

JUSTICES (APPEALS) AMENDMENT ACT 1988 No. 99

NEW SOUTH WALES



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JUSTICES (APPEALS) AMENDMENT ACT 1988 No. 99

NEW SOUTH WALES



Act No. 99, 1988

An Act to amend the Justices Act 1902 with respect to appeals by the Crown against certain sentences imposed by Local Courts and the withdrawal of those and other appeals made to the District Court; to amend the Children (Criminal Proceedings) Act 1987 in certain respects; and for other purposes. [Assented to 19 December 1988]

*Justices (Appeals) Amendment 1988***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Justices (Appeals) Amendment Act 1988.

Commencement

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

Amendment of Justices Act 1902 No. 27

3. The Justices Act 1902 is amended as set out in Schedules 1 and 2.

Amendment of Children (Criminal Proceedings) Act 1987 No. 55

4. The Children (Criminal Proceedings) Act 1987 is amended as set out in Schedule 3.

Transitional provisions

5. Schedule 4 has effect.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

- (1) Part 5, Division 4A—

After Division 4, insert:

Division 4A—Appeal to the District Court by Crown**Definitions**

131AA. (1) In this Division—

“appeal” means an appeal under this Division;

“Judge” means a Judge of the District Court;

“proclaimed place” has the same meaning as in the District Court Act 1973;

“sentence” includes any order made by a Justice or Justices on the conviction of a person, including (but not limited to) an order for compensation or relating to property;

“vary” includes increase or reduce.

- (2) Without limiting the definition of “sentence”, for the purposes of this Division—

- (a) an order under section 556A (1) of the Crimes Act 1900 with respect to a person dealt with for an offence; or

*Justices (Appeals) Amendment 1988*SCHEDULE 1—AMENDMENTS—*continued*

- (b) an order or decision under section 558 (1) of the Crimes Act 1900 with respect to a person dealt with for an offence; or
- (c) any other order or decision of any kind whatever made by a Justice or Justices with respect to a person dealt with for an offence—
 - (i) deferring passing sentence on the person; or
 - (ii) remanding the person in custody; or
 - (iii) remanding the person and releasing him or her subject to conditions,
 whether or not the person has been convicted,

shall be taken to be a sentence imposed on the conviction of the person, and the person shall be taken to have been convicted of the offence.

(3) A reference in this Division to imposing a sentence includes a reference to making an order or decision referred to in subsection (2).

Appeal by Crown to District Court against sentence

131AB. (1) The Director of Public Prosecutions may appeal to the District Court against any sentence imposed by a Justice or Justices in—

- (a) proceedings for an indictable offence being dealt with summarily in a Local Court; or
- (b) proceedings for a prescribed summary offence (as defined in the Director of Public Prosecutions Act 1986); or
- (c) proceedings for any other summary offence if instituted or carried on by the Director of Public Prosecutions.

(2) The District Court may, in its discretion, do any one or more of the following:

- (a) confirm, quash, set aside or vary the sentence;
- (b) impose such sentence as may seem proper to the District Court;
- (c) exercise, by order, any power which such a Justice or Justices might have exercised.

(3) Any such sentence varied or imposed by the District Court, or any such order made by the District Court, shall have the same effect and be enforced in the same manner as if it had been imposed or made by such a Justice or Justices.

*Justices (Appeals) Amendment 1988*SCHEDULE 1—AMENDMENTS—*continued*

- (4) The District Court may not—
- (a) vary a sentence so that the sentence as varied could not have been imposed by the Justice or Justices concerned; or
 - (b) impose a sentence that could not have been imposed by the Justice or Justices concerned.

Procedure

131AC. (1) An appeal must be lodged within 28 days from the date the Justice or Justices imposed the sentence.

(2) The District Court may do any one or more of the following:

- (a) specify the proclaimed place at which the hearing of an appeal is to be heard or continued;
- (b) specify the sitting at which an appeal is to be set down for hearing;
- (c) adjourn the hearing of an appeal;
- (d) dismiss an appeal.

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

(4) A Judge may issue a warrant for the apprehension of a defendant who is not present at the proceedings for an appeal relating to the defendant's sentence.

