FIRST PRINT

JUSTICES (AMENDMENT) BILL 1993

NEW SOUTH WALES

EXPLANATORY NOTE

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

The object of this Bill is to amend provisions of the Justices Act 1902 which provide for the issue of court attendance notices and provisions which provide for appeals from Local Courts to the District Court.

Court attendance notices

The amendments will enable all police officers to issue court attendance notices to offenders (see Schedule 1 (1)–(4)).

Appeals

The amendments will enable the District Court to dismiss an appeal, or an application for leave to appeal, if an appellant or applicant fails to appear without the need to first conduct a "diligent search and inquiry" to locate the appellant or applicant (see Schedule 1 (5)).

Before dismissing an appeal or application in these circumstances, the District Court must be satisfied that each party knew of the time and place of the hearing, if there was an error in, or non-service of, the notice of hearing (see Schedule 1 (5)).

The Bill also makes other amendments requiring appellants and applicants for leave to appeal to notify the Court of changes of address (see Schedule 1 (6) and (7)) and extending the time limit (from 3 months to 12 months) within which an appellant may apply to the District Court to have an order dismissing an appeal vacated (see Schedule 1 (9)). Applicants for leave to appeal will also be able to apply to have orders dismissing such applications vacated (see Schedule 1 (9)). The District Court will be required to notify appellants and applicants of the dismissal of their appeals and applications and their rights to have orders for dismissal vacated (see Schedule 1 (8)).

The amendments made by the Bill will not apply to an appeal or application in respect of a conviction or order made before their commencement (see Schedule 1 (10)).

An explanation follows each proposed amendment set out in Schedule 1.

Clause 1 specifies the short title of the proposed Act.

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

Clause 3 gives effect to Schedule 1 which contains the amendments referred to above.

Clause 4 makes it clear that the explanatory notes contained in the proposed Act do not form part of the proposed Act.

FIRST PRINT

JUSTICES (AMENDMENT) BILL 1993

NEW SOUTH WALES

TABLE OF PROVISIONS

JUSTICES (AMENDMENT) BILL 1993

NEW SOUTH WALES

No. , 1993

A BILL FOR

An Act to amend the Justices Act 1902 to make provision with respect to the issue of court attendance notices and appeals to the District Court.

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Justices (Amendment) Act 1993.

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.

Explanatory notes

4. The matter appearing under the heading "Explanatory note" in Schedule 1 does not form part of this Act.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Part 4, Division 3, Subdivision 1 (**Interpretation**):

Omit the Subdivision.

(2) Section 100AB (**Issue of attendance notice**):

Omit "prescribed member of the police force may authorise the issue of", insert instead "member of the police force may issue".

(3) Section 100AC (**Form of attendance notice**):

Omit section 100AC (f) (ii), insert instead:

(ii) the member of the police force who issued it.

(4) Section 100AE (**Presumptions**):

Omit section 100AE (b), insert instead:

(b) that a member of the police force issued and signed an attendance notice, if the notice purports to have been issued and signed by a member of the police force; and

SCHEDULE 1—AMENDMENTS—*continued*

Explanatory note

Currently a court attendance notice requiring the attendance at court of a person against whom an information for an indictable or summary offence has been laid may be authorised and issued only by a police officer who is of or above the rank of sergeant or in charge of a police station. The amendments remove this requirement and enable police officers of all ranks to issue such notices, rather than having to take an offender to a police station.

(5) Section 122 (**Appeal allowed in every case of conviction or order made by Justices**):

Omit section 122 (2C), insert instead:

(2C) The registrar for the proclaimed place at which the appeal or application is to be heard and determined must, as soon as practicable after receiving a notice of appeal pursuant to subsection (1) or an application for leave to appeal accompanied by a notice of appeal pursuant to subsection (1C), give notice of the time and place fixed for the hearing of the appeal or application to all parties interested or concerned in the appeal or application.

(2CA) If a notice of hearing has not been given personally or in accordance with this section or any other permitted manner, the District Court may proceed to hear and determine or otherwise dispose of the appeal or application despite any error in, or non-service of, a notice of hearing if it is satisfied that each party had knowledge of the time and place fixed for the hearing and was not prejudiced by the error or non-service.

Explanatory note

Currently the hearing of an appeal, or an application for leave to appeal, to the District Court from a decision of a Local Court may proceed in the absence of the appellant or applicant, even if there is an error in, or non-service of, a notice of hearing, if the Court is satisfied that the appellant or applicant is avoiding service or cannot, after diligent search and inquiry, be found.

The amendment removes the requirement for diligent search and inquiry and provides that, if a party has not been given notice of the hearing personally or in accordance with the section or any other permitted manner, the Court may proceed if there is an error in, or non-service of, a notice of hearing only if satisfied that each party had knowledge of the time and place fixed for the hearing and was not prejudiced by the error or non-service.

