

First print



New South Wales

Justices Legislation Amendment (Appeals) Bill 1997

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

Schedule 1 [2] 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 [3] 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 [1]**, 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 criminal 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 conviction, order or sentence is provided for, in the event of an appeal or an appeal being adjourned, 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 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 [1]**, 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 the 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:

- (a) 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, and

- (b) 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 can be heard, and
- (c) 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 [1] 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 [1]**, 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 conviction, order or sentence is provided for, in the event of an appeal or an appeal being adjourned, 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. 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 [1]**, proposed sections 119–133E.)

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 only by the prosecution in exceptional circumstances. (See **Schedule 1 [1]**, proposed sections 133F–133J.)

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 [1]**, proposed sections 133K–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 [1]**, 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 conviction, order or sentence is provided for, in the event of an appeal or an appeal being adjourned, 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. 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 [1]**, proposed sections 133Z–133AR.)

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 only by the prosecution in exceptional circumstances. (See **Schedule 1 [1]**, proposed sections 133AS–133AW.)

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 [1]**, proposed sections 133AX–133BI.)

Savings, transitional and other provisions

Schedule 1 [4] 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 (proposed Part 10, 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 Noise Control Act 1975, the Occupational Health and Safety Act 1983, the Public Health Act 1991, the Strata Schemes Management Act 1996, the Wool, Hide and Skin Dealers Act 1935 and the Workers Compensation Act 1987 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.

First print



New South Wales

Justices Legislation Amendment (Appeals) Bill 1997

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New South Wales

Justices Legislation Amendment (Appeals) Bill 1997

No , 1997

A Bill for

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; and to consequentially amend other Acts; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Justices Legislation Amendment (Appeals) Act 1997*.

2 Commencement

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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

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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] Parts 5, 5A and 5B

Omit Part 5. Insert instead:

Part 5 Appeals to Supreme Court

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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. 10

informant includes the Director of Public Prosecutions or other person responsible for the conduct of a prosecution.

rules means rules of the Supreme Court. 15

102 Application of Part to sentences and orders

(1) A provision of this Part, or a right to appeal under this Part, about a sentence applies to any order made by a Magistrate:

(a) on the conviction or instead of a conviction of a person, or 20

(b) as punishment for any act or omission.

(2) Subsection (1) includes but is not limited to the following orders and decisions:

(a) an order for compensation or forfeiture, 25

(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, 5
 - (e) 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, 10
 - (f) a decision within the meaning of section 42 (3) of the *Children (Criminal Proceedings) Act 1987* made by the Children's Court in respect of an offence committed by a person. 15
- (3) A provision of this Part, or a right to appeal under this Part, about an order applies to any order of a Magistrate made under another Act against which:
- (a) an appeal is provided under the other Act to the Supreme Court, or 20
 - (b) an appeal is provided under the other Act but no court is specified for the appeal.
- (4) In this Part, a reference to imposing a sentence is taken to include making an order or decision referred to in subsection (1) or (2). 25
- (5) The provisions of this Part do not affect the provisions of the *Home Detention Act 1996*.

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. 30

Division 2 Appeals to Supreme Court

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

(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 to the Supreme Court on any of the following grounds: 5

- (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, 10
- (c) the ground that the conviction, order or sentence cannot be supported having regard to the evidence.

(2) **Appeals by informant**

An informant may appeal to the Supreme Court against a conviction or order made, or sentence imposed, by a Magistrate in summary proceedings on any of the following grounds: 15

- (a) a ground that involves a question of law alone, 20
- (b) a ground that involves a question of mixed law and fact, but only with the leave of the Supreme Court.

105 Matters in which no appeal may be made

An appeal may not be made against any interlocutory order made by a Magistrate. 25

106 How appeal to be made

- (1) An appeal is to be made 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. 30

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

- (1) The execution of a conviction, order or sentence is stayed when an appeal is made in accordance with this Part in relation to the conviction, order or sentence and one of the following circumstances applies to the appellant:
 - (a) the appellant is not in custody and bail has been dispensed with, 5
 - (b) the appellant is not in custody and bail has been granted or continued. 10
- (2) 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*. 15
- (3) An application for leave to appeal does not result in a stay of execution of a conviction, order or sentence.

108 Powers of Local Court to review stays of execution of convictions, orders or sentences 20

- (1) An informant may apply to a Local Court for a review of a stay of execution under section 107.
- (2) A Magistrate 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 conviction, order or sentence, but only if the informant satisfies the Magistrate that the appellant has unduly delayed the appeal proceedings. 25

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: 30
 - (a) confirming, quashing, setting aside or varying the conviction, order or sentence appealed against or any part of it, 35

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- (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.