(5) The criminal procedure rules of the District Court may make provision for or with respect to the procedure to be followed as regards appeals, and in particular as to the service on defendants of notices relating to appeals.

(2) Section 132B—

After section 132A, insert:

Withdrawal of appeals

132B. (1) An appeal under Division 4 or 4A may at any stage be withdrawn by the appellant with the leave of the District Court.

(2) In giving leave in respect of an appeal by a defendant, the District Court may make such orders as are necessary to place the defendant as nearly as possible in the same position as if the appeal had not been made.

(3) Any order made by the District Court in respect of an appeal which is withdrawn shall be taken to be an order made by the Justice or Justices who made the conviction, order or decision which gave rise to the appeal.

SCHEDULE 1—AMENDMENTS—*continued*

(3) Section 132c—

Before section 133, insert:

Limitation on appeals to District Court

132c. (1) No application to quash or vary any conviction or order of a Justice or Justices may be made to the District Court (whether in its civil or criminal jurisdiction) except by way of appeal as provided by Division 4 or 4A.

(2) No appeal may be made to the District Court under Division 4 or 4A from a decision of the District Court under either of those Divisions.

SCHEDULE 2—MINOR OR CONSEQUENTIAL AMENDMENTS

(Sec. 3)

(1) Section 3 (**Definitions**)—

Insert, in alphabetical order, in section 3 (1):

“District Court” means the District Court of New South Wales in its criminal jurisdiction (except where used in connection with registrars of the District Court).

(2) Section 25 (**Issue of warrant where indictment filed**)—

Section 25 (1)—

Omit “in the District Court in its criminal and special jurisdiction”, insert instead “the District Court”.

(3) Section 51A (**Effect of plea of guilty in committal proceedings**)—

Section 51A (1) (c)—

Omit “, or such sittings of the District Court in its criminal and special jurisdiction,”, insert instead “or the District Court”.

(4) Section 111 (**Persons appealing under this Division not to appeal to District Court**)—

Section 111 (1)—

Omit “in its criminal and special jurisdiction,”.

(5) Part 5, Division 4, heading—

Omit the heading, insert instead:

Division 4—Appeal to the District Court by defendant

Justices (Appeals) Amendment 1988

SCHEDULE 2—MINOR OR CONSEQUENTIAL AMENDMENTS—
continued
(6) Section 121A—

Omit the section, insert instead:

Definitions

121A. In this Division—

“appeal” means an appeal under this Division;

“Judge” means a Judge of the District Court;

“proclaimed place” has the same meaning as in the District Court Act 1973;

“registrar” means a registrar of the District Court.

(7) Section 122 (Appeal allowed in every case of conviction or order made by Justices)—

Omit section 122 (3).

(8) Section 127A (Vacating order of dismissal of appeal)—

Omit section 127A (1).

(9) Section 140 (Where action may be brought)—

(a) After “District Court” where firstly occurring, insert “in its civil jurisdiction”.

(b) Omit “a District Court”, insert instead “the District Court”.

(10) Section 146 (No certiorari)—

Omit “in its criminal and special jurisdiction”.

**SCHEDULE 3—AMENDMENT OF CHILDREN (CRIMINAL
 PROCEEDINGS) ACT 1987**

(Sec. 4)

Section 42 (Appeals)—

After section 42 (4), insert:

(5) Division 4A (Appeal to the District Court by Crown) of Part 5 of the Justices Act 1902 does not apply to a decision of the Children’s Court.

SCHEDULE 4—TRANSITIONAL PROVISIONS

(Sec. 5)

Appeal to the District Court by Crown

1. Appeals may be made under Division 4A of Part 5 of the Justices Act 1902 in relation to sentences imposed after, but not before, the commencement of that Division.

Justices (Appeals) Amendment 1988

SCHEDULE 4—TRANSITIONAL PROVISIONS—*continued*

Withdrawal of appeals

2. Section 132B of the Justices Act 1902 applies in relation to appeals pending at the commencement of that section, as well as to appeals made after that commencement.

[*Minister's second reading speech made in—
Legislative Assembly on 10 November 1988
Legislative Council on 7 December 1988*]







JUSTICES (APPEALS) AMENDMENT BILL 1988

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are—

- (a) to enable the Crown (through the Director of Public Prosecutions) to appeal to the District Court against sentences imposed by Magistrates; and
- (b) to provide for the withdrawal of criminal appeals to the District Court, whether made by defendants or the Crown; and
- (c) to make minor or consequential amendments.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days to be appointed by proclamation.

