



New South Wales

Courts Legislation Further Amendment Bill 1995

Explanatory note

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

Overview of Bill

The object of this Bill is to make minor amendments to legislation about courts and court procedure.

Most of the amendments simplify provisions about appeals. In particular, the Bill changes:

- the circumstances in which a party has a right to appeal to the Supreme Court against a decision of the District Court, the Dust Diseases Tribunal, the Land and Environment Court, the Legal Services Tribunal or the Veterinary Surgeons Disciplinary Tribunal
 - the way in which appeals to the Supreme Court are conducted
 - the powers of judges of the Court of Criminal Appeal in relation to criminal appeals
 - the treatment of time spent by a convicted person in custody pending an appeal against conviction or sentence.
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The Bill also changes certain other aspects of court procedure, including:

- the handling of evidence concerning indictable offences heard by coroners
- the appointment and powers of registrars of the District Court and Clerks of Local Courts
- the production of documents in response to subpoenas of the District Court
- the payment of interest on judgment debts relating to costs.

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 Acts set out in Schedule 1.

Clause 4 provides that explanatory notes in the proposed Act do not form part of the Act.

Schedule 1 amends certain Acts. The amendments are explained in detail in the explanatory notes in the proposed Act.

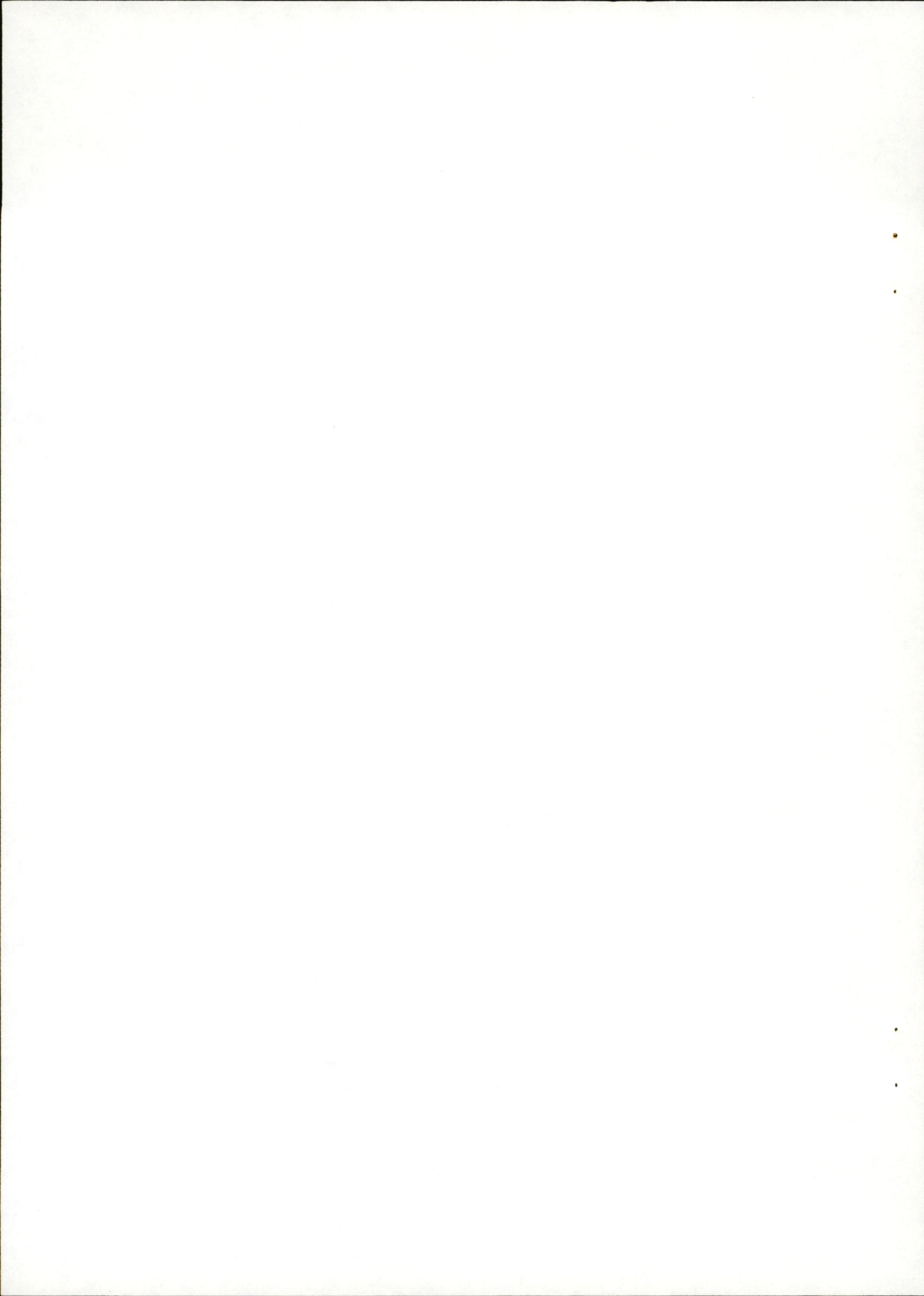


New South Wales

Courts Legislation Further Amendment Bill 1995

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New South Wales

Courts Legislation Further Amendment Bill 1995

No , 1995

A Bill for

An Act to amend certain Acts in relation to appeals to the Supreme Court and various other aspects of court procedure; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Courts Legislation Further Amendment Act 1995*.

2 Commencement

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

3 Amendment of Acts

The Acts specified in Schedule 1 are amended as set out in that Schedule.

4 Explanatory notes 10

Matter appearing under the heading **Explanatory note** in this Act does not form part of this Act.

Schedule 1 Amendment of Acts

(Section 3)

1.1 Coroners Act 1980 No 27

Section 19 Procedure at inquest or inquiry involving indictable offence

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Omit section 19 (3).

Explanatory note

Section 19 of the *Coroners Act 1980* imposes certain obligations on a coroner if, at any time during the course of an inquest or inquiry, the coroner is of the opinion that the evidence given establishes a prima facie case against any known person for an indictable offence. If the indictable offence is one in which the question in issue is whether the person caused the death, fire or explosion the subject of the inquest or inquiry, the coroner is required to forward certain evidence to the Director of Public Prosecutions and to inform the Director of the name of the relevant person.

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The proposed amendment removes an obligation on the Director of Public Prosecutions to then inform the Attorney General as to whether or not the Director intends to proceed with criminal charges against the person concerned.

1.2 Criminal Appeal Act 1912 No 16

[1] Section 18 Release of appellant on bail and custody when attending court

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Insert “(which is referred to in this section as *special treatment*)” after “prisons” in section 18 (1).

[2] Section 18 (2) and (3)

Omit subsection (3). Insert instead:

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- (2) The time during which an appellant is at liberty on bail (pending the determination of his or her appeal) does not count as part of any term of imprisonment or penal servitude under the appellant's sentence.

- (3) The time during which an appellant receives special treatment counts as part of any term of imprisonment or penal servitude under the appellant's sentence. However, if the court is satisfied that the appeal was unarguable or frivolous, the court may order that the time in custody with special treatment does not count. 5

Explanatory note

The *Criminal Appeal Act 1912* deals with appeals against convictions and sentences in criminal cases. Section 18 (1) of the Act provides that an appellant who is not released on bail pending determination of his or her appeal is to be treated in a special manner, as set out in the regulations. At present, section 18 (3) provides that, if a person in custody pending a determination of an appeal is specially treated, time spent in custody does not count, and an original sentence resumes (or a substituted sentence begins to run) from the date the appeal is determined. There is some discretion for the Court of Criminal Appeal to make an order that the time spent in custody does count. 10 15

The proposed amendments reverse the present position, so that time in custody under special treatment will count as part of the sentence unless the Court of Criminal Appeal is satisfied that it should not count. In addition, the rule will not apply to substituted sentences, which generally specify the date on which the substituted sentence is to commence. 20

[3] Section 22

Omit the section. Insert instead:

22 Powers of a judge sitting alone

- (1) The following powers of the court may be exercised by any judge of the court in the same manner as they may be exercised by the court, and subject to the same provisions: 25
- (a) the power to give leave to appeal,
 - (b) the power to extend the time in which notice of appeal may be given, 30
 - (c) the power to extend the time in which notice of an application for leave to appeal may be given,

-
- (d) the power to allow the appellant to be present at any proceedings (in cases where the appellant is not entitled to be present without leave),
- (e) the power to order the production of any document, exhibit or other thing concerned with proceedings, 5
- (f) the power to order any person who would have been a compellable witness at the trial to attend and be examined before the court,
- (g) the power to order any such person to be examined, 10
- (h) the power to admit any deposition taken as evidence,
- (i) the power to dispose of an appeal for failure to prosecute the appeal diligently, 15
- (j) the power to order that time spent by an appellant in custody is not to count towards the sentence imposed when an appeal, or an application for leave to appeal, is abandoned.
- (2) If the judge refuses an application on the part of the appellant to exercise any such power in the appellant's favour, the appellant is entitled to have the application determined by the court. 20

Explanatory note

Section 22 of the *Criminal Appeal Act 1912* lists the powers of the Court of Criminal Appeal that can be exercised by a judge of the court sitting alone. If an application made by an appellant under section 22 is refused, there is an automatic right of appeal to the court constituted by 3 judges. The proposed amendment adds to the list of powers exercisable by a single judge (by the inclusion of paragraphs (e)–(j) in section 22 (1)). 25 30

[4] Schedule 1 Savings and transitional provisions

Insert after clause 1:

2 Courts Legislation Further Amendment Act 1995

The amendments made to section 18 by the *Courts Legislation Further Amendment Act 1995* apply to any appellant whose appeal is determined, or abandoned, on or after the commencement of the amendments. 35

1.3 District Court Act 1973 No 9

[1] Section 4 Definitions: general

Insert after section 4 (10):

- (11) A reference in this or any other Act, or in any instrument, to the registrar of the District Court for a proclaimed place is, if there are 2 registrars for that place, a reference to either registrar. 5

[2] Section 18G Registrars

Omit section 18G (4). Insert instead:

- (4) The Minister may, by order published in the Gazette, direct that there can be 2 registrars for a particular proclaimed place, each having the functions specified in that order. 10

Explanatory note

At present, section 18G (4) of the *District Court Act 1973* provides that if 2 registrars of the District Court are appointed for any proclaimed place, one is to be the registrar of the court in its civil jurisdiction and the other is to be the registrar of the court in its criminal jurisdiction. The proposed amendment removes this distinction between jurisdictions. If 2 registrars are appointed for a particular place each will be the registrar for the entire jurisdiction of the court, each having the functions specified in the Ministerial order permitting the appointment of 2 registrars. 15
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[3] Section 18H Functions of registrars

Insert at the end of the section:

- (2) The registrar for a proclaimed place may exercise any or all of those functions in respect of that proclaimed place only. 25
- (3) The registrar for Sydney may exercise any or all of those functions in respect of any place in the State.

[4] Section 18J Functions of assistant registrars

Insert “, and may exercise any or all of those functions in respect of that proclaimed place only” after “criminal procedure rules” in section 18J (1).

[5] Section 18J (1A)

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Insert after section 18J (1):

- (1A) An assistant registrar for Sydney may exercise any or all of the functions of any registrar for Sydney in respect of any place in the State.

Explanatory note

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At present, section 18H of the *District Court Act 1973* provides that a registrar for a proclaimed place can exercise certain prescribed functions. Section 18J provides that an assistant registrar for a proclaimed place has such functions of the registrar for that proclaimed place as may be specified in the civil procedure rules or the criminal procedure rules.

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The proposed amendments clarify that a registrar or assistant registrar for a proclaimed place may exercise functions only in respect of that proclaimed place. However, the amendments do not apply this limitation to the exercise of functions of any registrar or assistant registrar appointed for Sydney. Such a registrar or assistant registrar may exercise his or her functions in respect of any place.

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[6] Section 64 Subpoenas

Omit section 64 (1) (b). Insert instead:

- (b) a subpoena for production, requiring the person to whom it is directed to attend and produce any specified document or thing that is in his or her possession or control.

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[7] Section 64 (1A)

Insert after section 64 (1):

- (1A) A subpoena for production of a document or thing may authorise compliance with the subpoena by the production of the document or thing:
- (a) at any hearing of the action or of proceedings ancillary to the action, or
- (b) to any specified person at a specified place.

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[8] Section 64 (2)

Insert "at a hearing" after "subpoena for production".

[9] Section 64 (4)

Insert after section 64 (3):

- (4) This section does not affect the operation of Division 1 of Part 4.6 of the *Evidence Act 1995* (Requests to produce documents or call witnesses). 5

Explanatory note

The proposed amendments to section 64 of the *District Court Act 1973* will allow the District Court to issue a subpoena requiring a person to produce documents and other things to a specified person at a specified place, which need not be a court. Presently, documents may only be required to be produced at a hearing. 10

[10] Section 85 Interest on judgment debt

Insert after section 85 (3):

- (4) If an order is made for the payment of costs, the Court may order that interest is to be paid on the amount so ordered, at the prescribed rate, from the date or dates when the amount in respect of costs was duly paid. 15

Explanatory note

At present, interest is generally payable on a judgment debt arising under the *District Court Act 1973*. That interest is calculated from the date when the judgment debt came into being, or from a later specified date. The proposed amendment deals with the calculation of interest on that part of the judgment debt which is an order as to the payment of costs. The proposed amendment will allow the District Court to order a party to pay interest on the other party's costs from the date on which the successful party paid the amount in respect of costs. 20
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[11] Sections 127 and 128

Omit the sections. Insert instead:

127 Right of appeal to Supreme Court

- (1) A party who is dissatisfied with a decision of a Judge may appeal to the Supreme Court. 30

- (2) The following appeals lie only by leave of the Supreme Court:
 - (a) an appeal from an interlocutory judgment or order,
 - (b) an appeal from a judgment or order as to costs only, 5
 - (c) an appeal from a final judgment or order, in respect of any property or any civil right, for an amount less than \$10,000.
- (3) In any other case, an appeal lies as of right.

128 Stay of proceedings on appeal to Supreme Court 10

- (1) This section applies if, after judgment in an action, the Court orders that proceedings be stayed during the period within which an appeal may be brought.
- (2) If during that period:
 - (a) an appeal is brought in respect of proceedings that have been stayed, and 15
 - (b) security is given to the satisfaction of the registrar for the amount of the judgment debt (if any) payable by the appellant, including an amount assessed by the registrar in respect of any costs forming part of the judgment debt, 20

the stay of proceedings is to continue until the appeal is disposed of or until the Court or the Supreme Court otherwise orders.
- (3) An appeal does not operate to stay proceedings in any other way. 25
- (4) This section does not affect the operation of section 156 (1).

[12] Section 129 Agreement not to appeal

Omit "under section 128 (1), (2A) or (5A)". 30
 Insert instead "to the Supreme Court".

[13] Sections 130 and 131

Omit the sections.

