

FIRST PRINT

**CRIMINAL PROCEDURE (POLICE CUSTODY OF  
PROPERTY) AMENDMENT BILL 1991**

NEW SOUTH WALES



**EXPLANATORY NOTE**

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

The objects of this Bill are:

- (a) to transfer the provisions of section 358A of the Crimes Act 1900 relating to the disposal of property in the custody of the police from that Act to the Criminal Procedure Act 1986; and
- (b) to amend those provisions to enable the police to dispose of livestock before proceedings relating to the livestock have been determined.

At present, because of the operation of section 358A of the Crimes Act 1900, property held in police custody in connection with an offence (for example, stolen goods) may not be delivered to a person in the absence of a court order. Such an order is usually not made until after the conclusion of the proceedings relating to the property. The provisions of this Bill will operate to reduce the time for which police are required to hold livestock (for example, stolen cattle) in custody pending the disposal of criminal proceedings relating to the livestock, and to reduce the costs to the police of maintaining the livestock while in custody, without prejudicing the rights of persons who may be lawfully entitled to the livestock and without weakening the evidence for the prosecution.

The Bill amends the Criminal Procedure Act 1986 to insert a new Part, Part 13—Police Custody of Property, into that Act. Section 358A of the Crimes Act 1900 is repealed consequentially.

---

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 amends the Criminal Procedure Act 1986 to insert a new Part into that Act. The new Part contains the following provisions:

*Criminal Procedure (Police Custody of Property) Amendment 1991*

---

**PART 13—POLICE CUSTODY OF PROPERTY**

**Division 1—General**

Proposed section 61 provides that the Part is to apply to property which is in police custody in connection with an offence (other than livestock to which section 19 of the Stock Diseases Act 1923 applies).

Proposed section 62 provides that a court may, on application, order property in police custody to be delivered to a person who appears to be lawfully entitled to it.

Proposed section 63 provides that property remaining in police custody within 1 month after proceedings against a person for an offence concerning the property are determined, if the property is money, is to be paid into the Consolidated Fund or, if other property, may be sold at public auction. After sale, the expenses of keeping the property in police custody may be deducted and any balance is to be paid into the Consolidated Fund.

Proposed section 64 enables a person who is lawfully entitled to any money paid into the Consolidated Fund in accordance with proposed section 63 to recover it from that Fund.

Proposed section 65 specifies which court has jurisdiction to deal with an application under the proposed Part by reference to the value of the property concerned.

Proposed section 66 provides that no restriction on other powers of a court to make orders relating to property in police custody is to be imputed from the provisions of the Part.

**Division 2—Livestock**

Proposed section 67 contains definitions of "livestock" and "ownership".

Proposed section 68 specifies the procedure that is to apply if there is no dispute as to the ownership of the livestock and the owner is known. The police may deliver the livestock to the owner after a suitable record has been made of the livestock for evidentiary purposes. The costs of custody are to be borne by the police.

Proposed section 69 specifies the procedure that is to apply if there is no dispute as to the ownership of the livestock but the owner is not known. A court, on the application of a police officer, is empowered to order the sale of the livestock after 28 days' notice of the intention to seek the court's order has been given to any possible owners and to the public at large. A suitable record is required to be made for evidentiary purposes. The police are to bear the costs of keeping the livestock in custody for the first 28 days and may recover the costs incurred after that time from the proceeds of sale. Otherwise, the proceeds are to be paid into the Consolidated Fund.

Proposed section 70 specifies the procedure that is to apply if there is a dispute as to the ownership of the livestock. A court, on the application of a police officer, is empowered to order the sale of the livestock if no party to the dispute undertakes to pay the expenses of keeping the livestock in police custody or a party who has given such an undertaking fails to comply with it. A court may order that the parties disputing ownership are to pay the expenses of keeping the livestock in police custody in such proportions as the court determines. The same provisions as under

*Criminal Procedure (Police Custody of Property) Amendment 1991*

---

proposed section 69 apply to the giving of notice of the application to the court, the making of a record for evidentiary purposes and the application of the proceeds of sale.

Proposed section 71 provides that any benefit (such as produce or progeny) derived from livestock while in police custody is to belong to the owner.

Proposed section 72 requires notice to be given to parties disputing ownership of livestock which is sold under the Part of the rights of the owner to recover the sale proceeds from the Treasurer.

