accordance with subsection (2) unless”.

(c) Section 87 (2)–(4)—

At the end of section 87, insert:

(2) Where—

- 10 (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
- 15 (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.

(3) 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.

25 (4) A warrant under this section committing a person to prison for non-payment of an amount adjudged by a conviction or order to be paid is revoked on the making of a community service order under section 26B of the Community Service Orders Act 1979 requiring the person to perform community service work in relation to the conviction or order.

(5) A warrant under this section shall not be issued—

- (a) in relation to a conviction or order with respect to—
- 30 (i) an offence under the Motor Traffic Act 1909 or an offence prescribed for the purposes of section 18B of that Act; or
- (ii) an offence under any prescribed provision of an Act or a statutory instrument,

unless the authorised justice has been otherwise notified in accordance with the regulations;

35 (b) in relation to a conviction or order in respect of which a community service order has been made under Part 3 of the Community Service Orders Act 1979, except in accordance with section 26K (6) of that Act;

(c) in relation to a conviction or order made against a person to whom the Children (Community Service Orders) Act 1987 applies;

40 (d) in relation to an enforcement order made against a person—

- (i) who was under the age of 18 years at the time the alleged offence to which the order relates was committed; and

*Miscellaneous Acts (Fine Default) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

(ii) who was under the age of 21 years at the time the order was made, under Division 2 of Part IVB; or

(e) in such circumstances as may be prescribed for the purposes of this subsection.

5 (4) Section 87A (**Warrant of commitment in respect of certain traffic and other offences**)—

Omit the section.

(5) Section 90A (**Warrant where part payment made**)—

10 Omit “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”, insert instead “section 87 (2), having regard to the unsatisfied balance”.

(6) Section 91A—

After section 91, insert:

Imprisonment under several default warrants

15 91A. (1) If, by two or more warrants under section 87, a person is committed to prison for two or more terms of imprisonment, the terms shall be served consecutively, not concurrently.

20 (2) A term of imprisonment for which a person is committed by a warrant under section 87 (or any two or more of such terms, consecutively) may be served concurrently with any imprisonment (including any term of imprisonment by way of periodic detention) of the person arising otherwise than from committal by such a warrant.

(3) In so far as subsection (2) applies to a person—

(a) serving a term of imprisonment by way of periodic detention; and

25 (b) concurrently serving a term of imprisonment to which the person was committed by a warrant under section 87,