[14] Section 183A

Insert after section 183:

**183A Provision consequent on enactment of Courts
Legislation Further Amendment Act 1995**

The substitution of sections 127 and 128 by the *Courts
Legislation Further Amendment Act 1995* does not
operate to require leave to appeal against a decision of
the Court if, when the decision was made, an appeal lay
as of right. 5

Explanatory note 10

The proposed amendments simplify the provisions of the *District Court Act 1973*
relating to appeals against decisions of the District Court. The appeals will be to
the Supreme Court. Section 48 of the *Supreme Court Act 1970* assigns such an
appeal to the Court of Appeal. As a result of the amendments, most appeals will
lie as of right while some will require the leave of the Supreme Court. In addition a
person will no longer be able to make an application to the Supreme Court for a
new trial. 15

1.4 Dust Diseases Tribunal Act 1989 No 63

[1] Section 32

Omit the section. Insert instead: 20

32 Right of appeal to Supreme Court

- (1) A party who is dissatisfied with a decision of the
Tribunal may appeal to the Supreme Court.
- (2) The following appeals lie only by leave of the Supreme
Court: 25
 - (a) an appeal from an interlocutory decision,
 - (b) an appeal from a decision as to costs only,
 - (c) an appeal from a final decision awarding an
amount less than \$10,000.
- (3) In any other case, an appeal lies as of right. 30

[2] Schedule 3 Savings, transitional and other provisions

Insert after clause 2:

3 Appeals

The substitution of section 32 by the *Courts Legislation Further Amendment Act 1995* does not operate to require leave to appeal against a decision of the Tribunal if, when the decision was made, an appeal lay as of right.

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Explanatory note

At present, an appeal lies to the Supreme Court against a decision of the Dust Diseases Tribunal. Section 48 of the *Supreme Court Act 1970* assigns such an appeal to the Court of Appeal. The proposed amendments simplify the provisions of the *Dust Diseases Tribunal Act 1989* relating to appeals. As a result of the amendments, most appeals will lie as of right while some will require the leave of the Supreme Court.

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1.5 Land and Environment Court Act 1979 No 204

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[1] Section 58 Class 4 proceedings—appeals

Insert “, or an order or decision as to costs only,” after “interlocutory order or decision” in section 58 (3).

[2] Section 58 (4)

Insert after section 58 (3):

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- (4) The amendment made to this section by the *Courts Legislation Further Amendment Act 1995* does not operate to require leave to appeal against an order or decision of the Court if, when the order or decision was made, an appeal lay as of right.

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Explanatory note

At present, a party may appeal to the Supreme Court against an order or decision in proceedings in Class 4 of the jurisdiction of the Land and Environment Court (which is concerned with environmental planning and protection and with development contract civil enforcement). At present, an appeal against an order or decision as to costs only lies as of right. The proposed amendment will have the effect that such an appeal will lie only with the leave of the Supreme Court.

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1.6 Legal Profession Act 1987 No 109

[1] Section 171F Appeal against order of Tribunal

Omit section 171F (4).

Explanatory note

At present, an appeal lies to the Supreme Court against any determination of a complaint by the Legal Services Tribunal. Presently, section 171F (4) of the *Legal Profession Act 1987* provides that an appeal is by way of a new hearing and further evidence may be given. The proposed amendment removes that provision from the Act. Section 75A of the *Supreme Court Act 1970* will then apply in relation to the appeal. Under that section, the Supreme Court may receive further evidence only on special grounds. Any appeal will be heard by way of rehearing.

[2] Section 208V

Insert after section 208U:

208V Application of Division

This Division does not apply to an amount of interest ordered on a judgment debt (being an order for the payment of costs) under section 85 (4) of the *District Court Act 1973* or section 95 (4) of the *Supreme Court Act 1970*.

Explanatory note

The proposed amendment is consequential on the amendments made by this Act to the *District Court Act 1973* and the *Supreme Court Act 1970*, dealing with the payment of interest on a judgment debt.

1.7 Local Courts Act 1982 No 164

Section 10 Clerks of the Local Courts

Insert after section 10 (4):

(4A) The Minister may delegate in writing to the Director-General of the Attorney General's Department the Minister's power of appointment under subsection (4).

Explanatory note

Section 10 (4) of the *Local Courts Act 1982* empowers the Minister to appoint a person to act temporarily in the office of Clerk of a Local Court. The proposed amendment will empower the Director-General of the Attorney General's Department to also appoint such persons, but only if the Minister has delegated the power.

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1.8 Supreme Court Act 1970 No 52

[1] Section 43 Sittings

Omit section 43 (5).

[2] Section 43A

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Insert after section 43:

43A Multiple sittings

More than one sitting of the Court of Appeal (constituted by 2 or more Judges of Appeal) may be held at the same time.

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Explanatory note

The proposed amendments clarify that the principle that more than one sitting of the Court of Appeal may be held at the same time applies to a sitting of the Court constituted by 2 Judges of Appeal as it does to a sitting of the Court constituted by 3 Judges of Appeal.

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[3] Section 46B

Insert after section 46A:

46B Certain other matters may be heard by 2 Judges

(1) This section applies to the following applications:

- (a) applications for leave to appeal,
- (b) applications involving a question of practice and procedure in an appeal or other matter in the Court of Appeal (being applications that are not capable of being dealt with by a single Judge of Appeal).

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(2) The Chief Justice may direct that such an application be heard and determined by such 2 Judges of Appeal as the President of the Court of Appeal directs.

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- (3) For the purpose of hearing and determining an application the subject of a direction under this section, the Court of Appeal is constituted by the 2 Judges directed by the President of the Court of Appeal.
- (4) The decision of the Court of Appeal when constituted by 2 Judges of Appeal is to be in accordance with the opinion of those Judges. 5
- (5) If the judges are divided in opinion, the application is to be reheard and determined by the Court of Appeal constituted by 3 Judges of Appeal. 10

Explanatory note

The proposed amendment will allow 2 Judges of Appeal to deal with applications for leave to appeal, and applications involving questions of practice and procedure in appeals and other matters in the Court which cannot be dealt with by a bench constituted by a single judge. 15

[4] Section 95 Interest on debt under judgment or order

Insert after section 95 (3):

- (4) If an order is made for the payment of costs, the Court may order that interest is to be paid on the amount so ordered, at the prescribed rate, from the date or dates when the amount in respect of costs was duly paid. 20

Explanatory note

At present, interest is generally payable on a judgment debt arising under the *Supreme Court Act 1970*. That interest is calculated from the date when the judgment debt came into being, or from a later specified date. The proposed amendment deals with the calculation of interest on that part of the judgment debt which is an order as to the payment of costs. The proposed amendment will allow the Supreme Court to order a party to pay interest on the other party's costs from the date on which the successful party paid the amount in respect of costs. 25

[5] Section 101 Appeal in proceedings in the Court 30

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

- (h) a judgment or order of the Court in a Division on appeal from, or in proceedings relating to or arising from, proceedings in a court or tribunal that is not a specified tribunal (within the meaning of section 48), 35

[6] Section 101 (2) (j) and (k)

Omit the paragraphs.

Explanatory note

Section 48 of the *Supreme Court Act 1970* specifies those tribunals from which an appeal lies to the Court of Appeal as of right. Parties may appeal against a judgment or order of a court or tribunal that is not a specified tribunal to a Division of the Supreme Court. Parties may then, by leave of the Court of Appeal, appeal to the Court of Appeal. The proposed amendments consolidate several existing provisions relating to leave to appeal. The new paragraph will apply to all appeals to the Court of Appeal from decisions of the Supreme Court arising in turn from appeals or reviews of decisions of a court or tribunal (other than those from a specified court or tribunal). The new paragraph will apply to require leave to appeal in relation to proceedings in the Local Court, the Licensing Court, the Residential Tenancies Tribunal, the Commercial Tribunal and the Mental Health Tribunal, among other courts and tribunals.

[7] Section 101 (2)

Insert after section 101 (2) (l):

- (m) a judgment or order of the Court on an application under section 74K, 74MA or 74O of the *Real Property Act 1900*,
- (n) a judgment or order of the Court in a Division for the winding up of a corporation,
- (o) a judgment or order of the Court in a Division restraining or refusing to restrain the presentation or advertisement of an application for the winding up of a corporation,
- (p) a judgment or order of the court on an application under section 459G of the *Corporations Law*.

Explanatory note

The proposed amendment introduces a requirement to obtain the leave of the Court of Appeal in order to appeal against certain judgments or orders of the Supreme Court involving caveats under the *Real Property Act 1900*, the winding up of a corporation or an application to set aside a statutory demand made under the *Corporations Law*.

[8] Fourth Schedule Savings and transitional provisions

Insert after clause 1:

2 Courts Legislation Further Amendment Act 1995

The amendments made to section 101 (2) by the *Courts Legislation Further Amendment Act 1995* do not operate to require leave to appeal against a judgment or order of the Court if, when the judgment or order was made, an appeal lay as of right. 5

1.9 Veterinary Surgeons Act 1986 No 55

Section 34 Appeal against order of Disciplinary Tribunal 10

Omit section 34 (3).

Explanatory note

The proposed amendment limits the right to adduce further evidence in an appeal to the Supreme Court from the Veterinary Surgeon's Disciplinary Tribunal. At present, an appeal lies to the Supreme Court against any order of the Veterinary Surgeon's Disciplinary Tribunal. Presently, section 34 (3) of the *Veterinary Surgeons Act 1986* provides that an appeal is by way of a new hearing and further evidence may be given. The proposed amendment removes that provision from the Act. Section 75A of the *Supreme Court Act 1970* will then apply in relation to the appeal. Under that section, the Supreme Court may receive further evidence only on special grounds. Any appeal will be heard by way of rehearing. 15
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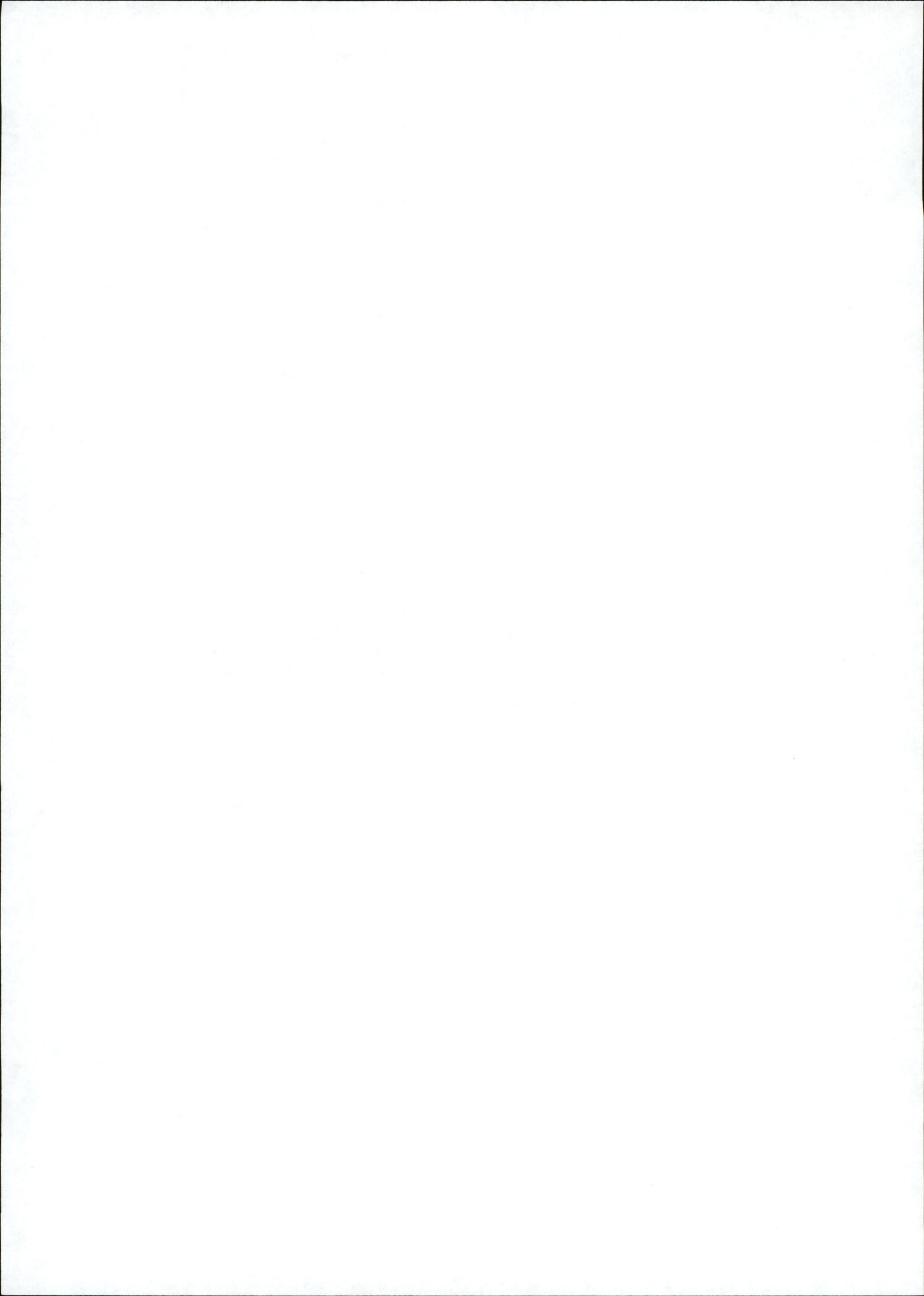
LEGISLATIVE COUNCIL

Courts Legislation Further Amendment Bill 1995

First Print

Amendments to be moved in Committee

- No. 1 Page 7, Schedule 1 [6], lines 21-26. Omit all words on those lines.
- No. 2 Page 7, Schedule 1 [7], lines 29-34. Omit all words on those lines. Insert instead.
- (1A) A subpoena for production of a document or thing may authorise compliance with the subpoena by the production of the document or thing to a specified person at a specified place. However, the person who is required by the subpoena to produce a document or thing can still elect to produce the document or thing at the specified hearing of the action or of proceedings ancillary to the action.



COURTS LEGISLATION FURTHER AMENDMENT BILL

1995

SECOND READING SPEECH

LEGISLATIVE COUNCIL

MR PRESIDENT,

THE COURTS LEGISLATION FURTHER AMENDMENT BILL SEEKS TO AMEND VARIOUS COURT LEGISLATION TO PROVIDE FOR MINOR REFORM OF CERTAIN COURT PROCEDURES AND ADMINISTRATION.

THE PROPOSED AMENDMENTS ARE MINOR IN NATURE AND HAVE ARISEN PRIMARILY IN THE COURSE OF DISCUSSION WITH THE RESPECTIVE JURISDICTIONS ON IMPROVING THE ADMINISTRATION OF THE COURTS.

