



New South Wales

Courts Legislation Amendment Bill 1999

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to allow statements of children in relation to criminal proceedings to be provided in the form of a transcript of any recording made by an investigating official of an interview with the child (pursuant to the *Evidence (Children) Act 1997*),
- (b) to allow the Crown to appeal to the Supreme Court against an order by a Magistrate that has the effect of staying summary proceedings for the prosecution of an offence,
- (c) to clarify the matters that may be appealed to the Supreme Court under the *Justices Act 1902*, particularly in relation to committal proceedings and interlocutory orders,

Explanatory note

- (d) to give the Land and Environment Court, in relation to environmental offences, similar appellate jurisdiction to that of the Supreme Court under the *Justices Act 1902* and to require appeals in relation to environmental offences to generally be heard by the Land and Environment Court, rather than the Supreme Court,
- (e) to enable an appeal hearing commenced before 3 or more Judges of the Court of Appeal to be continued, with the consent of the parties, if one of the Judges dies, resigns or is unable to continue,
- (f) to enable certain appeals and references under the *Aboriginal Land Rights Act 1983* to be heard by the Land and Environment Court in its Class 3 jurisdiction, so that the Court may, in hearing the proceedings, be assisted by 2 Commissioners of the Court (with suitable qualifications),
- (g) to restrict the availability of remedies in the nature of certiorari in relation to proceedings in the District Court,
- (h) to provide for peremptory challenges to jurors in civil proceedings,
- (i) to increase the penalties for failure to attend for jury service,
- (j) to allow the sheriff to excuse potential jurors from jury service at any time,
- (k) to remove the requirement that every potential juror complete and return to the sheriff a questionnaire relating to proposed jury service,
- (l) to make a minor change to the rules relating to disqualification of persons for jury service,
- (m) to allow an appeal to the District Court against an apprehended violence order made with the consent of the defendant to be made only with the leave of the District Court,
- (n) to provide that appeals against sentence in the District Court are to be by way of rehearing (including by the admission of new evidence), rather than by rehearing on transcript evidence,
- (o) to require the registrars of the District Court and the Land and Environment Court to supply to the parties to an appeal transcripts of evidence given by witnesses in the original proceedings,
- (p) to prevent a person who is the subject of a conviction, order or sentence made by a Magistrate from seeking review by both a Local Court and the Industrial Relations Commission in Court Session,
- (q) to clarify the powers of appellate courts to stay a sentence, order or conviction on appeal,
- (r) to increase the general limit on the civil jurisdiction of the Small Claims Division of a Local Court,

- (s) to extend the initial review period for awards under the *Industrial Relations Act 1996*,
- (t) to remove the requirement that video link facilities in the Supreme Court be "of television standard",
- (u) to make other minor amendments.

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 *Criminal Appeal Act 1912*, the *Industrial Relations Act 1996*, the *Jury Act 1977*, the *Justices Act 1902*, the *Land and Environment Court Act 1979*, the *Local Courts (Civil Claims) Act 1970*, the *Supreme Court Act 1970* and the *Wills, Probate and Administration Act 1898* set out in Schedules 1–8.

Schedule 1 Amendments to Criminal Appeal Act 1912

Section 5F of the *Criminal Appeal Act 1912* allows appeals to be made to the Court of Criminal Appeal against certain interlocutory judgments and orders, including orders made in committal proceedings. The amendment provides that such an appeal cannot be made if the person has already instituted an appeal to the Supreme Court under Part 5 of the *Justices Act 1902*. The amendment relates to the amendments to be made to Part 5 of the *Justices Act 1902* by Schedule 4 (those amendments make it clear that orders made by Magistrates in relation to committal proceedings can be appealed to the Supreme Court on a question of law).

Schedule 2 Amendments to Industrial Relations Act 1996

At present, the Industrial Relations Commission is required to review each award at least once every 3 years (the deadline for the first review period being 2 September 1999). The amendment extends the first review period for 2 years, while retaining the requirement for subsequent reviews at least once every 3 years.

Schedule 3 Amendments to Jury Act 1977

Questionnaire relating to jury service

At present, the sheriff sends to each person who is proposed to be included on the jury roll a notice advising the person of that proposal and requiring the person to return a completed questionnaire to the sheriff. This requirement is removed. The questionnaire will be required to be returned only if the person is disqualified or ineligible for jury service, or claims an exemption, or if the person's particulars have changed or if the person is otherwise required by the sheriff to return the questionnaire. (Schedule 3 [1] and [7])

The amendments also increase the maximum penalty payable on penalty notice for failure to respond to the questionnaire from 2.5 penalty units (\$275) to 5 penalty units (\$550). (Schedule 3 [13])

Power of sheriff to excuse persons from attending for jury service

The amendments allow the sheriff to excuse a person whose name appears on a jury roll from attending for jury service during the period, or any part of the period, in which the person may be required by summons to attend for jury service. At present a person may be excused from jury service only after the person has actually been summoned to attend for jury service. (Schedule 3 [2])

Peremptory challenges to jurors in civil proceedings

The amendments provide that both parties in any civil proceedings have a right of peremptory challenge of a juror. The number of peremptory challenges available to each party equals half the number of jurors required to constitute the jury. (See Schedule 3 [3] and consequential amendments in Schedule 3 [4], [5] and [6].)

Failure to attend for jury service

The penalties for a failure to attend for jury service are increased. At present, if a person fails to attend for jury service the sheriff is to serve on the person a notice requiring the person to pay a penalty not exceeding 2 penalty units (\$220) or to show cause why a penalty should not be imposed. If the person fails to pay the penalty or show cause, a penalty notice may be served on the person requiring the person, if he or she does not wish the matter to be dealt with by a court, to pay a prescribed penalty not exceeding 2.5 penalty units (\$275). If the matter is dealt with by a court, the court may impose a penalty not exceeding 5 penalty units (\$550) for the failure to attend for jury service. These amounts are increased to 10 penalty units (\$1100), 15 penalty units (\$1650) and 20 penalty units (\$2200) respectively,

and the requirement that the appropriate penalties be prescribed by regulation is removed. (Schedule 3 [8], [10], [11], [12], [13], [14] and [15])

The amendments also provide that it is a defence to a prosecution for an offence of failure to attend for jury service (if the matter is dealt with by a court) if the person prosecuted proves that he or she had a reasonable excuse for that failure. (Schedule 3 [9])

Persons who are disqualified as jurors because of juvenile offences

At present, a person who at any time within the last 5 years has been found guilty of an offence and detained in a detention centre or other institution for juvenile offenders (not being detention merely for failure to pay a fine) is disqualified from being a juror. The relevant crime-free period for juvenile offences is reduced from 5 years to 3 years. (Schedule 3 [16])

Savings and transitional provisions

Amendments for savings and transitional purposes are also made. (Schedule 3 [17] and [18])

Schedule 4 Amendments to Justices Act 1902

Recording of interviews with children

The *Evidence (Children) Act 1997* allows children to give evidence of a previous representation wholly or partly in the form of a recording made by an investigating official of an interview with the child where the child was questioned regarding the alleged commission of an alleged offence.