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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:

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- (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.

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- (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.

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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:

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- (a) is to take effect on and from a day specified in the order, or

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- (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 conviction, order or sentence appealed against. 5
 - (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. 10

112 Appeals relating to certain traffic offences committed by children

- (1) Proceedings for an appeal in respect of a traffic offence committed by a child may be taken: 15
 - (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. 20
25
- (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*. 30

traffic offence means an offence arising under a provision of:

 - (a) the *Traffic Act 1909*, or
 - (b) the *Roads Act 1993*, or 35

(c) the *Motor Vehicles (Third Party Insurance) Act 1942*, or

(d) the *Recreation Vehicles Act 1983*,

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

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113 No appeal to District Court in certain cases

(1) A person may not appeal to the District 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.

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(2) A person's right of appeal to the District 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

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(b) the Supreme Court remitted the matter on appeal to the Magistrate to hear and determine, and

(c) the Magistrate has heard and determined the matter.

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114 Circumstances where Magistrate no longer holds office

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, the Chief Magistrate is to nominate a Magistrate to hear and determine the remitted matter.

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115 Part not to apply to committal proceedings

This Part does not confer any right to appeal in relation to committal proceedings.

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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. 5

Judge means a Judge of the District Court.

registrar means a registrar of the District Court.

117 Application of Part to sentences and orders

- (1) A provision of this Part, or a right to appeal under this Part, about a sentence applies to any order made by a Magistrate: 10
- (a) on the conviction or instead of a conviction of a person, or
- (b) as punishment for any act or omission. 15
- (2) Subsection (1) 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), 20
- (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 decision under section 558 (1) of the *Crimes Act 1900* with respect to a person dealt with for an offence, 25
- (e) a decision by a Local Court under the *Fines Act 1996* not to annul a fine enforcement order,

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- (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, 5
 - (g) a decision within the meaning of section 42 (3) of the *Children (Criminal Proceedings) Act 1987* made by the Children's Court in respect of an offence committed by a person. 10
 - (3) A provision of this Part, or a right to appeal under this Part, about an order applies to any order of a Magistrate made under another Act against which:
 - (a) an appeal is provided under the other Act to the District Court, or 15
 - (b) an appeal is provided under the other Act but no court is specified for the appeal.
 - (4) In this Part, a reference to imposing a sentence is taken to include making an order or decision referred to in subsection (1) or (2). 20
 - (5) The provisions of this Part do not affect the provisions of the *Home Detention Act 1996*.

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. 25

Division 2 Appeals by defendants and other persons

119 Definitions

In this Division: 30

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 to the District Court by the person against whom the conviction or order was made or on whom the sentence was imposed. 5
- (2) **Appeals under other Acts**
An appeal may be made 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. 10

121 Matters in which no appeal may be made 15

- (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 a dismissal of an information by a Magistrate. 20

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. 25
- (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. 30

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 made after a guilty plea or in the absence of the defendant only with the leave of the District Court. 5
- (2) An appeal may be made by a person who has not exhausted all rights 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. 10
- (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. 15

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. 20 25
- (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. 30

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

- (1) 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 35

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. 5

- (2) The District Court may hear and determine the matter only if it is satisfied that the failure to comply with this Division was through inadvertence or error.

126 Lodging of notices of appeal and applications for leave to appeal 10

- (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: 15
- (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. 20
- (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 a notice of appeal or an application to any other interested person. 25
- (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 among the records of the District Court. 30

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

- (1) The execution of a conviction, order or sentence is stayed until an appeal is heard and determined when a notice of appeal is given in accordance with this Division, and one of the following circumstances applies to the appellant: 5
- (a) the appellant is not in custody and bail has been dispensed with,
- (b) the appellant is not in custody and bail has been granted or continued. 10
- (2) An application for leave to appeal does not result in a stay of execution of a conviction, order or sentence.

128 Effect on appeal or application for leave to appeal of defect in notice or statement of grounds of appeal 15

- (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. 20
- (3) The amendment may be made subject to conditions as to adjournment or costs, or both, as the District Court thinks just. 25

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. 30
- (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:

- (a) the appellant has shown sufficient cause for the failure to give notice of appeal or to make an application for leave to appeal within the required time, and 5
- (b) 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. 10

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. 15

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: 20

- (a) within 12 months after the dismissal the applicant shows to the District Court sufficient cause for the failure to appear, and 25
- (b) the District Court is of the opinion that it is in the interests of justice to do so.

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, order or sentence appealed against. 30

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- (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. 5

133 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: 10
 - (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. 15
- (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. 20

133A 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: 25
 - (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. 30
- (2) The order may be made subject to conditions specified in the order.