the warrant shall, except as provided by subsection (4), be deemed—

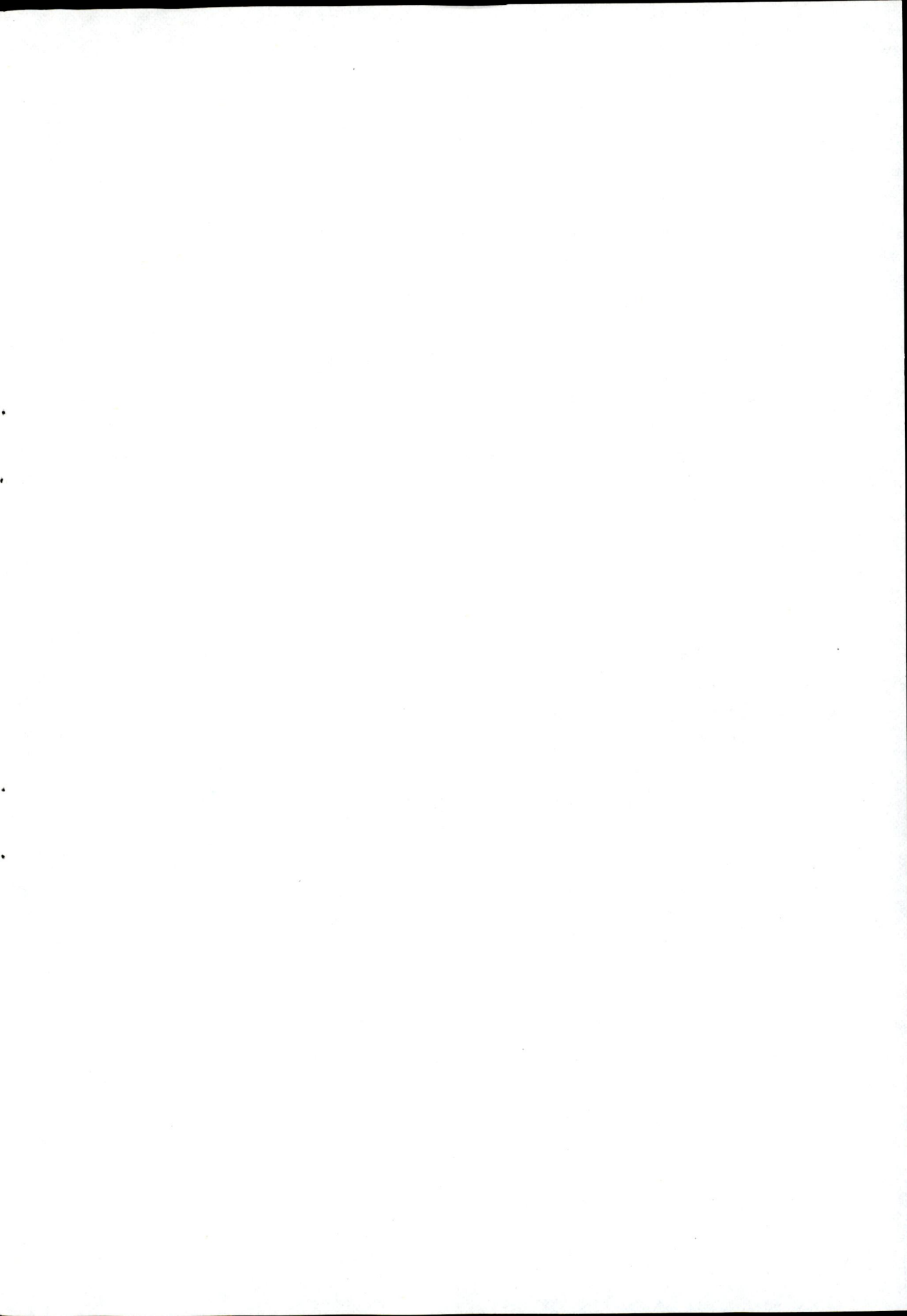
(c) to authorise the release, at the end of each period of the periodic detention, of the person to whom the warrant applies; and

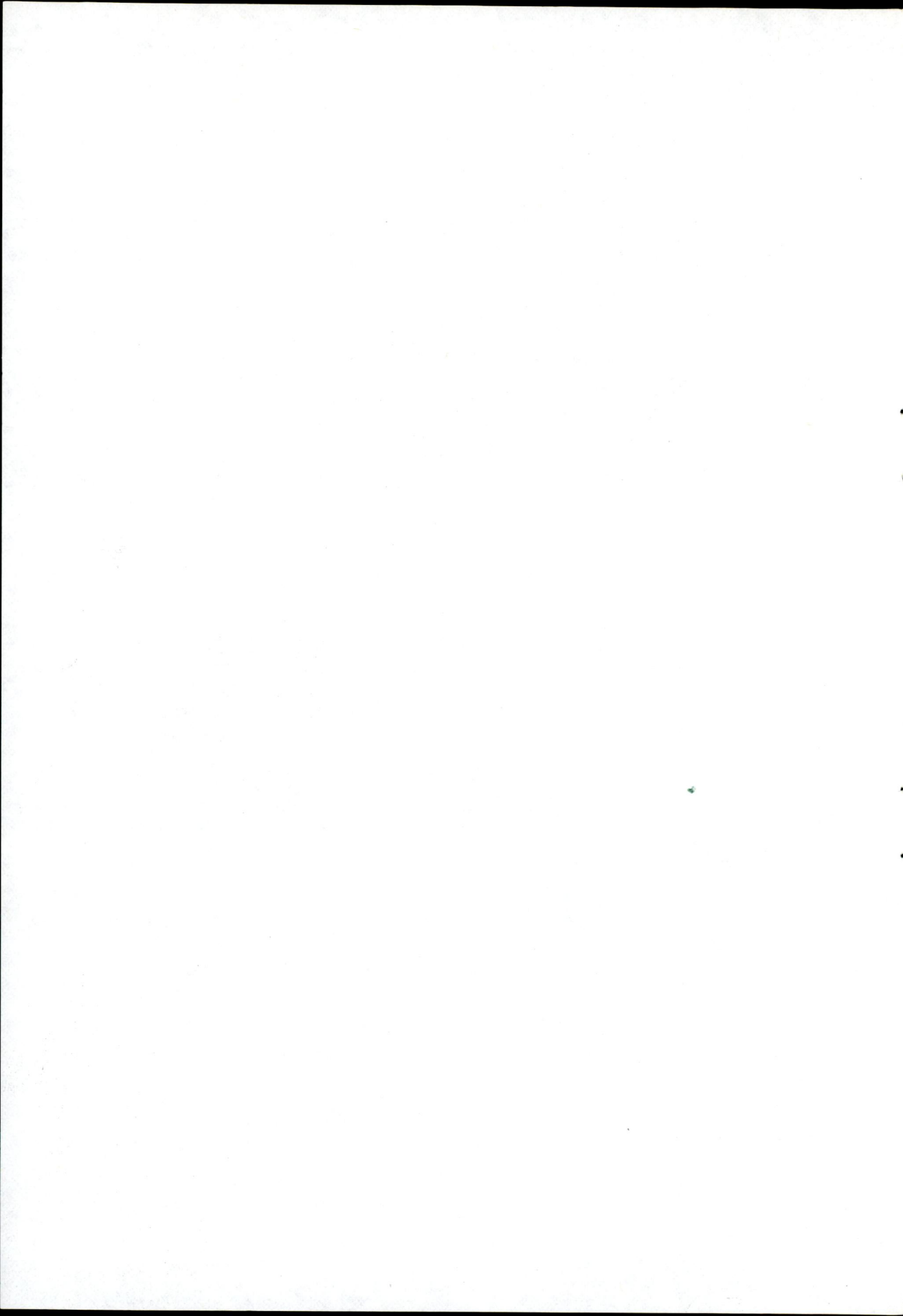
30 (d) to authorise the re-committal of the person to prison at the commencement of each such period,