Subdivision 7A of Division 1 of Part 4 of the *Justices Act 1902* provides for "paper" committal proceedings. The prosecution must give its evidence by tendering written statements of witnesses as to the evidence that they would be prepared to give in court. Such statements are admissible in the same way as oral evidence. Those provisions are amended to provide that a transcript of any recording of an interview with a child will satisfy the requirements of a written statement. Such a transcript, when certified by the investigating official concerned, will serve as a written statement by the child concerned. It is also made clear that the prosecution is not required to provide the defendant with a copy of the recording, but the defendant must be given a reasonable opportunity to listen to it or view it before the committal proceedings. (Schedule 4 [1] and [2])

Subdivision 6A of Division 2 of Part 4 of the *Justices Act 1902* requires a prosecuting authority to serve a brief of evidence on a defendant who pleads not

guilty to an offence. The brief of evidence consists of the documents regarding the evidence that the prosecution intends to adduce in order to prove the commission of the offence. The amendments to those provisions allow the prosecution to provide, as part of the brief of evidence, a transcript of a recording made by an investigating official of an interview with a child, during which the child was questioned about the alleged offence. The prosecution will not be required to also include in the brief of evidence a written statement from the child. In addition, it is made clear that the prosecution is not required to give the defence a copy of the actual recording made of the child. The amendments will not affect the requirements of the *Evidence (Children) Act 1997* that the defence be given a reasonable opportunity to listen to or view the recording prior to the admission of the recording into evidence. (Schedule 4 [3])

Review of decisions by Local Courts

Part 4A of the *Justices Act 1902* allows a person to apply to a Local Court for a review of a conviction or order made by a Magistrate in respect of the person, or a sentence imposed on the person by a Magistrate, in certain circumstances. Those provisions are amended so that an application for review cannot be made if the decision has been appealed to the Industrial Relations Commission in Court Session under the *Industrial Relations Act 1996*. For instance, a conviction for an offence against that Act can be appealed to the Commission under that Act. (Schedule 4 [4])

Appeals to Supreme Court

The amendments clarify the power of the Supreme Court to hear appeals in respect of committal proceedings and interlocutory orders made in summary proceedings. At present, the *Justices Act 1902* provides that such appeals may be made, but only with leave of the Court. The amendments provide that such appeals may be made by a defendant or an informant and provide that they may be made on a ground that involves a question of law alone. (See Schedule 4 [9] and consequential amendments in Schedule 4 [6], [7], [11] and [15].) A person will not be able to appeal to the Supreme Court if the person has instituted an appeal to the Court of Criminal Appeal under section 5F of the *Criminal Appeal Act 1912*. (See Schedule 4 [14] and Schedule 1.)

The amendments also make it clear that appeals under the *Local Courts (Civil Claims) Act 1970* can be made to the Supreme Court, as provided for by section 69 of that Act. (Schedule 4 [9])

In addition, the Supreme Court is given power to hear appeals by an informant in any summary proceedings against an order made by a Magistrate that has the effect of staying the prosecution of an offence. (Schedule 4 [8])

Appeals to Land and Environment Court

At present the Supreme Court has power to hear certain appeals against decisions made by Magistrates in summary proceedings. These appeals, sometimes called "case stated" appeals, may generally be made only on a question of law. They include some types of appeals that cannot be made to either the District Court or the Land and Environment Court under the *Justices Act 1902*, such as appeals against orders made in committal proceedings and interlocutory orders made by Magistrates.

The amendments confer on the Land and Environment Court the same jurisdiction as the Supreme Court has under the *Justices Act 1902* to hear and dispose of appeals relating to environmental offences. As a result of the amendments it will be possible for a person to appeal to the Land and Environment Court against any conviction, order or sentence of a Magistrate that can currently be appealed to the Supreme Court, such as orders in relation to committal proceedings and interlocutory orders. (See Schedule 4 [29] and consequential amendments in Schedule 4 [23], [24] and [27].)

In addition, the amendments will prevent appeals in relation to environmental offences from being heard by the Supreme Court, except with the leave of the Supreme Court. The Supreme Court is to give leave to appeal only if it is of the view that the appeal is likely to require the resolution of a matter relating to constitutional law or a matter of general application. Otherwise, the appeal is to be heard and disposed of by the Land and Environment Court. (See Schedule 4 [10] and consequential amendments in Schedule 4 [5], [13] and [30].)

The *Land and Environment Court Act 1979* is also amended, so as to create a new class of jurisdiction of the Court for the hearing of the types of appeals currently disposed of by the Supreme Court and to give the Judges of the Court a power to make rules concerning those appeals. (See Schedule 5 [5] and [9] and consequential amendments in Schedule 5 [1], [4], [6], [7] and [8].)

