



New South Wales

Justices Legislation Amendment (Appeals) Act 1998 No 137

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New South Wales

Justices Legislation Amendment (Appeals) Act 1998 No 137

Act No 137, 1998

An Act to amend the *Justices Act 1902* in relation to appeals from Magistrates' decisions to the Supreme Court, the District Court and the Land and Environment Court; to consequentially amend other Acts; and for other purposes. [Assented to 8 December 1998]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Justices Legislation Amendment (Appeals) Act 1998*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Justices Act 1902 No 27

The *Justices Act 1902* is amended as set out in Schedule 1.

4 Amendment of other Acts

The Acts set out in Schedule 2 are amended as set out in that Schedule.

Schedule 1 Amendment of Justices Act 1902

(Section 3)

[1] Section 4A

Insert after section 4:

4A Notes

Notes included in this Act do not form part of this Act.

[2] Parts 5, 5A and 5B

Omit Part 5. Insert instead:

Part 5 Appeals to Supreme Court

Division 1 Preliminary

101 Definitions

In this Part:

appeal means an appeal under this Part.

appellant means a person who appeals or applies for leave to appeal under this Part.

informant includes a complainant, the Director of Public Prosecutions and any other person responsible for the conduct of a prosecution.

rules means rules of the Supreme Court.

102 Application of Part generally

- (1) In this Part, a reference to a sentence includes a reference to:
 - (a) a fine or sentence imposed by a Magistrate, and
 - (b) any order made by a Magistrate:
 - (i) on the conviction or instead of a conviction of a person, or
 - (ii) as punishment for any act or omission.

- (2) Subsection (1) (b) includes but is not limited to the following orders and decisions:
- (a) an order for compensation or forfeiture,
 - (b) an order to pay any sum of money (whether for payment by any person of costs of a party or witness or for any other purpose),
 - (c) an order under section 556A (1) of the *Crimes Act 1900* with respect to a person dealt with for an offence,
 - (d) an order or a decision under section 558 (1) of the *Crimes Act 1900* with respect to a person dealt with for an offence,
 - (e) a decision by a Magistrate exercising the jurisdiction of a Local Court under the *Fines Act 1996* not to annul a fine enforcement order,
 - (f) any other order or decision of any kind whatever made by a Magistrate with respect to a person dealt with for an offence (whether or not the person has been convicted) deferring passing sentence on the person and releasing the person subject to conditions or without conditions,
 - (g) a decision within the meaning of section 42 (3) of the *Children (Criminal Proceedings) Act 1987* made by a Magistrate exercising the jurisdiction of the Children's Court in respect of an offence committed by a person.
- (3) This Part, to the extent to which it is not inconsistent with any other Act, applies to any order of a Magistrate made under another Act against which:
- (a) an appeal is provided for under the other Act to the Supreme Court, or
 - (b) an appeal is provided for under the other Act but no court is specified for the appeal.
- (4) The provisions of this Part do not affect the provisions of the *Home Detention Act 1996*.
- (5) This Part does not apply to the exercise of ministerial functions by a Magistrate.

103 Application of Part to Justices

In this Part, a reference to a Magistrate includes a reference to any person (not being a Magistrate) who exercises the functions, powers or jurisdiction of a Justice or Justices conferred by this Act.

Division 2 Appeals to Supreme Court

104 When an appeal can be made by a defendant or informant

(1) **Appeals by defendants**

A person against whom any conviction or order was made, or sentence was imposed, by a Magistrate in summary proceedings may appeal under this Division to the Supreme Court on any of the following grounds:

- (a) a ground that involves a question of law alone,
- (b) a ground that involves a question of mixed law and fact, but only with the leave of the Supreme Court,
- (c) the ground that the conviction, order or sentence cannot be supported having regard to the evidence.

(2) **Appeals by informants**

An informant may appeal under this Division to the Supreme Court against an order dismissing an information or complaint or order for costs made, or sentence imposed, by a Magistrate in summary proceedings on a ground that involves a question of law alone.

105 Appeals against interlocutory orders of Magistrates

An appeal may not be made against any interlocutory order made by a Magistrate, except with the leave of the Supreme Court.

106 How appeal to be made and conducted

- (1) An appeal is to be made and conducted in accordance with the rules.
- (2) An appeal is to be made within such period after the date that the relevant conviction or order is made, or the sentence imposed, as may be prescribed by the rules.

107 Stay of execution of conviction, order or sentence pending appeal

- (1) The execution of a sentence imposed as a consequence of a conviction, or of any other order, is stayed when a notice of appeal is given in accordance with this Division.
- (2) Subsection (1) does not apply to an appellant who is in custody when the appeal is made unless and until the appellant enters into a bail undertaking in accordance with the *Bail Act 1978*, or bail is dispensed with.
- (3) The stay of execution continues until the appeal is finally determined, subject to any order or direction of the Supreme Court and section 111 (3).
- (4) Despite subsection (1), any period during which the stay is in force is not to be taken into account when calculating the length of a period of disqualification from holding a driver's licence resulting from a conviction under the *Traffic Act 1909*.
- (5) An application for leave to appeal does not result in a stay of execution under this section.

108 Powers of Supreme Court to review stays of execution of sentences

- (1) An informant may apply to the Supreme Court for a review of a stay of execution under section 107.
- (2) The Supreme Court may, on application being made under this section by an informant, order that a stay of execution under section 107 is to cease to have effect in relation to a sentence, but only if the informant satisfies the Court that the appellant has unduly delayed the appeal proceedings.

109 Powers of Supreme Court in determining appeals

The Supreme Court may, after hearing an appeal, determine the appeal by dismissing the appeal or by doing any one or more of the following:

- (a) confirming, quashing, setting aside or varying the conviction, order or sentence appealed against or any part of it,
- (b) increasing or reducing the sentence appealed against,
- (c) making such other orders as it thinks just,
- (d) remitting the matter to the Magistrate who made the conviction or order, or imposed the sentence, to hear and determine the matter of the appeal.

110 Errors in form or law not of themselves to enable appeal success

- (1) The Supreme Court is not to quash or set aside a conviction, order or sentence on an appeal merely because of:
 - (a) an omission or mistake in the form of the conviction or order, or
 - (b) any error in law in the order or sentence,if it appears to the Supreme Court that there were sufficient grounds before the Magistrate to have authorised a conviction, order or sentence free from the omission, mistake or error.
- (2) In any such case, the Supreme Court may:
 - (a) amend the conviction, order or sentence and determine the appeal as if the omission, mistake or error did not exist, or
 - (b) remit the case to the Magistrate to make the conviction or order, or impose the sentence, authorised by law and to amend the conviction, order or sentence accordingly.

111 Supreme Court may confirm conviction, order or sentence with effect from an earlier day

- (1) The Supreme Court may order that a conviction, order or sentence confirmed or varied by it on appeal, or any part of it:
 - (a) is to take effect on and from a day specified in the order, or
 - (b) in the case of a sentence that has been served in part, is to recommence on and from a day specified in the order,
being the day the order is made or an earlier day.
- (2) The order has effect even though a stay of execution may have been in force in respect of the sentence appealed against.
- (3) Any time spent in custody by an appellant pending the determination of an appeal counts as part of any sentence imposed on the appellant in relation to the matter on appeal.
- (4) Despite subsections (1) and (2), any period during which a stay of execution was in force in respect of a conviction under the *Traffic Act 1909* is not to be taken into account when calculating the length of a period of disqualification from holding a driver's licence resulting from the conviction.

112 Appeals relating to certain traffic offences committed by children

- (1) An appeal may be made in respect of a traffic offence committed by a child:
 - (a) by the child concerned, or
 - (b) if the child is under 18 years, on the child's behalf and in the child's name, by a person responsible for the child or the child's counsel, or
 - (c) if the child is in the care or custody of the Minister administering the *Children (Care and Protection) Act 1987* or the Director-General of the Department of Community Services, by that Minister or the Director-General on behalf of the child.