until those periods of committal in the aggregate amount to a period equal to the period for which the warrant was expressed to commit the person to prison.

*Miscellaneous Acts (Fine Default) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

- (4) If, at the end of a period of imprisonment served by a person otherwise than by way of periodic detention, the whole of the term of imprisonment to which the person was committed by a warrant under section 87 has not been served, the warrant shall be deemed to commit the person to prison for the remainder of the term.
- 5
- (7) Section 100N (**Default imprisonment**)—
- (a) Section 100N (1)—
Omit “section 82”, insert instead “section 87”.
- (b) Section 100N (2)—
10 Omit the subsection.
- (c) Section 100N (3)—
Omit “section 82 (2)”, insert instead “section 87”.
- (8) Section 131 (**Recovery of costs of appeal**)—
- 15 Section 131 (1) (c)—
Omit “subsection (2) of section 82”, insert instead “section 87 (2)”.
- Periodic Detention of Prisoners Act 1981 No. 18—**
- Section 34 (**Regulations**)—
- (a) Section 34 (1) (k)—
Omit “and” where secondly occurring.
- 20 (b) Section 34 (1) (l), (m)—
At the end of section 34 (1) (l), insert:
; and
(m) the preparation and contents of reports by governors of prisons for the purposes of section 26A (2) of the Community Service Orders Act 1979.