THE BILL WILL:

- (i) AMEND SECTION 64 OF THE DISTRICT COURT ACT 1973 TO PERMIT A SUBPOENA FOR PRODUCTION TO SPECIFY A PLACE OTHER THAN THE COURT, AS THE PLACE OF PRODUCTION;
- (ii) AMEND SECTION 95 OF THE SUPREME COURT ACT 1970 AND SECTION 85 OF THE DISTRICT COURT ACT 1973 TO MORE CLEARLY DEFINE THE EXISTENCE AND CIRCUMSTANCE FOR THE EXERCISE OF THE POWER TO AWARD INTEREST ON THE AMOUNT OF TAXED COSTS;
- (iii) REPEAL SECTION 19(3) OF THE CORONERS ACT 1980 SO THAT THE DIRECTOR OF PUBLIC PROSECUTIONS IS NO LONGER OBLIGED TO INFORM THE ATTORNEY GENERAL AS TO WHETHER OR NOT THE DIRECTOR INTENDS TO PROCEED WITH CRIMINAL CHARGES AGAINST THE PERSON CONCERNED;
- (iv) AMEND THE LOCAL COURTS ACT 1982 TO PROVIDE FOR THE DELEGATION OF THE MINISTER'S AUTHORITY TO THE DIRECTOR GENERAL OF THE ATTORNEY GENERAL'S

DEPARTMENT, TO APPOINT A PERSON TO ACT TEMPORARILY IN THE OFFICE OF CLERK OF THE LOCAL COURT;

- (v) AMEND THE DISTRICT COURT ACT TO PROVIDE THAT IF TWO REGISTRARS ARE APPOINTED FOR A PARTICULAR PLACE, EACH WILL BE THE REGISTRAR FOR THE ENTIRE JURISDICTION OF THE COURT, EACH HAVING THE FUNCTIONS SPECIFIED IN THE MINISTERIAL ORDER PERMITTING THE APPOINTMENT OF TWO REGISTRARS.

- (vi) AMEND A NUMBER OF STATUTES RELATING TO THE JURISDICTION OF THE COURT OF APPEAL AND THE COURT OF CRIMINAL APPEAL AS FOLLOWS:
 - a) RATIONALISE EXISTING LEAVE TO APPEAL PROVISIONS;

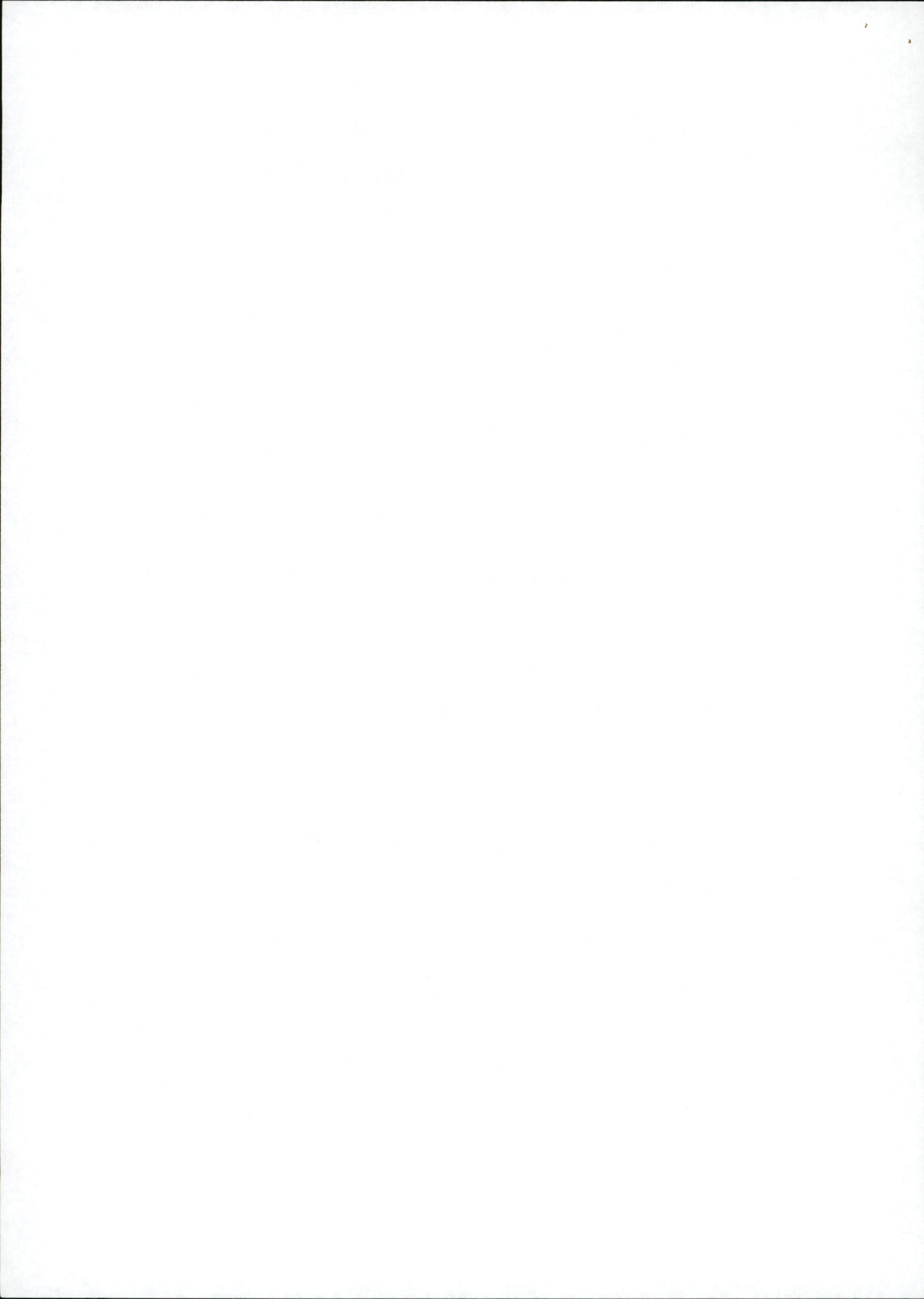
 - b) INTRODUCE A LEAVE REQUIREMENT IN CERTAIN APPEALS RELATING TO CAVEATS

UNDER THE REAL PROPERTY ACT 1900 AND WINDING UP UNDER THE CORPORATIONS LAW;

c) RATIONALISE PROVISIONS RELATING TO APPEALS TO THE COURT OF APPEAL FROM THE DISTRICT AND THE DUST DISEASES TRIBUNAL TO CREATE ESSENTIALLY UNIFORM PROVISIONS GOVERNING APPEALS FROM TRIBUNALS OF CO-ORDINATE STATUS;

d) MAKE A MINOR AMENDMENT TO THE LAND AND ENVIRONMENT COURT ACT 1979 TO REQUIRE LEAVE TO APPEAL FROM COSTS ORDERS MADE BY THAT COURT IN CLASS 4 MATTERS;

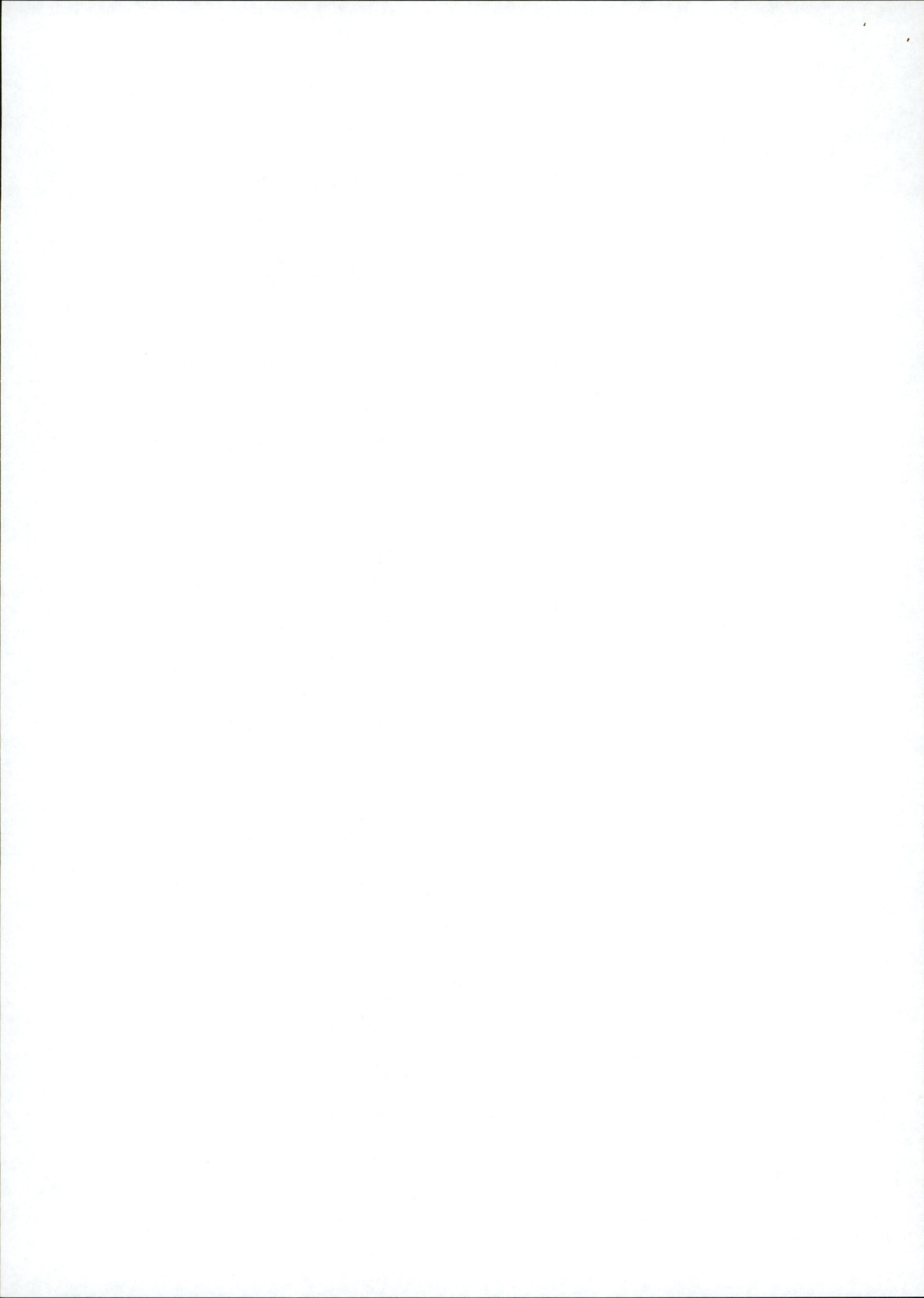
e) AMEND SECTION 171F(4) OF THE LEGAL PROFESSION ACT 1987 AND SECTION 34(1) OF THE VETERINARY SURGEONS ACT 1986, TO LIMIT THE RIGHT TO ADDUCE FRESH EVIDENCE IN APPEALS FROM THE LEGAL SERVICES TRIBUNAL AND THE VETERINARY SURGEONS DISCIPLINARY TRIBUNAL



f) AMEND SECTION 46A OF THE SUPREME COURT ACT 1970 TO ALLOW BENCHES OF TWO JUDGES OF APPEAL TO DEAL WITH APPLICATIONS FOR LEAVE TO APPEAL, AND APPLICATIONS INVOLVING QUESTIONS OF PRACTICE AND PROCEDURE IN APPEALS AND OTHER MATTERS IN THE COURT WHICH CANNOT BE DEALT WITH BY A BENCH CONSTITUTED BY ONE JUDGE;

g) AMEND SECTION 22 OF THE CRIMINAL APPEAL ACT 1912 TO INCREASE THE POWERS OF THE COURT WHEN CONSTITUTED BY A JUDGE SITTING ALONE; AND

h) AMEND SECTION 18(3) OF THE CRIMINAL APPEAL ACT 1912 TO MAKE IT CLEAR THAT THE JUSTIFICATION FOR AN ORDER THAT TIME SERVED PENDING DETERMINATION OF AN APPEAL TO THE COURT IS NOT TO COUNT, IS CONFINED TO THE DETERRENCE OF UNARGUABLE OR FRIVOLOUS APPEALS AND TO REMOVE FROM IT REFERENCES TO SUBSTITUTED SENTENCES.



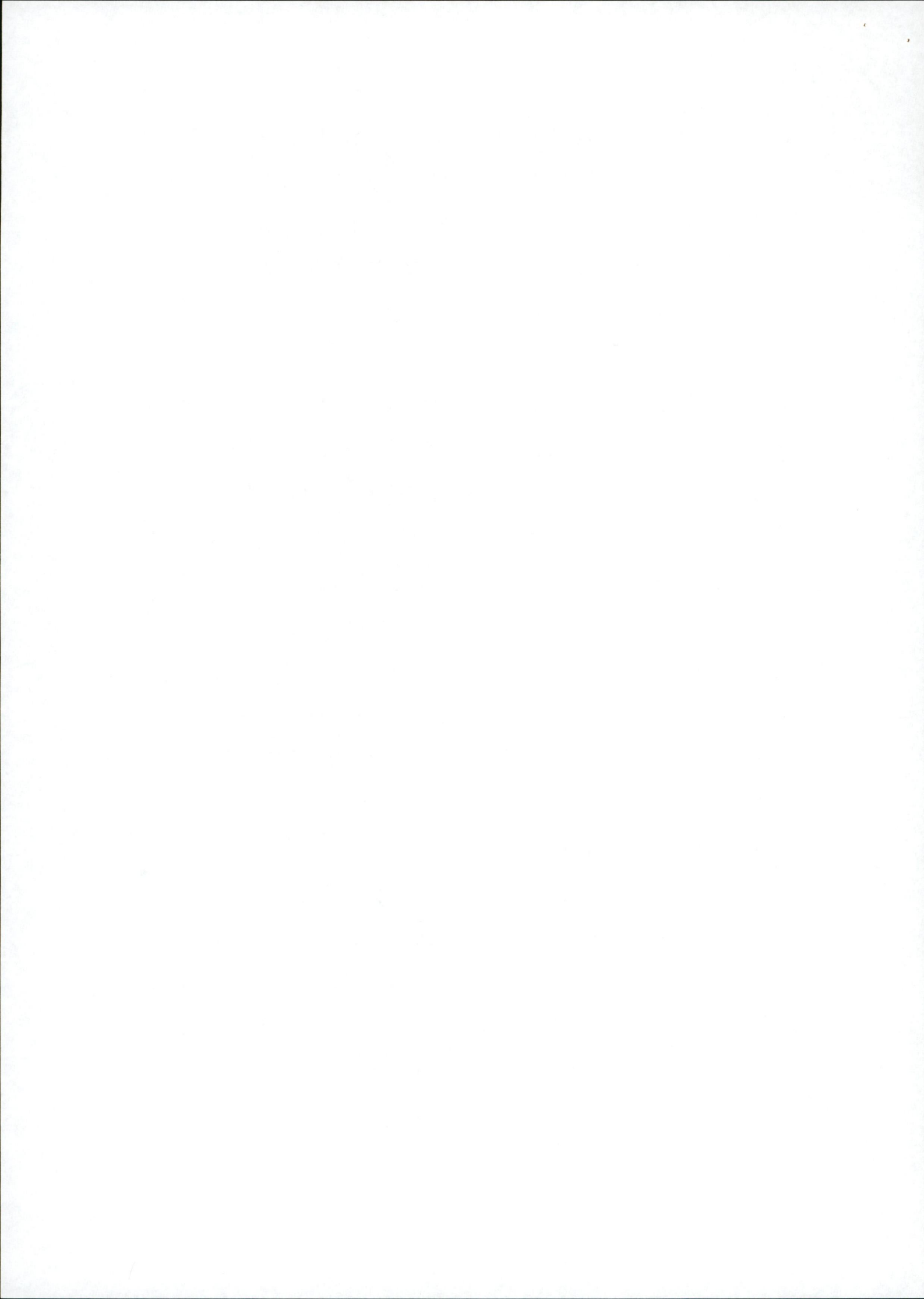
SECTION 64 OF THE DISTRICT COURT

IT IS PROPOSED TO AMEND THE DISTRICT COURT ACT TO ALLOW SUBPOENAED DOCUMENTS TO BE DELIVERED TO A LOCATION OTHER THAN THE DISTRICT COURT. THIS PROPOSAL INVOLVES ONLY MINOR LEGISLATIVE AMENDMENT AND IS CONFINED TO THE DISTRICT COURT FOR THE PRESENT TO ALLOW THE DISTRICT COURT TO TEST NEW PROCEDURES IN A PILOT STUDY.