SCHEDULE 1—AMENDMENTS—*continued*

(6) Section 123 (**Conditions on which execution of conviction or order stayed**):

(a) From section 123 (1) (b) (ii), omit "and abide the judgment of the District Court thereon and", insert instead "to notify the registrar for the proclaimed place at which the appeal is to be heard of any change in the appellant's address, to abide the judgment of the District Court on the appeal and to".

(b) Omit section 123 (3), insert instead:

(3) If, in the case of an appellant who is an accused person and who is in custody:

(a) notice of appeal has been duly given within the time specified in section 122 (1); and

(b) the appellant is granted bail in accordance with the Bail Act 1978,

the appellant must not be released on bail unless, in the appellant's bail undertaking, the appellant undertakes to appear at the District Court and prosecute the appeal, to notify the registrar for the proclaimed place at which the appeal is to be heard of any change in the appellant's address, to abide the judgment of the District Court on the appeal and to pay such costs as may be awarded by the District Court.

Explanatory note

Section 123 sets out the conditions on which the execution of a conviction or order of a Local Court which is subject to an appeal to the District Court will be stayed. One of the conditions is that an appellant who is not in custody enters into a recognizance for a specified sum of costs that is also subject to conditions.

Item (6) (a) makes it a condition of the recognizance that the appellant notify the registrar of the court of any change in address.

Item (6) (b) makes it a condition of the bail undertaking of an appellant who is released from custody before the hearing of an appeal that the appellant notify the registrar of the court of any change in address.

(7) Section 125A (**Further recognizance to prosecute appeal**):

(a) Omit section 125A (2) (b), insert instead:

(b) discharge the appellant on the appellant entering into a recognizance, with or without a surety or sureties in such sum as the Court determines, that contains conditions requiring the appellant:

SCHEDULE 1—AMENDMENTS—*continued*

(i) to appear before the District Court in accordance with the terms of the recognizance; and

(ii) to prosecute the appeal; and

(iii) to notify the registrar for the proclaimed place at which the appeal is to be heard of any change in the appellant's address; and

(iv) to abide the judgment of the District Court on the appeal; and

(v) to pay such costs as may be awarded by the District Court.

(b) Omit section 125A (2B), insert instead:

(2B) If the appellant referred to in subsection (2A) is granted bail in accordance with the Bail Act 1978, the appellant must not be released on bail unless, in the appellant's bail undertaking, the appellant undertakes:

(a) to appear before the District Court and prosecute the appeal; and

(b) to notify the registrar for the proclaimed place at which the appeal is to be heard of any change in the appellant's address; and

(c) to abide the judgment of the District Court on the appeal; and

(d) to pay such costs as may be awarded by the District Court.

Explanatory note

Section 125A sets out the actions the District Court may take on the adjournment of an appeal from a Local Court, including releasing an appellant on condition that the appellant enter into a further recognizance.

Item (7) (a) makes it an additional condition of the further recognizance that the appellant notify the registrar of the Court of any change in address.

Item (7) (b) makes it an additional condition of the bail undertaking of an appellant who is released from custody after the adjournment of an appeal that the appellant notify the registrar of the Court of any change in address.

SCHEDULE 1—AMENDMENTS—*continued*

(8) Section 126A:

After section 126, insert:

Notice of dismissal

126A. (1) This section applies to:

(a) an application for leave to appeal to the District Court which is dismissed because of the failure of the applicant to appear; and

(b) an appeal to the District Court which is dismissed because of the failure of the appellant to appear and prosecute the appeal.

(2) The registrar for the proclaimed place at which the application or appeal is dismissed must notify the applicant or appellant at his or her last known address of:

(a) the order of the District Court dismissing the application or appeal; and

(b) the right of the applicant or appellant under section 127A to have the order vacated within 12 months from the dismissal.

(3) The notice may be given in the manner permitted by section 122 (4).

Explanatory note

The amendment inserts proposed section 126A which requires a notice of dismissal to be given to an applicant for leave to appeal, or an appellant, when an application for leave to appeal or an appeal is dismissed because the applicant or appellant fails to appear. The notice will also set out the right to have the order of dismissal vacated. The notice may be served by post.

(9) Section 127A (**Vacating order of dismissal**):

(a) Before section 127A (2), insert:

(1) Where:

(a) an application for leave to appeal to the District Court is dismissed on the failure of the applicant to appear; and

(b) within 12 months after that dismissal the applicant shows to a Judge sufficient cause for the applicant's failure to appear,

SCHEDULE 1—AMENDMENTS—*continued*

the Judge may, where in the Judge's opinion it is in the interests of justice to do so, by order vacate the order dismissing the application and any other order made as a consequence of the failure of the applicant to appear or the dismissal of the application.

