

# Justices Legislation Amendment (Appeals) Bill 1998

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are:

- (a) to repeal and re-enact provisions of the *Justices Act 1902* relating to appeals from decisions of Magistrates in criminal proceedings to the Supreme Court, the District Court and the Land and Environment Court, and
- (b) to make consequential amendments to that Act and other Acts.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the *Justices Act 1902* set out in Schedule 1.

**Clause 4** is a formal provision giving effect to the amendments to the other Acts set out in Schedule 2.

## Schedule 1 Amendment of Justices Act 1902

### Appeals to Supreme Court

Currently, the Principal Act provides for review by the Supreme Court of determinations of a Magistrate in summary proceedings in the following ways:

- (a) a party to the proceedings may apply for the Magistrate to state and sign a case for the opinion of the Supreme Court on a point of law (Division 1 of Part 5),
- (b) a party to the proceedings may commence action in the Supreme Court on the ground that the relevant conviction or order cannot be supported (Division 2 of Part 5).

**Schedule 1 [2]** provides that notes included in the Act do not form part of the Act.

**Schedule 1 [3]** removes those existing types of review and replaces them with a new Part 5 containing the appeal procedure outlined below.

**Schedule 1 [4]** removes section 134 of the Act which enables a person to apply to the Supreme Court for an order directing a Justice to do any act relating to the duties of his or her office.

**Schedule 1 [5]** removes section 146 of the Act which provides that no conviction or order by a Magistrate, or adjudication on appeal of the District Court, may be removed by any order into the Supreme Court. The purpose of the section is to restrict the availability of relief in the nature of certiorari.

### Part 5 Appeals to Supreme Court

#### Division 1 Preliminary

The proposed Division contains definitions of expressions used in the proposed Part and sets out the

way in which the proposed Part applies to sentences, orders and proceedings. (See **Schedule 1 [2]**, proposed sections 101–103.)

### **Division 2 Appeals to Supreme Court**

The proposed Division sets out when an appeal to the Supreme Court may be made against a conviction or order made, or a sentence imposed, by a Magistrate in summary proceedings. A person against whom a conviction or order is made, or on whom a sentence is imposed, may appeal to the Supreme Court on a question of law or on the ground that the determination of the Magistrate cannot be supported, or with the leave of the Supreme Court may appeal on a ground that involves a question of mixed law and fact. An informant in such proceedings may appeal to the Supreme Court on a question of law or with the leave of the Supreme Court on a question of mixed law and fact.

A stay of execution of a sentence is provided for, in the event of an appeal, when an appellant is not in custody. The powers of the Supreme Court in determining an appeal are set out. Provision is made for persons who may take proceedings in appeals relating to traffic offences committed by children.

An appeal to the District Court or the Land and Environment Court may not be made if an appeal has been made under the proposed Part to the Supreme Court unless the matter is remitted to the Local Court and the Local Court has redetermined the matter. (See **Schedule 1 [2]**, proposed sections 104–115.)

### **Appeals to District Court and Land and Environment Court**

Currently, the Principal Act enables appeals to be made to the District Court from convictions, orders and other decisions of Magistrates in criminal proceedings. The Principal Act also enables appeals to be made to the Land and Environment Court from decisions of Magistrates in criminal proceedings relating to environmental offences and applies provisions relating to District Court appeals to appeals to the Land and Environment Court. The amendments re-enact the current appeal provisions in separate Parts (proposed Parts 5A and 5B) and set out in full the provisions applying to environmental offences. The main differences between the current appeal procedure and the proposed Parts are:

- (c) appeals against convictions are to be dealt with as rehearings on the transcripts of evidence in the original hearings, rather than on the basis of rehearing all the evidence in matters (except where the Court directs that evidence is to be given in person), and
- (d) a new requirement that a person who pleaded guilty must obtain leave to appeal from the District Court or the Land and Environment Court before an appeal (other than an appeal against a sentence) can be heard, and
- (e) a new requirement that a person who has not exhausted all avenues of review by the Local Court of a decision by a Magistrate must obtain leave to appeal from the District Court or the Land and Environment Court before an appeal can be heard.

**Schedule 1 [2]** inserts proposed Parts 5A and 5B containing the following provisions:

### **Part 5A Appeals to District Court**

#### **Division 1 Preliminary**

The proposed Division contains definitions of expressions used in the proposed Part and sets out the way in which the proposed Part applies to sentences, orders and proceedings. (See **Schedule 1 [2]**, proposed sections 116–118.)