IN 1994 A REVIEW OF COURT SERVICES WAS CONDUCTED. A DISCUSSION PAPER WAS RELEASED FOR COMMENT ON VARIOUS PROPOSALS FOR REFORM ARISING FROM THE REVIEW. ONE PROPOSAL WAS FOR REFORM OF THE SUBPOENA PROCESS. THE REFORM PROPOSED INVOLVES THE ISSUE OF A SUBPOENA REQUESTING THE HOLDER OF THE DOCUMENTS TO PROVIDE PHOTOCOPIES OF THE MATERIAL DIRECTLY TO THE PERSON WHO REQUESTED IT, UPON PAYMENT OF SUFFICIENT CONDUCT MONEY TO MEET THE REASONABLE COSTS OF THAT PHOTOCOPYING. THIS WOULD MEAN THAT

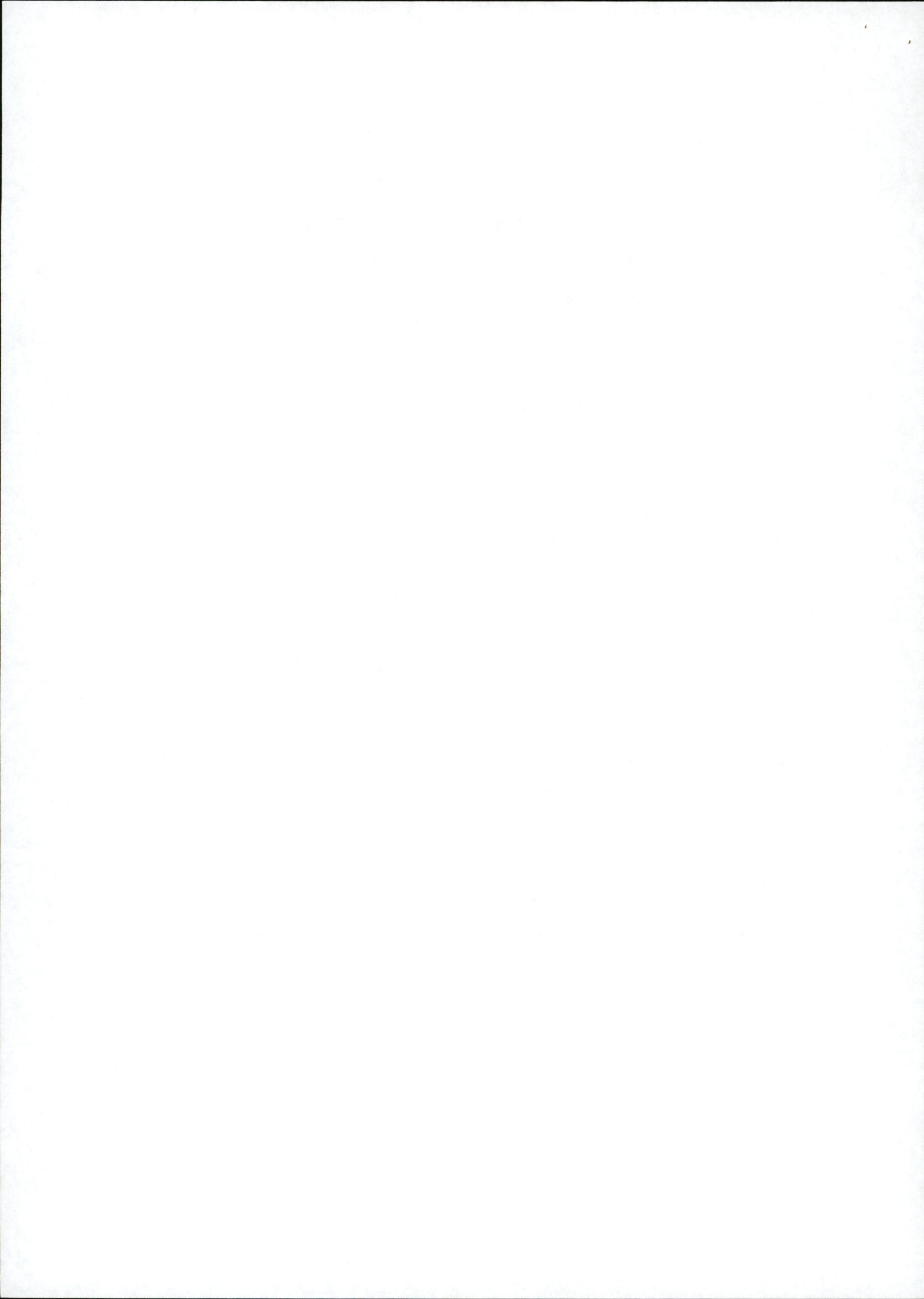
INSTEAD OF THE ORIGINAL DOCUMENTS BEING FORWARDED TO THE COURT REGISTRY TO BE PHOTOCOPIED AT THAT LOCATION, THE PHOTOCOPYING WILL BE CONDUCTED WITHOUT THE INTERVENTION OF THE REGISTRY.

THE PRESENT PROCEDURE PLACES A SIGNIFICANT BURDEN ON ALL PARTIES CONCERNED, INCLUDING THE COURT. HAVING REGARD TO THE LOW INCIDENCE OF OBJECTIONS TO ACCESS ORDERS BEING MADE, THE FACT THAT MOST OF THE MATERIAL SUBPOENAED IS PHOTOCOPIED BY THE PARTIES, AND THAT MUCH OF THE MATERIAL SUBPOENAED IS NOT TENDERED IN EVIDENCE, THIS PROPOSAL WILL LIMIT THE INVOLVEMENT OF THE COURT IN THE INSPECTION OF DOCUMENTS AND MATERIAL REQUIRED IN COURT PROCEEDINGS TO THOSE OCCASIONS WHERE INTERVENTION IS CLEARLY REQUIRED. AN ADDITIONAL BENEFIT WILL BE THAT THE OCCASIONS ON WHICH A SOLICITOR WILL BE REQUIRED TO ATTEND COURT TO OBTAIN ACCESS TO SUBPOENAED MATERIAL WILL, IN MOST CASES, BE REDUCED.



IN THE EVENT THAT THE HOLDER OF THE DOCUMENTS SHOULD OBJECT TO THE PHOTOCOPYING OF THE SUBPOENAED MATERIAL (FOR EXAMPLE, THE HOLDER DOES NOT HAVE THE FACILITIES TO PHOTOCOPY THE MATERIAL, OR THE MATERIAL IS TOO BULKY) IT WILL BE OPEN TO THAT PERSON TO MAKE ALTERNATIVE ARRANGEMENTS DIRECTLY WITH THE SOLICITOR CONCERNED, FOR EXAMPLE, TO VIEW THE DOCUMENTS ON THE PREMISES OF THE HOLDER OF THE DOCUMENTS.

IN THE EVENT THAT A CLAIM FOR PRIVILEGE IS TO BE MADE, THE DOCUMENT HOLDER WOULD COMMUNICATE THAT INTENTION DIRECTLY TO THE SOLICITOR WHO ISSUED THE SUBPOENA. IF THE SOLICITOR INTENDED TO PURSUE OBTAINING ACCESS TO THE MATERIAL SUBJECT TO THE CLAIM, IT WOULD THEN BE INCUMBENT UPON THE ISSUING SOLICITOR TO FILE A NOTICE OF MOTION TO LIST THIS MATTER BEFORE THE COURT FOR THE CLAIM OF PRIVILEGE TO BE DETERMINED. A COPY OF THIS MOTION WOULD BE SERVED ON THE HOLDER OF THE DOCUMENTS, WHO WOULD THEN ATTEND COURT TO ARGUE THE CLAIM OF PRIVILEGE. IT IS NOTED THAT STATISTICS

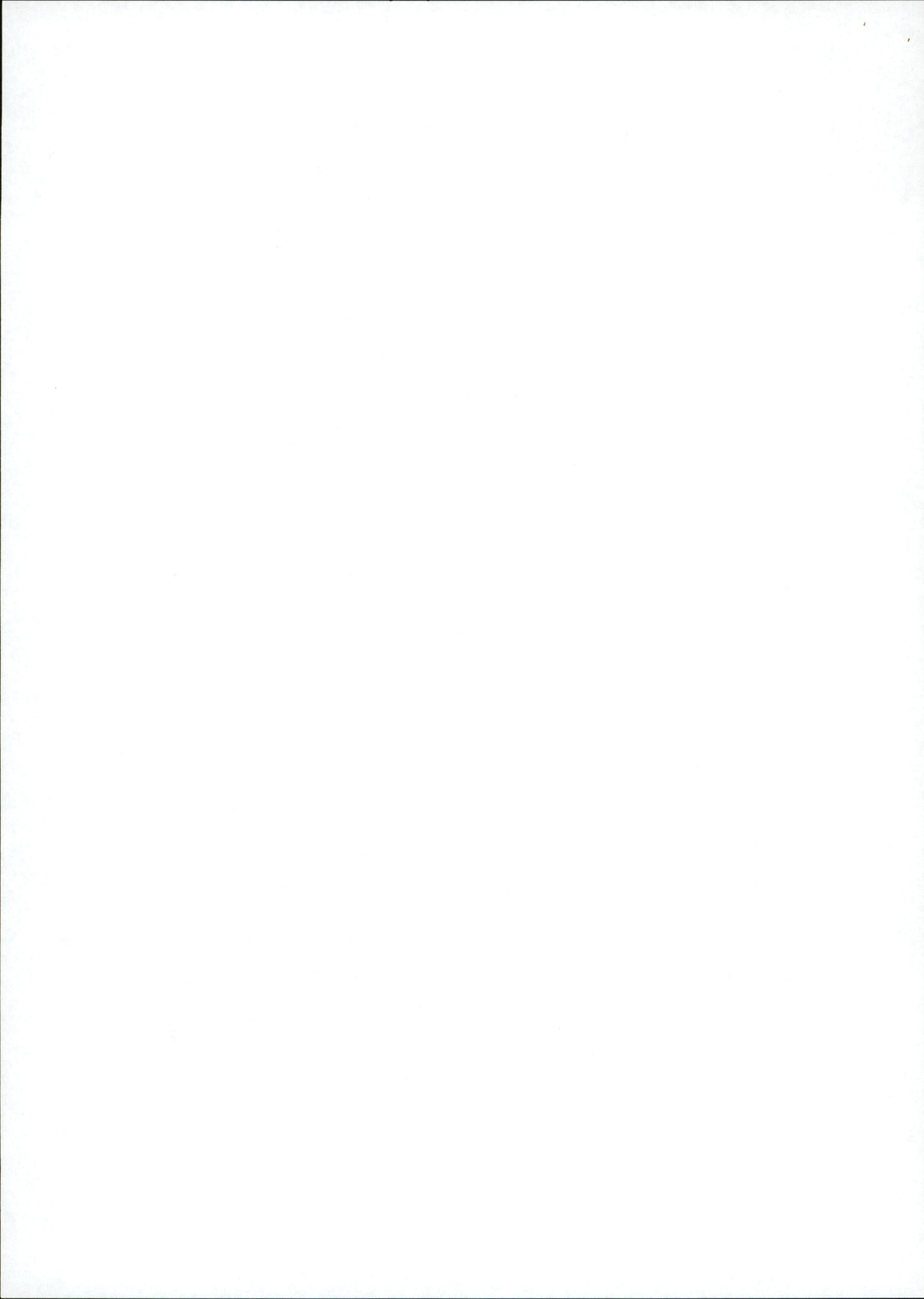


OBTAINED FROM THE DISTRICT COURT REVEAL THAT A CLAIM FOR PRIVILEGE OR AN OBJECTION TO ACCESS IS MADE IN RELATION TO ONLY 5% OF SUBPOENAS ISSUED.

TO ALLOW SUCH A SCHEME TO BE PILOTED, THE DISTRICT COURT ACT NEEDS TO BE AMENDED TO PERMIT THE DELIVERY OF DOCUMENTS TO LOCATIONS OTHER THAN THE DISTRICT COURT.

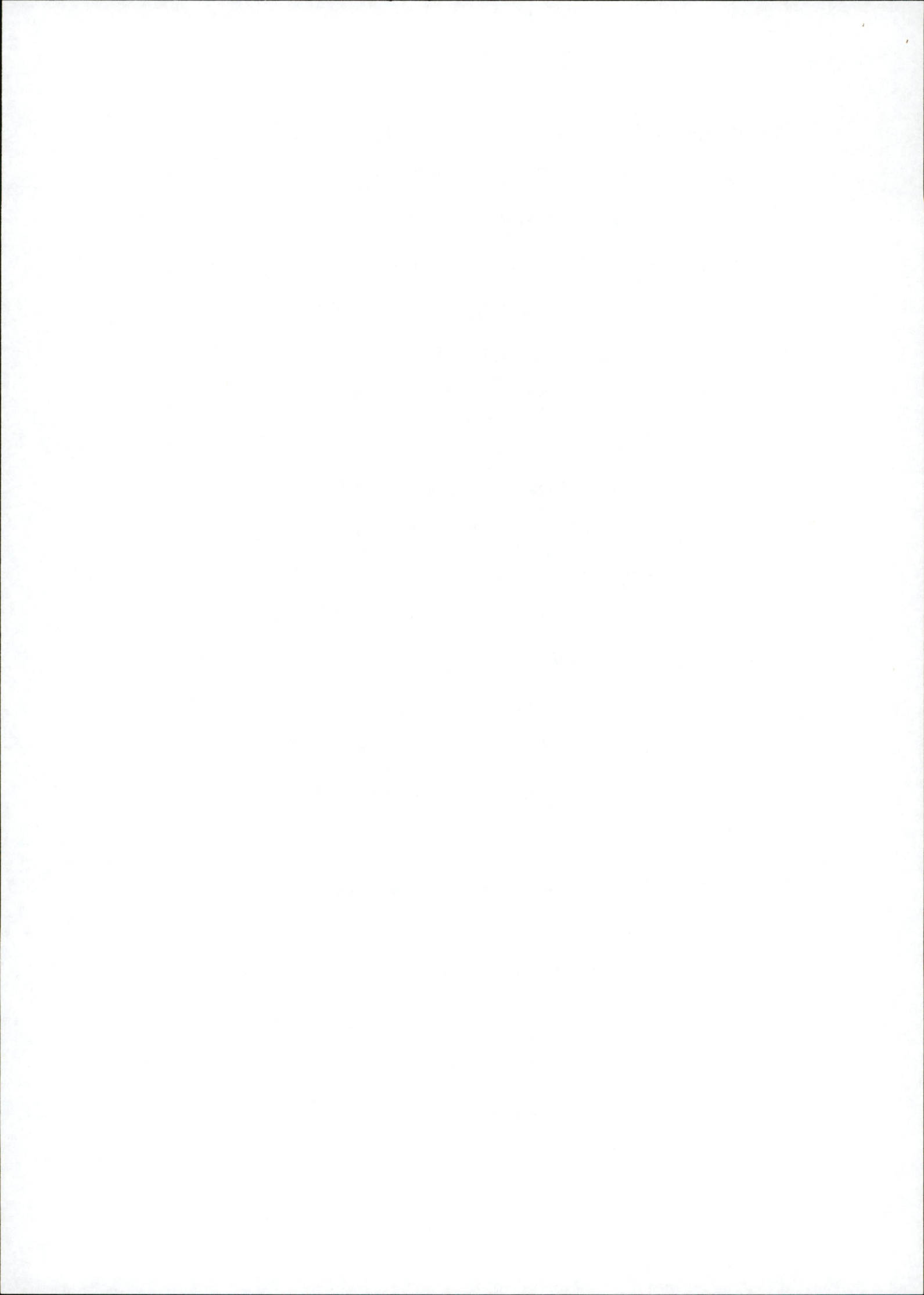
SECTION 95 OF THE SUPREME COURT ACT AND SECTION 85 OF THE DISTRICT COURT ACT.