Stay of execution of conviction, order or sentence pending appeal

The *Justices Act 1902* (sections 107, 127 and 133AH) provides that the execution of a sentence imposed as a consequence of a conviction, or of any other order, is stayed when a notice of appeal is given. In the case of an appellant who is in custody, the stay does not take effect unless and until the appellant enters into a bail undertaking in accordance with the *Bail Act 1978*, or bail is dispensed with. The amendments to those sections make it clear that this also applies to an appellant who is the subject of an order for periodic detention or a home detention order ie the stay does not have effect in respect of such an appellant unless and until a bail undertaking is given or bail is dispensed with. (Schedule 4 [12], [17] and [25])

Appeals against apprehended violence orders

The *Justices Act 1902* provides that appeals may be made to the District Court as of right in respect of certain decisions. The amendment to section 123 provides that an appeal against an apprehended violence order that was made under the *Crimes Act 1900* with the consent of the person against whom the order was made can be made only with the leave of the District Court. (Schedule 4 [16])

Hearing of appeals in the District Court

Sections 132 and 133 of the *Justices Act 1902* provide that appeals to the District Court from the decision of a Magistrate are to be by way of rehearing on the transcripts of the evidence heard before the Magistrate who made the conviction or order or imposed the sentence appealed against. In special circumstances, the District Court may direct that a person attend to give evidence in person in the appeal proceedings.

These provisions are amended so that they do not apply in respect of appeals against sentence by the person against whom the sentence was imposed. An appeal against sentence is to be by way of a new hearing, and new evidence may be given. (Schedule 4 [18], [19], [20] and [22])

Amendments to section 132 also require a registrar of the District Court to provide one copy of a transcript of evidence of any witness to an appellant or respondent on request (if a copy of the transcript has been provided to the registrar by a clerk of the Local Court). A similar amendment is made to section 133AM, which deals with appeals to the Land and Environment Court. (Schedule 4 [21] and [26])

No remedies in the nature of certiorari in respect of District Court adjudications

Section 146 of the *Justices Act 1902*, before its repeal by the *Justices Legislation Amendment (Appeals) Act 1998*, provided that no conviction or order of a Justice or Justices, or adjudication on appeal of the District Court, could be removed by any order into the Supreme Court. The amendments restore section 146 insofar as it applied to adjudications of the District Court. The purpose of the provision is to restrict the availability of relief in the nature of certiorari in relation to adjudications of the District Court on appeal. (Schedule 4 [31])

Other amendments

A cross reference is corrected. (Schedule 4 [28])

Amendments for savings and transitional purposes are also made. (Schedule 4 [32])

Schedule 5 Amendments to Land and Environment Court Act 1979

Schedule 5 amends the *Land and Environment Court Act 1979* (*the Act*) to provide that appeals under section 49F of the *Aboriginal Land Rights Act 1983* (Rectification of register), and references under section 49G of that Act (Reference by Registrar to Land and Environment Court), fall within the Class 3 jurisdiction of the Land and Environment Court instead of its Class 4 jurisdiction. (Schedule 5 [2], [3] and [10])

As a consequence of the transfer of jurisdiction, section 37 of the Act (Commissioners sitting with a Judge) applies in relation to the hearing by the Land and Environment Court of proceedings arising under section 49F or 49G of the *Aboriginal Land Rights Act 1983*. Accordingly, the Court may, in hearing the proceedings (or any part of the proceedings), be assisted by 2 Commissioners of the Court (or by one Commissioner if the Chief Judge of the Court so directs). Any such Commissioner must, in accordance with section 30 (2A) of the Act, be a person who has suitable knowledge of matters concerning land rights for Aborigines and qualifications and experience suitable for the determination of disputes involving Aborigines.

Schedule 5 also makes amendments that are related to the powers to be conferred on the Land and Environment Court by Schedule 4 to hear appeals under the *Justices Act 1902* that are currently heard by the Supreme Court. (See Schedule 5 [1] and [5] and consequential amendments in Schedule 5 [4], [6], [7], [8] and [9].)

Schedule 6 Amendments to Local Courts (Civil Claims) Act 1970

The amendments increase to \$10,000 the general limit on the civil jurisdiction of the Small Claims Division of a Local Court (currently the limit is \$3,000).

Schedule 7 Amendments to Supreme Court Act 1970

The amendments to the *Supreme Court Act 1970* enable the hearing of an appeal commenced before 3 or more Judges of the Court of Appeal to be continued to be heard and determined despite one or more of the Judges being unable to continue, so long as at least 2 Judges remain and the parties consent. This replaces another provision of the *Supreme Court Act 1970* that applied only if one of the Judges died before the decision was given. (Schedule 7 [1], [2] and [6])

The amendments also remove the requirement that video link facilities in the Supreme Court be of television standard, and provide that the rules of the Supreme Court may make provision in relation to those facilities. (Schedule 7 [3] and [4])
Schedule 7 [5] provides for additional offices of registrars of the Supreme Court.

Schedule 8 Amendments to Wills, Probate and Administration Act 1898

The amendment replaces an obsolete reference to the Registrar of the Probate Division of the Supreme Court (that Division will soon become part of the Equity Division).