(2) In this section:

child means a person who was under 18 years when the traffic offence was committed and under 21 years when summary proceedings for the offence were commenced.

person responsible for a child has the same meaning as in the *Children (Care and Protection) Act 1987*.

traffic offence means an offence arising under a provision of:

- (a) the *Traffic Act 1909*, or
- (b) the *Roads Act 1993*, or
- (c) the *Motor Vehicles (Third Party Insurance) Act 1942*, or
- (d) the *Recreation Vehicles Act 1983*, or
- (e) any other Act prescribed for the purposes of this definition,

in respect of the use, standing or parking of a motor vehicle within the meaning of that provision.

113 No appeal to District Court or Land and Environment Court in certain cases

- (1) A person may not appeal to the District Court or the Land and Environment Court against a conviction or order made, or a sentence imposed, by a Magistrate in summary proceedings if the person has instituted an appeal to the Supreme Court against the conviction, order or sentence.
- (2) A person's right of appeal to the District Court or Land and Environment Court under this Act is not affected by subsection (1) if:
 - (a) the person instituted an appeal to the Supreme Court against a conviction or order made, or a sentence imposed, by a Magistrate in summary proceedings, and

- (b) the Supreme Court:
- (i) remitted the matter on appeal to the Magistrate to hear and determine and the Magistrate has heard and determined the matter, or
 - (ii) the Supreme Court refused leave to appeal on a question of mixed law and fact.

114 Circumstances where Magistrate unable to hear matter

If the Supreme Court remits a matter to a Magistrate under this Part and the Magistrate who made the original conviction or order, or imposed the original sentence, has ceased to hold office as a Magistrate or is for any other reason unable to continue to hear and determine the remitted matter, the matter is to be dealt with by another Magistrate nominated by the Chief Magistrate.

115 Appeals in relation to committal proceedings

An appeal may not be made in relation to committal proceedings, except with the leave of the Supreme Court.

Part 5A Appeals to District Court

Division 1 Preliminary

116 Definitions

In this Part:

appellant means a person who appeals or applies for leave to appeal under this Part.

informant includes a complainant, the Director of Public Prosecutions and any other person responsible for the conduct of a prosecution.

Judge means a Judge of the District Court.

registrar means a registrar of the District Court.

117 Application of Part generally

- (1) In this Part, a reference to a sentence includes a reference to:
 - (a) a fine or sentence imposed by a Magistrate, and
 - (b) any order made by a Magistrate:
 - (i) on the conviction or instead of a conviction of a person, or
 - (ii) as punishment for any act or omission.
- (2) Subsection (1) (b) includes but is not limited to the following orders and decisions:
 - (a) an order for compensation or forfeiture,
 - (b) an order to pay any sum of money (whether for payment by any person of costs of a party or witness or for any other purpose),
 - (c) an order under section 556A (1) of the *Crimes Act 1900* with respect to a person dealt with for an offence,
 - (d) an order or a decision under section 558 (1) of the *Crimes Act 1900* with respect to a person dealt with for an offence,
 - (e) a decision by a Magistrate exercising the jurisdiction of a Local Court under the *Fines Act 1996* not to annul a fine enforcement order,
 - (f) any other order or decision of any kind whatever made by a Magistrate with respect to a person dealt with for an offence (whether or not the person has been convicted) deferring passing sentence on the person and releasing the person subject to conditions or without conditions,
 - (g) a decision within the meaning of section 42 (3) of the *Children (Criminal Proceedings) Act 1987* made by a Magistrate exercising the jurisdiction of the Children's Court in respect of an offence committed by a person.

- (3) This Part, to the extent to which it is not inconsistent with any other Act, applies to any order of a Magistrate made under another Act against which:
 - (a) an appeal is provided for under the other Act to the District Court, or
 - (b) an appeal is provided for under the other Act but no court is specified for the appeal.
- (4) The provisions of this Part do not affect the provisions of the *Home Detention Act 1996*.
- (5) This Part does not apply to the exercise of ministerial functions by a Magistrate.

118 Application of Part to Justices

In this Part, a reference to a Magistrate includes a reference to any person (not being a Magistrate) who exercises the functions, powers or jurisdiction of a Justice or Justices conferred by this Act.

Division 2 Appeals by defendants and other persons

119 Definitions

In this Division:

appeal means an appeal under this Division.

application for leave to appeal means an application for leave to appeal under this Division.

120 When an appeal can be made by a defendant or other person

- (1) **Appeals against convictions, sentences or orders**
An appeal against any conviction or order made, or sentence imposed, by a Magistrate in summary proceedings may be made under this Division to the District Court by the person against whom the conviction or order was made or on whom the sentence was imposed.

(2) **Appeals under other Acts**

An appeal may be made under this Division to the District Court against an order of a Magistrate exercising the powers of a Justice or Justices under another Act, for which an appeal could be made under section 122, as in force before the commencement of this section.

121 Matters in which no appeal may be made

(1) **Interlocutory orders**

An appeal may not be made against any interlocutory order made by a Magistrate.

(2) **Dismissal**

An appeal may not be made against the dismissal of an information by a Magistrate.

(3) **Costs awarded against informants**

An appeal may not be made against a decision of a Magistrate not to make an order for costs against an informant.

122 How appeal to be made

- (1) An appeal is to be made by lodging a written notice of appeal not later than 28 days after the conviction or order is made, or the sentence is imposed, by the Magistrate.
- (2) A notice of appeal must state the intention to appeal and the general grounds of appeal.
- (3) If an application is made to a Local Court under Part 4A, the time for making an appeal does not start to run until that application is finally disposed of.

Note. Section 126 sets out the manner in which an appeal is to be lodged.

123 Matters in which an appeal can be made only with the leave of the District Court

- (1) An appeal may be made against a conviction entered after a guilty plea or in the absence of the defendant only with the leave of the District Court.

- (2) An appeal may be made by a person who has not exhausted all rights of appeal under Part 4A only with the leave of the District Court.
- (3) An application for leave to appeal is to be made by lodging a written application and a notice of appeal complying with section 122 not later than 28 days after the conviction or order is made, or the sentence is imposed, by the Magistrate.
Note. Section 126 sets out the manner in which an application is to be lodged.
- (4) If an application is made to a Local Court under Part 4A, the time for lodging an application for leave to appeal does not start to run until the application under Part 4A is finally disposed of.
- (5) This section does not apply to an appeal against the severity of a sentence.

124 Appeal may be made with leave, outside time for giving notice of appeal

- (1) A person who is entitled to appeal but who does not give notice of appeal or apply for leave to appeal within the time required by section 122 or 123 may apply, not later than 3 months after the conviction or order is made, or the sentence is imposed, by the Magistrate, to the District Court for leave to appeal against the conviction, order or sentence.
- (2) An application for leave to appeal is to be made by lodging a written application, stating the reasons why the notice or application was not made within the time required, and a notice of appeal complying with section 122.

125 Time for notices of appeal when more than one conviction or order involved

An appeal, or an application for leave to appeal, against a conviction or order made, or a sentence imposed, on the same day as another conviction, sentence or order

involving the same person against which an appeal, or an application for leave to appeal, is made as required by this Division may be heard and determined by the District Court even though the firstmentioned appeal or application was not made as required by this Division.

126 Lodging of notices of appeal and applications for leave to appeal

- (1) A notice of appeal or an application for leave to appeal may be lodged with the clerk of any Local Court or the person in charge of the place at which the appellant is then held in custody.
- (2) A person with whom a notice of appeal or an application is lodged under this section must immediately forward a copy of it to:
 - (a) the informant or any other party to the proceedings concerned, and
 - (b) the clerk of the Local Court where the conviction or order was made or the sentence imposed, if the person is not that clerk.
- (3) Nothing in this section prevents a person with whom a notice of appeal or application for leave to appeal is lodged under this section from giving a copy of the notice of appeal or application to any other interested person.
- (4) The clerk of the Local Court must, as soon as practicable after receiving a notice of appeal or an application for leave to appeal under this Division, transmit the relevant papers, including a copy of any relevant order or conviction made by the Magistrate, to a registrar for keeping in the records of the District Court.

127 Stay of execution of conviction, order or sentence pending appeal

- (1) The execution of a sentence imposed as a consequence of a conviction, or of any other order, is stayed when a notice of appeal is given in accordance with this Division.

