

JUSTICES (AMENDMENT) ACT 1988 No. 98

NEW SOUTH WALES



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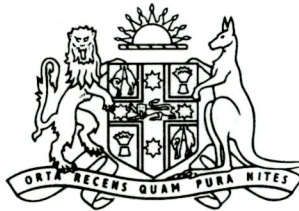
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JUSTICES (AMENDMENT) ACT 1988 No. 98

NEW SOUTH WALES



Act No. 98, 1988

An Act to amend the Justices Act 1902 with respect to paper committals, taking evidence in the absence of a defendant and penalty notices. [Assented to 19 December 1988]

Justices (Amendment) 1988

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Justices (Amendment) Act 1988.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).

- (2) Section 4 and Schedule 4 commence on the date of assent to this Act.

Amendment of Justices Act 1902 No. 27

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

Transitional provisions

4. Schedule 4 has effect.

**SCHEDULE 1—AMENDMENTS RELATING TO PAPER
COMMITTALS**

(Sec. 3)

- (1) Section 48BA—

After section 48B, insert:

Addresses and telephone numbers not to be disclosed

48BA. (1) A written statement served on a defendant under section 48B in committal proceedings must not disclose the address or telephone number of the person who made the statement or of any other living person, unless—

- (a) the address or telephone number is a materially relevant part of the evidence; or
- (b) the Justice or Justices make an order permitting the disclosure in the statement.

(2) An application for such an order may be made by the informant or the defendant.

(3) The Justice or Justices shall not make such an order unless satisfied that disclosure is not likely to present a reasonably ascertainable risk to the welfare or protection of any person or that the interests of justice (including the defendant's right to prepare properly for the hearing or for trial) outweigh any such risk.

(4) An address or telephone number that must not be disclosed may, without reference to the person who made the written statement, be deleted from the statement, or rendered illegible, before the statement is served on the defendant.

**SCHEDULE 1—AMENDMENTS RELATING TO PAPER
COMMITTALS—*continued***

(5) A written statement is not inadmissible as evidence on the ground that it either does or does not disclose any such address or telephone number as is mentioned in this section.

(6) This section does not prevent the disclosure of an address in a written statement if the statement does not identify it as a particular person's address.

(7) In this section—

“address” includes a private, business or official address;

“telephone number” includes a private, business or official telephone number.

(2) Section 48C (**Requirements as to statements**)—

Section 48C (1) (a), (b)—

Omit the paragraphs, insert instead:

(a) the statement is not endorsed in the following form:

This statement made by me accurately sets out the evidence which I would be prepared, if necessary, to give in Court as a witness.

The statement is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

**SCHEDULE 2—AMENDMENTS RELATING TO TAKING
EVIDENCE IN ABSENCE OF DEFENDANT**

(Sec. 3)

Section 41 (**Procedure on hearing of charge of indictable offence**)—

(1) Section 41 (1B) (b)—

Omit “together with one or more other defendants.”.

(2) Section 41 (1B) (e)—

Omit the paragraph, insert instead:

(e) The evidence for the prosecution shall not be taken under paragraph (d) in the absence of a defendant unless—

(i) the defendant has been served under section 48B with a copy of any written statement to be tendered as evidence in the proceedings; or

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 SCHEDULE 2—AMENDMENTS RELATING TO TAKING EVIDENCE
 IN ABSENCE OF DEFENDANT—*continued*

- (ii) the defendant has been informed of the time set by the Justice or Justices for the commencement of the taking of the evidence for the prosecution.

 SCHEDULE 3—AMENDMENTS RELATING TO PENALTY
 NOTICES

(Sec. 3)

(1) Section 100i (**Definitions**)—

Insert (in alphabetical order) in the statutory provisions listed in paragraph (a) of the definition of “penalty notice” the following matter:

- Companies (New South Wales) Code, section 570A;
- Futures Industry (New South Wales) Code, section 149;
- Securities Industry (New South Wales) Code, section 141A;

(2) Section 100LA—

After section 100L, insert:

Withdrawal of certificate

100LA. (1) If a certificate has been produced to an authorised Justice under section 100L in relation to a penalty notice, an appropriate officer may, by notice in writing, request the authorised Justice, or another authorised Justice at the court at which the certificate was produced, to withdraw the certificate.