- (3) If an order is made, section 127 (1) applies to the conviction, 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. 5

133B 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: 10

- (a) the order of the District Court dismissing the application or appeal, and 15
- (b) the appellant's right under this Division to seek to have the order vacated within 12 months from the dismissal.

133C Stay of execution of conviction, order or sentence

- (1) The execution of a conviction, order or sentence is stayed until an appeal is heard and determined when the District Court adjourns an appeal against the conviction, order or sentence and one of the following circumstances applies to the appellant: 20
 - (a) the appellant is not in custody and bail has been dispensed with, 25
 - (b) the appellant is not in custody and bail has been granted or continued.
- (2) 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*. 30
- (3) This section does not apply if a stay is in force under another provision of this Part. 35

133D Restrictions on grant of bail to appellant on adjournment

An appellant must not be released on bail after giving notice of appeal or applying for leave to appeal, or after the hearing of an appeal or an application for leave to appeal is adjourned, unless, in the appellant's bail undertaking, the appellant undertakes:

- (a) to appear before the District Court and prosecute the appeal or application, and
- (b) to notify a registrar of any change in the appellant's address, and
- (c) to abide the judgment of the District Court on the appeal or application, and
- (d) to pay such costs as may be awarded by the District Court.

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133E Appeals relating to certain traffic offences committed by children

- (1) Proceedings for an appeal in respect of a traffic offence committed by a child may be taken:

- (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.

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- (2) In this section:

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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*.

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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 5
- (d) the *Recreation Vehicles Act 1983*,

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

Division 3 Appeals by Crown 10

133F Meaning of "appeal"

In this Division:

appeal means an appeal under this Division.

133G When the Crown may appeal against a sentence

- (1) The Director of Public Prosecutions may appeal to the District Court against any sentence imposed by a Magistrate in proceedings of a kind set out in subsection (2). 15
- (2) An appeal may be made in any of the following proceedings: 20
 - (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*), 25
 - (c) proceedings for any other summary offence if instituted or carried on by the Director of Public Prosecutions.

133H 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. 5 10

133I Evidence in appeals

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

133J Powers of District Court in determining appeals 15

- (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, 20
 - (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. 25
- (3) Except as provided by section 133S, the District Court may make such order as to costs to be paid by either party (including the Crown) as it thinks just.

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

133K Definitions

In this Division:

appeal means an appeal under this Part. 5

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

133L General powers of District Court

Without limiting any powers of the District Court under
the *District Court Act 1973*, the District Court may do 10
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 15
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.

133M Rules for procedure for appeals and applications 20

- (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 25
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, 30
 - (d) notice of dismissal of appeals or applications,
 - (e) service of process and other documents.

133N 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.

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

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(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

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(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.

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(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.

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(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, the Chief Magistrate is to nominate a Magistrate to deal with the remitted matter.

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133P 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 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. 5
- (3) Any order made by the District Court in respect of an appeal or application which 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. 10

133Q Court may confirm conviction, order or sentence with effect from an earlier day 15

- (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 20
 - (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. 25
- (2) The order has effect even though a stay of execution may have been in force in respect of the conviction, order or 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. 30

133R 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 which 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. 5
- (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. 10

133S 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: 15
- (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, 20
- (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, 25
- (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. 30
- (2) This section does not apply to the awarding of costs against a respondent acting in a private capacity.

133T 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. 5
- (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. 10

133U Payment of money 15

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 20
- (b) state a time within which the costs or other amount must be paid. 25

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. 30
- (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.

Part 5B Appeals to Land and Environment Court

Division 1 Preliminary

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133W Definitions

In this Part:

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

environmental offence means:

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(a) an offence against the *Environmental Offences and Penalties Act 1989*, and

(b) any offence against the *Environmental Offences and Penalties Act 1989* arising under the provisions of the *Clean Air Act 1961*, the *Clean Waters Act 1970*, the *Noise Control Act 1975* or the *Pollution Control Act 1970*, or a regulation under any of those Acts.

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Judge means a Judge of the Land and Environment Court.

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registrar means the registrar of the Land and Environment Court.

133X Application of Part to sentences and orders

- (1) A provision of this Part, or a right to appeal under this Part, about a sentence applies to any order made by a Magistrate:

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(a) on the conviction or instead of a conviction of a person, or

(b) as punishment for any act or omission.