**MISCELLANEOUS ACTS (FINE DEFAULT) AMENDMENT
ACT 1987 No. 266**

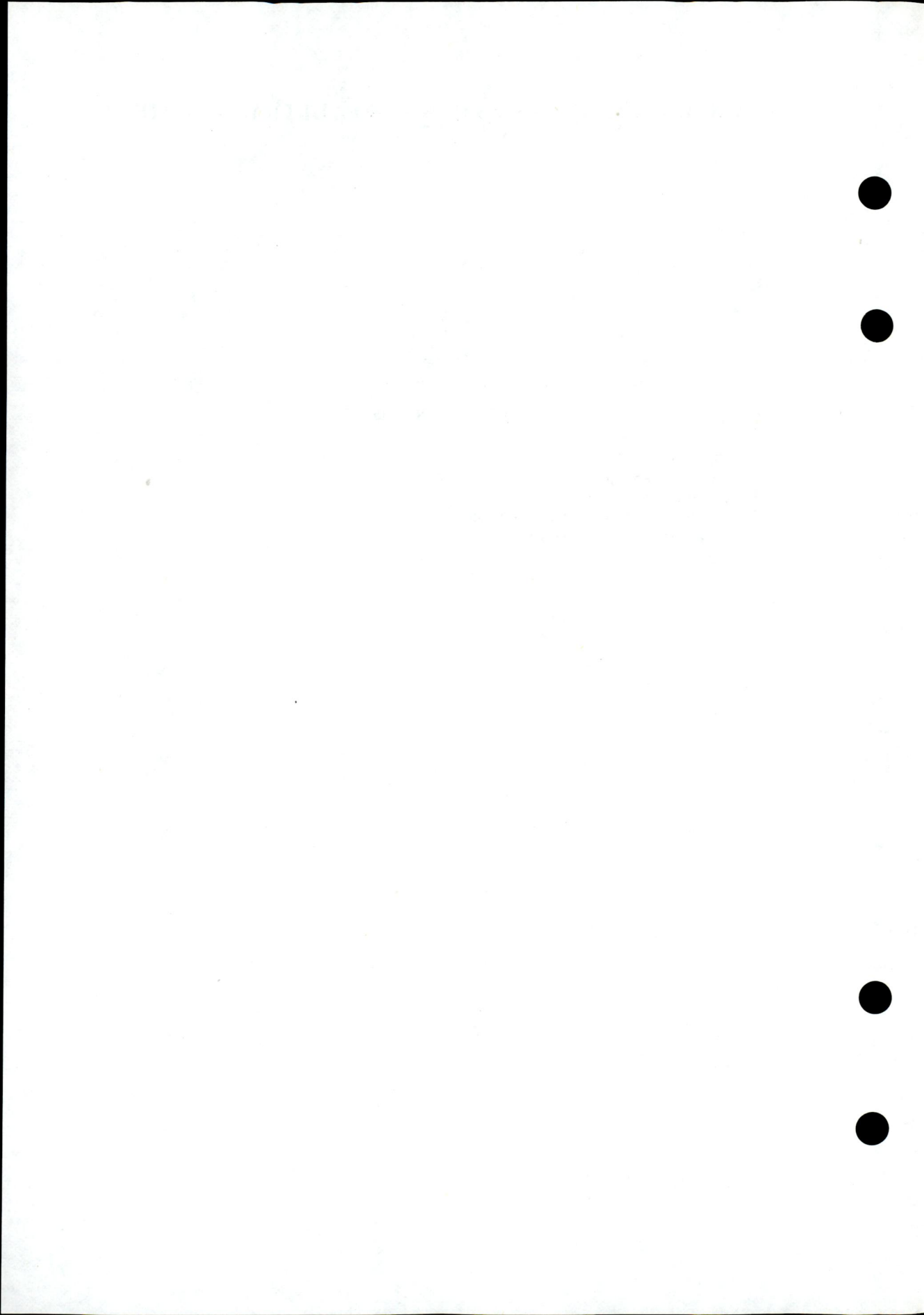
NEW SOUTH WALES



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SCHEDULE 1—AMENDMENTS



**MISCELLANEOUS ACTS (FINE DEFAULT) AMENDMENT ACT
1987 No. 266**

NEW SOUTH WALES



Act No. 266, 1987

An Act to amend certain Acts as a consequence of the enactment of the Community Service Orders (Fine Default) Amendment Act 1987 and the Children (Community Service Orders) (Fine Default) Amendment Act 1987. [Assented to 16 December 1987]

Miscellaneous Acts (Fine Default) Amendment 1987

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Miscellaneous Acts (Fine Default) Amendment Act 1987.

Commencement

2. This Act shall commence on a day or days to be appointed by proclamation.

Amendments

3. Each Act specified in Schedule 1 is amended as set out in that Schedule.

Savings and transitional provisions

4. (1) A reference made before the commencement of this section in any Act, statutory instrument or other document to the provisions of section 82 of the Justices Act 1902, in so far as the reference has the effect of applying or precluding the application of provisions of that section relating to—

- (a) the imprisonment of a person for a failure to pay any fine, penalty, costs or other amount of money; or
- (b) the manner of calculating a term of imprisonment,

shall be read as a reference to the provisions of section 87 of that Act, as amended by this Act.

(2) Section 91A of the Justices Act 1902, as amended by this Act, does not apply to or in respect of a warrant issued before the commencement of that section.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

Children (Criminal Proceedings) Act 1987 No. 55—

Section 23 (Detention in default of payment of fines etc.)—

Omit the section.