(2) If the notice of withdrawal is received before the enforcement order is made, the authorised Justice to whom the request is made must withdraw the certificate.

(3) A certificate which is withdrawn under this section has no further force or effect.

(3) Section 100M (**Costs**)—

Section 100M (a)—

Omit the paragraph, insert instead:

- (a) the prescribed amount or such greater amount as to the authorised Justice seems just and reasonable; or

Justices (Amendment) 1988

SCHEDULE 3—AMENDMENTS RELATING TO PENALTY
NOTICES—*continued*

(4) Part 4B, Division 3, heading—

After “Annulment”, insert “or withdrawal”.

(5) Section 100XA—

After section 100X, insert:

Withdrawal of enforcement orders

100XA. (1) If an enforcement order has been made in relation to a penalty notice, an appropriate officer may, by notice in writing, request an authorised Justice at the court in which the order was made to withdraw the order.

(2) The authorised Justice to whom the request is made must make an order withdrawing the enforcement order.

(3) An enforcement order which is withdrawn under this section ceases to have any force or effect as from the making of the order of withdrawal.

SCHEDULE 4—TRANSITIONAL PROVISIONS

(Sec. 4)

Paper committals

1. (1) The amendment made by item (1) of Schedule 1 applies only to written statements served after the commencement of that item.

(2) The amendment made by item (2) of Schedule 1 applies only to written statements made after the commencement of that item.

(3) Section 48C (1) of the Justices Act 1902, as in force immediately before the commencement of item (2) of Schedule 1, continues to apply in relation to written statements made before that commencement as if that item had not been enacted.

Taking evidence in absence of defendant

2. The amendment made by an item of Schedule 2 applies in relation to proceedings commenced before or after the commencement of that item.

Penalty notices

3. (1) Section 100LA of the Justices Act 1902, as inserted by item (2) of Schedule 3 applies in relation to certificates produced before or after the commencement of that item.

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SCHEDULE 4—TRANSITIONAL PROVISIONS—*continued*

(2) Section 100xA of the Justices Act 1902, as inserted by item (5) of Schedule 3 applies in relation to enforcement orders made before or after the commencement of that item.

*[Minister's second reading speech made in—
Legislative Assembly on 15 November 1988
Legislative Council on 7 December 1988]*

JUSTICES (AMENDMENT) BILL 1988

NEW SOUTH WALES



EXPLANATORY NOTE

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

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

- (a) to restrict the disclosure of addresses and telephone numbers in written statements of witnesses in committal proceedings; and
- (b) to provide that a written statement of a witness in committal proceedings need include only one endorsement (instead of two) by the witness; and
- (c) to enable a single defendant to be excused from attending committal proceedings in the same way as any of two or more joint defendants may now be excused; and
- (d) to extend the Self-Enforcing Infringement Notice Scheme to cover penalty notices under the companies and securities legislation; and
- (e) to provide for the withdrawal of enforcement orders and associated certificates issued in connection with that Scheme.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that amendments made by the proposed Act are to commence on a day or days to be appointed by proclamation.

Clauses 3 and 4 are formal provisions giving effect to the Schedules.

SCHEDULE 1—AMENDMENTS RELATING TO PAPER COMMITTALS

Written statements made by witnesses in committal proceedings

Schedule 1 (1) inserts proposed section 48BA (Addresses and telephone numbers not to be disclosed) to provide that a written statement served on a defendant in committal proceedings must not disclose the address or telephone number of the witness who made the statement or of any other living person, unless—

- the address or telephone number is a materially relevant part of the evidence; or
- the court makes an order, on the application of the informant or the defendant, allowing disclosure.

Justices (Amendment) 1988

Before making such an order, the court must be satisfied either that there is no risk to any person or that the interests of justice outweigh any such risk.

Schedule 1 (2) amends section 48c (Requirements as to statements) to provide that a written statement of a witness in committal proceedings needs to include only one endorsement by the witness (in the form set out in the section) which indicates that the witness is fully aware of his or her responsibilities in making the written statement. Currently, it is required that the written statement contain 2 such endorsements (one at the beginning and the other at the end of the written statement).