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- (2) Subsection (1) 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), 5
 - (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 decision under section 558 (1) of the *Crimes Act 1900* with respect to a person dealt with for an offence, 10
 - (e) a decision by 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, 15
20
 - (g) a decision within the meaning of section 42 (3) of the *Children (Criminal Proceedings) Act 1987* made by the Children's Court in respect of an offence committed by a person.
- (3) A provision of this Part, or a right to appeal under this Part, about an order 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. 25
- (4) In this Part, a reference to imposing a sentence is taken to include making an order or decision referred to in subsection (1) or (2). 30
- (5) The provisions of this Part do not affect the provisions of the *Home Detention Act 1996*.

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.

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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.

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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 to the Land and Environment Court by the person against whom the conviction or order was made or on whom the sentence was imposed.

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133AB Matters in which no appeal can be made

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(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 a dismissal of an information by a Magistrate.

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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.

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- (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. 5

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 made after a guilty plea or in the absence of the defendant only with the leave of the Land and Environment Court. 10
- (2) An appeal may be made by a person who has not exhausted all rights 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. 15
- (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. 20

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. 25 30
- (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. 35

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

- (1) 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. 5
- (2) The Land and Environment Court may hear and determine the matter only if it is satisfied that the failure to comply with this Division was through inadvertence or error. 15

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.
- (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. 25
- (3) Nothing in this section prevents a person with whom a notice of appeal is lodged under this section from giving a copy of a notice of appeal or an application to any other interested person. 30
- (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 among the records of the Land and Environment Court. 35

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

- (1) The execution of a conviction, order or sentence is stayed until an appeal is heard and determined when a notice of appeal is given in accordance with this Division, and one of the following circumstances applies to the appellant: 5
 - (a) the appellant is not in custody and bail has been dispensed with,
 - (b) the appellant is not in custody and bail has been granted or continued. 10
- (2) An application for leave to appeal does not result in a stay of execution of a conviction, order or sentence.

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

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- (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. 20
- (3) The amendment may be made subject to conditions as to adjournment or costs, or both, as the Land and Environment Court thinks just. 25

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. 30
- (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:

- (a) the appellant has shown sufficient cause for the failure to give notice of appeal or to make an application for leave to appeal within the required time, and 5
- (b) 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. 10

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. 15

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: 20

- (a) within 12 months after the dismissal the applicant shows to the Land and Environment Court sufficient cause for the failure to appear, and 25
- (b) the Land and Environment Court is of the opinion that it is in the interests of justice to do so.

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, order or sentence appealed against. 30

- (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. 5

133AN 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: 10
 - (a) confirming, quashing, setting aside or varying the conviction, order or sentence appealed against,
 - (b) increasing or reducing the sentence appealed against, 15
 - (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. 20

133AO 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: 25
 - (a) within 12 months after the dismissal the appellant shows to the Land and Environment Court sufficient cause for the failure to appear, and 30
 - (b) the Land and Environment Court is of the opinion that it is in the interests of justice to do so.

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- (2) The order may be made subject to conditions specified in the order.
- (3) If an order is made, section 133AH (1) applies to the conviction, 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. 5

133AP Notice of dismissal of application for leave to appeal or appeal 10

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 15
- (b) the appellant's right under this Division to seek to have the order vacated within 12 months from the dismissal.

133AQ Stay of execution of conviction, order or sentence

- (1) The execution of a conviction, order or sentence is stayed until an appeal is heard and determined when the Land and Environment Court adjourns an appeal against the conviction, order or sentence and one of the following circumstances applies to the appellant: 20
- (a) the appellant is not in custody and bail has been dispensed with, 25
- (b) the appellant is not in custody and bail has been granted or continued.
- (2) This section does not apply if a stay is in force under another provision of this Part. 30

133AR Restrictions on grant of bail to appellant on adjournment

An appellant must not be released on bail after giving notice of appeal or applying for leave to appeal, or after the hearing of an appeal or an application for leave to appeal is adjourned, unless, in the appellant's bail undertaking, the appellant undertakes: 5

- (a) to appear before the Land and Environment Court and prosecute the appeal or application, and
- (b) to notify a registrar of any change in the appellant's address, and 10
- (c) to abide the judgment of the Court on the appeal or application, and
- (d) to pay such costs as may be awarded by the Court.

Division 3 Appeals by Crown 15

133AS Meaning of "appeal"

In this Division:

appeal means an appeal under this Division.

133AT When the Crown may appeal against a sentence

- (1) The Director of Public Prosecutions may appeal to the Land and Environment Court against any sentence imposed by a Magistrate in proceedings for an environmental offence, if instituted or carried on by the Director of Public Prosecutions. 20
- (2) The Environmental Protection Authority may appeal to the Land and Environment Court against any sentence imposed by a Magistrate in summary proceedings for an environmental offence if those proceedings have been instituted or carried on by the Environmental Protection Authority. 25
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133AU 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.