(b) From section 127A (2) (b), omit "3 months", insert instead "12 months".

Explanatory note

Item (9) (a) enables an order dismissing an application for leave to appeal to be vacated if the order was made because the applicant failed to appear and the applicant shows sufficient cause for that failure to appear. This puts an applicant for leave to appeal in the same position as an appellant in similar circumstances. Item (9) (a) and (9) (b) also provide that such an order, and an order vacating an order dismissing an appeal, may be made up to 12 months after the dismissal.

(10) Second Schedule (**Savings, transitional and other provisions**):

After clause 14, insert:

PART 5—TRANSITIONAL PROVISIONS CONSEQUENT ON ENACTMENT OF THE JUSTICES (AMENDMENT) ACT 1993

15. A provision of Division 4 of Part 5 applies to and in respect of an appeal or application under that Division by a person against whom a conviction or order was made before the commencement of an amendment to that provision made by the Justices (Amendment) Act 1993 as if the amendment were not in force.

Explanatory note

The amendment inserts a transitional provision which will have the effect that the amendments to Part 5 of the Act will not apply to an appeal or application in respect of a conviction or order made before the commencement of the relevant amendment.

SECOND READING SPEECH

LEGISLATIVE COUNCIL

JUSTICES (AMENDMENT) BILL 1993

MINISTER TO SAY :

I MOVE THAT THIS BILL BE NOW READ A FIRST TIME.

(WHEN AGREED TO)

MR PRESIDENT, I MOVE THAT THIS BILL NOW BE READ A SECOND TIME. I SEEK THE LEAVE OF THE HOUSE TO HAVE THE SECOND READING SPEECH INCORPORATED IN *HANSARD* (IF DESIRED).

THE PURPOSE OF THIS BILL IS TO EXPAND THE OPERATION OF THE COURT ATTENDANCE NOTICE SCHEME AND TO STREAMLINE PROCEDURES IN THE DISTRICT COURT IN CIRCUMSTANCES WHERE AN APPELLANT DOES NOT ATTEND THE DISTRICT COURT TO PROSECUTE AN APPEAL FROM A DECISION OF A LOCAL COURT.

LOOKING FIRST AT THE COURT ATTENDANCE NOTICE SCHEME, DIVISION 3 OF PART IV OF THE JUSTICES ACT, WHICH CONTAINS SECTIONS 100AA TO 100AE, WAS INTRODUCED IN 1985 TO PROVIDE A LEGISLATIVE BASIS FOR THE SCHEME, WHICH WAS INTENDED TO OFFER AN ALTERNATIVE TO CHARGING OFFENDERS.

UNDER THE SCHEME, A POLICE OFFICER, ON IDENTIFYING THE ALLEGED OFFENDER, COULD ARRANGE THE ISSUE OF A COURT ATTENDANCE NOTICE, WHICH CONTAINED DETAILS OF THE ALLEGED OFFENCE AND WHICH REQUIRED THE OFFENDER TO APPEAR AT A LOCAL COURT ON A SPECIFIED

DATE AND TIME TO BE DEALT WITH ACCORDING TO LAW. THERE WAS NO NEED TO ARREST AND CHARGE THE OFFENDER OR TO MAKE A DETERMINATION AS TO BAIL. IF THE OFFENDER FAILED TO APPEAR, THE MATTER COULD EITHER BE DEALT WITH IN HIS OR HER ABSENCE OR A WARRANT FOR APPREHENSION OF THE OFFENDER COULD BE ISSUED.

THE PROBLEM WITH THE SCHEME IN ITS CURRENT FORM IS THAT THE LEGISLATION REQUIRES THAT THE ISSUE OF THE NOTICE MUST BE AUTHORISED BY A "PRESCRIBED MEMBER OF THE POLICE FORCE". UNDER SECTION 100AA, THIS IS DEFINED AS A MEMBER OF THE POLICE FORCE " ...ABOVE THE RANK OF SERGEANT ... " OR " ... FOR THE TIME BEING IN CHARGE OF A POLICE STATION ... ". THIS MEANT THAT GENERALLY AN OFFENDER HAD TO BE TAKEN BACK TO THE POLICE STATION FOR THE ISSUE OF THE NOTICE TO BE AUTHORISED, THUS REDUCING THE USEFULNESS OF THE SCHEME. POLICE WERE NOT ENTHUSIASTIC ABOUT THE SCHEME AND IT HAS NOT BEEN EMPLOYED AS WIDELY AS MAY BE DESIRABLE.