**SCHEDULE 2—AMENDMENTS RELATING TO TAKING EVIDENCE IN
ABSENCE OF DEFENDANT**

Attendance at committal proceedings

Schedule 2 (1) amends section 41 (Procedure on hearing of charge of indictable offence) to enable a single defendant to be excused from attending committal proceedings at the discretion of the court. Currently, a defendant can only be excused from attending committal proceedings if the defendant appears with one or more other defendants.

Schedule 2 (2) is a consequential amendment, and clarifies the operation of section 41 (1B) (e) in regard to the taking of evidence where the defendant fails to appear.

SCHEDULE 3—AMENDMENTS RELATING TO PENALTY NOTICES

Definition of “penalty notice”

Schedule 3 (1) amends section 100i (Definitions) to extend the definition of “penalty notice” to cover penalty notices issued under the companies and securities legislation. The result will be that such notices will be brought within the Self-Enforcing Infringement Notice Scheme.

Withdrawal of certificates and enforcement orders

Schedule 3 (2) inserts proposed section 100LA, which provides for the withdrawal, at the request of the appropriate officer, of the certificate which precedes the issue of an enforcement order.

Schedule 3 (5) inserts proposed section 100XA, which provides for the withdrawal, at the request of the appropriate officer, of an enforcement order.

Schedule 3 (4) is a consequential amendment.

Costs specified in enforcement orders

Schedule 3 (3) amends section 100M (Costs) to provide that the amount for costs to be specified in an order enforcing a penalty notice can be greater than the amount (if any) prescribed by regulations. This amendment will enable the authorised Justice to include in the costs specified in the order any reasonable costs incurred in addition to any prescribed amount.

SCHEDULE 4—TRANSITIONAL PROVISIONS

Schedule 4 contains transitional provisions, stating whether or not certain of the amendments proposed to be made by the Bill affect existing matters.

JUSTICES (AMENDMENT) BILL 1988

NEW SOUTH WALES



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ABSENCE OF DEFENDANT

SCHEDULE 3—AMENDMENTS RELATING TO PENALTY NOTICES

SCHEDULE 4—TRANSITIONAL PROVISIONS



JUSTICES (AMENDMENT) BILL 1988

NEW SOUTH WALES



No. , 1988

A BILL FOR

An Act to amend the Justices Act 1902 with respect to paper committals, taking evidence in the absence of a defendant and penalty notices.

*Justices (Amendment) 1988***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Justices (Amendment) Act 1988.

Commencement

- 5 2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
 (2) Section 4 and Schedule 4 commence on the date of assent to this Act.

Amendment of Justices Act 1902 No. 27

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

10 Transitional provisions

4. Schedule 4 has effect.

**SCHEDULE 1—AMENDMENTS RELATING TO PAPER
 COMMITTALS**

(Sec. 3)

- 15 (1) Section 48BA—

After section 48B, insert:

Addresses and telephone numbers not to be disclosed

- 20 48BA. (1) A written statement served on a defendant under section 48B in committal proceedings must not disclose the address or telephone number of the person who made the statement or of any other living person, unless—

- (a) the address or telephone number is a materially relevant part of the evidence; or
 25 (b) the Justice or Justices make an order permitting the disclosure in the statement.

(2) An application for such an order may be made by the informant or the defendant.

- 30 (3) The Justice or Justices shall not make such an order unless satisfied that disclosure is not likely to present a reasonably ascertainable risk to the welfare or protection of any person or that the interests of justice (including the defendant's right to prepare properly for the hearing or for trial) outweigh any such risk.

- 35 (4) An address or telephone number that must not be disclosed may, without reference to the person who made the written statement, be deleted from the statement, or rendered illegible, before the statement is served on the defendant.

Justices (Amendment) 1988

**SCHEDULE 1—AMENDMENTS RELATING TO PAPER
COMMITTALS—*continued***

(5) A written statement is not inadmissible as evidence on the ground that it either does or does not disclose any such address or telephone number as is mentioned in this section.

5 (6) This section does not prevent the disclosure of an address in a written statement if the statement does not identify it as a particular person's address.

(7) In this section—

“address” includes a private, business or official address;

10 “telephone number” includes a private, business or official telephone number.

