

## JUSTICES (AMENDMENT) ACT.

### Act No. 24, 1966.

An Act to make further provisions relating to appeals to the Supreme Court by way of special case from the decision of a Justice or magistrate; for this purpose to amend the Justices Act, 1902, as amended by subsequent Acts, and certain other Acts; and for purposes connected therewith. [Assented to, 13th April, 1966.]

Elizabeth II,  
No. 24, 1966

**B**E it enacted by the Queen'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, 1966".

(2)

Short title  
and  
citation.

196           **Justices (Amendment) Act.**

**No. 24, 1966**           (2) The Justices Act, 1902, as amended by subsequent Acts and by this Act, may be cited as the Justices Act, 1902-1966.

Amendment of Act No. 27, 1902.   **2.** The Justices Act, 1902, as amended by subsequent Acts, is amended—

New sec. 104A.           (a) by inserting next after section one hundred and four the following new section :—

Provisions for stating a case where Justice or magistrate dies, retires, etc.

104A. (1) In this section—

“Justice” does not include a magistrate acting in his capacity as a magistrate.

“Magistrate” means a Stipendiary Magistrate, a licensing magistrate under the Liquor Act, 1912, as amended by subsequent Acts, a special magistrate under the Child Welfare Act, 1939, as amended by subsequent Acts, and an industrial magistrate under the Industrial Arbitration Act, 1940, as amended by subsequent Acts.

(2) Where, after making a determination in any proceedings held before him sitting alone, a magistrate (in this section referred to as the “original magistrate”) has ceased to hold office as a magistrate by reason of his retirement from that office and—

(a) that original magistrate had not, at his retirement, stated and signed a case in respect of that determination pursuant to an application made to him before his retirement in accordance with subsection one of section one hundred and one of this Act, that original magistrate may state and sign the case; or

(b) an application had not been made to him before his retirement in accordance with that subsection to state and sign a case in respect

respect of that determination, an application may be made to him in accordance with that subsection to state and sign the case and that original magistrate may state and sign the case. No. 24, 1966

(3) For the purpose of stating and signing a case under subsection two of this section, and for no other purpose, an original magistrate shall, subject to subsection four of this section—

- (a) be deemed to continue in his former office as a magistrate; and
- (b) do all acts and things necessary under this Part of this Act for or in connection with the stating and signing of the case in all respects as if he still held his former office as a magistrate.

(4) Where—

- (a) an application to state and sign a case has been made to an original magistrate as referred to in subsection two of this section; and
- (b) the prescribed person has, upon an application being made to the prescribed person to nominate another magistrate to state and sign the case, determined that the original magistrate has neglected or failed to settle and to state and sign the case in accordance with the rules of the Supreme Court made for the purposes of this Part of this Act,

the prescribed person shall cause a copy of the application to be served upon another magistrate nominated by the prescribed person to state and sign the case, and the powers and duties, under subsections two and three of this section, of the original magistrate to state and sign the case shall cease and determine.

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(5) Where, after making a determination in any proceedings held before him sitting alone, a Justice or a magistrate (in this section respectively referred to as the "original Justice" and the "original magistrate") has ceased to hold office as a Justice or a magistrate, as the case may be, by reason of his death or otherwise (but, in the case of a magistrate, not by reason of his retirement) or is unable by reason of absence or illness to attend to the duties of his office, and—

(a) that original Justice or that original magistrate had not, at the time when he so ceased to hold office or so became unable to attend to his duties, stated and signed a case in respect of that determination pursuant to an application made to him before that time in accordance with subsection one of section one hundred and one of this Act, the prescribed person shall, subject to subsection eleven of this section, cause a copy of the application to be served upon a magistrate nominated by the prescribed person to state and sign the case; or

(b) an application had not been made to that original Justice or that original magistrate before that time in accordance with that subsection to state and sign a case in respect of that determination, an application to state and sign the case may be made to the prescribed person as if he were the original Justice or the original magistrate, as the case may be, and that application shall, subject to subsection eleven of this section, be forwarded by him to a magistrate nominated by him to state and sign the case.