#### **Division 2 Appeals by defendants and other persons**

The proposed Division contains the procedures for making an appeal, or an application for leave to appeal, to the District Court and sets out when an appeal to the District Court may be made against a conviction or order made, or a sentence imposed, by a Magistrate. The proposed Division also specifies when an appeal may be made only with the leave of the District Court, including after *ex parte* proceedings and after a plea of guilty. A stay of execution of a sentence is provided for, in the event of an appeal, when an appellant is not in custody.

An appeal is to be by way of rehearing on the transcripts of evidence heard before the Magistrate. However, the District Court may direct that evidence be given in person if, in the case of evidence given by a victim of a violent offence, it is of the opinion that there are special reasons why, in the

interests of justice, the witness should attend to give oral evidence. In any other case, the direction may be given if the District Court is of the opinion that there are substantial reasons why, in the interests of justice, the witness should give evidence in person. Fresh evidence may only be given if the District Court is of the opinion that it is in the interests of justice that it be given.

The powers of the District Court in determining an appeal are set out. Other procedural matters are dealt with, including provision for orders dismissing appeals and applications for leave to appeal to be set aside in certain circumstances. Additional undertakings relating to the appeal are required of an appellant or applicant for leave to appeal before bail may be granted to an appellant or applicant. Provision is made for persons who may take proceedings in appeals relating to traffic offences committed by children. (See **Schedule 1 [2]**, proposed sections 119–133D.)

### **Division 3 Appeals by Crown**

The proposed Division contains the procedures for the making of an appeal by the Director of Public Prosecutions against a sentence imposed in proceedings for certain summary offences. The powers of the District Court in determining an appeal are provided for, including the power to exercise any function that the Magistrate might have exercised. New evidence may be given with the leave of the District Court, but by the prosecution only in exceptional circumstances. (See **Schedule 1 [2]**, proposed sections 133E–133I.)

### **Division 4 General provisions relating to appeals and applications for leave to appeal**

The proposed Division contains provisions applying to appeals and applications for leave to appeal under proposed Division 2 and proposed Division 3. The District Court is given power to specify the sitting for an appeal and to make rules for procedures for appeals and applications for leave to appeal. An appeal or application for leave to appeal may be heard even though there is an error in a notice of appeal or other notice. Other procedural matters are dealt with, including the effect of errors or omissions or mistakes in the form of orders, convictions and sentences, the withdrawal of appeals and applications for leave to appeal, the time when a conviction, order or sentence confirmed or varied by the District Court takes effect, the continuing effect of existing recognizances if a conviction, order or sentence is confirmed by the District Court and the manner in which the Court must direct costs to be paid.

The circumstances in which costs may be awarded in favour of an appellant against a respondent (not being a person acting in a private capacity) are limited to circumstances involving an unreasonable or improper investigation, bad faith, failure to investigate certain matters or other exceptional circumstances.

The District Court may not vary, increase or reduce a sentence in a way that could not have been done by a Magistrate.

The proposed Division also sets out the limits on appeals and prohibits appeals to the District Court relating to environmental offences (to be dealt with by the Land and Environment Court). (See **Schedule 1 [2]**, proposed sections 133J–133V.)

## **Part 5B Appeals to Land and Environment Court**

### **Division 1 Preliminary**

The proposed Division contains definitions of expressions used in the proposed Part and sets out the way in which the proposed Part applies to sentences, orders and proceedings. (See **Schedule 1 [2]**, proposed sections 133W–133Y.)

### **Division 2 Appeals by defendants and other persons**

The proposed Division contains the procedures for making an appeal, or application for leave to appeal, to the Land and Environment Court and sets out when an appeal to the Land and Environment Court may be made against a conviction or order made, or a sentence imposed, by a Magistrate in respect of an environmental offence. The proposed Division also specifies when an appeal may be made only with the leave of the Land and Environment Court, including after ex parte proceedings and after a plea of guilty. A stay of execution of a sentence is provided for, in the event of an appeal, when an appellant is not in custody.

An appeal is to be by way of rehearing on the transcripts of evidence heard before the Magistrate.

However, the Land and Environment Court may direct that evidence be given in person if, in the case of evidence given by a victim of a violent offence, it is of the opinion that there are special reasons why, in the interests of justice, the witness should attend to give oral evidence. In any other case, the direction may be given if the Land and Environment Court is of the opinion that there are substantial reasons why, in the interests of justice, the witness should give evidence in person. Fresh evidence may only be given if the Land and Environment Court is of the opinion that it is in the interests of justice that it be given.