Justices Act 1902 No. 27—

(1) Section 80AA (Absent defendant not to be imprisoned)—

Section 80AA (1)—

Omit “(except pursuant to section 82)”.

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

Section 82 (2), (2D)—

Omit the subsections.

Miscellaneous Acts (Fine Default) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

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

(a) Section 87 (a)—

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

(b) Section 87—

Omit “conviction or order unless”, insert instead “warrant for a period calculated in accordance with subsection (2) unless”.

(c) Section 87 (2)–(4)—

At the end of section 87, insert:

(2) 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.

(3) 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.

(4) A warrant under this section committing a person to prison for non-payment of an amount adjudged by a conviction or order to be paid is revoked on the making of a community service order under section 26B of the Community Service Orders Act 1979 requiring the person to perform community service work in relation to the conviction or order.

(5) A warrant under this section shall not be issued—

(a) in relation to a conviction or order with respect to—

- (i) an offence under the Motor Traffic Act 1909 or an offence prescribed for the purposes of section 18B of that Act; or
- (ii) an offence under any prescribed provision of an Act or a statutory instrument,

unless the authorised justice has been otherwise notified in accordance with the regulations;

- (b) in relation to a conviction or order in respect of which a community service order has been made under Part 3 of the Community Service Orders Act 1979, except in accordance with section 26K (6) of that Act;
- (c) in relation to a conviction or order made against a person to whom the Children (Community Service Orders) Act 1987 applies;
- (d) in relation to an enforcement order made against a person—
 - (i) who was under the age of 18 years at the time the alleged offence to which the order relates was committed; and

Miscellaneous Acts (Fine Default) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

(ii) who was under the age of 21 years at the time the order was made,
under Division 2 of Part IVB; or

(e) in such circumstances as may be prescribed for the purposes of this subsection.

(4) Section 87A (**Warrant of commitment in respect of certain traffic and other offences**)—

Omit the section.

(5) Section 90A (**Warrant where part payment made**)—

Omit “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”, insert instead “section 87 (2), having regard to the unsatisfied balance”.

(6) Section 91A—

After section 91, insert:

Imprisonment under several default warrants

91A. (1) If, by two or more warrants under section 87, a person is committed to prison for two or more terms of imprisonment, the terms shall be served consecutively, not concurrently.

(2) A term of imprisonment for which a person is committed by a warrant under section 87 (or any two or more of such terms, consecutively) may be served concurrently with any imprisonment (including any term of imprisonment by way of periodic detention) of the person arising otherwise than from committal by such a warrant.

(3) In so far as subsection (2) applies to a person—

- (a) serving a term of imprisonment by way of periodic detention; and
- (b) concurrently serving a term of imprisonment to which the person was committed by a warrant under section 87,

the warrant shall, except as provided by subsection (4), be deemed—

- (c) to authorise the release, at the end of each period of the periodic detention, of the person to whom the warrant applies; and
- (d) to authorise the re-committal of the person to prison at the commencement of each such period,

until those periods of committal in the aggregate amount to a period equal to the period for which the warrant was expressed to commit the person to prison.

Miscellaneous Acts (Fine Default) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

(4) If, at the end of a period of imprisonment served by a person otherwise than by way of periodic detention, the whole of the term of imprisonment to which the person was committed by a warrant under section 87 has not been served, the warrant shall be deemed to commit the person to prison for the remainder of the term.

(7) Section 100N (**Default imprisonment**)—

(a) Section 100N (1)—

Omit “section 82”, insert instead “section 87”.

(b) Section 100N (2)—

Omit the subsection.

(c) Section 100N (3)—

Omit “section 82 (2)”, insert instead “section 87”.

(8) Section 131 (**Recovery of costs of appeal**)—

Section 131 (1) (c)—

Omit “subsection (2) of section 82”, insert instead “section 87 (2)”.

Periodic Detention of Prisoners Act 1981 No. 18—

Section 34 (**Regulations**)—

(a) Section 34 (1) (k)—

Omit “and” where secondly occurring.

(b) Section 34 (1) (l), (m)—

At the end of section 34 (1) (l), insert:

; and

(m) the preparation and contents of reports by governors of prisons for the purposes of section 26A (2) of the Community Service Orders Act 1979.