(6)

(6) A magistrate nominated under sub-section four or five of this section—

- (a) shall, subject to section one hundred and three of this Act, state and sign the case and do all acts and things necessary under this Part of this Act for or in connection with the stating and signing of the case in all respects as if he were the original Justice or the original magistrate who made the determination in respect of which the case was stated and signed; and
- (b) shall not be required to set forth the grounds of the determination in respect of which the case is stated and signed by him.

(7) Where a case has been stated and signed under any of the provisions of this Part of this Act, the Supreme Court shall hear and determine the question or questions of law arising on such case and shall exercise and perform such of its powers and duties under this Part of this Act in relation to the case as it deems proper, notwithstanding that—

- (a) the Justice or magistrate in respect of whose determination the case was stated and signed; or
- (b) the Justice or magistrate by whom the case was stated and signed,

has ceased to hold office by reason of retirement, death or otherwise or is unable to attend to the duties of his office.

(8) Where the Supreme Court determines that a matter should be remitted or a case should be sent back for amendment in accordance with the provisions of subsection one of section one hundred and six of this Act, and the case was stated and signed—

- (a) by a magistrate in accordance with the provisions of subsections two and three of this section;

(b)

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- (b) by a Justice or magistrate who since stating and signing the case—
- (i) has died; or
  - (ii) has become unable by reason of absence or illness to attend to the duties of his office;
- (c) by a Justice who since stating and signing the case has ceased to be a Justice otherwise than by reason of his death; or
- (d) by a magistrate who since stating and signing the case has ceased to hold office as a magistrate otherwise than by reason of his death,

the Supreme Court shall, upon an application made by the appellant, remit the matter, or send the case back for amendment, to the prescribed person to be forwarded, subject to subsection eleven of this section, by him to a magistrate nominated by him.

(9) A magistrate nominated under subsection eight of this section shall deal with the matter remitted to him or amend the case referred back to him, and do all acts and things necessary under this Part of this Act for or in connection with dealing with the matter or amending the case in all respects as if he were the Justice or magistrate who made the determination in respect of which the case was stated and signed, and for the purpose of dealing with the matter or amending the case the magistrate so nominated—

- (a) may read as evidence for either party the depositions of all witnesses in the proceedings in which that determination was made; and
- (b) may grant leave for further evidence to be called by any of the parties to those proceedings.

(10)

(10) A reference in subsections four, five, eight and eleven of this section to the prescribed person shall be deemed to be a reference—

- (a) except where the original magistrate was a licensing magistrate under the Liquor Act, 1912, as amended by subsequent Acts, or an industrial magistrate under the Industrial Arbitration Act, 1940, as amended by subsequent Acts—to the chairman of the bench of Stipendiary Magistrates appointed under this Act, or the person for the time being acting as such chairman;
- (b) where the original magistrate was such a licensing magistrate—to the chairman of licensing courts appointed under the Liquor Act, 1912, as amended by subsequent Acts, or the person for the time being acting as such chairman; and
- (c) where the original magistrate was such an industrial magistrate—to the person specified in regulations made under the Industrial Arbitration Act, 1940, as amended by subsequent Acts (which regulations are hereby authorised to be made) as the prescribed person for the purpose of this section.

(11) The prescribed person shall not be bound to nominate a magistrate—

- (a) under subsection five of this section where the application to state and sign the case is made in respect of the determination of an original Justice or an original magistrate who is unable by reason of absence or illness to attend to the duties of his office; or
- (b)

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(b) under subsection eight of this section where the case was stated and signed by a Justice or magistrate who since stating and signing the case has become unable by reason of absence or illness to attend to the duties of his office,

unless, in the opinion of the prescribed person, it is necessary in the interests of the parties to the proceedings for him to do so.

(12) The provisions of this section apply whether the original Justice or the original magistrate retired or otherwise ceased to hold office as a Justice or a magistrate, or became unable to attend to the duties of his office, before or after the commencement of the Justices (Amendment) Act, 1966.

Sec. 154.  
(Regulations.)

(b) by inserting next after subsection (1A) of section one hundred and fifty-four the following new subsection : —

(1B) The Governor may make regulations not inconsistent with this Act for or with respect to prescribing the manner of and the practice to be observed in relation to stating and signing a case under section 104A of this Act and the making of nominations under that section and such other matters as may be necessary or convenient for carrying out or giving effect to the provisions of that section.