

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1935.

A BILL

To amend the law relating to proceedings before Magistrates and Justices of the Peace and the law relating to proceedings in the nature of appeal therefrom; to repeal the Justices (Fees) Act, 1904; to amend the Justices Act, 1902, and certain other Acts; and for purposes connected therewith.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Justices (Amendment) Act, 1935," and shall be read and construed with the Justices Act, 1902, as amended by subsequent Acts. Short title and citation.

Justices (Amendment).

(2) The Justices Act, 1902, as amended by subsequent Acts including this Act, may be cited as the Justices Act, 1902-1935.

2. (1) The Justices Act, 1902, as amended by subsequent Acts, is amended—

Amendment of Act No. 27, 1902.

(a) by omitting from section thirteen the words "or, within the metropolitan police district, the Mayor of Sydney";

Sec. 13. (Jurisdiction of Lord Mayor.)

(b) by omitting from paragraph (a) of section twenty-six the words "in New South Wales";

Sec. 26. (Attendance of witnesses.)

(c) by omitting from the first proviso to section thirty-four the words "the Justice" and by inserting in lieu thereof the words "where the defendant remains in custody any Justice";

Sec. 34. (Defendant in custody during adjournment.)

(d) by inserting after subsection one of section thirty-eight the following new subsection:—

Sec. 38 (1). (Binding witnesses to appear at trial.)

(1A) The power conferred by paragraph (a) of subsection one of this section upon the Justice or Justices before whom the witnesses are examined may be exercised by such Justice or Justices or by any other Justice.

(e) by omitting from subsection two of section forty the words "such sum, not exceeding four pence per folio, as the Judges of the Supreme Court from time to time determine" and by inserting in lieu thereof the words "a fee calculated on the rate prescribed by regulations which the Governor is hereby authorised to make under section one hundred and fifty-four of this Act";

Sec. 40 (2). (Copies of depositions.)

(f) (i) by omitting subsection three of section forty-one;

Sec. 41. (Procedure on hearing—indictable offence.)

(ii) by omitting from subsection four of the same section the words "After such depositions have been read, or if the defendant does not desire them to be read, the Justice or Justices shall" and by inserting in lieu thereof the words "Where the evidence for the prosecution has, in the opinion of the Justice or Justices, established a prima facie case, he shall";

(g)

- (g) (i) by omitting from paragraph (a) of section forty-two the words "by warrant"; Sec. 42.
- (ii) by inserting at the end of the same section the following new subsection:— (Commitment to prison.)
- (2) Where a person is committed to prison pursuant to paragraph (a) of subsection one of this section, the warrant of commitment may be signed by any Justice.
- (h) by omitting from paragraph (a) of section sixty-one the words "in New South Wales"; Sec. 61.  
(Attendance of witnesses.)
- (i) by inserting at the end of section sixty-nine the following proviso: "Provided that where the defendant remains in custody any Justice may order the said defendant to be brought before him or any other Justice or Justices at any time before the expiration of the period for which the hearing was adjourned and the gaoler or officer in whose custody the defendant then is shall duly obey such order"; Sec. 69.  
(Defendant in custody during adjournment.)
- (j) by inserting after subsection three of section seventy the following new subsection:— Sec. 70.  
(Depositions to be signed.)
- (4) The deposition of every witness shall be taken down in writing and shall be read over to such witness and be signed by him and by the Justice or Justices.
- (k) by omitting from subsection two of section seventy-three the words "such sum, not exceeding four pence per folio, as the Judges of the Supreme Court from time to time determine" and by inserting in lieu thereof the words "a fee calculated on the rate prescribed by regulations which the Governor is hereby authorised to make under section one hundred and fifty-four of this Act"; Sec. 73 (2).  
(Copies of depositions.)
- (l) by inserting next after section seventy-eight the following new section:— New sec.  
78A.
- 78A. (1) Where the defendant is charged with two or more offences, whether of a like or different nature, the Justice or Justices, if the complainant and the defendant consent thereto, shall have jurisdiction to hear and determine such charges together. Provision for hearing cases together.

Justices (Amendment).

(2) Where two or more defendants are separately charged with offences, whether of a like or different nature, alleged to have been committed at the same time and place, the Justice or Justices, if the complainants and the defendants consent thereto, shall have jurisdiction to hear and determine such charges together.

- (m) by inserting in subsection one of section eighty-one after the words "shall pay to the" wherever occurring the words "clerk of the court, to be by him paid to the"; Sec. 81 (1).  
(Costs to be paid to clerk.)
- (n) (i) by omitting from subsection two of section eighty-two the words "for such period within the limits hereinafter prescribed as to such Justice or Justices seems fit" and by inserting in lieu thereof the words "for a period calculated in accordance with the provisions of this subsection"; Sec. 82 (2).  
(Imprisonment in default of payment.)
- (ii) by inserting in the same subsection after the words "part thereof" the words "but in no case shall such period exceed twelve months";
- (o) by inserting at the end of section eighty-three the following subsection:— Sec. 83,  
new subsec.  
(4).

