

FIRST PRINT

JUSTICES (COSTS) AMENDMENT BILL 1991

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 so as to restrict the awarding of costs to successful defendants in committal proceedings or proceedings for offences dealt with by Magistrates to cases in which:

- (a) the investigation into the alleged offence was conducted in an unreasonable or improper manner; or
- (b) the proceedings were initiated without reasonable cause or in bad faith or were conducted by the prosecution in an improper manner; or
- (c) the prosecution unreasonably failed to investigate (or to investigate properly) any relevant matter of which it was aware and which suggested either that the defendant might not be guilty or that, for any other reason, the proceedings should not have been brought; or
- (d) because of other exceptional circumstances relating to the conduct of the proceedings by the prosecution, it is just and reasonable to award costs.

The Bill provides as a transitional measure that the proposed amendments do not affect the awarding of costs to defendants in proceedings commenced before the amendments commence.

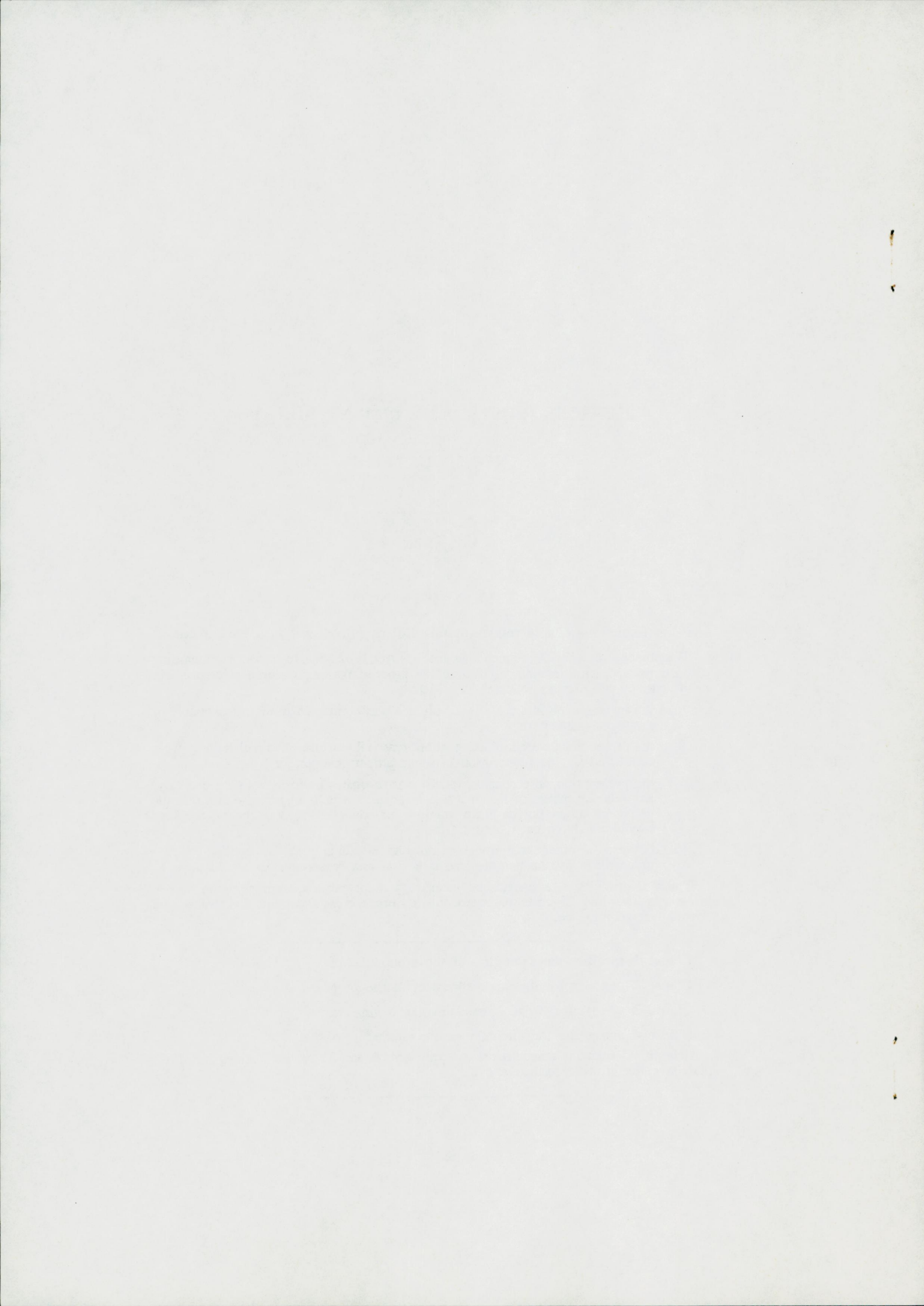
Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 gives effect to the Schedule of amendments.

Clause 4 makes the transitional measure referred to above.

Schedule 1 contains amendments to sections 41A and 81 of the Justices Act 1902 that have the effect described above.



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TABLE OF PROVISIONS

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SCHEDULE 1—AMENDMENTS

JUSTICES (COSTS) AMENDMENT BILL 1991

NEW SOUTH WALES



No. , 1991

A BILL FOR

An Act to amend the Justices Act 1902 with respect to the awarding of costs to defendants.

Justices (Costs) Amendment 1991

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Justices (Costs) Amendment Act 1991.

Commencement

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

Amendment of Justices Act 1902 No. 27

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

Transitional

4. An amendment made by this Act does not apply to the awarding of costs to a defendant in proceedings commenced before the commencement of the amendment.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 41A (**Payment of costs by informant**):

After section 41A (3), insert:

(4) An order for the payment of costs is not to be made under this section by a Justice or Justices in relation to any committal proceedings unless the Justice or Justices is or are satisfied as to any of the following:

- (a) that the investigation into the alleged offence was conducted in an unreasonable or improper manner;
- (b) that the proceedings were initiated without reasonable cause or in bad faith or were conducted by the prosecution in an improper manner;
- (c) that the prosecution unreasonably failed to investigate (or to investigate properly) any relevant matter of which it was aware and which suggested either that the defendant might not be guilty or that, for any other reason, the proceedings should not have been brought;
- (d) that, because of other exceptional circumstances relating to the conduct of the proceedings by the prosecution, it is just and reasonable to award costs.

Justices (Costs) Amendment 1991

SCHEDULE 1—AMENDMENTS—*continued*

(2) Section 81 (**Payment of costs by defendant, or by prosecutor or complainant**):

After section 81 (3), insert:

(4) A prosecutor or complainant is not to be required by a Justice or Justices to pay costs in the case of an order of dismissal unless the Justice or Justices is or are satisfied as to any of the following:

- (a) that the investigation into the alleged offence was conducted in an unreasonable or improper manner;
 - (b) that the proceedings were initiated without reasonable cause or in bad faith or were conducted by the prosecution in an improper manner;
 - (c) that the prosecution unreasonably failed to investigate (or to investigate properly) any relevant matter of which it was aware and which suggested either that the defendant might not be guilty or that, for any other reason, the proceedings should not have been brought;
 - (d) that, because of other exceptional circumstances relating to the conduct of the proceedings by the prosecution, it is just and reasonable to award costs.
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