THE INCREASING INCIDENCE OF PEOPLE IN CUSTODY ATTEMPTING SUICIDE HAS PROMPTED A FURTHER EXAMINATION OF THE COURT ATTENDANCE NOTICE SCHEME WITH A VIEW TO IMPROVING ITS EFFECTIVENESS AND ENCOURAGING ITS USE BY POLICE OFFICERS.

IT HAS THEREFORE BEEN PROPOSED TO INCREASE USE OF THE SCHEME BY MAKING IT ACCESSIBLE FOR OFFICERS IN THE FIELD, AVOIDING THE NEED TO BRING OFFENDERS INTO THE STATION. THE PROPOSED AMENDMENT WILL ALLOW ANY POLICE OFFICER TO ISSUE A COURT ATTENDANCE NOTICE TO AN OFFENDER, WHERE AN ASSESSMENT IS MADE THAT IT IS NOT APPROPRIATE IN THE PARTICULAR CIRCUMSTANCES TO ARREST AND CHARGE THE OFFENDER.

THE CHANGE, IF APPROVED, WILL REFLECT A MAJOR CHANGE IN OUTLOOK FOR THE POLICE SERVICE. PREVIOUSLY, THE PROSECUTION OF OFFENCES WAS APPROACHED ON THE BASIS THAT AN OFFENDER WOULD BE ARRESTED UNLESS THERE WERE PARTICULAR REASONS WHY THE OFFENDER SHOULD NOT BE TAKEN INTO CUSTODY. THE PROPOSAL WILL REVERSE THIS APPROACH, IN THAT POLICE OFFICERS WILL EXAMINE CASES ON THE BASIS THAT OFFENDERS WILL NOT BE ARRESTED UNLESS SPECIFIC FACTORS ARE PRESENT WHICH INDICATE THAT ARREST WOULD BE APPROPRIATE.

THESE FACTORS INCLUDE SUCH ISSUES AS WHETHER THE POLICE OFFICER IS SATISFIED AS TO THE IDENTITY OF THE ALLEGED OFFENDER AND WHETHER IT IS NECESSARY TO REMOVE THE ALLEGED OFFENDER TO PREVENT A CONTINUATION OF THE OFFENCE OR TO PROTECT A VICTIM, WITNESS OR THE ALLEGED OFFENDER BY THE IMPOSITION OF A BAIL CONDITION. A COURT ATTENDANCE NOTICE WILL NOT BE ISSUED WHERE THE ALLEGED OFFENDER IS INCAPACITATED DUE TO INTOXICATION.

THIS CHANGE WILL HAVE SEVERAL BENEFITS. FIRSTLY, FEWER OFFENDERS WILL BE TAKEN INTO CUSTODY, WHICH, IT IS HOPED, WILL REDUCE THE INCIDENCE OF PERSONS HARMING THEMSELVES WHILE IN CUSTODY. THE NEW PROCEDURE WILL ALSO MEAN THAT POLICE OFFICERS WILL BE ABLE TO SPEND MORE TIME ON THE STREETS, RATHER THAN BACK IN THE STATION PROCESSING OFFENDERS. RATHER THAN HAVING TO ARREST OFFENDERS, ACCOMPANY THEM TO THE STATION AND PARTICIPATE IN THE CHARGING AND BAILING PROCESS, POLICE OFFICERS WILL BE ABLE TO ISSUE COURT ATTENDANCE NOTICES ON THE SPOT TO A SUBSTANTIAL NUMBER OF OFFENDERS AND THEN CONTINUE THEIR PATROLS.

THE SCHEME WILL NOT BE APPLICABLE FOR ALL OFFENCES BUT ONLY FOR A CATEGORY OF MOST COMMON LESS SERIOUS PROSECUTIONS, INCLUDING BOTH SUMMARY OFFENCES AND SOME INDICTABLE OFFENCES WHICH CAN BE DEALT WITH SUMMARILY, EITHER WITH OR WITHOUT THE CONSENT OF THE DEFENDANT. SHORT DESCRIPTIONS FOR THE OFFENCES WILL BE PRESCRIBED TO AVOID ANY DIFFICULTIES ABOUT THE ADEQUACY OF THE DESCRIPTION OF OFFENCES ON THE NOTICES, PURSUANT TO SECTION 145B OF THE JUSTICES ACT.

IF THE LEGISLATION IS PASSED, THE SCHEME WILL BE TRIALLED IN A NUMBER OF METROPOLITAN AND COUNTRY PATROLS WITH A VIEW TO DETERMINING ITS EFFECTIVENESS BEFORE INTRODUCTION STATEWIDE.

IF SUCCESSFUL, THE SCHEME WILL MARK A SIGNIFICANT CHANGE IN POLICE PROCEDURES. IT WILL REDUCE THE NEED FOR OFFENDERS TO BE TAKEN INTO AND HELD IN CUSTODY AND IT WILL ENABLE POLICE OFFICERS TO SPEND MORE TIME ON PATROL.