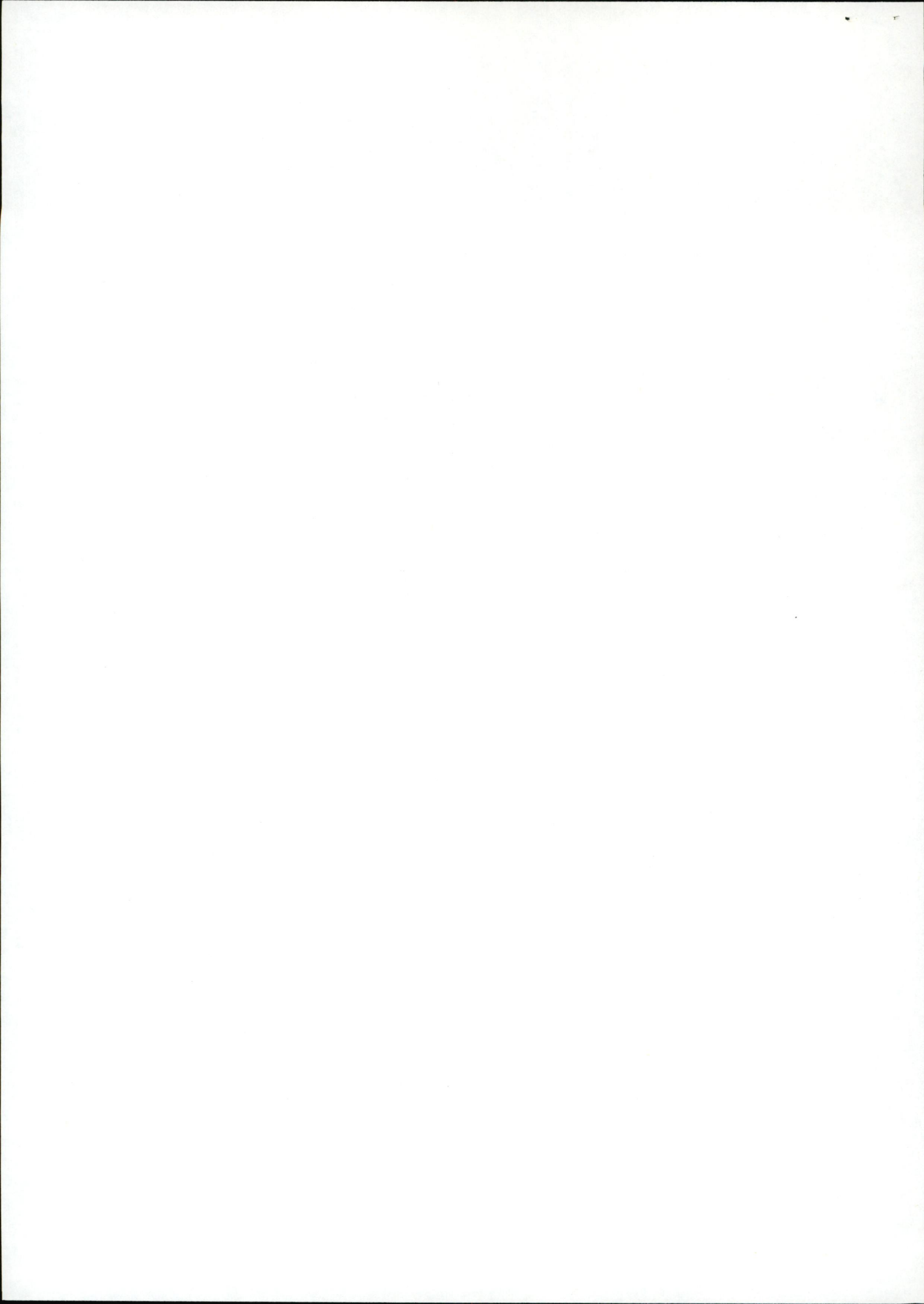
Proposed section 73 enables the owner of livestock which is sold under the Part to recover the sale proceeds from the Treasurer.

Proposed section 74 provides that the provisions of Division 2 are in addition to those of Division 1.

Clause 4 repeals section 358A of the Crimes Act 1900.

Clause 5 is a transitional provision which provides that the amendments made by the proposed Act apply in relation to property (including livestock) which, on the commencement of the proposed Act, is in police custody in connection with an offence.

