

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.

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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.