- (2) Subsection (1) does not apply to an appellant who is in custody when the appeal is made unless and until the appellant enters into a bail undertaking in accordance with the *Bail Act 1978*, or bail is dispensed with.
- (3) The stay of execution continues until the appeal is finally determined, subject to any order or direction of the District Court and section 133P (3).
- (4) Despite subsection (1), any period during which the stay is in force is not to be taken into account when calculating the length of a period of disqualification from holding a driver's licence resulting from a conviction under the *Traffic Act 1909*.
- (5) An application for leave to appeal does not result in a stay of execution under this section.

128 Effect on appeal or application for leave to appeal of defect in notice or statement of grounds of appeal

- (1) An appeal or an application for leave to appeal is not defeated merely because of a defect, whether of substance or form, in the notice of appeal or statement of grounds of appeal or application.
- (2) The District Court hearing the appeal or application may amend any such notice or statement or application if it is of the opinion that the notice or statement or application is capable of amendment and ought to be amended.
- (3) The amendment may be made subject to such conditions as to adjournment as the District Court thinks just.

129 Powers of District Court in determining applications for leave to appeal

- (1) The District Court may, after hearing an application for leave to appeal, dismiss the application or grant the application.
- (2) The District Court must not grant an application for leave to appeal under section 124 (relating to matters where notice of appeal or an application for leave to appeal was not given in time) unless it is of the opinion that it is in the interests of justice to grant the application.

- (3) The District Court may make such order as to costs to be paid by the appellant as it thinks just if it dismisses an application for leave to appeal.

130 Hearing of appeal after leave to appeal granted

After granting an application for leave to appeal, the District Court may immediately proceed to hear and determine the appeal or may adjourn the appeal.

131 When order dismissing application for leave to appeal may be vacated

The District Court may by order vacate an order dismissing an application for leave to appeal because the applicant failed to appear, and any other order made as a consequence, if an application for vacation of the order is made within 12 months of the dismissal and the District Court is of the opinion that it is in the interests of justice to grant the application.

132 Appeal to be by way of rehearing

- (1) An appeal is to be by way of rehearing on the transcripts of evidence heard before the Magistrate who made the conviction or order or imposed the sentence appealed against, except as provided by section 133.
- (2) For the purposes of subsection (1), a transcript is taken to be a correct transcript of a true record of evidence if the transcript is certified in the manner prescribed by the regulations.
- (3) On an appeal, new evidence may be given only with the leave of the District Court, if the Court is of the opinion that it is in the interests of justice that the evidence be given.
- (4) A clerk of a Local Court must, at the request of an appellant or respondent, provide one copy of the transcript of evidence of any witness free of charge to the appellant or respondent.

133 Circumstances when evidence to be given in person

- (1) The District Court may direct that a person attend to give evidence in person in appeal proceedings if:
 - (a) in the case of a witness in proceedings that relate to an offence involving violence who is the alleged victim of the offence—the Court is of the opinion that there are special reasons why, in the interests of justice, the witness should attend to give evidence, or
 - (b) in any other case—the Court is of the opinion that there are substantial reasons why, in the interests of justice, the witness should attend to give evidence.
- (2) An appellant or a respondent may apply for a direction under this section only if he or she has served on the other party, within such period as the District Court may direct, a notice that the applicant wishes a specified witness to attend at the appeal proceedings.
- (3) A direction may be withdrawn only on the application, or with the consent, of the applicant.
- (4) If the District Court refuses to give a direction, the Court must give reasons for the refusal.
- (5) The regulations may make provision for or with respect to the determination of special reasons under subsection (1) (a) and the determination of substantial reasons under subsection (1) (b).
- (6) In particular and without otherwise limiting subsection (5), the District Court is, in determining whether special or substantial reasons exist, to have regard to whether or not the appellant was legally represented for the whole or part of the proceedings heard before the Magistrate.

133A Powers of District Court in determining appeals

- (1) The District Court may, after hearing an appeal, determine the appeal by dismissing the appeal or by doing any one or more of the following:
 - (a) confirming, quashing, setting aside or varying the conviction, order or sentence appealed against,

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- (b) increasing or reducing the sentence appealed against,
 - (c) making such other orders as it thinks just.
- (2) In determining an appeal, the District Court may exercise any function that the Magistrate who made the conviction or order might have exercised.
 - (3) The District Court may make such order as to costs to be paid by either party (including the Crown) as it thinks just, except as provided by section 133R.

133B When order dismissing appeal may be vacated

- (1) The District Court may by order vacate an order dismissing an appeal because the appellant failed to appear, and any other order made as a consequence, if:
 - (a) within 12 months after the dismissal the appellant shows to the District Court sufficient cause for the failure to appear, and
 - (b) the District Court is of the opinion that it is in the interests of justice to do so.
- (2) The order may be made subject to conditions specified in the order.
- (3) If an order is made, section 127 applies to any sentence subject to the appeal.
- (4) No action lies against any person for anything done by the person in good faith, and without notice of the order, to enforce the conviction, order or sentence the subject of the dismissed appeal.

133C Notice of dismissal of application for leave to appeal or appeal

When an application for leave to appeal, or an appeal, is dismissed, because the appellant fails to appear, the registrar for the proclaimed place at which the application or appeal is dismissed must notify the appellant of:

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

- (b) the appellant's right under this Division to seek to have the order vacated within 12 months from the dismissal.

133D Appeals relating to certain traffic offences committed by children

- (1) An appeal may be made in respect of a traffic offence committed by a child:
 - (a) by the child concerned, or
 - (b) if the child is under 18 years, on the child's behalf and in the child's name, by a person responsible for the child or the child's counsel, or
 - (c) if the child is in the care or custody of the Minister administering the *Children (Care and Protection) Act 1987* or the Director-General of the Department of Community Services, by that Minister or the Director-General on behalf of the child.
- (2) In this section:

child means a person who was under 18 years when the traffic offence was committed and under 21 years when summary proceedings for the offence were commenced.

person responsible for a child has the same meaning as in the *Children (Care and Protection) Act 1987*.

traffic offence means an offence arising under a provision of:

- (a) the *Traffic Act 1909*, or
- (b) the *Roads Act 1993*, or
- (c) the *Motor Vehicles (Third Party Insurance) Act 1942*, or
- (d) the *Recreation Vehicles Act 1983*,

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- (e) any other Act prescribed for the purposes of this definition,

in respect of the use, standing or parking of a motor vehicle within the meaning of that provision.

Division 3 Appeals by Crown

133E Meaning of "appeal"

In this Division:

appeal means an appeal under this Division.

133F When the Crown may appeal against a sentence

- (1) The Director of Public Prosecutions may appeal under this Division to the District Court against any sentence imposed by a Magistrate in proceedings of a kind set out in subsection (2).
- (2) An appeal may be made in any of the following proceedings:
 - (a) proceedings for an indictable offence dealt with summarily by a Magistrate,
 - (b) proceedings for a prescribed summary offence (as defined in the *Director of Public Prosecutions Act 1986*),
 - (c) proceedings for any other summary offence if instituted or carried on by the Director of Public Prosecutions.

133G How appeal to be made

- (1) An appeal is to be made by lodging a written notice of appeal not later than 28 days after the sentence is imposed by the Magistrate.
- (2) Despite subsection (1), an appeal against a sentence may be lodged later than the required time if the sentence was reduced because the defendant undertook to assist law enforcement agencies (within the meaning of the *Criminal Records Act 1991*) and the defendant failed wholly or partly to fulfil the undertaking.

- (3) A notice of appeal may be lodged with the clerk of any Local Court.
- (4) A clerk of a Local Court with whom a notice of appeal or an application is lodged under this section must immediately forward a copy of it to:
 - (a) any other party to the proceedings concerned, and
 - (b) the clerk of the Local Court where the sentence was imposed, if the person is not that clerk.
- (5) Nothing in this section prevents a clerk of a Local Court with whom a notice of appeal is lodged under this section from giving a copy of the notice of appeal to any other interested person.
- (6) The clerk of the Local Court must, as soon as practicable after receiving a notice of appeal under this Division, transmit the relevant papers, including a copy of any relevant order or conviction made by the Magistrate, to a registrar for keeping in the records of the District Court.