TURNING NOW TO THE PROPOSED CHANGES TO THE APPEAL PROVISIONS, UNDER CURRENT LEGISLATION, IF AN APPELLANT DOES NOT APPEAR AT THE DISTRICT COURT, THE COURT MAY ONLY PROCEED TO HEAR AN APPEAL IF IT IS SATISFIED THAT EACH PARTY HAD KNOWLEDGE OF THE HEARING, OR THAT THE APPELLANT IS AVOIDING SERVICE OF THE NOTICE OF HEARING, OR THE APPELLANT COULD NOT AFTER, "DILIGENT SEARCH AND INQUIRY", BE FOUND.

IT HAS BECOME COMMON PRACTICE, WHERE THE APPELLANT HAS NOT APPEARED, FOR JUDGES OF THE DISTRICT COURT TO REQUEST A "DILIGENT SEARCH AND INQUIRY" PRIOR TO DEALING WITH APPEALS. I AM INFORMED THAT OVER 1000 SUCH REQUESTS WERE MADE LAST YEAR.

THE "DILIGENT SEARCH AND INQUIRY" ORDER IS DIRECTED TO THE REGISTRAR OF THE COURT WHO, IN TURN, INSTRUCTS THE INFORMANT POLICE OFFICER TO UNDERTAKE AN EXTENSIVE INVESTIGATION TO LOCATE THE APPELLANT AND TO SUPPLY A REPORT TO THE COURT. THE APPEAL ITSELF IS ADJOURNED TO ALLOW THE INVESTIGATION TO BE CONDUCTED.

THIS PRACTICE HAS GIVEN RISE TO ADMINISTRATIVE DIFFICULTIES AND, MORE IMPORTANTLY, REPRESENTS A WASTE OF BOTH COURT AND POLICE RESOURCES.

FOR INSTANCE, POLICE INFORMANTS MUST NOT ONLY PUT ASIDE OTHER POLICE DUTIES TO SEARCH FOR THE APPELLANT, BUT THE SEARCH MUST OFTEN BE CONDUCTED OUTSIDE THE DISTRICT TO WHICH THE INFORMANT OFFICER IS ATTACHED. FURTHERMORE, DUE TO THE WORK COMMITMENTS OF POLICE OFFICERS, THE REQUESTS ARE OFTEN GIVEN LOW PRIORITY.

THEREFORE, ON THE ADJOURNED DATE, THE COURT IS FREQUENTLY FACED WITH THE SITUATION THAT NO REPORT HAS BEEN PREPARED. IN OTHER CASES, THE COURT MAY REQUEST AN ADDITIONAL OR MORE COMPREHENSIVE REPORT TO BE PREPARED. IN SUCH CIRCUMSTANCES, THE APPEAL WILL AGAIN BE ADJOURNED TO ALLOW THE PREPARATION OF SUCH A REPORT OR THE CALLING OF THE POLICE INFORMANT, ADDING FURTHER TO COURT DELAYS AND CREATING MORE ADMINISTRATIVE PROBLEMS FOR THE REGISTRY - NOT TO MENTION THE DRAIN ON POLICE RESOURCES.

HONOURABLE MEMBERS WILL SEE THAT SUCH AN ARRANGEMENT AS THIS MEANS THAT VALUABLE COURT TIME IS EXPENDED NOT IN ADDRESSING THE BACKLOG OF CASES BUT ON ADMINISTRATIVE MATTERS.

THIS BILL WILL SET IN PLACE AN ADMINISTRATIVE MECHANISM TO ALLOW A COURT TO DISMISS QUICKLY AND CONFIDENTLY THOSE APPEALS WHERE AN APPELLANT HAS FAILED TO ATTEND TO PROSECUTE HIS OR HER APPEAL, IN THE KNOWLEDGE THAT THE EVERY REASONABLE EFFORT HAS BEEN MADE TO ADVISE THE APPELLANT OF THE HEARING DATE.

TO ACHIEVE THIS OBJECTIVE, GREATER WEIGHT WILL BE PLACED ON THE OBLIGATION OF THE APPELLANT TO PROSECUTE THE APPEAL. THIS WILL BE DONE BY AMENDING SECTION 123 OF THE JUSTICES ACT TO MAKE IT A CONDITION OF ANY BAIL UNDERTAKING OR RECOGNIZANCE WHICH THE APPELLANT ENTERS TO PROSECUTE AN APPEAL THAT HE OR SHE NOTIFY THE DISTRICT COURT REGISTRAR OF ANY CHANGE OF ADDRESS.