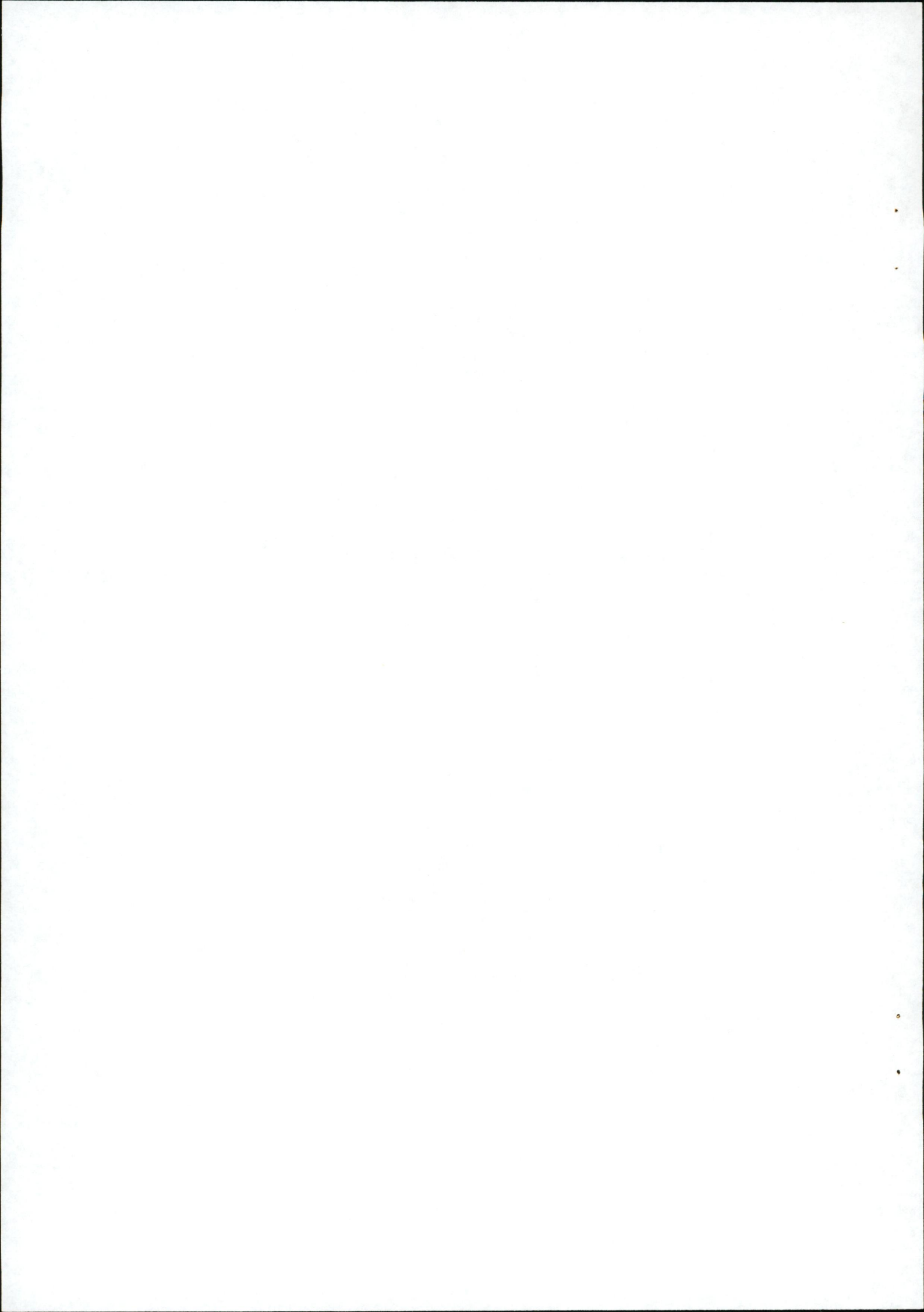


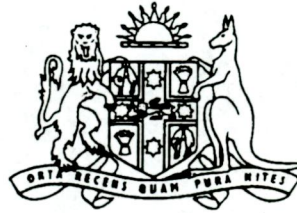
New South Wales

Courts Legislation Amendment Bill 1999

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New South Wales

Courts Legislation Amendment Bill 1999

No. , 1999

A Bill for

An Act to make miscellaneous amendments to the *Criminal Appeal Act 1912*, the *Industrial Relations Act 1996*, the *Jury Act 1977*, the *Justices Act 1902*, the *Land and Environment Court Act 1979*, the *Local Courts (Civil Claims) Act 1970*, the *Supreme Court Act 1970* and the *Wills, Probate and Administration Act 1898*.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Courts Legislation Amendment Act 1999</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5 6
3 Amendment of Acts	7
The Acts specified in Schedules 1–8 are amended as set out in those Schedules.	8 9

**Schedule 1 Amendment of Criminal Appeal Act 1912
No 16**

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(Section 3)

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Section 5F Appeal against interlocutory judgment or order

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Insert after section 5F (6):

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- (7) A person may not appeal to the Court of Criminal Appeal under this section against an interlocutory judgment or order if the person has instituted an appeal against the interlocutory judgment or order to the Supreme Court under Part 5 of the *Justices Act 1902*.

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Courts Legislation Amendment Bill 1999

Schedule 2 Amendment of Industrial Relations Act 1996 No 17

**Schedule 2 Amendment of Industrial Relations Act
1996 No 17**

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(Section 3)

Section 19 Review of awards

Omit section 19 (1). Insert instead:

- (1) The Commission is required to review each award before September 2001 and subsequently at least once in every 3 years.

Schedule 3 Amendment of Jury Act 1977 No 18

(Section 3)

[1] Section 13 Persons included on supplementary jury roll to be notified

Omit section 13 (1) (c) and (d). Insert instead:

- (c) containing a questionnaire that is required to be completed by the person if:
 - (i) the person is disqualified or ineligible or claims exemption, or
 - (ii) the particulars of the person appearing on the questionnaire have changed, or
 - (iii) the person is otherwise required by the sheriff in the notice to complete the questionnaire, and
- (d) requiring the person, if required to complete the questionnaire, to complete it and return it to the sheriff, within the time specified in the notice.

[2] Section 18A

Insert after section 18:

18A Sheriff may excuse persons from jury service before being summoned

- (1) The sheriff may, at any time before a person on a jury roll or supplementary jury roll is required by summons to attend for jury service, excuse the person from attending for jury service if the person shows good cause to be excused from attending for jury service because of any matter of special importance or any matter of special urgency.
- (2) A person may be excused under this section for the whole or any part of the period during which the person may be summoned to attend for jury service because of the person being included on a jury roll.

(3) A person does not have good cause to be excused under this section on the ground that the person is entitled as of right to be exempted from serving as a juror if the person was entitled, but without reasonable excuse failed, to claim an exemption under section 13.	1 2 3 4 5
(4) The sheriff may require a person to verify a request to be excused under this section by statutory declaration.	6 7
(5) If the sheriff excuses a person from attending for jury service for any period under this section, the sheriff is to make a record of that fact.	8 9 10
[3] Section 42A	11
Insert after section 42:	12 13
42A Peremptory challenges in civil proceedings	14
In any civil proceedings, each party to the proceedings has the number of peremptory challenges without restriction that is equal to half the number of jurors required to constitute the jury for trial.	15 16 17 18
[4] Section 45 Time for making challenge to juror	19
Omit “, or a challenge for cause to a juror in civil proceedings,” from section 45 (1).	20 21 22
Insert instead “or in civil proceedings”.	23
[5] Section 45 (1A)	24
Insert “or in civil proceedings” after “criminal proceedings”.	25 26
[6] Section 49 Balloting for jury in civil proceedings	27
Omit “for cause” from section 49 (3).	28 29