133H Evidence in appeals

On an appeal, new evidence may be given with the leave of the District Court, but may be given by the prosecution only in exceptional circumstances.

133I Powers of District Court in determining appeals

- (1) The District Court may, after hearing an appeal, determine the appeal by dismissing the appeal or by doing any one or more of the following:
 - (a) confirming, quashing, setting aside, varying, increasing or reducing the sentence appealed against,
 - (b) imposing such sentence as may seem proper to the District Court.
- (2) In determining an appeal, the District Court may exercise any function that the Magistrate who imposed the sentence might have exercised.

- (3) The District Court may make such order as to costs to be paid by either party (including the Crown) as it thinks just, except as provided by section 133R.

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

133J Definitions

In this Division:

appeal means an appeal under this Part.

application for leave to appeal means an application for leave to appeal under this Part.

133K General powers of District Court

Without limiting any powers of the District Court under the *District Court Act 1973*, the District Court may do any one or more of the following:

- (a) specify the proclaimed place at which the hearing of an appeal or application for leave to appeal is to be heard or continued,
- (b) specify the sitting at which the hearing of an appeal or application for leave to appeal is to be heard or continued,
- (c) adjourn the hearing of an appeal or application for leave to appeal.

133L Rules for procedure for appeals and applications

- (1) The criminal procedure rules of the District Court under the *District Court Act 1973* may make provision for or with respect to the procedure to be followed as regards appeals or applications for leave to appeal.
- (2) Without limiting subsection (1), the rules may make provision for or with respect to the following:
 - (a) the place at which an appeal or application is to be heard.

- (b) when an appeal or application must be heard,
- (c) notice of appeals, applications and hearings,
- (d) notice of dismissal of appeals or applications,
- (e) service of process and other documents.

133M Appeal or application may be heard when notice not given as required

The District Court may proceed to hear and determine or otherwise dispose of an appeal or application for leave to appeal despite any error in, or non-service of, a notice of appeal or other notice 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.

133N Errors in form or law not of themselves to enable appeal success

- (1) The District Court is not to quash or set aside a conviction, order or sentence on an appeal merely because of:
 - (a) an omission or mistake in the form of the conviction or order, or
 - (b) any error in law in the order or sentence,if it appears to the District Court that there were sufficient grounds before the Magistrate to have authorised a conviction, order or sentence free from the omission, mistake or error.
- (2) In any such case, the District Court may:
 - (a) amend the conviction or order and determine the appeal as if the omission, mistake or error did not exist, or
 - (b) remit the case to the Magistrate to make the conviction or order, or impose the sentence, authorised by law and to amend the conviction, order or sentence accordingly.

- (3) If the District Court remits a matter to a Magistrate under this section and the Magistrate who made the original conviction or order or imposed the original sentence has ceased to hold office as a Magistrate or is for any other reason unable to continue to hear and determine the remitted matter, the matter is to be dealt with by another Magistrate nominated by the Chief Magistrate.

1330 Withdrawal of appeals and applications

- (1) An appeal or application for leave to appeal may at any stage be withdrawn by the appellant with the leave of the District Court.
- (2) In giving leave for an appeal or application for leave to appeal by an appellant to be withdrawn, the District Court may make such orders as are necessary to place the appellant as nearly as possible in the same position as if the appeal or application had not been made.
- (3) Any order made by the District Court in respect of an appeal or application that is withdrawn is taken to be an order made by the Magistrate that made the conviction or order or imposed the sentence that gave rise to the appeal.

133P Court may confirm conviction, order or sentence with effect from an earlier day

- (1) The District Court may order that a conviction, order or sentence, confirmed or varied by it on appeal, or any part of it:
 - (a) is to take effect on and from a day specified in the order, or
 - (b) in the case of a sentence that has been served in part, is to recommence on and from a day specified in the order,being the day the order is made or an earlier day.
- (2) The order has effect even though a stay of execution may have been in force in respect of the sentence appealed against.

- (3) Any time spent in custody by an appellant pending the determination of an appeal counts as part of any sentence imposed on the appellant in relation to the matter on appeal.
- (4) Despite subsections (1) and (2), any period during which a stay of execution was in force in respect of a conviction under the *Traffic Act 1909* is not to be taken into account when calculating the length of a period of disqualification from holding a driver's licence resulting from the conviction.

133Q Effect on recognizances of confirmation of conviction, order or sentence

- (1) If the District Court confirms a conviction, order or sentence on an appeal, any recognizance that the appellant was required to enter into by the original conviction or order, and any sureties, have effect according to the terms of the recognizances, except to the extent to which the District Court otherwise directs.
- (2) The recognizance has effect even though a stay of execution may have been in force in respect of the conviction, order or sentence appealed against.

133R Limit on circumstances when costs may be awarded against a public informant

- (1) Costs are not to be awarded in favour of an appellant whose conviction is quashed or set aside unless the District Court is satisfied as to any of the following:
 - (a) that the investigation into the alleged offence was conducted in an unreasonable or improper manner,
 - (b) that the proceedings were initiated without reasonable cause or in bad faith or were conducted by the informant in an improper manner,
 - (c) that the prosecution unreasonably failed to investigate (or to investigate properly) any relevant matter of which it was aware or ought reasonably to have been aware and which suggested either that the appellant might not be guilty or that, for any other reason, the proceedings should not have been brought.

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- (d) that, because of other exceptional circumstances relating to the conduct of the proceedings by the informant, it is just and reasonable to award costs.
- (2) This section does not apply to the awarding of costs against a respondent acting in a private capacity.
- (3) For the purposes of subsection (2), an officer of the Royal Society for the Prevention of Cruelty to Animals, or of any other charitable organisation under the *Prevention of Cruelty to Animals Act 1979*, is taken not to be acting in a private capacity if the officer acts as the respondent in any appeal arising from proceedings under that Act.

133S District Court's powers on appeals relating to sentences and orders

- (1) The District Court may not vary, increase or reduce a sentence so that the sentence as so varied, increased or reduced could not have been imposed by the Magistrate concerned.
- (2) The District Court may not make an order or impose a sentence that could not have been made or imposed by the Magistrate concerned.
- (3) Any sentence varied, increased or reduced or imposed by the District Court, or any order made by the District Court under this Part, has the same effect and may be enforced in the same manner as if it were made by a Magistrate.

133T Payment of money

If the District Court orders an appellant or a respondent to pay costs under this Part, or makes any other order for the payment of money under this Part, the District Court must:

- (a) direct that the costs or other amount be paid to the clerk of the Local Court where the matter the subject of the appeal or application for leave to appeal concerned was originally heard, and
- (b) state a time within which the costs or other amount must be paid.

133U Evidence of quashing of conviction or order

- (1) If a conviction or order is quashed or set aside on an appeal, a memorandum to that effect must be endorsed forthwith on the conviction or order by the Registrar of the District Court for the nearest proclaimed place or by another proper officer.
- (2) If a certificate of the conviction or order is given at any time, a copy of the memorandum is sufficient evidence that the conviction or order has been quashed or set aside.

133V Limits on appeals

- (1) No application to quash or vary any conviction, order or sentence of a Magistrate that could be the subject of an appeal under this Part may be made to the District Court (whether in its civil or criminal jurisdiction) except by way of appeal as provided by this Part.
- (2) No appeal may be made to the District Court under this Part from a decision of the District Court under this Part.
- (3) There is no appeal to the District Court under this Part in relation to proceedings for an environmental offence in respect of which an appeal may be made under Part 5B.
- (4) There is no appeal to the District Court under this Part if there is an appeal to the Supreme Court as referred to in section 113.

Part 5B Appeals to Land and Environment Court

Division 1 Preliminary

133W Definitions

In this Part:

appellant means a person who appeals or applies for leave to appeal under this Part.

environmental offence means an offence against the environment protection legislation as defined in the *Protection of the Environment Administration Act 1991*.

informant includes a complainant, the Director of Public Prosecutions and any other person responsible for the conduct of a prosecution.

Judge means a Judge of the Land and Environment Court.

registrar means the registrar of the Land and Environment Court.