A SIMPLE ARRANGEMENT AS THIS WILL ENSURE THAT THE REGISTRY HAS AN UP TO DATE ADDRESS FOR THE APPELLANT TO ENABLE NOTICES OF LISTING TO BE SENT. THESE NOTICES OF LISTING WILL INFORM THE APPELLANT OF THE DATE AND PLACE OF THE HEARING AND THE TIME OF LISTING.

ON THE DATE THE APPEAL IS LISTED, THE COURT WILL BE QUICKLY ABLE TO SATISFY ITSELF WHETHER OR NOT THE APPELLANT HAS BEEN ADVISED OF THE HEARING BY REFERRING TO A COPY OF THE NOTICE ON FILE.

IT WILL NO LONGER BE NECESSARY FOR THE INFORMANT POLICE OFFICER TO CARRY OUT A SEARCH IN AN ATTEMPT TO LOCATE AN APPELLANT WHO, IN A LARGE NUMBER OF CASES, HAS SIMPLY DECIDED NOT TO PROCEED WITH THE APPEAL.

HOWEVER MR SPEAKER, TO PROTECT APPELLANTS WHO, THROUGH NO FAULT OF THEIR OWN, DID NOT RECEIVE A NOTICE OF LISTING, THE PROPOSED SECTION 126A REQUIRES THE REGISTRAR OF THE DISTRICT COURT TO NOTIFY THE APPELLANT AT HIS OR HER LAST KNOWN ADDRESS OF THE ORDER DISMISSING THE APPEAL AND OF THE APPELLANT'S RIGHT TO HAVE THE ORDER VACATED UNDER SECTION 127A.

IN ADDITION, THE PROPOSED AMENDMENT TO SECTION 127A WILL EXTEND THE TIME LIMIT (FROM 3 TO 12 MONTHS) WITHIN WHICH SUCH AN APPELLANT MAY APPLY TO THE DISTRICT COURT TO HAVE THE ORDER FOR DISMISSAL VACATED. THIS MEASURE WILL ACT AS A SAFEGUARD AND ALLOW DESERVING APPEALS TO BE HEARD.

THE BILL MAKES SIMILAR PROVISION IN RELATION TO THE DISMISSAL OF APPLICATIONS FOR LEAVE TO APPEAL TO THE DISTRICT COURT, THAT IS, IN CIRCUMSTANCES WHERE THE APPEAL IS NOT LODGED IN TIME.

CURRENTLY, IF AN APPLICATION FOR LEAVE TO APPEAL IS DISMISSED ON THE FAILURE OF THE APPLICANT TO APPEAR, THE APPLICANT HAS NO RIGHT TO HAVE THE DISMISSAL ORDER VACATED EVEN IF THE APPLICANT HAS A GOOD REASON FOR NOT APPEARING.

THE PROPOSED SECTION 126A REQUIRES THAT WHERE AN APPLICATION FOR LEAVE TO APPEAL HAS BEEN DISMISSED BECAUSE THE APPLICANT FAILED TO APPEAR, THE REGISTRAR OF THE DISTRICT COURT MUST NOTIFY THE APPLICANT OF THE ORDER DISMISSING THE APPLICATION AND OF THE RIGHT TO HAVE THE ORDER OF DISMISSAL VACATED.

IN ADDITION, THE AMENDMENT TO SECTION 127A WILL ENABLE AN ORDER DISMISSING AN APPLICATION FOR LEAVE TO APPEAL TO BE VACATED IF THE ORDER WAS MADE BECAUSE THE APPLICANT FAILED TO APPEAR AND THE APPLICANT SHOWS SUFFICIENT CAUSE FOR THAT FAILURE TO APPEAR. THIS AMENDMENT PUTS AN APPLICANT FOR LEAVE TO APPEAL IN THE SAME POSITION AS AN APPELLANT IN SIMILAR CIRCUMSTANCES.

THE JUSTICES (AMENDMENT) BILL, AS IT RELATES TO DISTRICT COURT APPEALS, REPRESENTS A MINOR AMENDMENT TO THE JUSTICES ACT BUT A MAJOR SAVING TO BOTH COURT AND POLICE RESOURCES. APPEALS TO THE DISTRICT COURT WILL BE DISPOSED OF FAIRLY AND EFFICIENTLY ALLOWING JUDGES OF THAT COURT MORE TIME TO DEAL WITH MORE SERIOUS MATTERS. SIMILARLY, THE PROPOSED AMENDMENTS WILL FREE POLICE OFFICERS TO PERFORM POLICE DUTIES. THE BILL NEVERTHELESS DOES NOT SACRIFICE THE INTERESTS OF THE APPELLANT IN ORDER TO ACHIEVE THESE INCREASED EFFICIENCIES.