[7] Section 61 Offences relating to responding to questionnaire	1
Omit section 61 (1). Insert instead:	2
	3
(1) A person who is sent a notice under section 13 about the person's inclusion on a supplementary jury roll and who is required to return to the sheriff the questionnaire included in the notice must not, except with good cause, fail to do so within the time specified in the notice.	4
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[8] Section 63 Failure to attend for jury service	9
Omit "5 penalty units" from section 63 (1).	10
Insert instead "20 penalty units".	11
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[9] Section 63 (3)	13
Insert after section 63 (2):	14
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(3) It is a defence to a prosecution for an offence under this section if the person prosecuted proves that the person had a reasonable excuse for his or her failure to attend for jury service.	16
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[10] Section 64 Procedure where failure to attend for jury service	20
Omit "(not exceeding 2 penalty units) prescribed" from section 64 (2) (a).	21
Insert instead "equal to 10 penalty units".	22
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[11] Section 64 (4)	24
Omit "prescribed".	25
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[12] Section 64 (5)–(6)	27
Omit "prescribed" wherever occurring. Insert instead "relevant".	28
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[13] Section 66 Penalty notices for failure to attend jury service	30
Omit section 66 (2). Insert instead:	31
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(2) A penalty notice is a notice to the effect that, if the person served does not wish to have the alleged contravention of section 61 or 63 dealt with by a court, the person may pay,	33
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	within the time and to the person specified in the notice, the penalty of:	1
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	(a) in the case of an alleged contravention of section 61—5 penalty units, or	3
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	(b) in the case of an alleged contravention of section 63—15 penalty units.	5
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[14]	Section 66 (3)	7
	Omit “penalty prescribed”. Insert instead “relevant penalty”.	8
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[15]	Section 66 (5)	10
	Omit the subsection.	11
		12
[16]	Schedule 1 Persons disqualified from serving as jurors	13
	Omit “5 years” from item 2. Insert instead “3 years”.	14
		15
[17]	Schedule 8 Transitional and savings provisions	16
	Insert at the end of clause 1A (1):	17
	<i>Courts Legislation Amendment Act 1999</i>	18
		19
[18]	Schedule 8, Part 6	20
	Insert after Part 5 of Schedule 8:	21
		22
	Part 6 Transitional and savings provisions consequent on enactment of Courts Legislation Amendment Act 1999	23
		24
		25
15	Peremptory challenges in civil proceedings	26
	Section 42A, as inserted by the <i>Courts Legislation Amendment Act 1999</i> , applies only in respect of civil proceedings for which a jury is selected after the commencement of this clause.	27
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Schedule 4 Amendment of Justices Act 1902 No 27

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	(Section 3)
[1] Section 48 Definitions	4
Insert after section 48 (2):	5
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(3) In this Subdivision:	7
(a) a reference to a written statement includes a reference to the transcript of a recording made by an investigating official of an interview with a child, during which the child was questioned by the investigating official in connection with the investigation of the commission or possible commission of an offence (as referred to in the <i>Evidence (Children) Act 1997</i>), and	8
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(b) a reference to the person who made such a written statement is taken to be a reference to the child who gave the interview.	15
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[2] Section 48CA	18
Insert after section 48C:	19
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48CA Special requirements as to transcripts of recordings of interviews with children	21
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(1) A written statement that is in the form of a transcript of a recording of an interview with a child is not admissible as evidence under section 48A in any committal proceedings unless:	23
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(a) it has been certified by an investigating official as an accurate transcript of the recording to which the statement relates, and	27
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(b) the defendant has been given, in accordance with the regulations under section 12 (2) of the <i>Evidence (Children) Act 1997</i> , a reasonable opportunity to listen to and, in the case of a video recording, view the recording.	30
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(2) Section 48C (1) (a), (c), (e) and (f) do not apply to any such written statement.	35
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- (3) In any committal proceedings, it is, for the purposes of this Subdivision, to be presumed, in the absence of evidence to the contrary, that a signature on such a written statement purporting to or appearing to be that of an investigating official is in fact the signature of that person. 1
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- (4) Nothing in this Subdivision requires the informant to serve on the defendant a copy of a recording of an interview with a child (other than a transcript of the recording). 6
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- (5) In this section: 9
- investigating official* has the same meaning as in the *Evidence (Children) Act 1997*. 10
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- recording of an interview with a child* means a recording made by an investigating official of an interview with a child, during which the child was questioned by the investigating official in connection with the investigation of the commission or possible commission of an offence (as referred to in the *Evidence (Children) Act 1997*). 12
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- Note.** The *Evidence (Children) Act 1997* allows children to give evidence of a previous representation in the form of a recording made by an investigating official of an interview with the child. Section 12 (2) of that Act provides that such evidence is not to be admitted unless the accused person and his or her lawyer have been given a reasonable opportunity to listen to or view the recording. 18
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- [3] **Section 66CA** 24
- Insert after section 66C: 25
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- 66CA Recordings of interviews with children** 27
- (1) If the prosecution intends to call a child to give evidence in proceedings for a prescribed summary offence, the brief of evidence relating to the offence may include a transcript of a recording made by an investigating official of an interview with the child, during which the child was questioned by the investigating official in connection with the investigation of the commission or possible commission of the offence (as referred to in the *Evidence (Children) Act 1997*). 28
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- (2) A copy of the transcript of the recording must be certified by an investigating official as an accurate transcript of the recording and served on the defendant in accordance with section 66B. 36
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<p>(3) A brief of evidence that includes a transcript of a recording of an interview with a child is not required to also include a written statement from the child concerned.</p> <p>(4) The transcript of the recording is taken, for the purposes of this Subdivision, to be a written statement taken from the child. Accordingly, any document or other thing identified in the transcript as a proposed exhibit forms part of the brief of evidence.</p> <p>(5) Nothing in this Subdivision requires the prosecuting authority to serve on the defendant a copy of the actual recording made by an investigating official of an interview with the child.</p> <p>(6) This section does not affect section 12 (2) of the <i>Evidence (Children) Act 1997</i>.</p> <p>(7) In this section: <i>investigating official</i> has the same meaning as in the <i>Evidence (Children) Act 1997</i>.</p> <p>Note. The <i>Evidence (Children) Act 1997</i> allows children to give evidence of a previous representation in the form of a recording made by an investigating official of an interview with the child. Section 12 (2) of that Act provides that such evidence is not to be admitted unless the accused person and his or her lawyer have been given a reasonable opportunity to listen to or view the recording.</p> <p>[4] Section 100P Application prohibited if decision has been appealed to another court</p> <p>Insert “or under the <i>Industrial Relations Act 1996</i> to the Industrial Relations Commission in Court Session” after “Land and Environment Court”.</p> <p>[5] Section 101 Definitions</p> <p>Insert in alphabetical order: <i>environmental offence</i> means an offence against the environment protection legislation as defined in the <i>Protection of the Environment Administration Act 1991</i>.</p> <p>[6] Section 102 Application of Part generally</p> <p>Insert “, except in relation to committal proceedings (as provided for by section 104 (3))” after “Magistrate” in section 102 (5).</p>	<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p> <p>36</p> <p>37</p>
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[7] Section 104 When an appeal can be made by a defendant or other person	1
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Insert at the end of section 104 (1):	3
	4
This subsection does not apply in respect of an order that is made in relation to committal proceedings or an interlocutory order.	5
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[8] Section 104 (2)	8
Omit the subsection. Insert instead:	9
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(2) Appeals by informants	11
An informant may appeal under this Division to the Supreme Court against the following, on a ground that involves a question of law alone:	12
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	14
(a) an order made by a Magistrate that stays summary proceedings for the prosecution of an offence,	15
	16
(b) an order made by a Magistrate in summary proceedings dismissing an information or complaint,	17
	18
(c) an order for costs made by a Magistrate in summary proceedings,	19
	20
(d) a sentence imposed by a Magistrate in summary proceedings.	21
	22
[9] Section 104	23
Insert after section 104 (2):	24
	25
(3) Appeals in relation to committal proceedings	26
A defendant or an informant may appeal under this Division to the Supreme Court against any order that is made in relation to committal proceedings, on a ground that involves a question of law alone, but only with the leave of the Supreme Court.	27
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(4) Appeals in relation to interlocutory orders	31
A defendant or an informant may appeal under this Division to the Supreme Court against any interlocutory order that is made by a Magistrate in summary proceedings, on a ground that involves a question of law alone, but only with the leave of the Supreme Court.	32
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(5) Appeals by parties to civil proceedings	1
A party to any proceedings under the <i>Local Courts (Civil Claims) Act 1970</i> may appeal under this Division to the Supreme Court as provided for by section 69 of that Act.	2 3 4
[10] Section 104A	5
Insert after section 104:	6 7
104A Appeals in relation to environmental offences to be heard only with leave	8 9
(1) Despite section 104, a person may not appeal to the Supreme Court against a conviction or order made, or sentence imposed, by a Magistrate in proceedings relating to an environmental offence, except with the leave of the Supreme Court.	10 11 12 13
(2) The Supreme Court is to give such leave only if it is of the opinion that the appeal is likely to require the resolution of a matter relating to constitutional law or a matter of general application.	14 15 16 17
Note. Appeals in relation to environmental offences may be made to the Land and Environment Court (see Division 3A of Part 5B). Section 72 of the <i>Land and Environment Court Act 1979</i> allows the Supreme Court to transfer proceedings to the Land and Environment Court.	18 19 20 21
[11] Section 105 Appeals against interlocutory orders of Magistrates	22
Omit the section.	23 24
[12] Section 107 Stay of execution of conviction, order or sentence pending appeal	25 26
Insert after section 107 (5):	27 28
(6) In this section, a reference to an appellant who is in custody includes a reference to person who is the subject of an order for periodic detention under the <i>Periodic Detention of Prisoners Act 1981</i> or a home detention order within the meaning of the <i>Home Detention Act 1996</i> .	29 30 31 32 33