(4) The security referred to in paragraph (c) of subsection one of this section may be given either before or after the defendant has been committed to prison in default of payment of such amount. Where such security is given after the defendant has been committed to prison the amount thereof shall be the amount adjudged to be paid reduced by a sum bearing as nearly as possible the same proportion to the total amount as the days served in prison bear to the total number of days for which he was committed. When security may be given.
- (p) (i) by omitting from subsection two of section eighty-four the words "and seals"; Sec. 84 (2).  
(Security.)
- (ii)

- (ii) by inserting at the end of the same subsection the words "or by and under the hand of any Stipendiary, Police, or Special Magistrate";
- (q) (i) by inserting in subsection two of section ninety after the word "otherwise" the words "or by a remission by the Governor pursuant to the Fines and Penalties Act, 1901-1933"; Sec. 90. (Commitment for unpaid balance.)
- (ii) by omitting from the same subsection the words "term not exceeding such less maximum term" and by inserting in lieu thereof the words "period calculated in accordance with the provisions of subsection two of section eighty-two of this Act, having regard to the unsatisfied balance";
- (r) (i) by omitting from subsection two of section one hundred and twenty-two the word "heard" and by inserting in lieu thereof the words "set down for hearing"; Sec. 122 (2). (Appeals—venue.)
- (ii) by omitting from the same subsection the words "at such other Court of Quarter Sessions either then sitting or thereafter to sit as the Attorney-General may direct" and by inserting in lieu thereof the words "if the Attorney-General so directs, at a Court of Quarter Sessions for such district or for any other district being holden either at the time of such direction or thereafter to be holden.  
The chairman of the Court of Quarter Sessions at which such appeal is set down for hearing may if he thinks fit order that such appeal shall be heard at a Court of Quarter Sessions for the same district to be holden at any time after the making of such order";
- (s) (i) by omitting from subsection one of section one hundred and fifty-three the word "sergeant" and by inserting in lieu thereof the words "first-class constable"; Sec. 153. (Persons authorised to grant bail.)
- (ii)

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(ii) by inserting in the same subsection after the words "perform any act" the words "or upon his giving security by an acknowledgment pursuant to subsection one of section eighty-four of this Act";

(iii) by inserting in the same subsection after the words "person on recognisance" the words "or on his giving a security by an acknowledgment";

(iv) by omitting subsection two of the same section and by inserting in lieu thereof the following subsection:—

(2) Every recognizance entered into and every acknowledgment given pursuant to subsection one of section eighty-four of this Act before any such officer or gaoler shall be of equal obligation on the persons entering into or giving the same, and liable to the same proceedings for the estreating of the recognisance or the enforcement of the payment of the sum due by way of security (as the case may be) as if the same had been entered into or given before a Justice.

(v) by inserting in subsection three of the same section after the words "entered into" the words "or such acknowledgment is given";

(t) by inserting next after section one hundred and fifty-three the following new section:— New sec. 154.

154. (1) It shall be lawful for the Governor to make regulations— Regulations.

(a) fixing the fees to be demanded and taken in respect of proceedings before any Justice or Justices or in respect of any recognizance taken in pursuance of section one hundred and fifty-three of this Act and prescribing what fees may be taken and what fees may be retained for their own use by bailiffs of courts of petty sessions;

(b)

- (b) prescribing in what manner lists of such fees shall be published for general information;
- (c) prescribing the persons by whom such fees may be demanded and taken;
- (d) prescribing under what circumstances and by whom such fees may be remitted;
- (e) prescribing the practice and procedure to be observed in collecting such fees.

And such fees and no other may be so demanded, taken and retained.

(2) Such regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in such regulations; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication, if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before such House, disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

(3) Provided that no fee shall be demanded—

- (a) from any naval or military pensioner for administering any oath necessary to be made for the receipt of his pension; or
- (b) in respect of proceedings before any Justice or Justices from any prosecutor or accused person in any prosecution for an offence which cannot by law be disposed of summarily.

(u)

Justices (Amendment).

(u) by omitting from section one the figures "146-151" and by inserting in lieu thereof the figures and letter "145A-154." Sec. 1. Consequential.

(2) The Justices (Amendment) Act 1909, is amended by omitting paragraph (a) of subsection two of section twenty-two. Consequential amendment of Act No. 24, 1909, s. 22 (2) (a).

3. (1) The Justices (Fees) Act, 1904, is repealed. Repeal of Act No. 14, 1904.

(2) All regulations made under the authority of the Act hereby repealed, and in force immediately before the commencement of this Act, shall be deemed to have been made under the authority of section one hundred and fifty-four of the Justices Act, 1902, as inserted by section two of this Act. Saving.

4. The Crimes Act, 1900, as amended by subsequent Acts, is amended by omitting subsection three of section five hundred and fifty-four and by inserting in lieu thereof the following subsection:— Amendment of Act No. 40, 1900, s. 554 (3).

(3) Where a person is convicted of any offence by the said Court, the Court may, on such conviction or at any time thereafter upon notice given to the offender direct that a sum not exceeding fifty pounds be paid for the benefit of any person aggrieved, by way of compensation for injury or loss sustained by reason of the commission of such offence. Damages and compensation.

Any sum so directed to be paid shall be paid by the offender to the clerk of the Court, to be by him paid to the person aggrieved.

Any such direction shall be deemed to be a conviction or order whereby a sum of money is adjudged to be paid within the meaning of the Justices Act, 1902-1935.