FINALLY MR SPEAKER, I HAVE BEEN ADVISED THAT THE CHIEF JUDGE OF THE DISTRICT COURT, HIS HONOUR JUDGE STAUNTON, SUPPORTS THE PROPOSED AMENDMENTS TO THE JUSTICES ACT IN RESPECT TO THE APPEAL PROCEDURES.

I COMMEND THE BILL TO THE HOUSE.

JUSTICES (AMENDMENT) ACT 1993 No. 45

NEW SOUTH WALES

TABLE OF PROVISIONS

JUSTICES (AMENDMENT) ACT 1993 No. 45

NEW SOUTH WALES

Act No. 45, 1993

An Act to amend the Justices Act 1902 to make provision with respect to the issue of court attendance notices and appeals to the District Court. [Assented to 15 June 1993]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Justices (Amendment) Act 1993.

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.

Explanatory notes

4. The matter appearing under the heading "Explanatory note" in Schedule 1 does not form part of this Act.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Part 4, Division 3, Subdivision 1 (**Interpretation**):

Omit the Subdivision.

(2) Section 100AB (**Issue of attendance notice**):

Omit "prescribed member of the police force may authorise the issue of", insert instead "member of the police force may issue".

(3) Section 100AC (**Form of attendance notice**):

Omit section 100AC (f) (ii), insert instead:

(ii) the member of the police force who issued it.

(4) Section 100AE (**Presumptions**):

Omit section 100AE (b), insert instead:

(b) that a member of the police force issued and signed an attendance notice, if the notice purports to have been issued and signed by a member of the police force; and

SCHEDULE 1—AMENDMENTS—*continued*

Explanatory note

Currently a court attendance notice requiring the attendance at court of a person against whom an information for an indictable or summary offence has been laid may be authorised and issued only by a police officer who is of or above the rank of sergeant or in charge of a police station. The amendments remove this requirement and enable police officers of all ranks to issue such notices, rather than having to take an offender to a police station.

(5) Section 122 (**Appeal allowed in every case of conviction or order made by Justices**):

Omit section 122 (2C), insert instead:

(2C) The registrar for the proclaimed place at which the appeal or application is to be heard and determined must, as soon as practicable after receiving a notice of appeal pursuant to subsection (1) or an application for leave to appeal accompanied by a notice of appeal pursuant to subsection (1C), give notice of the time and place fixed for the hearing of the appeal or application to all parties interested or concerned in the appeal or application.

(2CA) If a notice of hearing has not been given personally or in accordance with this section or any other permitted manner, the District Court may proceed to hear and determine or otherwise dispose of the appeal or application despite any error in, or non-service of, a notice of hearing if it is satisfied that each party had knowledge of the time and place fixed for the hearing and was not prejudiced by the error or non-service.

Explanatory note

Currently the hearing of an appeal, or an application for leave to appeal, to the District Court from a decision of a Local Court may proceed in the absence of the appellant or applicant, even if there is an error in, or non-service of, a notice of hearing, if the Court is satisfied that the appellant or applicant is avoiding service or cannot, after diligent search and inquiry, be found.

The amendment removes the requirement for diligent search and inquiry and provides that, if a party has not been given notice of the hearing personally or in accordance with the section or any other permitted manner, the Court may proceed if

SCHEDULE 1—AMENDMENTS—*continued*

there is an error in, or non-service of, a notice of hearing only if satisfied that each party had knowledge of the time and place fixed for the hearing and was not prejudiced by the error or non-service.

(6) Section 123 (**Conditions on which execution of conviction or order stayed**):

(a) From section 123 (1) (b) (ii), omit "and abide the judgment of the District Court thereon and", insert instead "to notify the registrar for the proclaimed place at which the appeal is to be heard of any change in the appellant's address, to abide the judgment of the District Court on the appeal and to".

(b) Omit section 123 (3), insert instead:

(3) If, in the case of an appellant who is an accused person and who is in custody:

(a) notice of appeal has been duly given within the time specified in section 122 (1); and

(b) the appellant is granted bail in accordance with the Bail Act 1978,

the appellant must not be released on bail unless, in the appellant's bail undertaking, the appellant undertakes to appear at the District Court and prosecute the appeal, to notify the registrar for the proclaimed place at which the appeal is to be heard of any change in the appellant's address, to abide the judgment of the District Court on the appeal and to pay such costs as may be awarded by the District Court.

Explanatory note

Section 123 sets out the conditions on which the execution of a conviction or order of a Local Court which is subject to an appeal to the District Court will be stayed. One of the conditions is that an appellant who is not in custody enters into a recognizance for a specified sum of costs that is also subject to conditions.

Item (6) (a) makes it a condition of the recognizance that the appellant notify the registrar of the court of any change in address.

Item (6) (b) makes it a condition of the bail undertaking of an appellant who is released from custody before the hearing of an appeal that the appellant notify the registrar of the court of any change in address.