---



FIRST PRINT

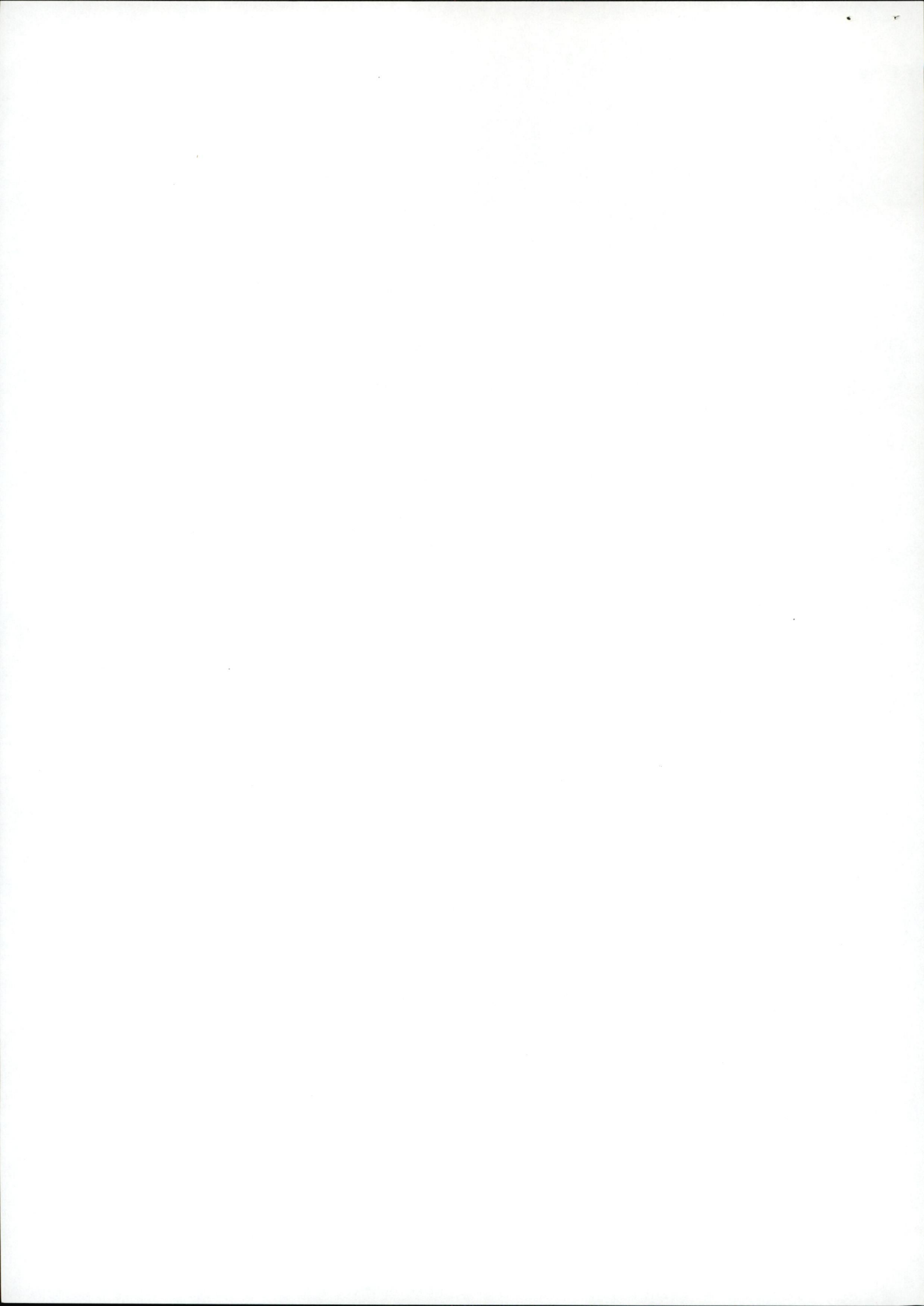
**CRIMINAL PROCEDURE (POLICE CUSTODY OF  
PROPERTY) AMENDMENT BILL 1991**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
  2. Commencement
  3. Amendment of Criminal Procedure Act 1986 No. 209
  4. Repeal of Crimes Act 1900 No. 40, s. 358A (Disposal of property in custody of police)
  5. Transitional provision
-



**CRIMINAL PROCEDURE (POLICE CUSTODY OF  
PROPERTY) AMENDMENT BILL 1991**

NEW SOUTH WALES



No.           , 1991

---

---

**A BILL FOR**

An Act to amend the Criminal Procedure Act 1986 with respect to police custody of property held in connection with an offence and to repeal section 358A of the Crimes Act 1900.