IN THE CASE OF MCWILLIAMS WINES PTY LTD. V LIAWEENA (NSW) PTY. LTD. THE THEN CHIEF JUDGE OF THE COMMERCIAL DIVISION OF THE SUPREME COURT, JUSTICE ROGERS, PROPOSED THAT THE SUPREME COURT ACT BE AMENDED TO ALLOW THE COURT TO ORDER AN UNSUCCESSFUL DEFENDANT TO PAY INTEREST ON A SUCCESSFUL PLAINTIFF'S COSTS FROM THE DATE UPON WHICH SUCH A PLAINTIFF PAID THE AMOUNT IN RESPECT OF COSTS TO HIS SOLICITOR.



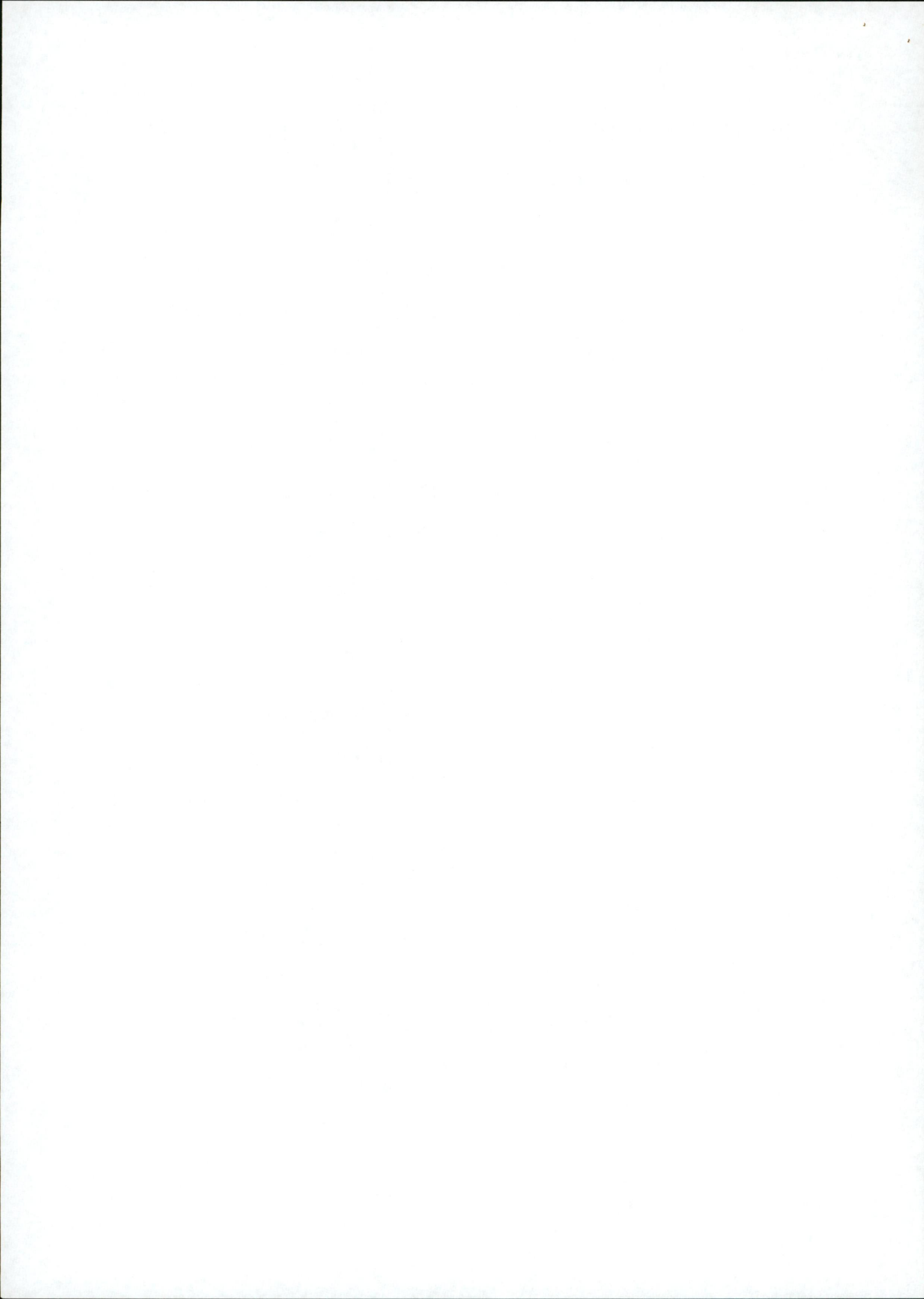
AT PRESENT, A LITIGANT CLAIMING DAMAGES IN A DIVISION OF THE SUPREME COURT, OTHER THAN THE COMMON LAW DIVISION, CANNOT OBTAIN INTEREST ON MONIES PAID TO SOLICITORS ON ACCOUNT OF COSTS. THE LITIGANT MAY HAVE PAID A SUM OF MONEY ON ACCOUNT OF COSTS TO HIS/HER SOLICITOR AT A TIME DISTANT TO AN ORDER FOR COSTS BEING MADE AND THE EVENTUAL RECEIPT OF A TAXED BILL. IN SUCH CIRCUMSTANCES, THAT LITIGANT WILL BE OUT OF POCKET FOR WHAT MAY BE A MATTER OF YEARS. UNDER SECTION 95 OF THE SUPREME COURT ACT THERE IS CURRENTLY NO POWER IN THE COURT TO COMPENSATE SUCH A LITIGANT BY ALLOWING THE COURT TO ORDER INTEREST TO BE PAID ON THE MONEY HELD ON ACCOUNT OF PARTY/PARTY COSTS.

IT IS PROPOSED TO AMEND THE SUPREME COURT ACT AND THE DISTRICT COURT ACT TO CONFER ON THE SUPREME AND DISTRICT COURTS A DISCRETIONARY POWER TO ORDER THAT A PARTY AGAINST WHOM A PARTY/PARTY COSTS ORDER IS MADE ALSO PAY INTEREST ON SUCH COSTS TO THE PARTY IN WHOSE



FAVOUR THE ORDER IS MADE. THE POWER WILL BE AVAILABLE ON THE BASIS THAT:

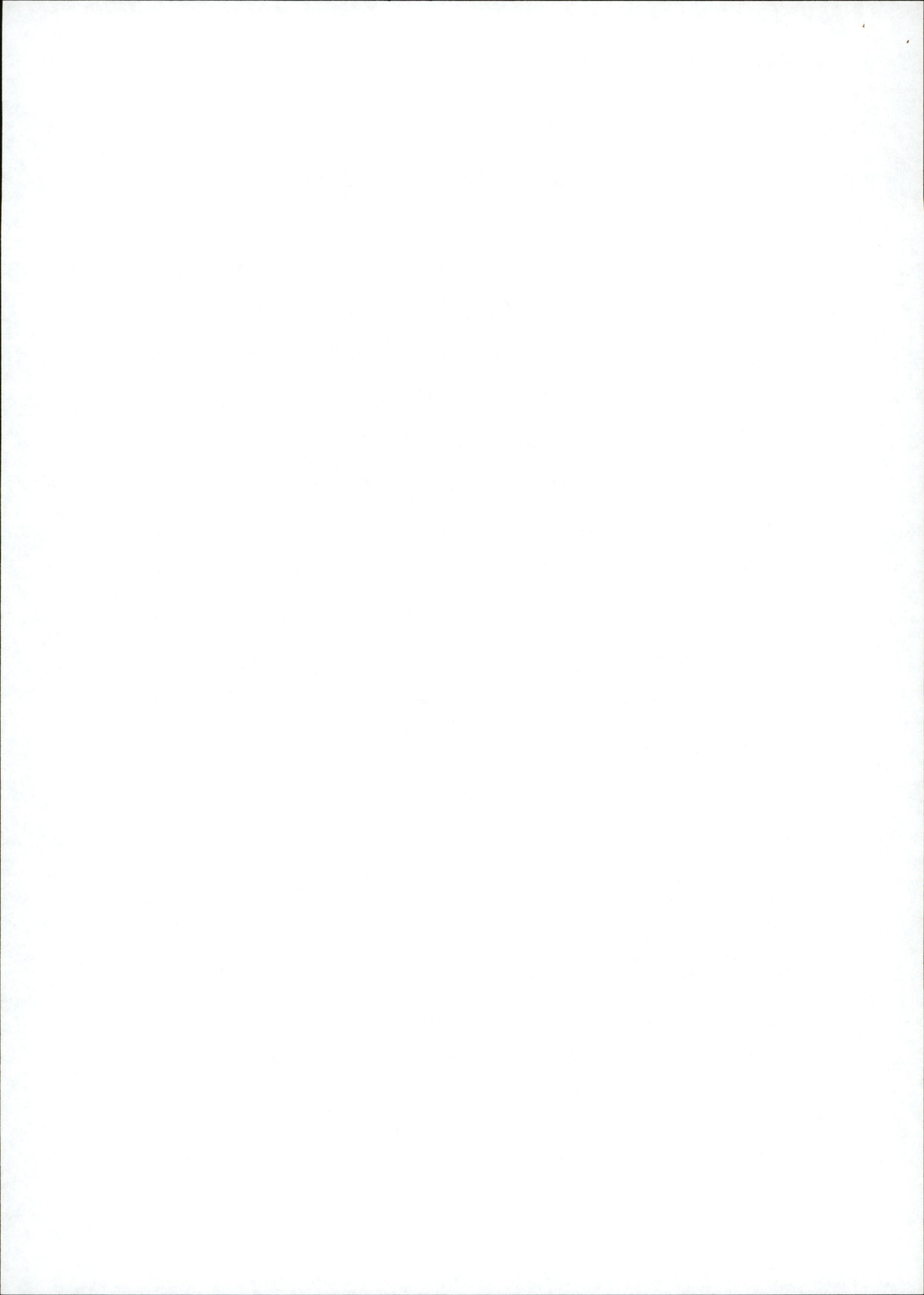
1. IT IS EXERCISED ONLY WHERE THE SPECIAL CIRCUMSTANCES OF THE CASE WARRANT THE MAKING OF SUCH AN ORDER.
2. INTEREST SHOULD ACCRUE FROM THE TIME WHEN THE PARTY, IN WHOSE FAVOUR THE ORDER IS MADE, HAD MADE PAYMENT(S) TO HIS SOLICITOR IN RESPECT OF WORK DONE OR DISBURSEMENTS PAID.
3. THE ENTITLEMENT TO INTEREST SHOULD NOT BE DEPENDENT UPON TAXATION OR ASSESSMENT UNDER THE LEGAL PROFESSION ACT.
4. THE RATE OF INTEREST SHOULD BE EQUAL TO THAT PRESCRIBED FROM TIME TO TIME PURSUANT TO SECTION 95(1) OF THE SUPREME COURT ACT.



SECTION 19 OF THE CORONERS ACT 1980

SECTION 19 OF THE CORONERS ACT 1980 PROVIDES INTER ALIA, THAT A CORONER MAY TERMINATE AN INQUEST OR INQUIRY WHERE THE CORONER IS OF THE VIEW THAT THE EVIDENCE ESTABLISHES A PRIMA FACIE CASE AGAINST ANY KNOWN PERSON FOR AN INDICTABLE OFFENCE RELATED TO THE DEATH OR THE FIRE OR EXPLOSION, THE SUBJECT OF THE INQUIRY. SECTION 19(3) REQUIRES THE DIRECTOR OF PUBLIC PROSECUTIONS (THE DPP) TO FURNISH A NOTICE TO THE ATTORNEY GENERAL ADVISING HIM OF A DETERMINATION TO PROCEED WITH THE MATTER.

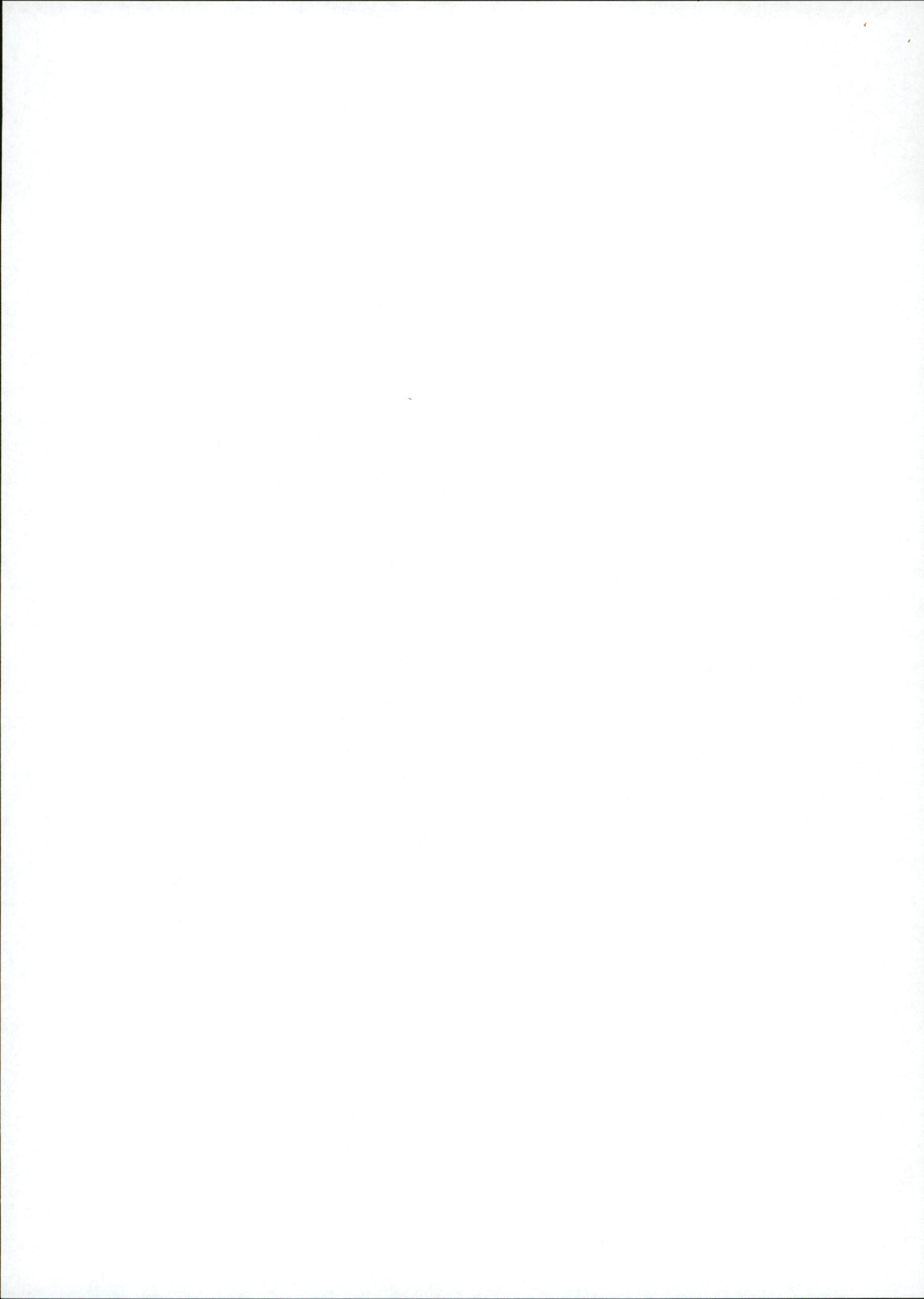
SECTION 28(2)(II) OF THE 1960 CORONERS ACT PROVIDED THAT WHERE A CORONER WAS OF THE OPINION THAT A PRIMA FACIE CASE WAS ESTABLISHED AGAINST A PERSON, THE CORONER WAS REQUIRED TO FORWARD THE MATTER TO THE ATTORNEY GENERAL TOGETHER WITH THE DETAILS OF THAT PERSON AND THE PARTICULARS OF THE OFFENCE. AS THE ATTORNEY GENERAL AT THAT



TIME HAD THE SOLE RESPONSIBILITY FOR FILING INDICTMENTS, THE ATTORNEY WOULD EXAMINE THE EVIDENCE TAKEN BY THE CORONER AND MAKE A DECISION AS TO WHETHER TO PROCEED WITH THE MATTER.