Clauses 3, 4 and 5 are formal provisions giving effect to the Schedules.

SCHEDULE 1—AMENDMENTS

Appeals by Crown

Schedule 1 (1) inserts a new Division 4A into Part 5 of the Justices Act 1902, dealing with appeals to the District Court by the Director of Public Prosecutions. The new Division contains the following provisions:

Definitions

Proposed section 131AA defines expressions used in the new Division. In particular, "sentence" is defined widely to include, among other things, orders releasing defendants (under section 556A of the Crimes Act 1900) or deferring passing of sentence (under section 558 of the Crimes Act 1900).

Justices (Appeals) Amendment 1988

Appeal by Crown to District Court against sentence

Proposed section 131AB empowers the Director of Public Prosecutions to appeal to the District Court against a sentence imposed by a Magistrate (or other Justice or Justices) in—

- (a) proceedings for an indictable offence being dealt with summarily in a Local Court; or
- (b) proceedings for a prescribed summary offence (as defined in the Director of Public Prosecutions Act 1986, i.e. an offence for which the Director of Public Prosecutions may institute or take over proceedings without consent); or
- (c) proceedings for any other summary offence if instituted or carried on by the Director of Public Prosecutions.

The new section provides that the District Court may confirm or vary the sentence being appealed against or impose another sentence.

Procedure

Proposed section 131AC provides that an appeal under the new Division has to be lodged within 28 days from when the sentence was imposed by the Magistrate. It also provides that the District Court can specify the venue and the setting down for the hearing of the appeal as well as adjourn the hearing of the appeal. The District Court is also empowered to issue bench warrants in appropriate cases.

Withdrawal of appeals

Schedule 1 (2) inserts a new section 132B into the Justices Act 1902, enabling an appeal by a defendant or by the Crown to the District Court to be withdrawn at any stage with the leave of the Court. The section also provides that when it gives leave to withdraw an appeal, the District Court may make such orders as will result in the defendant being placed in the same position as if the appeal had not been made.

Limitation on appeals

Schedule 1 (3) inserts a new section 132C into the Justices Act 1902, limiting the making of appeals to the District Court in criminal matters. Subsection (1) is a restatement of the provision at present contained in section 122 (3), but suitably expanded to deal with Crown appeals against sentences. Subsection (2) makes it clear that the decision of the District Court on an appeal is not itself subject to further appeal to the District Court.

SCHEDULE 2—MINOR OR CONSEQUENTIAL AMENDMENTS

Definition of "District Court"

Schedule 2 (1) inserts a definition of "District Court" in section 3 of the Justices Act 1902. As a result, an existing definition in section 121A can be omitted, and other consequential amendments made. These are effected by Schedule 2 (2), (3), (4), (9) and (10).

Heading to Division 4 of Part 5

Schedule 2 (5) substitutes the heading to the Division, so as to distinguish the contents of the Division from the proposed Division 4A, which also deals with appeals.

Definitions for Division 4 of Part 5

Schedule 2 (6) substitutes section 121A, in line with the definitions for proposed Division 4A. Schedule 2 (8) omits a definition, which will instead be included in the substituted section 121A.

Justices (Appeals) Amendment 1988

Limitation on appeals

Schedule 2 (7) omits section 122 (3), as a consequence of the amendment made by Schedule 1 (3).

**SCHEDULE 3—AMENDMENT OF CHILDREN (CRIMINAL PROCEEDINGS)
ACT 1987**

Schedule 3 amends section 42 (Appeals) of the Children (Criminal Proceedings) Act 1987 so that an appeal by the Crown against a sentence in summary proceedings does not lie against a decision of the Children's Court.

SCHEDULE 4—TRANSITIONAL PROVISIONS

Appeal to the District Court by the Crown

Clause 1 of Schedule 4 provides that an appeal may not be made by the Crown against a sentence imposed in summary proceedings before the commencement of the new appeal provisions.