---

---

*Criminal Procedure (Police Custody of Property) Amendment 1991*

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

**Short title**

1. This Act may be cited as the Criminal Procedure (Police Custody of Property) Amendment Act 1991.

**Commencement**

2. This Act commences on a day to be appointed by proclamation.

**Amendment of Criminal Procedure Act 1986 No. 209**

3. The Criminal Procedure Act 1986 is amended by inserting at the end of that Act the following Part:

**PART 13—POLICE CUSTODY OF PROPERTY**

**Division 1—General**

**Application of this Part**

61. (1) This Part applies to property that is in police custody in connection with an offence whether punishable on indictment or summarily.

(2) This Part does not apply to livestock to which section 19 of the Stock Diseases Act 1923 (Power to seize stock) applies.

**Disposal of property on application**

62. A court may, on the application of any person, make an order that any property to which this Part applies be delivered to the person who appears to it to be lawfully entitled to the property.

**Disposal of property after determination of proceedings**

63. (1) Property to which this Part applies that has not been delivered to the person lawfully entitled to it (by virtue of an order under section 62 or otherwise) within 1 month after determination of proceedings against a person for an offence concerning the property:

(a) in the case of money, is to be paid to the Treasurer for payment into the Consolidated Fund; or

(b) in any other case, may be sold at public auction.

(2) Expenses incurred in keeping the property in police custody may be deducted from the proceeds of sale of the property and paid to the Commissioner of Police.



*Criminal Procedure (Police Custody of Property) Amendment 1991*

(3) The proceeds of sale of the property (after making any deductions under subsection (2)) are to be forwarded to the Treasurer for payment into the Consolidated Fund.

**Application to Treasurer for recovery of money or proceeds of sale**

64. A person who is lawfully entitled to any property that has been dealt with in accordance with section 63 may recover from the Treasurer the money or proceeds of sale held by the Treasurer. This Act authorises the Treasurer to pay the amount out of the Consolidated Fund (which is appropriated to the necessary extent).

**Which is the appropriate court for the purposes of this Part?**

65. The court to which an application under this Part may be made is:

- (a) a Local Court, constituted by a Magistrate sitting alone, for the district in which the property is held, if the estimated value of the property (or the amount of the money) does not exceed \$25,000; or
- (b) the District Court, if the estimated value of the property (or the amount of the money) exceeds \$25,000 but does not exceed \$250,000; or
- (c) the Supreme Court, if the estimated value of the property (or the amount of the money) exceeds \$250,000.

**No restriction on other orders of a court**

66. Except as provided by this Part, nothing in this Part prevents a court (on an application under this Part or in any other proceedings) from making a finding or order as to the ownership and delivery of property or as to the liability for and payment of expenses incurred in keeping property in police custody.

**Division 2—Livestock**

**Definitions**

67. In this Division:

- “livestock” means animals (including birds and fish);
- “ownership” includes any form of lawful entitlement.

*Criminal Procedure (Police Custody of Property) Amendment 1991*

any amount specified by the court under subsection (4)) together with a copy of the record made under subsection (5) are to be forwarded to the Treasurer and the proceeds are to be paid into the Consolidated Fund.

**Disposition of benefit derived from livestock**

71. Any income or benefit derived from livestock while in police custody (such as offspring born during custody or, in the case of poultry, eggs) is to be held or applied on behalf of the owner of the livestock.

**Notification of right to recover proceeds of sale**

72. If, at the time at which livestock are sold in accordance with this Part:

(a) the parties disputing ownership of the livestock have not resolved their dispute; and

(b) a court has not determined who the owner of the livestock is, a police officer is required to notify each such party of the rights of the owner under section 73.

**Application to Treasurer for recovery of proceeds of sale**

73. A person who was the owner of livestock immediately before they were sold under this Division may recover from the Treasurer the amount held by the Treasurer in respect of the proceeds of sale. This Act authorises the Treasurer to pay the amount out of the Consolidated Fund (which is appropriated to the necessary extent).

**Relationship with Division 1**

74. The provisions of this Division are in addition to the provisions of Division 1.

**Repeal of Crimes Act 1900 No. 40, s. 358A (Disposal of property in custody of police)**

4. Section 358A of the Crimes Act 1900 is repealed.

**Transitional provision**

5. The amendments made by this Act apply in relation to property (including livestock) which, on the commencement of this Act, is in police custody in connection with an offence.