[13] Section 113 Limits on appeals	1
Omit section 113 (2) (b) (ii). Insert instead:	2
	3
(ii) refused leave to appeal on a question of mixed law and fact, or	4
	5
(iii) refused leave to appeal in proceedings relating to an environmental offence.	6
	7
[14] Section 113 (3)	8
Insert after section 113 (2):	9
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(3) A person may not appeal to the Supreme Court under this Division against any interlocutory judgment or order that may be appealed to the Court of Criminal Appeal under section 5F of the <i>Criminal Appeal Act 1912</i> , if the person has instituted an appeal to the Court of Criminal Appeal under that section.	11
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[15] Section 115 Appeals in relation to committal proceedings	16
Omit the section.	17
	18
[16] Section 123 Matters in which an appeal can be made only with leave of District Court	19
Insert after section 123 (1):	20
	21
	22
(1A) An appeal may be made against an apprehended violence order under Part 15A of the <i>Crimes Act 1900</i> that was made with the consent of the person against whom the order was made only with the leave of the District Court.	23
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	26
[17] Section 127 Stay of execution of conviction, order or sentence pending appeal	27
Insert after section 127 (5):	28
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(6) In this section, a reference to an appellant who is in custody includes a reference to person who is the subject of an order for periodic detention under the <i>Periodic Detention of Prisoners Act 1981</i> or a home detention order within the meaning of the <i>Home Detention Act 1996</i> .	31
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[18] Section 131A	1
Insert after section 131:	2
	3
131A Appeals against sentence to be by way of rehearing of evidence	4
An appeal against the severity of a sentence is to be by way of	5
a rehearing of the evidence heard before the Magistrate who	6
imposed the sentence, and new evidence or evidence in	7
addition to, or in substitution for, the evidence given in relation	8
to the sentence appealed against may be given on appeal.	9
[19] Section 132 Appeals against conviction or order to be by way of	10
rehearing on the transcripts of evidence	11
Omit section 132 (1). Insert instead:	12
	13
(1) An appeal against any conviction or order made by a	14
Magistrate is to be by way of rehearing on the transcripts of	15
evidence heard before the Magistrate, except as provided by	16
section 133.	17
[20] Section 132 (3)	18
Omit "On an appeal". Insert instead "On such an appeal".	19
	20
[21] Section 132 (5)	21
Insert after section 132 (4):	22
	23
(5) A registrar is also required, at the request of an appellant or	24
respondent, to provide one copy of the transcript of evidence of	25
any witness free of charge to the appellant or respondent, if the	26
registrar has been provided with a copy of the transcript by a	27
clerk of the Local Court.	28
Note. On receiving notice of an appeal the clerk of a Local Court is	29
required to transmit the relevant papers to a registrar for keeping in the	30
records of the District Court (see section 126 (4)).	31
[22] Section 133 Circumstances when evidence to be given in person	32
Insert "referred to in section 132" after "appeal proceedings" in section 133	33
(1).	34
	35