WHEN THE 1960 CORONERS ACT WAS REPLACED BY THE 1980 CORONERS ACT, SECTION 19(2) OF THE NEW ACT REPRODUCED THE REQUIREMENT TO FORWARD THIS MATERIAL TO THE ATTORNEY GENERAL. IN 1986, AT THE TIME OF ESTABLISHING THE OFFICE OF THE DPP UNDER THE DIRECTOR OF PUBLIC PROSECUTIONS ACT, SECTION 19(2) OF THE CORONERS ACT WAS AMENDED TO REMOVE THE REFERENCE TO "ATTORNEY GENERAL" AND TO INSERT INSTEAD A REFERENCE TO "DIRECTOR OF PUBLIC PROSECUTIONS". AT THAT TIME SECTION (3) WAS ALSO INTRODUCED WHICH REQUIRED THE DPP TO INDICATE TO THE ATTORNEY GENERAL WHETHER HE INTENDED TO PROCEED WITH CRIMINAL CHARGES AGAINST THE PERSON CONCERNED.

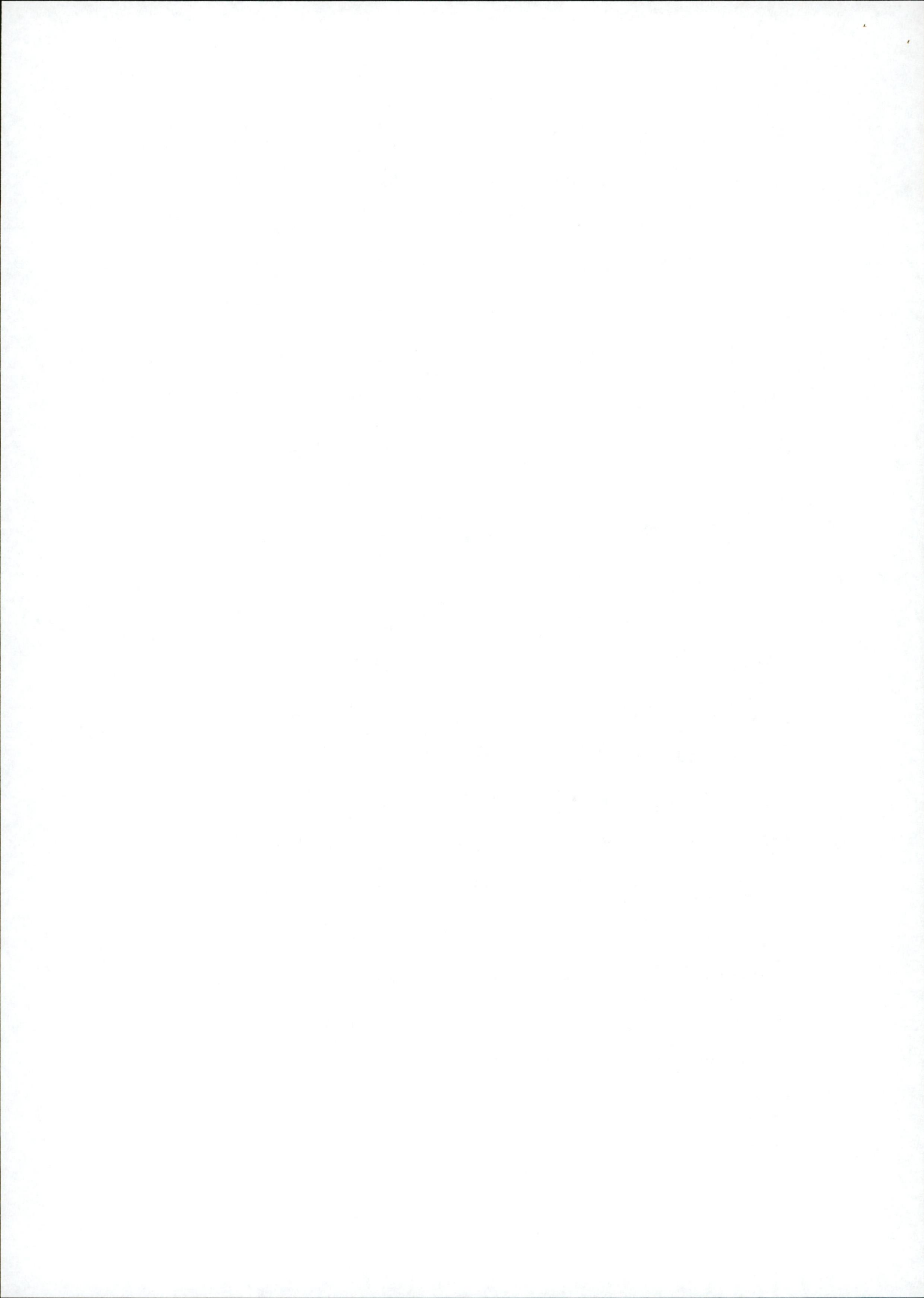
IT IS NOT CONSIDERED NECESSARY FOR THE ATTORNEY GENERAL TO BE ADVISED OF THESE



MATTERS IN THIS MANNER. THE DPP DOES PROVIDE IN HIS ANNUAL REPORT, STATISTICAL DETAILS OF "NO BILL" APPLICATIONS INCLUDING THE NUMBER OF APPLICATIONS GRANTED AND THE GENERAL REASONS FOR GRANTING THE APPLICATIONS. THE ANNUAL REPORT ALSO PROVIDES DETAILS OF MATTERS REFERRED TO THE DPP BY THE CORONER PURSUANT TO SECTION 19(2) OF THE CORONERS ACT.

DELEGATION OF AUTHORITY

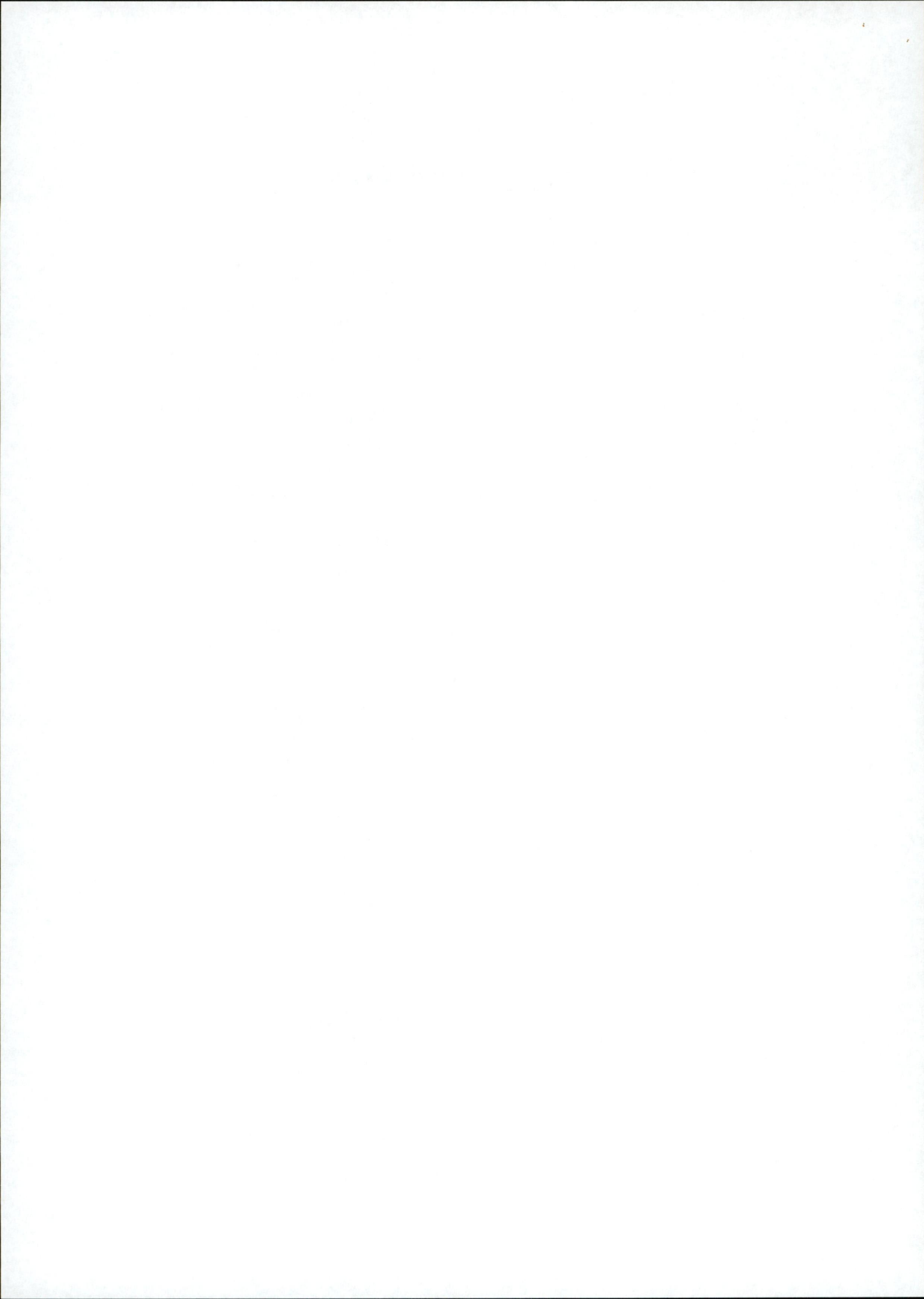
SECTION 10 (4) OF THE LOCAL COURTS ACT 1982 PROVIDES AUTHORITY FOR THE MINISTER TO APPOINT A PERSON TO ACT TEMPORARILY IN THE OFFICE OF CLERK OF THE LOCAL COURT. AS THIS AUTHORITY CANNOT BE DELEGATED, THE MINISTER MUST APPROVE ALL OCCASIONS OF STAFF ACTING IN THESE POSITIONS. THIS IS AN ADMINISTRATIVE PROCESS WHICH COULD BE STREAMLINED. IT IS, THEREFORE, PROPOSED TO AMEND THE ACT TO PERMIT THE DIRECTOR GENERAL OF THE ATTORNEY GENERAL'S DEPARTMENT TO APPROVE THE APPOINTMENT OF ACTING CLERKS OF THE LOCAL COURTS.



REGISTRARS OF THE DISTRICT COURT

AT PRESENT, SECTION 18G(4) OF THE DISTRICT COURT ACT PROVIDES THAT IF TWO REGISTRARS OF THE DISTRICT COURT ARE APPOINTED FOR ANY PROCLAIMED PLACE, ONE IS TO BE THE REGISTRAR OF THE COURT IN ITS CIVIL JURISDICTION FOR THE PLACE AND THE OTHER IS TO BE THE REGISTRAR OF THE COURT IN ITS CRIMINAL JURISDICTION FOR THE PLACE. THIS AMENDMENT REMOVES THIS DISTINCTION BETWEEN THE TWO JURISDICTION. IF TWO REGISTRARS ARE APPOINTED TO A PARTICULAR PLACE, EACH WILL BE THE REGISTRAR FOR THE ENTIRE JURISDICTION OF THE COURT, EACH HAVING THE FUNCTIONS SPECIFIED IN THE MINISTERIAL ORDER PERMITTING THE APPOINTMENT OF TWO REGISTRARS.