---

FIRST PRINT

**CRIMINAL PROCEDURE (POLICE CUSTODY OF  
PROPERTY) AMENDMENT BILL 1991 (No. 2)**

NEW SOUTH WALES



**EXPLANATORY NOTE**

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

The objects of this Bill are:

- (a) to transfer the provisions of section 358A of the Crimes Act 1900 relating to the disposal of property in the custody of the police from that Act to the Criminal Procedure Act 1986; and
- (b) to amend those provisions to enable the police to dispose of livestock before proceedings relating to the livestock have been determined.

At present, because of the operation of section 358A of the Crimes Act 1900, property held in police custody in connection with an offence (for example, stolen goods) may not be delivered to a person in the absence of a court order. Such an order is usually not made until after the conclusion of the proceedings relating to the property. The provisions of this Bill will operate to reduce the time for which police are required to hold livestock (for example, stolen cattle) in custody pending the disposal of criminal proceedings relating to the livestock, and to reduce the costs to the police of maintaining the livestock while in custody, without prejudicing the rights of persons who may be lawfully entitled to the livestock and without weakening the evidence for the prosecution.

The Bill amends the Criminal Procedure Act 1986 to insert a new Part, Part 13—Police Custody of Property, into that Act. Section 358A of the Crimes Act 1900 is repealed consequentially.

---

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 amends the Criminal Procedure Act 1986 to insert a new Part into that Act. The new Part contains the following provisions:

## PART 13—POLICE CUSTODY OF PROPERTY

### Division 1—General

Proposed section 61 provides that the Part is to apply to property which is in police custody in connection with an offence (other than livestock to which section 19 of the Stock Diseases Act 1923 applies).

Proposed section 62 provides that a court may, on application, order property in police custody to be delivered to a person who appears to be lawfully entitled to it.

Proposed section 63 provides that property remaining in police custody within 1 month after proceedings against a person for an offence concerning the property are determined, if the property is money, is to be paid into the Consolidated Fund or, if other property, may be sold at public auction. After sale, the expenses of keeping the property in police custody may be deducted and any balance is to be paid into the Consolidated Fund.

Proposed section 64 enables a person who is lawfully entitled to any money paid into the Consolidated Fund in accordance with proposed section 63 to recover it from that Fund.

Proposed section 65 specifies which court has jurisdiction to deal with an application under the proposed Part by reference to the value of the property concerned.

Proposed section 66 provides that no restriction on other powers of a court to make orders relating to property in police custody is to be imputed from the provisions of the Part.

### Division 2—Livestock

Proposed section 67 contains definitions of "livestock" and "ownership".

Proposed section 68 specifies the procedure that is to apply if there is no dispute as to the ownership of the livestock and the owner is known. The police may deliver the livestock to the owner after a suitable record has been made of the livestock for evidentiary purposes. The costs of custody are to be borne by the police.

Proposed section 69 specifies the procedure that is to apply if there is no dispute as to the ownership of the livestock but the owner is not known. A court, on the application of a police officer, is empowered to order the sale of the livestock after 28 days' notice of the intention to seek the court's order has been given to any possible owners and to the public at large. A suitable record is required to be made for evidentiary purposes. The police are to bear the costs of keeping the livestock in custody for the first 28 days and may recover the costs incurred after that time from the proceeds of sale. Otherwise, the proceeds are to be paid into the Consolidated Fund.

Proposed section 70 specifies the procedure that is to apply if there is a dispute as to the ownership of the livestock. A court, on the application of a police officer, is empowered to order the sale of the livestock if no party to the dispute undertakes to pay the expenses of keeping the livestock in police custody or a party who has given such an undertaking fails to comply with it. A court may order that the parties disputing ownership are to pay the expenses of keeping the livestock in police custody in such proportions as the court determines. The same provisions as under

*Criminal Procedure (Police Custody of Property) Amendment 1991 (No. 2)*

---

proposed section 69 apply to the giving of notice of the application to the court, the making of a record for evidentiary purposes and the application of the proceeds of sale.

Proposed section 71 provides that any benefit (such as produce or progeny) derived from livestock while in police custody is to belong to the owner.

Proposed section 72 requires notice to be given to parties disputing ownership of livestock which is sold under the Part of the rights of the owner to recover the sale proceeds from the Treasurer.

Proposed section 73 enables the owner of livestock which is sold under the Part to recover the sale proceeds from the Treasurer.

Proposed section 74 provides that the provisions of Division 2 are in addition to those of Division 1.

Clause 4 repeals section 358A of the Crimes Act 1900.

Clause 5 is a transitional provision which provides that the amendments made by the proposed Act apply in relation to property (including livestock) which, on the commencement of the proposed Act, is in police custody in connection with an offence.

---