[23] Section 133X Application of Part generally	1
Insert “, except in relation to committal proceedings (as provided for by Division 3A)” after “Magistrate” in section 133X (5).	2 3 4
[24] Section 133AB Matters in which no appeal can be made	5
Insert after section 133AB (3):	6 7
(4) Appeals under Division 3A	8
This section does not limit the making of an appeal under Division 3A.	9 10
[25] Section 133AH Stay of execution of conviction, order or sentence pending appeal	11
Insert after section 133AH (5):	12 13 14
(6) In this section, a reference to an appellant who is in custody includes a reference to person who is the subject of an order for periodic detention under the <i>Periodic Detention of Prisoners Act 1981</i> or a home detention order within the meaning of the <i>Home Detention Act 1996</i> .	15 16 17 18 19
[26] Section 133AM Appeal to be by way of rehearing	20
Insert after section 133AM (4):	21 22
(5) The registrar is also required, at the request of an appellant or respondent, to provide one copy of the transcript of evidence of any witness free of charge to the appellant or respondent, if the registrar has been provided with a copy of the transcript by a clerk of the Local Court.	23 24 25 26 27
Note. On receiving notice of an appeal the clerk of a Local Court is required to transmit the relevant papers to a registrar for keeping in the records of the Land and Environment Court (see section 133AG (4)).	28 29 30
[27] Part 5B, Division 3, heading	31
Omit the heading. Insert instead “ Division 3 Appeals by Crown against sentence ”.	32 33 34
[28] Section 133AT How appeal is made	35
Omit “District Court” from section 133AT (6). Insert instead “Land and Environment Court”.	36 37 38

[29] Part 5B, Division 3A	1
Insert after section 133AV:	2 3
Division 3A Other appeals to Land and Environment Court	4
133AVA Other appeals	5
A person may appeal under this Division to the Land and Environment Court as provided for by section 133AVB.	6 7
133AVB Land and Environment Court to have same jurisdiction as Supreme Court in relation to appeals on environmental offences	8 9
(1) The Land and Environment Court has the same jurisdiction and powers as the Supreme Court has under Part 5 to hear and dispose of proceedings on appeal against any conviction or order made, or sentence imposed, by a Magistrate in summary proceedings for an environmental offence.	10 11 12 13 14
(2) Accordingly, an appeal may be made by a person to the Land and Environment Court against any conviction or order made, or sentence imposed, by a Magistrate in summary proceedings for an environmental offence on any ground that the person would be able to appeal the conviction, order or sentence under section 104.	15 16 17 18 19 20
Note. Section 104 allows appeals to be made on a question of law against interlocutory orders and orders in relation to committal proceedings (among other things).	21 22 23
(3) The provisions of Division 2 of Part 5 (section 104A excepted) apply in respect of appeals made to the Land and Environment Court under this Division, in the same way as they apply to appeals made to the Supreme Court under that Division, with any necessary modifications.	24 25 26 27 28
(4) For the purpose of applying those provisions, references to the Supreme Court are to be read as references to the Land and Environment Court.	29 30 31
133AVC How appeal to be made and conducted	32
(1) An appeal under this Division is to be made and conducted in accordance with the rules of the Land and Environment Court.	33 34

(2) An appeal is to be made within such period after the date that the relevant conviction or order is made, or the sentence is imposed, as may be prescribed by the rules of the Land and Environment Court.	1 2 3 4
[30] Section 133BI Limits on appeals	5
Insert after section 133BI (2):	6 7
(3) There is no appeal to the Land and Environment Court under this Part if there is an appeal to the Supreme Court as referred to in section 113.	8 9 10
[31] Section 146	11
Insert after section 145B:	12 13
146 No proceedings in the nature of certiorari	14
No adjudication on appeal of the District Court is to be removed by any order into the Supreme Court.	15 16
[32] Second Schedule Savings, transitional and other provisions	17
Insert in the Second Schedule, with appropriate Part and clause numbers:	18 19
Part Provisions consequent on enactment of Courts Legislation Amendment Act 1999	20 21
Regulations	22
(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the <i>Courts Legislation Amendment Act 1999</i> .	23 24 25
(2) Any such provision may, if the regulations so provide, take effect from the date of assent to that Act or a later date.	26 27
(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:	28 29 30
(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	31 32 33

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication. 1
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Use of transcripts of interviews with children 4

- (1) The amendments made to Subdivision 7A of Division 1 of Part 4 by the *Courts Legislation Amendment Act 1999* apply only in respect of committal proceedings that are commenced to be heard by a Justice or Justices after the commencement of those amendments. 5
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- (2) The amendments to Subdivision 6A of Division 2 of Part 4 made by the *Courts Legislation Amendment Act 1999* do not apply in respect of proceedings for the prosecution of a prescribed summary offence if the hearing of the evidence for the prosecution commenced before the commencement of those amendments. 10
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Review of decisions by Industrial Magistrates 16

The amendment made to section 100P by the *Courts Legislation Amendment Act 1999* does not apply in respect of any application made by a person under section 100D or 100G before the commencement of that amendment. 17
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Amendments to appeal provisions 21

- (1) The amendments made to Part 5 by the *Courts Legislation Amendment Act 1999* do not apply in respect of any conviction or order made, or sentence imposed, before the commencement of those amendments. 22
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- (2) The amendment made to section 127 by the *Courts Legislation Amendment Act 1999* does not apply in respect of any conviction or order made, or sentence imposed, before the commencement of that amendment. 26
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- (3) The amendments made to Part 5B by the *Courts Legislation Amendment Act 1999* do not apply in respect of any conviction or order made, or sentence imposed, before the commencement of those amendments. 30
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Appeals to District Court against apprehended violence orders	1
Section 123 (1A), as inserted by the <i>Courts Legislation Amendment Act 1999</i> , applies only in respect of apprehended violence orders made under Part 15A of the <i>Crimes Act 1900</i> after the commencement of that subsection.	2 3 4 5
Hearing of appeals against sentence by District Court	6
(1) Section 131A and the amendments made to sections 132 and 133 by the <i>Courts Legislation Amendment Act 1999</i> apply to appeals against sentence made to the District Court after the commencement of section 131A, and so apply even if the sentence the subject of the appeal was imposed before the commencement of that section.	7 8 9 10 11 12
(2) Sections 132 and 133, as in force immediately before the commencement of section 131A, continue to have effect in respect of appeals against sentence made to the District Court before that commencement.	13 14 15 16
Availability of certiorari	17
Section 146, as inserted by the <i>Courts Legislation Amendment Act 1999</i> , does not apply in respect of any application made to the Supreme Court before the commencement of that section.	18 19 20