Withdrawal of appeals

Clause 2 of Schedule 4 provides that appeals may be withdrawn even though made before the commencement of the new withdrawal provisions.

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1987

SCHEDULE 4—TRANSITIONAL PROVISIONS

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JUSTICES (APPEALS) AMENDMENT BILL 1988

NEW SOUTH WALES



No. , 1988

A BILL FOR

An Act to amend the Justices Act 1902 with respect to appeals by the Crown against certain sentences imposed by Local Courts and the withdrawal of those and other appeals made to the District Court; to amend the Children (Criminal Proceedings) Act 1987 in certain respects; and for other purposes.

*Justices (Appeals) Amendment 1988***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Justices (Appeals) Amendment Act 1988.

Commencement

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

Amendment of Justices Act 1902 No. 27

3. The Justices Act 1902 is amended as set out in Schedules 1 and 2.

Amendment of Children (Criminal Proceedings) Act 1987 No. 55

- 10 4. The Children (Criminal Proceedings) Act 1987 is amended as set out in Schedule 3.

Transitional provisions

5. Schedule 4 has effect.

SCHEDULE 1—AMENDMENTS

15 (Sec. 3)

- (1) Part 5, Division 4A—

After Division 4, insert:

Division 4A—Appeal to the District Court by Crown**Definitions**

20 131AA. (1) In this Division—

“appeal” means an appeal under this Division;

“Judge” means a Judge of the District Court;

“proclaimed place” has the same meaning as in the District Court Act 1973;

25 “sentence” includes any order made by a Justice or Justices on the conviction of a person, including (but not limited to) an order for compensation or relating to property;

“vary” includes increase or reduce.

30 (2) Without limiting the definition of “sentence”, for the purposes of this Division—

- (a) an order under section 556A (1) of the Crimes Act 1900 with respect to a person dealt with for an offence; or

*Justices (Appeals) Amendment 1988*SCHEDULE 1—AMENDMENTS—*continued*

- (b) an order or decision under section 558 (1) of the Crimes Act 1900 with respect to a person dealt with for an offence; or
- 5 (c) any other order or decision of any kind whatever made by a Justice or Justices with respect to a person dealt with for an offence—
- (i) deferring passing sentence on the person; or
- (ii) remanding the person in custody; or
- 10 (iii) remanding the person and releasing him or her subject to conditions,
- whether or not the person has been convicted,
- shall be taken to be a sentence imposed on the conviction of the person, and the person shall be taken to have been convicted of the offence.

- 15 (3) A reference in this Division to imposing a sentence includes a reference to making an order or decision referred to in subsection (2).

Appeal by Crown to District Court against sentence

- 20 131AB. (1) The Director of Public Prosecutions may appeal to the District Court against any sentence imposed by a Justice or Justices in—

- (a) proceedings for an indictable offence being dealt with summarily in a Local Court; or
- 25 (b) proceedings for a prescribed summary offence (as defined in the Director of Public Prosecutions Act 1986); or
- (c) proceedings for any other summary offence if instituted or carried on by the Director of Public Prosecutions.

- (2) The District Court may, in its discretion, do any one or more of the following:

- 30 (a) confirm, quash, set aside or vary the sentence;
- (b) impose such sentence as may seem proper to the District Court;
- (c) exercise, by order, any power which such a Justice or Justices might have exercised.

- 35 (3) Any such sentence varied or imposed by the District Court, or any such order made by the District Court, shall have the same effect and be enforced in the same manner as if it had been imposed or made by such a Justice or Justices.

*Justices (Appeals) Amendment 1988*SCHEDULE 1—AMENDMENTS—*continued*

(4) The District Court may not—

- (a) vary a sentence so that the sentence as varied could not have been imposed by the Justice or Justices concerned; or
- (b) impose a sentence that could not have been imposed by the Justice or Justices concerned.

Procedure

131AC. (1) An appeal must be lodged within 28 days from the date the Justice or Justices imposed the sentence.

(2) The District Court may do any one or more of the following:

- (a) specify the proclaimed place at which the hearing of an appeal is to be heard or continued;
- (b) specify the sitting at which an appeal is to be set down for hearing;
- (c) adjourn the hearing of an appeal;
- (d) dismiss an appeal.