The powers of the Land and Environment Court in determining an appeal are set out. Other procedural matters are dealt with, including provision for orders dismissing appeals and applications for leave to appeal to be set aside in certain circumstances. Additional undertakings relating to the appeal are required of an appellant or applicant for leave to appeal before bail may be granted to an appellant or applicant. Provision is made for persons who may take proceedings in appeals relating to traffic offences committed by children. (See **Schedule 1 [2]**, proposed sections 133Z–133AQ.)

### **Division 3 Appeals by Crown**

The proposed Division contains the procedures for the making of an appeal by the Director of Public Prosecutions against a sentence imposed in proceedings for certain summary environmental offences. The powers of the Land and Environment Court in determining an appeal are provided for, including the power to exercise any power the Magistrate might have exercised. New evidence may be given with the leave of the Land and Environment Court, but by the prosecution only in exceptional circumstances. (See **Schedule 1 [2]**, proposed sections 133AR–133AV.)

### **Division 4 General provisions relating to appeals and applications for leave to appeal**

The proposed Division contains provisions applying to appeals and applications for leave to appeal under proposed Division 2 and proposed Division 3. The Land and Environment Court is given power to specify the sitting for an appeal and to make rules for procedures for appeals and applications for leave to appeal. An appeal or application for leave to appeal may be heard even though there is an error in a notice of appeal or other notice. Other procedural matters are dealt with, including the effect of errors or omissions or mistakes in the form of orders, convictions and sentences, the withdrawal of appeals and applications for leave to appeal, the time when a conviction, order or sentence confirmed or varied by the Land and Environment Court takes effect, the continuing effect of existing recognizances if a conviction, order or sentence is confirmed by the Land and Environment Court and the manner in which the Court must direct costs to be paid.

The circumstances in which costs may be awarded in favour of an appellant against a respondent (not being a person acting in a private capacity) are limited to circumstances involving an unreasonable or improper investigation, bad faith, failure to investigate certain matters or other exceptional circumstances.

The Land and Environment Court may not vary, increase or reduce a sentence in a way that could not have been done by a Magistrate.

The limits on appeals are also set out. (See **Schedule 1 [2]**, proposed sections 133AW–133BI.)

### **Savings, transitional and other provisions**

**Schedule 1 [5]** inserts savings, transitional and other provisions that apply the new provisions relating to appeals to convictions or orders made, and sentences imposed, after the relevant provisions commence and continue the application of the existing provisions to convictions or orders made, or sentences imposed, before those commencements and also enable regulations to be made (proposed new Part, Second Schedule).

## **Schedule 2 Amendment of other Acts**

Schedule 2 contains the following consequential amendments to other Acts:

- (a) amendments to the *Bail Act 1978*, the *Children (Community Service Orders) Act 1987*, the *Children (Criminal Proceedings) Act 1987*, the *Community Land Management Act 1989*, the

*Community Service Orders Act 1979, the Construction Safety Act 1912, the Crimes Act 1900, the Director of Public Prosecutions Act 1986, the Factories, Shops and Industries Act 1962, the Industrial Relations Act 1996, the Infants' Custody and Settlements Act 1899, the Land and Environment Court Act 1979, the Landlord and Tenant (Amendment) Act 1948, the Local Courts Act 1982, the Local Courts (Civil Claims) Act 1970, the Mining Act 1992, the Minors (Property and Contracts) Act 1970, the Motor Vehicles (Third Party Insurance) Act 1942, the Occupational Health and Safety Act 1983, the Protection of the Environment Operations Act 1997, the Public Health Act 1991, the Strata Schemes Management Act 1996 and the Wool, Hide and Skin Dealers Act 1935 to update references to the substituted provisions relating to appeals under the Justices Act 1902,*

- (b) an amendment to the *Bail Act 1978* conferring power on the Land and Environment Court to grant bail on an appeal to an appellant under the *Justices Act 1902*.

Schedule 2 also contains amendments to:

- (a) the *Criminal Appeal Act 1912* to enable a party to proceedings before the District Court in its criminal and special jurisdiction to apply for the Judge who heard the proceedings to submit a question of law to the Court of Criminal Appeal even though the proceedings have been disposed of, and
- (b) the *Supreme Court Act 1970* that reproduce provisions currently contained in Division 3 of Part 5 of the *Justices Act 1902* relating to proceedings in the Supreme Court for a writ of habeas corpus and provide for a stay of proceedings in proceedings for a judicial review by the Supreme Court of a determination of the District Court in appeal proceedings from a Local Court.