133X Application of Part generally

- (1) In this Part, a reference to a sentence includes a reference to:
 - (a) a fine or sentence imposed by a Magistrate, and
 - (b) any order made by a Magistrate:
 - (i) on the conviction or instead of a conviction of a person, or
 - (ii) as punishment for any act or omission.
- (2) Subsection (1) (b) includes but is not limited to the following orders and decisions:
 - (a) an order for compensation or forfeiture,
 - (b) an order to pay any sum of money (whether for payment by any person of costs of a party or witness or for any other purpose),
 - (c) an order under section 556A (1) of the *Crimes Act 1900* with respect to a person dealt with for an offence,
 - (d) an order or a decision under section 558 (1) of the *Crimes Act 1900* with respect to a person dealt with for an offence,
 - (e) a decision by a Magistrate exercising the jurisdiction of a Local Court under the *Fines Act 1996* not to annul a fine enforcement order,

- (f) any other order or decision of any kind whatever made by a Magistrate with respect to a person dealt with for an offence (whether or not the person has been convicted) deferring passing sentence on the person and releasing the person subject to conditions or without conditions,
 - (g) a decision within the meaning of section 42 (3) of the *Children (Criminal Proceedings) Act 1987* made by a Magistrate exercising the jurisdiction of the Children's Court in respect of an offence committed by a person.
- (3) This Part, to the extent to which it is not inconsistent with any other Act, applies to any order of a Magistrate made under another Act against which an appeal is provided under the other Act to the Land and Environment Court.
 - (4) The provisions of this Part do not affect the provisions of the *Home Detention Act 1996*.
 - (5) This Part does not apply to the exercise of ministerial functions by a Magistrate.

133Y Application of Part to Justices

In this Part, a reference to a Magistrate includes a reference to any person (not being a Magistrate) who exercises the functions, powers or jurisdiction of a Justice or Justices conferred by this Act.

Division 2 Appeals by defendants and other persons

133Z Definitions

In this Division:

appeal means an appeal under this Division.

application for leave to appeal means an application for leave to appeal under this Division.

133AA When an appeal can be made by a defendant or other person

An appeal against any conviction or order made, or sentence imposed, by a Magistrate in proceedings for an environmental offence may be made under this Division to the Land and Environment Court by the person against whom the conviction or order was made or on whom the sentence was imposed.

133AB Matters in which no appeal can be made

- (1) **Interlocutory orders**
An appeal may not be made against any interlocutory order made by a Magistrate.
- (2) **Dismissal**
An appeal may not be made against the dismissal of an information by a Magistrate.
- (3) **Costs awarded against informants**
An appeal may not be made against a decision of a Magistrate not to make an order for costs against an informant.

133AC How appeal to be made

- (1) An appeal is to be made by lodging a written notice of appeal not later than 28 days after the conviction or order is made, or the sentence is imposed, by the Magistrate.
- (2) A notice of appeal must state the intention to appeal and the general grounds of appeal.
- (3) If an application is made to a Local Court under Part 4A, the time for lodging an appeal does not start to run until that application is finally disposed of.

Note. Section 133AG sets out the manner in which an appeal is to be lodged.

133AD Matters in which an appeal can be made only with the leave of the Land and Environment Court

- (1) An appeal may be made against a conviction entered after a guilty plea or in the absence of the defendant only with the leave of the Land and Environment Court.

- (2) An appeal may be made by a person who has not exhausted all rights of appeal under Part 4A only with the leave of the Land and Environment Court.
- (3) An application for leave to appeal is to be made by lodging a written application and a notice of appeal complying with section 133AC not later than 28 days after the conviction or order is made, or the sentence is imposed, by the Magistrate.
Note. Section 133AG sets out the manner in which an appeal is to be lodged.
- (4) If an application is made to a Local Court under Part 4A, the time for lodging an application for leave to appeal does not start to run until the application under Part 4A is finally disposed of.
- (5) This section does not apply to an appeal against the severity of a sentence.

133AE Appeal may be made with leave outside time for giving notice of appeal

- (1) A person who is entitled to appeal but who does not give notice of appeal or apply for leave to appeal within the time required by section 133AC or 133AD may apply, not later than 3 months after the conviction or order is made, or the sentence is imposed, by the Magistrate, to the Land and Environment Court for leave to appeal against the conviction, order or sentence.
- (2) An application for leave to appeal is to be made by lodging a written application, stating the reasons why the notice or application was not made within the time required, and a notice of appeal complying with section 133AC.

133AF Time for notices of appeal when more than one conviction or order involved

An appeal, or an application for leave to appeal, against a conviction or order made, or a sentence imposed, on the same day as another conviction, sentence or order involving the same person against which an appeal, or an application for leave to appeal, is made as required by

this Division may be heard and determined by the Land and Environment Court even though the firstmentioned appeal or application was not made as required by this Division.

133AG Lodging notices of appeal and applications for leave to appeal

- (1) A notice of appeal or an application for leave to appeal may be lodged with the clerk of any Local Court or the person in charge of the place at which the appellant is then held in custody.
- (2) A person with whom a notice of appeal or an application is lodged under this section must immediately forward a copy of it to:
 - (a) the informant or any other party to the proceedings concerned, and
 - (b) the clerk of the Local Court where the conviction or order was made or the sentence imposed, if the person is not that clerk.
- (3) Nothing in this section prevents a person with whom a notice of appeal is lodged under this section from giving a copy of the notice of appeal or application to any other interested person.
- (4) The clerk of a Local Court must, as soon as practicable after receiving a notice of appeal or an application for leave to appeal under this Division, transmit the papers, including a copy of any relevant order or conviction made by the Magistrate, to the registrar for keeping in the records of the Land and Environment Court.

133AH Stay of execution of conviction, order or sentence pending appeal

- (1) The execution of a sentence imposed as a consequence of a conviction, or of any other order, is stayed when a notice of appeal is given in accordance with this Division.

- (2) Subsection (1) does not apply to an appellant who is in custody when the appeal is made unless and until the appellant enters into a bail undertaking in accordance with the *Bail Act 1978*, or bail is dispensed with.
- (3) The stay of execution continues until the appeal is finally determined, subject to any order or direction of the District Court and section 133BC (3).
- (4) Despite subsection (1), any period during which the stay is in force is not to be taken into account when calculating the length of a period of disqualification from holding a driver's licence resulting from a conviction under the *Traffic Act 1909*.
- (5) An application for leave to appeal does not result in a stay of execution under this section.

133AI Effect on appeal or application for leave to appeal of defect in notice or statement of grounds of appeal

- (1) An appeal or an application for leave to appeal is not defeated merely because of a defect, whether of substance or form, in the notice of appeal or statement of grounds of appeal or application.
- (2) The Land and Environment Court may amend any such notice or statement or application if it is of the opinion that the notice or statement or application is capable of amendment and ought to be amended.
- (3) The amendment may be made subject to such conditions as to adjournment as the Land and Environment Court thinks just.

133AJ Powers of Land and Environment Court in determining applications for leave to appeal

- (1) The Land and Environment Court may, after hearing an application for leave to appeal, dismiss the application or grant the application.

- (2) The Land and Environment Court must not grant an application for leave to appeal under section 133AE (relating to matters where notice of appeal or an application for leave to appeal was not given in time) unless it is of the opinion that it is in the interests of justice to grant the application.
- (3) The Land and Environment Court may make such order as to costs to be paid by the appellant as it thinks just if it dismisses an application for leave to appeal.

133AK Hearing of appeal after leave to appeal granted

After granting an application for leave to appeal, the Land and Environment Court may immediately proceed to hear and determine the appeal or may adjourn the appeal.

133AL When order dismissing application for leave to appeal may be vacated

The Land and Environment Court may by order vacate an order dismissing an application for leave to appeal because the applicant failed to appear, and any other order made as a consequence, if an application for vacation of the order is made within 12 months of the dismissal and the Land and Environment Court is of the opinion that it is in the interests of justice to grant the application.

133AM Appeal to be by way of rehearing

- (1) An appeal is to be by way of rehearing on the transcripts of evidence heard before the Magistrate who made the conviction or order or imposed the sentence appealed against, except as provided by section 133AN.
- (2) For the purposes of subsection (1), a transcript is taken to be a correct transcript of a true record of evidence if the transcript is certified in the manner prescribed by the regulations.