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

(4) A Judge may issue a warrant for the apprehension of a defendant who is not present at the proceedings for an appeal relating to the defendant's sentence.

(5) The criminal procedure rules of the District Court may make provision for or with respect to the procedure to be followed as regards appeals, and in particular as to the service on defendants of notices relating to appeals.

(2) Section 132B—

After section 132A, insert:

Withdrawal of appeals

132B. (1) An appeal under Division 4 or 4A may at any stage be withdrawn by the appellant with the leave of the District Court.

(2) In giving leave in respect of an appeal by a defendant, the District Court may make such orders as are necessary to place the defendant as nearly as possible in the same position as if the appeal had not been made.

(3) Any order made by the District Court in respect of an appeal which is withdrawn shall be taken to be an order made by the Justice or Justices who made the conviction, order or decision which gave rise to the appeal.

SCHEDULE 1—AMENDMENTS—*continued*

(3) Section 132C—

Before section 133, insert:

Limitation on appeals to District Court

5 132C. (1) No application to quash or vary any conviction or order of a Justice or Justices may be made to the District Court (whether in its civil or criminal jurisdiction) except by way of appeal as provided by Division 4 or 4A.

10 (2) No appeal may be made to the District Court under Division 4 or 4A from a decision of the District Court under either of those Divisions.

SCHEDULE 2—MINOR OR CONSEQUENTIAL AMENDMENTS

(Sec. 3)

(1) Section 3 (**Definitions**)—

Insert, in alphabetical order, in section 3 (1):

15 “District Court” means the District Court of New South Wales in its criminal jurisdiction (except where used in connection with registrars of the District Court).

(2) Section 25 (**Issue of warrant where indictment filed**)—

Section 25 (1)—

20 Omit “in the District Court in its criminal and special jurisdiction”, insert instead “the District Court”.

(3) Section 51A (**Effect of plea of guilty in committal proceedings**)—

Section 51A (1) (c)—

25 Omit “, or such sittings of the District Court in its criminal and special jurisdiction,”, insert instead “or the District Court”.

(4) Section 111 (**Persons appealing under this Division not to appeal to District Court**)—

Section 111 (1)—

Omit “in its criminal and special jurisdiction,”.

30 (5) Part 5, Division 4, heading—

Omit the heading, insert instead:

Division 4—Appeal to the District Court by defendant

Justices (Appeals) Amendment 1988

 SCHEDULE 2—MINOR OR CONSEQUENTIAL AMENDMENTS—
continued

(6) Section 121A—

Omit the section, insert instead:

Definitions

121A. In this Division—

- 5 “appeal” means an appeal under this Division;
 “Judge” means a Judge of the District Court;
 “proclaimed place” has the same meaning as in the District
 Court Act 1973;
 “registrar” means a registrar of the District Court.

10. (7) Section 122 (**Appeal allowed in every case of conviction or order made by Justices**)—

Omit section 122 (3).

(8) Section 127A (**Vacating order of dismissal of appeal**)—

Omit section 127A (1).

15 (9) Section 140 (**Where action may be brought**)—

- (a) After “District Court” where firstly occurring, insert “in its civil jurisdiction”.
 (b) Omit “a District Court”, insert instead “the District Court”.

(10) Section 146 (**No certiorari**)—

20 Omit “in its criminal and special jurisdiction”.

**SCHEDULE 3—AMENDMENT OF CHILDREN (CRIMINAL
 PROCEEDINGS) ACT 1987**

(Sec. 4)

Section 42 (**Appeals**)—

25 After section 42 (4), insert:

- (5) Division 4A (Appeal to the District Court by Crown) of Part 5 of the Justices Act 1902 does not apply to a decision of the Children’s Court.

SCHEDULE 4—TRANSITIONAL PROVISIONS

30 (Sec. 5)

Appeal to the District Court by Crown

1. Appeals may be made under Division 4A of Part 5 of the Justices Act 1902 in relation to sentences imposed after, but not before, the commencement of that Division.

Justices (Appeals) Amendment 1988

SCHEDULE 4—TRANSITIONAL PROVISIONS—*continued*

Withdrawal of appeals

2. Section 132B of the Justices Act 1902 applies in relation to appeals pending at the commencement of that section, as well as to appeals made after that commencement.