SCHEDULE 1—AMENDMENTS—*continued*

(7) Section 125A (**Further recognizance to prosecute appeal**):

(a) Omit section 125A (2) (b), insert instead:

(b) discharge the appellant on the appellant entering into a recognizance, with or without a surety or sureties in such sum as the Court determines, that contains conditions requiring the appellant:

(i) to appear before the District Court in accordance with the terms of the recognizance; and

(ii) to prosecute the appeal; and

(iii) to notify the registrar for the proclaimed place at which the appeal is to be heard of any change in the appellant's address; and

(iv) to abide the judgment of the District Court on the appeal; and

(v) to pay such costs as may be awarded by the District Court.

(b) Omit section 125A (2B), insert instead:

(2B) If the appellant referred to in subsection (2A) is granted bail in accordance with the Bail Act 1978, the appellant must not be released on bail unless, in the appellant's bail undertaking, the appellant undertakes:

(a) to appear before the District Court and prosecute the appeal; and

(b) to notify the registrar for the proclaimed place at which the appeal is to be heard of any change in the appellant's address; and

(c) to abide the judgment of the District Court on the appeal; and

(d) to pay such costs as may be awarded by the District Court.

SCHEDULE 1—AMENDMENTS—*continued*

Explanatory note

Section 125A sets out the actions the District Court may take on the adjournment of an appeal from a Local Court, including releasing an appellant on condition that the appellant enter into a further recognizance.

Item (7) (a) makes it an additional condition of the further recognizance that the appellant notify the registrar of the Court of any change in address.

Item (7) (b) makes it an additional condition of the bail undertaking of an appellant who is released from custody after the adjournment of an appeal that the appellant notify the registrar of the Court of any change in address.

(8) Section 126A:

After section 126, insert:

Notice of dismissal

126A. (1) This section applies to:

(a) an application for leave to appeal to the District Court which is dismissed because of the failure of the applicant to appear; and

(b) an appeal to the District Court which is dismissed because of the failure of the appellant to appear and prosecute the appeal.

(2) The registrar for the proclaimed place at which the application or appeal is dismissed must notify the applicant or appellant at his or her last known address of:

(a) the order of the District Court dismissing the application or appeal; and

(b) the right of the applicant or appellant under section 127A to have the order vacated within 12 months from the dismissal.

(3) The notice may be given in the manner permitted by section 122 (4).

Explanatory note

The amendment inserts proposed section 126A which requires a notice of dismissal to be given to an applicant for leave to appeal, or an appellant, when an application for

SCHEDULE 1—AMENDMENTS—*continued*

leave to appeal or an appeal is dismissed because the applicant or appellant fails to appear. The notice will also set out the right to have the order of dismissal vacated. The notice may be served by post.

(9) Section 127A (**Vacating order of dismissal**):

(a) Before section 127A (2), insert:

(1) Where:

(a) an application for leave to appeal to the District Court is dismissed on the failure of the applicant to appear; and

(b) within 12 months after that dismissal the applicant shows to a Judge sufficient cause for the applicant's failure to appear,

the Judge may, where in the Judge's opinion it is in the interests of justice to do so, by order vacate the order dismissing the application and any other order made as a consequence of the failure of the applicant to appear or the dismissal of the application.

(b) From section 127A (2) (b), omit "3 months", insert instead "12 months".

Explanatory note

Item (9) (a) enables an order dismissing an application for leave to appeal to be vacated if the order was made because the applicant failed to appear and the applicant shows sufficient cause for that failure to appear. This puts an applicant for leave to appeal in the same position as an appellant in similar circumstances. Item (9) (a) and (9) (b) also provide that such an order, and an order vacating an order dismissing an appeal, may be made up to 12 months after the dismissal.

(10) Second Schedule (**Savings, transitional and other provisions**):

After clause 14, insert:

PART 5—TRANSITIONAL PROVISIONS CONSEQUENT ON ENACTMENT OF THE JUSTICES (AMENDMENT) ACT 1993

15. A provision of Division 4 of Part 5 applies to and in respect of an appeal or application under that Division by a person against whom a conviction or order was made before

SCHEDULE 1—AMENDMENTS—*continued*

the commencement of an amendment to that provision made by the Justices (Amendment) Act 1993 as if the amendment were not in force.

Explanatory note

The amendment inserts a transitional provision which will have the effect that the amendments to Part 5 of the Act will not apply to an appeal or application in respect of a conviction or order made before the commencement of the relevant amendment.

[*Minister's second reading speech made in—*
Legislative Assembly on 21 April 1993
Legislative Council on 18 May 1993]

BY AUTHORITY
R. J. MILLIGAN, ACTING GOVERNMENT PRINTER—1993