AT PRESENT SECTION 18H OF THE DISTRICT COURT ACT PROVIDES THAT A REGISTRAR FOR A PROCLAIMED PLACE CAN EXERCISE CERTAIN



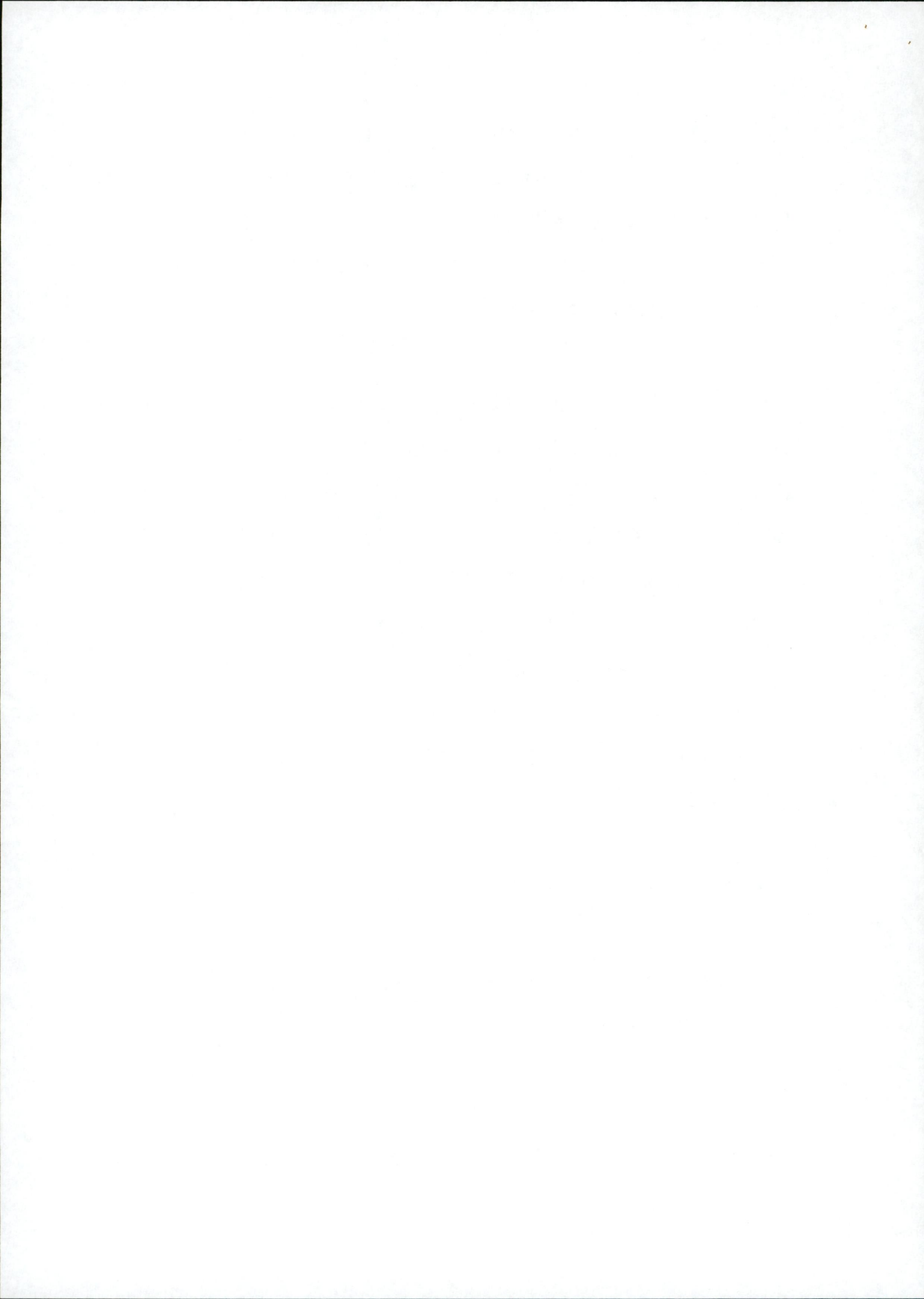
PRESCRIBED FUNCTIONS. SECTION 18J PROVIDES THAT AN ASSISTANT REGISTRAR FOR A PROCLAIMED PLACE HAS SUCH FUNCTIONS AS MAY BE SPECIFIED IN THE CIVIL PROCEDURE RULES OR THE CRIMINAL PROCEDURE RULES.

THESE AMENDMENTS CLARIFY THAT A REGISTRAR FOR A PROCLAIMED PLACE MAY EXERCISE FUNCTIONS ONLY IN RESPECT OF THAT PROCLAIMED PLACE. HOWEVER, THE AMENDMENTS DO NOT APPLY THIS LIMITATION TO THE EXERCISE OF FUNCTIONS OF ANY REGISTRAR OR ASSISTANT REGISTRAR APPOINTED FOR SYDNEY. SUCH A REGISTRAR OR ASSISTANT REGISTRAR MAY EXERCISE HIS OR HER FUNCTIONS IN RESPECT OF ANY PLACE.

COURT OF APPEAL AND COURT OF CRIMINAL APPEAL

- a. RATIONALISE EXISTING LEAVE TO APPEAL PROVISIONS.

SECTION 48 OF THE SUPREME COURT ACT DEFINES SPECIFIED TRIBUNALS FROM WHICH AN APPEAL TO



THE COURT OF APPEAL LIES AS OF RIGHT. OTHER NON-SPECIFIED TRIBUNALS MAY APPEAL TO A DIVISION OF THE SUPREME COURT AND THEN MAY, BY LEAVE OF THE COURT OF APPEAL (UNDER SUBSECTIONS 101 (2)(H), (I), (J) OF THE SUPREME COURT ACT), APPEAL TO THE COURT OF APPEAL. IT IS PROPOSED THAT THESE PROVISIONS BE REPEALED AND REPLACED WITH A SINGLE PROVISION WHICH WILL APPLY TO ALL APPEALS TO THE COURT OF APPEAL FROM A DECISION OF THE SUPREME COURT ARISING IN TURN FROM AN APPEAL OR REVIEW OF A DECISION OF A COURT OR TRIBUNAL OTHER THAN THOSE FROM A SPECIFIED TRIBUNAL.

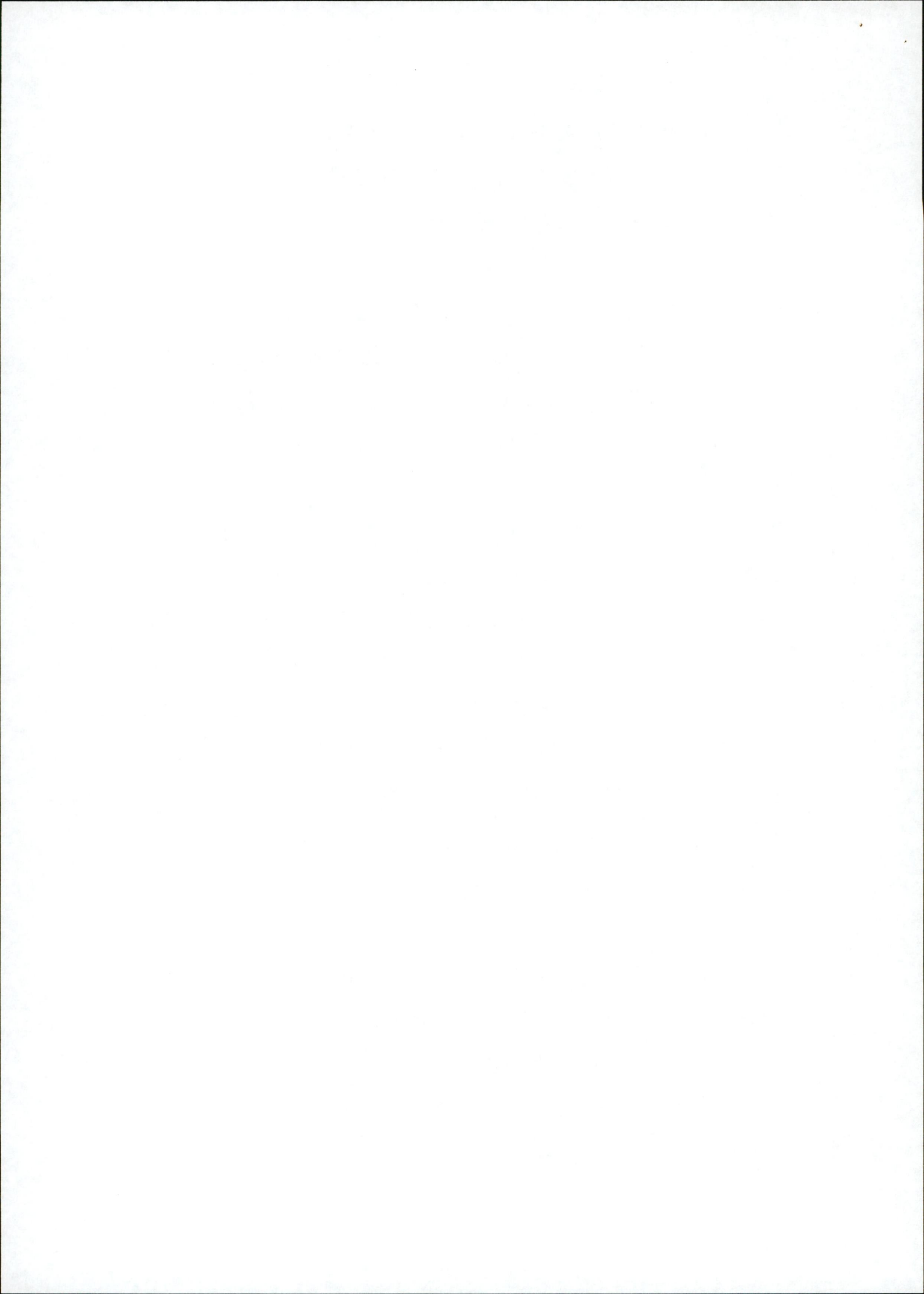
SUCH A PROVISION WOULD COVER APPEALS TO THE COURT OF APPEAL FROM JUDGMENTS OR ORDERS IN THE SUPREME COURT GRANTING OR REFUSING PREROGATIVE OR DECLARATORY RELIEF IN RELATION TO PROCEEDINGS IN THE LOCAL COURT, THE LICENSING COURT, THE RESIDENTIAL TENANCIES TRIBUNAL, THE COMMERCIAL TRIBUNAL, THE MENTAL HEALTH TRIBUNAL AND ANY OTHER COURT OR TRIBUNAL WHICH CURRENTLY EXISTS OR IS HEREAFTER CREATED. IT WILL ALSO MEAN THAT

S.101(2) WILL BE APPLICABLE TO OTHER TRIBUNALS WHEN THEY ARE CREATED UNLESS SUBSEQUENT LEGISLATION DETERMINES OTHERWISE.

- b. INTRODUCE A LEAVE REQUIREMENT IN APPEALS RELATING TO CAVEATS UNDER THE REAL PROPERTY ACT 1900 AND WINDINGS UP UNDER THE CORPORATIONS LAW.

IT IS PROPOSED THAT LEAVE BE REQUIRED TO APPEAL FROM DECISIONS MADE IN A DIVISION OF THE SUPREME COURT (USUALLY THE EQUITY DIVISION) FROM JUDGMENTS OR ORDERS UNDER SECTIONS 74K, 74MA AND 74O OF THE REAL PROPERTY ACT 1900 WHICH RESPECTIVELY DEAL WITH: THE EXTENSION OF THE OPERATION OF CAVEATS; THE WITHDRAWAL OF CAVEATS; AND THE LODGMENT OF SUCCESSIVE CAVEATS.

IT IS ALSO PROPOSED THAT LEAVE TO APPEAL BE REQUIRED FROM JUDGMENTS OR ORDERS (USUALLY IN THE EQUITY DIVISION) MADE UNDER THE CORPORATIONS LAW WHICH RELATE TO: SETTING ASIDE DEMANDS UNDER SECTION 459G; RESTRAINING



THE PRESENTATION OR ADVERTISING OF PRESENTATION OF A WINDING UP PETITION; AND MAKING A WINDING UP ORDER.

THE RATIONALE FOR THESE AMENDMENTS IS THAT ALTHOUGH THE RELEVANT ORDERS ARE FINAL IN FORM AND THEREFORE ATTRACT AN APPEAL AS OF RIGHT, THEY ARE INTERLOCUTORY IN SUBSTANCE AND, THEREFORE, FALL WITHIN THE INTENT OF S101(2)(E) WHICH REQUIRES LEAVE TO APPEAL FROM INTERLOCUTORY JUDGMENTS OR ORDERS MADE IN THE COURT.

- c. RATIONALISE PROVISIONS RELATING TO APPEALS FROM THE DISTRICT COURT AND THE DUST DISEASES TRIBUNAL TO CREATE ESSENTIALLY UNIFORM PROVISIONS.

IT IS PROPOSED THAT SECTIONS 127, 128, AND 130 OF THE DISTRICT COURT ACT 1973, WHICH DEAL WITH APPEALS TO THE SUPREME COURT AND WHICH ARE UNNECESSARILY COMPLEX, BE REPEALED AND REPLACED WITH ONE PROVISION. THE PROPOSAL DOES NOT ALTER THE POLICY UNDERLYING THE

EXISTING SECTIONS. APPEALS FROM ERRONEOUS DIRECTIONS TO JURIES ARE PRESERVED AND A PROVISION WILL BE RETAINED, ANALOGOUS TO S128(5B), WHICH PREVENTS A LITIGANT, ONCE A HEARING HAS COMMENCED, FROM SEEKING LEAVE TO APPEAL FROM AN INTERLOCUTORY ORDER, THEREBY DISRUPTING THE TRIAL.

CURRENTLY, THE DUST DISEASES TRIBUNAL ACT 1989 FIXES A \$5,000 THRESHOLD FOR APPEALS AS OF RIGHT TO THE COURT OF APPEAL. IT IS PROPOSED THAT THIS BE RAISED TO ALLOW A RIGHT OF APPEAL WHERE \$10,000 OR MORE IS INVOLVED, AND THAT OTHERWISE, APPEALS FROM THE DUST DISEASES TRIBUNAL BE AS PROPOSED FOR THE DISTRICT COURT.

- d. AMEND THE LAND AND ENVIRONMENT COURT ACT 1979 TO REQUIRE LEAVE TO APPEAL FROM COSTS ORDERS MADE BY THAT COURT IN CLASS 4 MATTERS.

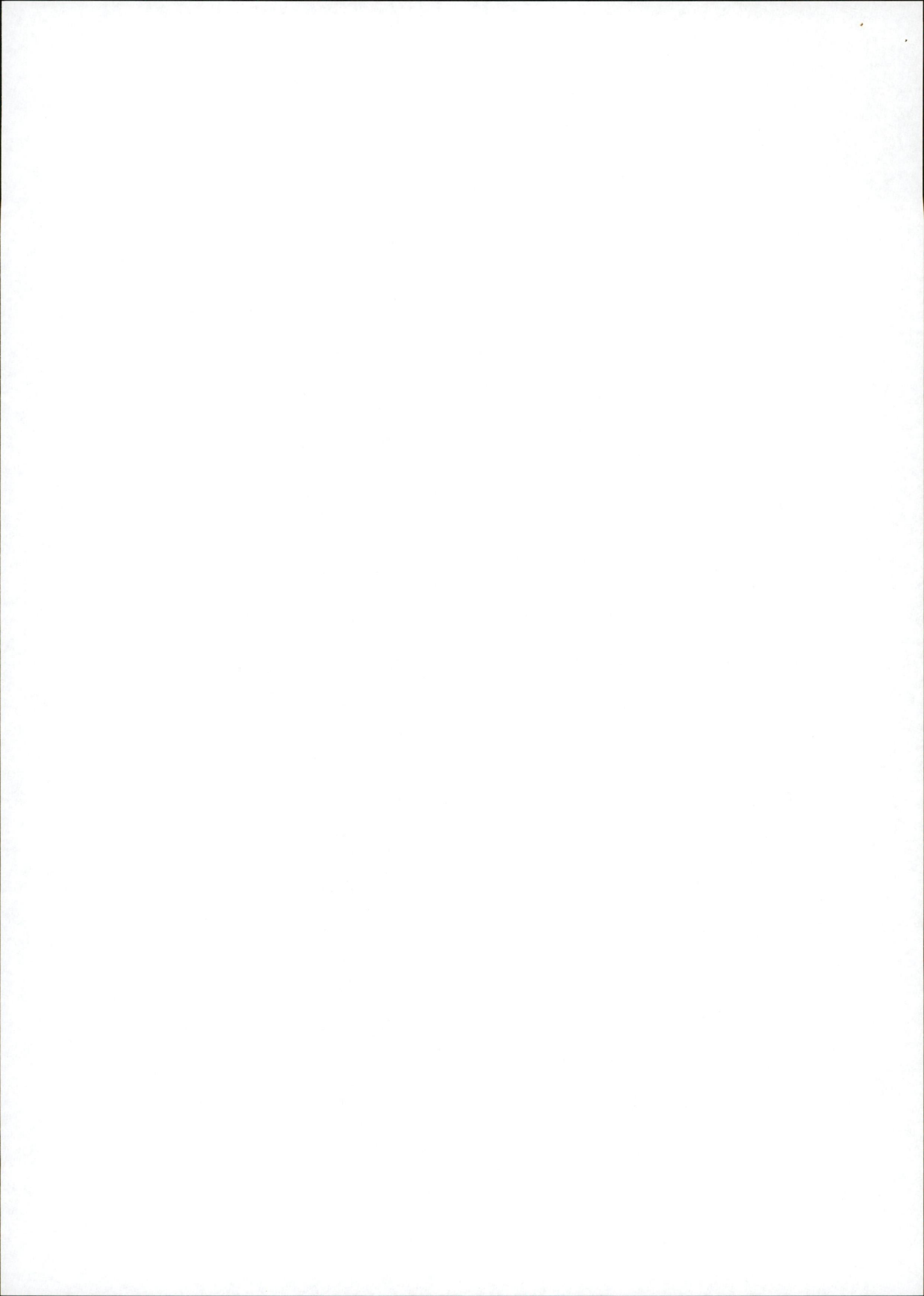
CURRENTLY, A GENERAL APPEAL ON FACT AS WELL AS LAW LIES FROM ORDERS OR DECISIONS IN CLASS 4

PROCEEDINGS, AND IN THE CASE OF INTERLOCUTORY ORDERS OR DECISIONS THE RIGHT TO APPEAL IS BY LEAVE ONLY.