(2) Section 48C (**Requirements as to statements**)—

Section 48C (1) (a), (b)—

Omit the paragraphs, insert instead:

(a) the statement is not endorsed in the following form:

15 This statement made by me accurately sets out the evidence which I would be prepared, if necessary, to give in Court as a witness.

20 The statement is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

**SCHEDULE 2—AMENDMENTS RELATING TO TAKING
EVIDENCE IN ABSENCE OF DEFENDANT**

25 (Sec. 3)

Section 41 (**Procedure on hearing of charge of indictable offence**)—

(1) Section 41 (1B) (b)—

Omit “together with one or more other defendants,”.

(2) Section 41 (1B) (e)—

30 Omit the paragraph, insert instead:

(e) The evidence for the prosecution shall not be taken under paragraph (d) in the absence of a defendant unless—

35 (i) the defendant has been served under section 48B with a copy of any written statement to be tendered as evidence in the proceedings; or

SCHEDULE 2—AMENDMENTS RELATING TO TAKING EVIDENCE
IN ABSENCE OF DEFENDANT—*continued*

- (ii) the defendant has been informed of the time set by the Justice or Justices for the commencement of the taking of the evidence for the prosecution.

5 **SCHEDULE 3—AMENDMENTS RELATING TO PENALTY
NOTICES**

(Sec. 3)

(1) Section 100I (**Definitions**)—

10 Insert (in alphabetical order) in the statutory provisions listed in paragraph (a) of the definition of “penalty notice” the following matter:

- Companies (New South Wales) Code, section 570A;
Futures Industry (New South Wales) Code, section 149;
Securities Industry (New South Wales) Code, section 141A;

(2) Section 100LA—

15 After section 100L, insert:

Withdrawal of certificate

20 100LA. (1) If a certificate has been produced to an authorised Justice under section 100L in relation to a penalty notice, an appropriate officer may, by notice in writing, request the authorised Justice, or another authorised Justice at the court at which the certificate was produced, to withdraw the certificate.

(2) If the notice of withdrawal is received before the enforcement order is made, the authorised Justice to whom the request is made must withdraw the certificate.

25 (3) A certificate which is withdrawn under this section has no further force or effect.

(3) Section 100M (**Costs**)—

Section 100M (a)—

Omit the paragraph, insert instead:

- 30 (a) the prescribed amount or such greater amount as to the authorised Justice seems just and reasonable; or

(4) Part 4B, Division 3, heading—

After “Annulment”, insert “or withdrawal”.

Justices (Amendment) 1988

 SCHEDULE 3—AMENDMENTS RELATING TO PENALTY
 NOTICES—*continued*
(5) Section 100_{XA}—

After section 100_X, insert:

Withdrawal of enforcement orders

5 100_{XA}. (1) If an enforcement order has been made in relation to a penalty notice, an appropriate officer may, by notice in writing, request an authorised Justice at the court in which the order was made to withdraw the order.

(2) The authorised Justice to whom the request is made must make an order withdrawing the enforcement order.

10 (3) An enforcement order which is withdrawn under this section ceases to have any force or effect as from the making of the order of withdrawal.

SCHEDULE 4—TRANSITIONAL PROVISIONS

(Sec. 4)

15 **Paper committals**

1. (1) The amendment made by item (1) of Schedule 1 applies only to written statements served after the commencement of that item.

(2) The amendment made by item (2) of Schedule 1 applies only to written statements made after the commencement of that item.

20 (3) Section 48C (1) of the Justices Act 1902, as in force immediately before the commencement of item (2) of Schedule 1, continues to apply in relation to written statements made before that commencement as if that item had not been enacted.

Taking evidence in absence of defendant

25 2. The amendment made by an item of Schedule 2 applies in relation to proceedings commenced before or after the commencement of that item.

Penalty notices

3. (1) Section 100_{LA} of the Justices Act 1902, as inserted by item (2) of Schedule 3 applies in relation to certificates produced before or after the commencement of that item.

30 (2) Section 100_{XA} of the Justices Act 1902, as inserted by item (5) of Schedule 3 applies in relation to enforcement orders made before or after the commencement of that item.