133AV Evidence in appeals

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

133AW 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) Except as provided by section 133BF, 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.

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

133AX Definitions

In this Division:

appeal means an appeal under this Part. 5

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

133AY General powers of Land and Environment Court

Without limiting any powers of the Land and
Environment Court under the *Land and Environment* 10
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, 15
- (b) adjourn the hearing of an appeal or application for
leave to appeal.

133AZ 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 20
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 25
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.

133BA 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.

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

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(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

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(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.

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(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

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(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, the Chief Magistrate is to nominate a Magistrate to deal with the remitted matter.

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133BC 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 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. 5
- (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. 10

133BD Court may confirm conviction, order or sentence with effect from an earlier day 15

- (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 20
 - (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. 25
- (2) The order has effect even though a stay of execution may have been in force in respect of the conviction, order or 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. 30

133BE 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 which 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. 5
- (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. 10

133BF 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: 15
 - (a) that the investigation into the alleged offence was conducted in an unreasonable or improper manner, 20
 - (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, 25 30
 - (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. 35

**133BG 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. 5
- (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. 10

133BH Payment of money 15

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 20
- (b) state a time within which the costs or other amount must be paid. 25

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. 30
- (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.

[2] Section 134 Direction to Justice to act

Omit the section.

[3] Section 146 No certiorari

Omit the section.

[4] Second Schedule Savings, transitional and other provisions 5

Insert after Part 9:

**Part 10 Provisions consequent on enactment of
Justices Legislation Amendment (Appeals)
Act 1997**

29 Application of appeals provisions 10

- (1) Parts 5, 5A and 5B, as inserted by the *Justices Legislation Amendment (Appeals) Act 1997*, apply only to convictions or orders made, or sentences imposed, after the commencement of that Part and so apply whether or not the proceedings concerned commenced before or after that commencement. 15
- (2) Part 5, as in force immediately before its repeal by the *Justices Legislation Amendment (Appeals) Act 1997*, continues to have effect in respect of convictions or orders made or sentences imposed before that repeal. 20
- (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 1997* in proceedings to which provisions of that Part were applied by that other Act. 25

30 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 subsection (1). 30

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). 5
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 10

- (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. 15
- (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). 20

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 25

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).

5

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”.

10

[3] Section 42 (2)

Omit “Notwithstanding sections 102 and 123 of the *Justices Act 1902*, the”.

Insert instead “The”.

2.4 Community Land Management Act 1989 No 202

15

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

20

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 by defendant against order made by Local Court or Children’s Court 5

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*. 10

[2] Section 562M (2)

Omit “section 123”. Insert instead “section 133C”.

2.8 Criminal Appeal Act 1912 No 16

[1] Section 5B Case stated from District Court

Insert at the end of section 5B: 15

- (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. 20

[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.

5

2.9 Director of Public Prosecutions Act 1986 No 207

Section 3 Definitions

10

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

15

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:

20

- (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.

25

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

5

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

10

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*".

15

[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".

2.16 Local Courts (Civil Claims) Act 1970 No 11

5

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

10

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.

15

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".

20

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".

5

2.20 Noise Control Act 1975 No 35

Section 69 Appeals to Court: noise abatement orders

Omit "Part 5 of the *Justices Act 1902* does" from section 69 (6).

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

2.21 Occupational Health and Safety Act 1983 No 20

10

Section 47 Summary procedure for offences

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

2.22 Public Health Act 1991 No 10

Section 42 Appeal to Supreme Court on matter of law

Omit section 42 (a). Insert instead:

15

- (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 in summary to which that Part applies, or

2.23 Strata Schemes Management Act 1996 No 138

20

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** 5
- (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. 10
- (2) The execution of a conviction, order or sentence that is confirmed or varied by the District Court on appeal from a Local Court is stayed when a person commences proceedings and one of the following circumstances applies to the person: 15
- (a) the person is not in custody and bail has been dispensed with,
- (b) the person is not in custody and bail has been granted or continued. 20
- (3) 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*. 25
- 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: 30
- (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 conviction, order or sentence that is the subject of the proceedings. 5

[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 10

- (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. 15
- (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. 20
- (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 25
- (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 30
- (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. 5
 - (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 10
 - (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. 15
 - (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 20
 - (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 25

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. 30

[3] Section 75A Appeal

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

[4] Section 101 Appeal in proceedings before the Court

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

5

- (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 “Division 1 of Part 5A”.

10

2.26 Workers Compensation Act 1987 No 70

Section 278 Proceedings for offences

Omit “, and the stating of a case by,” from section 278 (4).