- (3) On an appeal, new evidence may be given only with the leave of the Land and Environment Court, if the Court is of the opinion that it is in the interests of justice that the evidence be given.
- (4) A clerk of a Local Court must, at the request of an appellant or respondent, provide one copy of the transcript of evidence of any witness free of charge to the appellant or respondent.

133AN Circumstances when evidence to be given in person

- (1) The Land and Environment Court may direct that a person attend to give evidence in person in appeal proceedings if the Court is of the opinion that there are reasonable grounds for deciding that, in the interests of justice, the witness should attend to give evidence.
- (2) An appellant or a respondent may apply for a direction under this section only if he or she has served on the other party, within such period as the Land and Environment Court may direct, a notice that the applicant wishes a specified witness to attend at the appeal proceedings.
- (3) A direction may be withdrawn only on the application, or with the consent, of the applicant.
- (4) If the Land and Environment Court refuses to give a direction, the Court must give reasons for the refusal.
- (5) The regulations may make provision for or with respect to the determination of reasonable grounds under subsection (1).
- (6) In particular and without otherwise limiting subsection (5), the Land and Environment Court is, in determining whether reasonable grounds exist, to have regard to whether or not the appellant was legally represented for the whole or part of the proceedings heard before the Magistrate.

133AO Powers of Land and Environment Court in determining appeals

- (1) The Land and Environment Court may, after hearing an appeal, determine the appeal by dismissing the appeal or by doing any one or more of the following:
 - (a) confirming, quashing, setting aside or varying the conviction, order or sentence appealed against,
 - (b) increasing or reducing the sentence appealed against,
 - (c) making such other orders as it thinks just.
- (2) In determining an appeal, the Land and Environment Court may exercise any function that the Magistrate who made the conviction or order might have exercised.
- (3) The Land and Environment Court may make such order as to costs to be paid by either party (including the Crown) as it thinks just, except as provided by section 133BE.

133AP When order dismissing appeal may be vacated

- (1) The Land and Environment Court may by order vacate an order dismissing an appeal because the appellant failed to appear, and any other order made as a consequence, if:
 - (a) within 12 months after the dismissal the appellant shows to the Land and Environment Court sufficient cause for the failure to appear, and
 - (b) the Land and Environment Court is of the opinion that it is in the interests of justice to do so.
- (2) The order may be made subject to conditions specified in the order.
- (3) If an order is made, section 133AH applies to any order or sentence subject to the appeal.
- (4) No action lies against any person for anything done by the person in good faith, and without notice of the order, to enforce the conviction, order or sentence the subject of the dismissed appeal.

133AQ Notice of dismissal of application for leave to appeal or appeal

When an application for leave to appeal, or an appeal, is dismissed because the appellant fails to appear, the registrar must notify the appellant of:

- (a) the order of the Land and Environment Court dismissing the application or appeal, and
- (b) the appellant's right under this Division to seek to have the order vacated within 12 months from the dismissal.

Division 3 Appeals by Crown

133AR Meaning of "appeal"

In this Division:

appeal means an appeal under this Division.

133AS When the Crown may appeal against a sentence

- (1) The Director of Public Prosecutions may appeal under this Division to the Land and Environment Court against any sentence imposed by a Magistrate in proceedings for an environmental offence if those proceedings have been instituted or carried on by the Director of Public Prosecutions.
- (2) The Environment Protection Authority may appeal under this Division to the Land and Environment Court against any sentence imposed by a Magistrate in proceedings for an environmental offence if those proceedings have been instituted or carried on by the Environment Protection Authority.

133AT How appeal to be made

- (1) An appeal is to be made by lodging a written notice of appeal not later than 28 days after the sentence is imposed by the Magistrate.

- (2) Despite subsection (1), an appeal against a sentence may be lodged later than the required time if the sentence was reduced because the defendant undertook to assist law enforcement agencies (within the meaning of the *Criminal Records Act 1991*) and the defendant failed wholly or partly to fulfil the undertaking.
- (3) A notice of appeal may be lodged with the clerk of any Local Court.
- (4) A clerk of a Local Court with whom a notice of appeal is lodged under this section must immediately forward a copy of it to:
 - (a) any other party to the proceedings concerned, and
 - (b) the clerk of the Local Court where the sentence was imposed, if the person is not that clerk.
- (5) Nothing in this section prevents a clerk of a Local Court with whom a notice of appeal is lodged under this section from giving a copy of the notice of appeal to any other interested person.
- (6) The clerk of the Local Court must, as soon as practicable after receiving a notice of appeal under this Division, transmit the relevant papers, including a copy of any relevant order or conviction made by the Magistrate, to a registrar for keeping in the records of the District Court.

133AU Evidence in appeals

On an appeal, new evidence may be given with the leave of the Land and Environment Court, but may be given by the prosecution only in exceptional circumstances.

133AV Powers of Land and Environment Court in determining appeals

- (1) The Land and Environment Court may, after hearing an appeal, determine the appeal by dismissing the appeal or by doing any one or more of the following:
 - (a) confirming, quashing, setting aside, varying, increasing or reducing the sentence appealed against,

- (b) imposing such sentence as may seem proper to the Court.
- (2) In determining an appeal, the Land and Environment Court may exercise any function that the Magistrate who imposed the sentence might have exercised.
- (3) The Land and Environment Court may make such order as to costs to be paid by either party (including the Crown) as to it seems just, except as provided by section 133BE.

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

133AW Definitions

In this Division:

appeal means an appeal under this Part.

application for leave to appeal means an application for leave to appeal under this Part.

133AX General powers of Land and Environment Court

Without limiting any powers of the Land and Environment Court under the *Land and Environment Court Act 1979*, the Land and Environment Court may do any one or more of the following:

- (a) specify the sitting at which the hearing of an appeal or application for leave to appeal is to be heard or continued,
- (b) adjourn the hearing of an appeal or application for leave to appeal.

133AY Rules for procedures for appeals and applications

- (1) The rules of the Land and Environment Court under the *Land and Environment Court Act 1979* may make provision for or with respect to the procedure to be followed as regards appeals or applications for leave to appeal.

- (2) Without limiting subsection (1), the rules may make provision for or with respect to the following:
- (a) when an appeal or application must be heard,
 - (b) notice of appeals, applications and hearings,
 - (c) notice of dismissal of appeals or applications,
 - (d) service of process and other documents.

133AZ Appeal or application may be heard when notice not given as required

The Land and Environment Court may proceed to hear and determine or otherwise dispose of an appeal or application for leave to appeal despite any error in, or non-service of, a notice of appeal or other notice 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.

133BA Errors in form or law not of themselves to enable appeal success

- (1) The Land and Environment Court is not to quash or set aside a conviction, order or sentence on an appeal merely because of:
- (a) an omission or mistake in the form of the conviction or order, or
 - (b) any error in law in the order or sentence,
- if it appears to the Land and Environment Court that there were sufficient grounds before the Magistrate to have authorised a conviction, order or sentence free from the omission, mistake or error.
- (2) In any such case, the Land and Environment Court may:
- (a) amend the conviction or order and determine the appeal as if the omission, mistake or error did not exist, or
 - (b) remit the case to the Magistrate to make the conviction or order, or impose the sentence, authorised by law and to amend the conviction, order or sentence accordingly.

- (3) If the Land and Environment Court remits a matter to a Magistrate under this section and the Magistrate who made the original conviction or order or imposed the original sentence has ceased to hold office as a Magistrate or is for any other reason unable to continue to hear and determine the remitted matter, the matter is to be dealt with by another Magistrate nominated by the Chief Magistrate.

133BB Withdrawal of appeals and applications

- (1) An appeal or application for leave to appeal may at any stage be withdrawn by the appellant with the leave of the Land and Environment Court.
- (2) In giving leave for an appeal or application for leave to appeal by an appellant to be withdrawn, the Land and Environment Court may make such orders as are necessary to place the appellant as nearly as possible in the same position as if the appeal or application had not been made.
- (3) Any order made by the Land and Environment Court in respect of an appeal or application that is withdrawn is taken to be an order made by the Magistrate who made the conviction or order or imposed the sentence that gave rise to the appeal.