**Schedule 5 Amendment of Land and Environment
Court Act 1979 No 204**

	(Section 3)	1
		2
		3
		4
[1]	Section 16 Jurisdiction of the Court generally	5
	Omit "6" from section 16 (2). Insert instead "7".	6
		7
[2]	Section 19 Class 3—land tenure, valuation, rating and compensation matters	8
	Omit "and" from section 19 (g1). Insert after that paragraph:	9
		10
	(g2) appeals under section 49F of the <i>Aboriginal Land Rights Act 1983</i> ,	11
		12
	(g3) references under section 49G of the <i>Aboriginal Land Rights Act 1983</i> , and	13
		14
		15
[3]	Section 20 Class 4—environmental planning and protection and development contract civil enforcement	16
		17
	Omit section 20 (1) (cl) and (cm).	18
		19
[4]	Section 21A Class 6—appeals from convictions relating to environmental offences	20
		21
	Insert ", other than appeals under Division 3A of that Part" after " <i>Justices Act 1902</i> ".	22
		23
		24
[5]	Section 21B	25
	Insert after section 21A:	26
		27
	21B Class 7—other appeals relating to environmental offences	28
	The Court has jurisdiction (referred to in this Act as "Class 7" of its jurisdiction) to hear and dispose of appeals under Division 3A of Part 5B of the <i>Justices Act 1902</i> .	29
		30
		31
[6]	Section 28 Distribution of business among the Divisions	32
	Insert "or Class 7" after "Class 6" in section 28 (6).	33
		34

Courts Legislation Amendment Bill 1999

Schedule 5 Amendment of Land and Environment Court Act 1979 No 204

[7] Section 33 Exercise of jurisdiction in the Divisions	1
Omit "and 6" from section 33 (2).	2
Insert instead ", 6 and 7".	3
	4
[8] Sections 56 (b), 63 and 69 (9)	5
Omit "or 6" wherever occurring. Insert instead ", 6 or 7".	6
	7
[9] Section 74 Rules	8
Insert after section 74 (1) (a1):	9
	10
(a2) appeals under Division 3A of Part 5B of the Justices Act 1902,	11
	12
[10] Schedule 3 Savings, transitional and other provisions	13
Insert after clause 2:	14
	15
3 Provisions consequent on enactment of Courts Legislation Amendment Act 1999	16
	17
The amendments made to sections 19 and 20 by the <i>Courts Legislation Amendment Act 1999</i> do not apply in relation to proceedings that have been commenced in the Court (but not determined) before the commencement of those amendments.	18
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**Schedule 6 Amendment of Local Courts (Civil Claims)
Act 1970 No 11**

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(Section 3)

[1] Section 12 Limits of jurisdiction

Omit "\$3,000 (or such greater amount as the rules may prescribe)" from section 12 (3).

Insert instead "\$10,000".

[2] Section 12 (4)

Omit "\$3,000". Insert instead "\$10,000".

**Schedule 7 Amendment of Supreme Court Act 1970
No 52**

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	3
(Section 3)	4
[1] Section 45 Appeals	5
Omit section 45 (3).	6
	7
[2] Section 45AA	8
Insert after section 45:	9
	10
45AA Continuation of appeal if one or more Judges unable to continue	11
(1) If an appeal is commenced before 3 or more Judges of Appeal and, before the appeal is determined, one or more of the Judges dies, resigns from office or otherwise becomes unable to continue as a member of the Court of Appeal for the purposes of the appeal, the hearing and determination of the appeal may be completed by the remaining Judges of Appeal so long as at least 2 Judges remain and the parties consent.	12
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(2) If the appeal concerned is to be heard and determined by only 2 Judges of Appeal and those Judges are divided in opinion:	19
	20
(a) as to the decision determining the appeal—the appeal is to be reheard and determined by the Court of Appeal constituted by such 3 or more Judges of Appeal as the President of the Court of Appeal directs (including, if practicable, the 2 Judges of Appeal who completed the hearing of the appeal), or	21
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(b) as to any other decision—the decision of the Court is to be in accordance with the opinion of the senior Judge present.	27
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	29
(3) This section has effect despite any other provision of this Division.	30
	31
[3] Section 110B Manner of operation of video link facilities	32
Omit “of television standard” from section 110B (1).	33
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[4] Section 110B (2)	1
Omit the subsection. Insert instead:	2
	3
(2) The rules may make provision for or with respect to the technical and performance specifications for video link facilities.	4
	5
	6
[5] Section 119 Offices of registrars	7
Omit section 119 (1). Insert instead:	8
	9
(1) There are such registrars as may be appointed from time to time, including a Principal Registrar of the Court, a Registrar of the Court of Appeal, and a Registrar of each Division.	10
	11
	12
[6] Fourth Schedule Savings and transitional provisions	13
Insert after clause 13 in the Fourth Schedule:	14
	15
 Part 9 Provisions consequent on enactment of Courts Legislation Amendment Act 1999	16
	17
 14 Application of amendment	18
Section 45AA (as inserted by the <i>Courts Legislation Amendment Act 1999</i>) applies to appeal proceedings in the Court of Appeal whether the proceedings were commenced before or after the commencement of the amendment.	19
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**Schedule 8 Amendment of Wills, Probate and
Administration Act 1898 No 13**

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(Section 3)

Section 3 Definitions

Omit the definition of *Registrar*. Insert instead:

Registrar means a person who is:

- (a) appointed in accordance with section 120 of the *Supreme Court Act 1970*, and
- (b) nominated by the Principal Registrar of the Supreme Court for the purposes of this Act.