133BC Court may confirm conviction, order or sentence with effect from an earlier day

- (1) The Land and Environment Court may order that a conviction, order or sentence, confirmed or varied by it on appeal, or any part of it:
- (a) is to take effect on and from a day specified in the order, or
- (b) in the case of a sentence that has been served in part, is to recommence on and from a day specified in the order,

being the day the order is made or an earlier day.

- (2) The order has effect even though a stay of execution may have been in force in respect of the sentence appealed against.
- (3) Any time spent in custody by an appellant pending the determination of an appeal counts as part of any sentence imposed on the appellant in relation to the matter on appeal.

133BD Effect on recognizances of confirmation of conviction, order or sentence

- (1) If the Land and Environment Court confirms a conviction, order or sentence on an appeal, any recognizance that the appellant was required to enter into by the original conviction, order or sentence and any sureties, have effect according to the terms of the recognizances, except to the extent to which the Land and Environment Court otherwise directs.
- (2) The recognizance has effect even though a stay of execution may have been in force in respect of the sentence appealed against.

133BE Limit on circumstances when costs may be awarded against a public informant

- (1) Costs are not to be awarded in favour of an appellant whose conviction is quashed or set aside unless the Land and Environment Court is satisfied as to any of the following:
 - (a) that the investigation into the alleged offence was conducted in an unreasonable or improper manner,
 - (b) that the proceedings were initiated without reasonable cause or in bad faith or were conducted by the informant in an improper manner,
 - (c) that the prosecution unreasonably failed to investigate (or to investigate properly) any relevant matter of which it was aware or ought reasonably to have been aware and which suggested either that the appellant might not be guilty or that, for any other reason, the proceedings should not have been brought,

- (d) that, because of other exceptional circumstances relating to the conduct of the proceedings by the informant, it is just and reasonable to award costs.
- (2) This section does not apply to the awarding of costs against a respondent acting in a private capacity.

133BF Land and Environment Court's powers on appeals relating to sentences and orders

- (1) The Land and Environment Court may not vary, increase or reduce a sentence so that the sentence as varied, increased or reduced could not have been imposed by the Magistrate concerned.
- (2) The Land and Environment Court may not make an order or impose a sentence that could not have been made or imposed by the Magistrate concerned.
- (3) Any sentence varied, increased or reduced or imposed by the Land and Environment Court, or any order made by the Land and Environment Court under this Part, has the same effect and may be enforced in the same manner as if it were made by a Magistrate.

133BG Payment of money

If the Land and Environment Court orders an appellant or a respondent to pay costs under this Part, or makes any other order for the payment of money under this Part, the Land and Environment Court must:

- (a) direct that the costs or other amount be paid to the clerk of the Local Court where the matter the subject of the appeal or application for leave to appeal concerned was originally heard, and
- (b) state a time within which the costs or other amount must be paid.

133BH Evidence of quashing of conviction or order

- (1) If a conviction or order is quashed or set aside on an appeal, a memorandum to that effect must be endorsed forthwith on the conviction or order by the Registrar of the Land and Environment Court or by another proper officer.

- (2) If a certificate of the conviction or order is given at any time, a copy of the memorandum is sufficient evidence that the conviction or order has been quashed or set aside.

133BI Limits on appeals

- (1) No application to quash or vary any conviction, order or sentence of a Magistrate that could be the subject of an appeal under this Part may be made to the Land and Environment Court except by way of appeal as provided by this Part.
- (2) No appeal may be made to the Land and Environment Court under this Part from a decision of the Land and Environment Court under this Part.

[3] Section 134 Direction to Justice to act

Omit the section.

[4] Section 146 No certiorari

Omit the section.

[5] Second Schedule Savings, transitional and other provisions

Insert at the end of the Second Schedule (with appropriate Part and clause numbers):

**Part Provisions consequent on enactment of
Justices Legislation Amendment (Appeals)
Act 1998**

Application of appeals provisions

- (1) Parts 5, 5A and 5B, as inserted by the *Justices Legislation Amendment (Appeals) Act 1998*, apply only to convictions or orders made, or sentences imposed, after the commencement of those Parts and so apply whether or not the proceedings concerned commenced before or after that commencement.

- (2) Part 5, as in force immediately before its repeal by the *Justices Legislation Amendment (Appeals) Act 1998*, continues to have effect in respect of convictions or orders made or sentences imposed before that repeal.
- (3) This clause extends to a conviction, order, determination or sentence made or imposed under another Act before the repeal of Part 5 by the *Justices Legislation Amendment (Appeals) Act 1998* in proceedings to which provisions of that Part were applied by that other Act.

Direction to Justice to act

- (1) An application made under section 134 before its repeal but not determined before that repeal may be dealt with as if that section had not been repealed.
- (2) Section 134 (2) as in force before its repeal applies in relation to an order made by the Supreme Court on an application referred to in subclause (1).

Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the *Justices Legislation Amendment (Appeals) Act 1998*.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Bail Act 1978 No 161

[1] Section 23 Power of magistrates and justices to grant bail

Omit "Division 1 or 4 of Part 5" from section 23 (b).
Insert instead "Part 5, 5A or 5B".

[2] Section 30AB

Insert after section 30A:

30AB Power of Land and Environment Court to grant bail on appeals

- (1) The Land and Environment Court may grant bail in accordance with this Act to any person accused of an offence if, in connection with the offence, an appeal against a conviction or order or against the severity of the sentence is pending in the Land and Environment Court.
- (2) Section 27 (1) applies to the Land and Environment Court's powers under this section in the same way that it applies to the District Court's powers under section 26 (1) (c).

2.2 Children (Community Service Orders) Act 1987 No 56

Section 28 Subsequent dealing—children's community service orders to be taken into account

Omit section 28 (2) (a). Insert instead:

- (a) in the case of a decision of the Children's Court or a Local Court—under Part 5A of the *Justices Act 1902*, or

2.3 Children (Criminal Proceedings) Act 1987 No 55

[1] Section 21 Rights of appeal where person remitted for sentence

Omit "section 122" from section 21 (3). Insert instead "Part 5A".

[2] Section 42 Appeals

Omit "Part 5 of the *Justices Act 1902* applies to appeals from decisions of the Children's Court in the same way as it applies" from section 42 (1).

Insert instead "Parts 5, 5A and 5B of the *Justices Act 1902* apply to appeals from decisions of the Children's Court in the same way as they apply".

[3] Section 42 (1)

Omit "Part 5 of" where secondly occurring.

2.4 Community Land Management Act 1989 No 202

Section 108 Appeal to Supreme Court on a question of law

Omit "sections 101–110" from section 108 (2).

Insert instead "Part 5".

2.5 Community Service Orders Act 1979 No 192

Section 26 Subsequent sentence—order to be taken into account

Omit section 26 (2) (b). Insert instead:

- (b) if the court is a Local Court—under Part 5A of the *Justices Act 1902*.

2.6 Construction Safety Act 1912 No 38

Section 21 Penalties and proceedings for offences

Omit “, and the stating of a case by,” from section 21 (1B).

2.7 Crimes Act 1900 No 40

[1] Section 562M Appeal to District Court by defendant against order made by Local Court or Children’s Court

Omit section 562M (1). Insert instead:

- (1) A defendant may appeal against an order made by a Local Court or the Children’s Court under Part 5A of the *Justices Act 1902*.

[2] Section 562M (2)

Omit “section 123”. Insert instead “section 127”.

2.8 Criminal Appeal Act 1912 No 16

[1] Section 5B Case stated from District Court

Insert at the end of section 5B:

- (2) At the request of a person who was a party to appeal proceedings referred to in subsection (1), a question of law may be submitted under that subsection to the Court of Criminal Appeal for determination even though the appeal proceedings during which the question arose have been disposed of. The question of law must be submitted not later than 28 days after the end of the appeal proceedings, or within such longer period as the Court of Criminal Appeal may allow.

[2] Section 5BA Case stated from Land and Environment Court

Insert at the end of section 5BA:

- (2) At the request of a person who was the appellant in an appeal referred to in subsection (1), a question of law may be submitted under that subsection to the Court of Criminal Appeal for determination even though the appeal proceedings during which the question arose have been disposed of. The question of law must be submitted not later than 28 days after the end of the appeal proceedings, or within such longer period as the Court of Criminal Appeal may allow.

2.9 Director of Public Prosecutions Act 1986 No 207

Section 3 Definitions

Omit paragraph (a) of the definition of *appeal* in section 3 (1).
Insert instead:

- (a) any proceedings under Part 5, 5A or 5B of the *Justices Act 1902*, and

2.10 Factories, Shops and Industries Act 1962 No 43

Section 145 Proceedings

Omit “, and the stating of a case by,” from section 145 (4).

2.11 Industrial Relations Act 1996 No 17

Section 197 Appeals from Local Court

Omit section 197 (2) and (3). Insert instead:

- (2) The provisions of the *Justices Act 1902* that relate to appeals to the District Court and the Supreme Court, the decisions of those Courts on those matters and the carrying out of any such decision apply, subject to the regulations under this Act, to appeals to a Full Bench of the Commission in Court Session.

2.12 Infants' Custody and Settlements Act 1899 No 39

Section 10A Extension of jurisdiction

Omit "Part 5" from section 10A (2) (b).
Insert instead "Parts 5A and 5B".

2.13 Land and Environment Court Act 1979 No 204

Section 21A Class 6—appeals from convictions relating to environmental offences

Omit "sections 131AE and 131AF". Insert instead "Part 5B".

2.14 Landlord and Tenant (Amendment) Act 1948 No 25

[1] Section 41 Appeals

Omit "sections 101 to 110, both inclusive, of the *Justices Act 1902–1951*" from section 41 (2).
Insert instead "Part 5 of the *Justices Act 1902*".

[2] Section 41 (2)

Omit "the said sections" where firstly occurring.
Insert instead "Part 5 of the *Justices Act 1902*".

[3] Section 41 (2)

Omit "the said sections" where secondly occurring.
Insert instead "that Part".

2.15 Local Courts Act 1982 No 164

Section 21 Additional terms of office

Omit "section 104A or 104B" from section 21 (5).
Insert instead "section 114, 133N (3) or 133BA (3)".

2.16 Local Courts (Civil Claims) Act 1970 No 11

Section 69 Appeal

Omit "section 101 to section 115, both sections inclusive," from section 69 (3).

Insert instead "Part 5".

2.17 Mining Act 1992 No 29

Section 175C Appeals against, and suspensions and annulments of, exclusion orders

Omit section 175C (1). Insert instead:

- (1) An appeal may be made under Part 5A of the *Justices Act 1902* against an exclusion order made by a Warden's Court or a Local Court.

2.18 Minors (Property and Contracts) Act 1970 No 60

Section 27 Approval of contract or disposition

Omit "Part 5 of the *Justices Act 1902* does" from section 27 (7).

Insert instead "Parts 5 and 5A of the *Justices Act 1902* do".

2.19 Motor Vehicles (Third Party Insurance) Act 1942 No 15

Section 13 Appeal against refusal to issue or against cancellation of policy

Omit "Part 5" from section 13 (4) (b).

Insert instead "Part 5A".

2.20 Occupational Health and Safety Act 1983 No 20

Section 47 Summary procedure for offences

Omit “, and the stating of a case by,” from section 47 (4).

2.21 Protection of the Environment Operations Act 1997 No 156

Section 290 Appeals regarding noise

Omit “Part 5 of the *Justices Act 1902* does” from section 290 (2).
Insert instead “Parts 5, 5A and 5B of the *Justices Act 1902* do”.

2.22 Public Health Act 1991 No 10

Section 42 Appeal to Supreme Court on matter of law

Omit section 42 (a). Insert instead:

- (a) under Part 5 of the *Justices Act 1902*—against a decision of a Local Court confirming a public health order as if that decision were an order made in summary proceedings to which that Part applies, or

2.23 Strata Schemes Management Act 1996 No 138

Section 200 Appeal to Supreme Court on question of law

Omit “sections 101–110” from section 200 (2).
Insert instead “Part 5”.

2.24 Supreme Court Act 1970 No 52

[1] Sections 69C, 69D

Insert after section 69B:

69C Stay of execution of conviction, order or sentence pending appeal

- (1) This section and section 69D apply to proceedings in the Court for judicial review of a determination made by the District Court in appeal proceedings relating to a conviction or order made by a Local Court (or part of such a conviction or order) or sentence imposed by a Local Court.
- (2) The execution of a sentence imposed as a consequence of a conviction, or of any other order, is stayed when a notice of appeal is given in accordance with this Division.
- (3) Subsection (2) does not apply to an appellant who is in custody when the appeal is made unless and until the appellant enters into a bail undertaking in accordance with the *Bail Act 1978*, or bail is dispensed with.
- (4) The stay of execution continues until the appeal is finally determined, subject to any order or direction of the Court.
- (5) Despite subsection (2), any period during which the stay is in force is not to be taken into account when calculating the length of a period of disqualification from holding a driver's licence resulting from a conviction under the *Traffic Act 1909*.

69D Court may confirm conviction or order with effect from an earlier day

- (1) The Supreme Court may order that a conviction, order or sentence that is the subject of proceedings, or any part of it:
 - (a) is to take effect on and from a day specified in the order, or

(b) in the case of a sentence that has been served in part, is to recommence on and from a day specified in the order,

being the day the order is made or an earlier day.

(2) The order has effect even though a stay of execution may have been in force in respect of the sentence that is the subject of the proceedings.

[2] Sections 71A, 71B

Insert after section 71:

71A Powers of Court in relation to warrants in respect of convictions or orders of Local Court

- (1) In this section, *warrant* means a warrant of commitment issued in relation to a conviction or order of a Local Court.
- (2) This section has effect despite section 71.
- (3) In proceedings for a writ of habeas corpus or for the setting aside of a conviction or order of a Local Court, the Supreme Court is not to make an order for the discharge from custody of a person in custody under a warrant on the ground of any defect or error in the warrant unless the requirements of subsection (4) have been complied with.
- (4) The requirements are that the Magistrate, prosecutor or party interested in supporting the warrant:
 - (a) has had notice of intention to apply for the order, and
 - (b) has been required to transmit, or has had the opportunity to transmit, to the Supreme Court the following documents, or certified copies of them:
 - (i) the conviction or order, and
 - (ii) the information (if any) and transcript of evidence intended to be relied on in support of the conviction or order.

- (5) Subject to the rules, the notice of intention to apply for the order may be given at any stage of proceedings in the Supreme Court.
- (6) The Supreme Court may dispense with the notice if copies of the conviction or order and of the transcript of evidence are produced to the Court.
- (7) The Supreme Court is to allow the warrant and the conviction or order if necessary to be amended if:
 - (a) the conviction or order and transcript of evidence have been transmitted to the Supreme Court in accordance with this section, and
 - (b) the offence or matter charged or intended to have been charged appears to have been established, and
 - (c) the judgment of the Local Court appears to have been warranted in substance.
- (8) After any such amendment:
 - (a) the person committed is to be remanded to the person's former custody or the conviction or order may be enforced in the proper manner, and
 - (b) the conviction or order is to be treated as if it had originally stood so amended.
- (9) This section does not apply to an order of the Supreme Court under Part 5 of the *Justices Act 1902*.

71B Person to be remanded to former custody

The Supreme Court may remand a person who has been committed to prison by virtue of any summary conviction or order of a Local Court and has been brought up by a writ of habeas corpus to the person's former custody to serve the rest of the term for which the person was committed if the judgment of the Supreme Court is against the person.

[3] Section 75A Appeal

Insert “an appeal to the Court under the *Justices Act 1902* or to” after “to” in section 75A (3).

[4] Section 101 Appeal in proceedings before the Court

Omit section 101 (2) (h). Insert instead:

- (h) an order of the Court in a Division on an appeal under Part 5 of the *Justices Act 1902*,

2.25 Wool, Hide and Skin Dealers Act 1935 No 40

Section 13 Appeal

Omit “Division 4 of Part 5” in section 13 (2).
Insert instead “Part 5A”.

[Minister’s second reading speech made in—
Legislative Council on 17 September 1998
Legislative Assembly on 25 November 1998]