THE COURT OF APPEAL HAS RECEIVED A NUMBER OF APPEALS AS TO PARTY/PARTY COST IN CLASS 4 CASES. AT PRESENT, SUCH APPEALS LIE AS OF RIGHT. IT IS PROPOSED TO AMEND THE LEGISLATION TO REQUIRE LEAVE TO BE GRANTED IN SUCH CASES.

- e. LIMIT THE RIGHT TO ADDUCE FRESH EVIDENCE IN APPEALS FROM THE LEGAL SERVICES TRIBUNAL AND VETERINARY SURGEONS DISCIPLINARY TRIBUNAL

CURRENTLY SECTION 171F(4) OF THE LEGAL PROFESSION ACT 1987 WHICH WAS INSERTED INTO THE PRINCIPAL ACT BY THE LEGAL PROFESSION REFORM ACT 1993 PROVIDES THAT APPEALS TO THE COURT FROM THE LEGAL SERVICES TRIBUNAL SHALL "BE BY WAY OF A NEW HEARING AND FRESH EVIDENCE, OR EVIDENCE IN ADDITION TO OR SUBSTITUTION FOR THE EVIDENCE RECEIVED AT THE ORIGINAL HEARING MAY BE GIVEN".



SECTION 171F(4) RE-ENACTS SECTION 164(4) OF THE 1987 ACT. THE HEARINGS ARE *DE NOVO*, NOT RE-HEARINGS. THE PROPOSAL IS THAT THE APPEAL BE CHANGED TO A RE-HEARING.

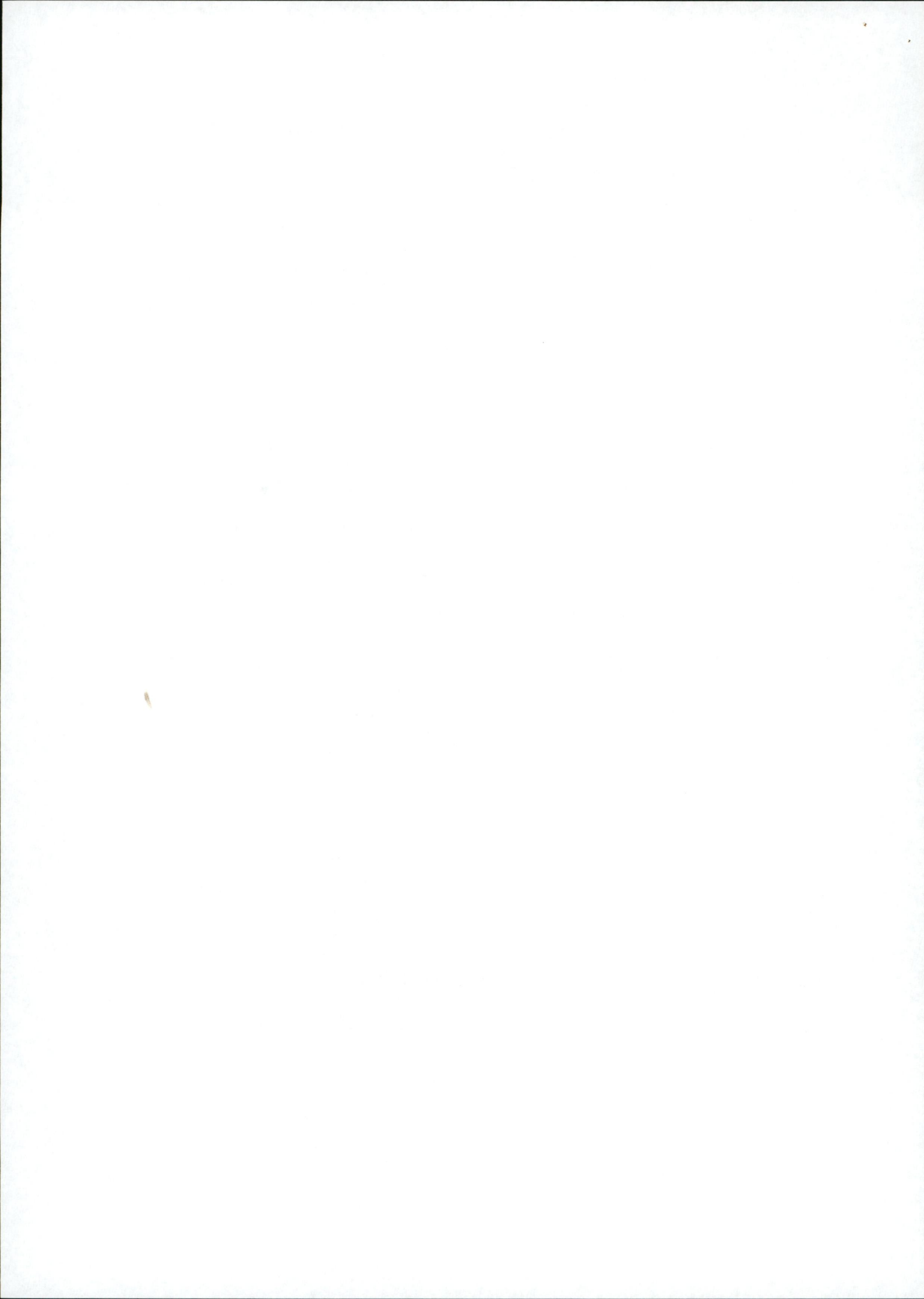
EXPERIENCE INDICATES THAT PARTIES USE THE HEARING BEFORE THE TRIBUNAL AS A "DRY RUN". ADDUCING FRESH EVIDENCE OR PUTTING A DIFFERENT CASE BEFORE THE COURT OF APPEAL WASTES RESOURCES. IT IS ALSO ARGUED THAT SUCH AN APPEAL IS AN ANOMALY. APPEALS FROM OTHER TRIBUNALS WHICH DISCIPLINE MEMBERS OF PROFESSIONS SUCH AS MEDICINE AND DENTISTRY ARE NOT TREATED IN THIS MANNER.

IT IS PROPOSED TO REPEAL SECTION 171F(4) AND ALLOW SECTION 75A OF THE SUPREME COURT ACT TO OPERATE IN APPEALS FROM THE TRIBUNAL. THIS WOULD MEAN THAT HEARINGS WOULD BE BY WAY OF RE-HEARING AND FRESH EVIDENCE COULD ONLY BE RECEIVED IN SPECIAL CIRCUMSTANCES.

SECTION 34(1) OF THE VETERINARY SURGEONS ACT 1986 ALLOWS FOR APPEALS TO THE SUPREME COURT FROM THE VETERINARY SURGEONS DISCIPLINARY TRIBUNAL, AND BY SECTIONS 48(1)(A)(VII) AND (2)(F), SUCH APPEALS ARE ASSIGNED TO THE COURT OF APPEAL.

SUB-SECTION (3) CREATES AN APPEAL WHICH IS A HYBRID OF AN APPEAL BY WAY OF RE-HEARING AND A HEARING *DE NOVO*, IN THAT IT PROVIDES THE APPEAL SHALL BE BY WAY OF A NEW HEARING (*DE NOVO*), BUT THAT NEW EVIDENCE MAY ONLY BE ADDUCED IF THE COURT IS SATISFIED THAT THERE WERE GOOD REASONS FOR ITS NOT HAVING BEEN ADDUCED BEFORE THE TRIBUNAL (AN ELEMENT OF A RE-HEARING).

REPEAL OF SECTION 34(3) WILL ALLOW SECTION 75A OF THE SUPREME COURT ACT TO OPERATE SO THAT HEARINGS ARE BY WAY OF RE-HEARING AND FRESH EVIDENCE CAN ONLY BE RECEIVED ON SPECIAL GROUNDS.

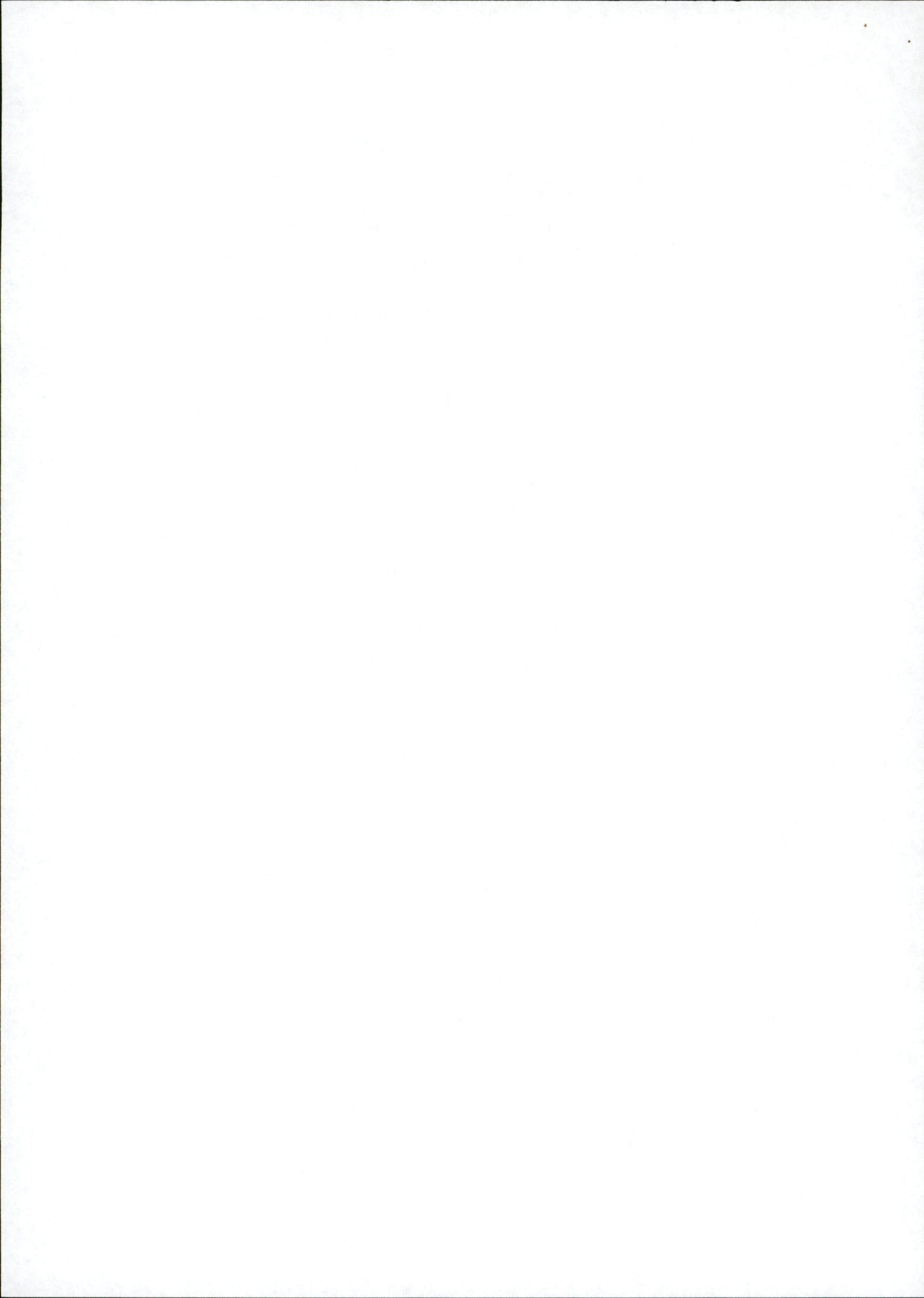


- f. AMEND SECTION 46A OF THE SUPREME COURT ACT TO ALLOW BENCHES OF TWO JUDGES OF APPEAL TO DEAL WITH APPLICATIONS FOR LEAVE TO APPEAL, APPLICATIONS INVOLVING QUESTIONS OF PRACTICE AND PROCEDURE IN APPEALS, AND OTHER MATTERS WHICH CANNOT BE DEALT WITH BY A SINGLE JUDGE.

SECTION 46A, WHICH WAS INSERTED INTO THE SUPREME COURT ACT IN 1994, ALLOWS THE COURT OF APPEAL CONSTITUTED BY TWO JUDGES TO HEAR APPEALS ON THE QUANTUM OF DAMAGES IN CASES ARISING OUT OF DEATH OR PERSONAL INJURY WHERE NO CONTESTED MATTER OF PRINCIPLE ARISES.

WHERE THE COURT SO CONSTITUTED IS EQUALLY DIVIDED, THERE IS A RE-HEARING BEFORE A BENCH CONSTITUTED BY THREE JUDGES OF APPEAL, WITH THE COSTS OF THE HEARING BEFORE THE TWO JUDGE BENCH BEING PAID FROM THE SUITOR'S FUND.

IT IS PROPOSED THAT SECTION 46A BE AMENDED TO ALLOW TWO JUDGE BENCHES TO DEAL WITH



APPLICATIONS FOR LEAVE TO APPEAL, AND APPLICATIONS INVOLVING QUESTIONS OF PRACTICE AND PROCEDURE IN APPEALS, INCLUDING INTERLOCUTORY APPEALS AND OTHER MATTERS IN THE COURT WHICH CANNOT BE DEALT WITH BY A JUDGE SITTING ALONE.

THIS PROPOSAL WOULD RESULT IN A MORE PRACTICAL USE OF JUDGE TIME ON APPLICATION DAYS IN THE COURT OF APPEAL. THE UNITED KINGDOM AND QUEENSLAND HAVE PERMANENT COURTS OF APPEAL AND POWERS SUCH AS THOSE PROPOSED ARE EXERCISED BY BENCHES OF TWO JUDGES. THE PROPOSAL IS CONSERVATIVE, AND COMPARABLE WITH THOSE IN OTHER JURISDICTIONS.

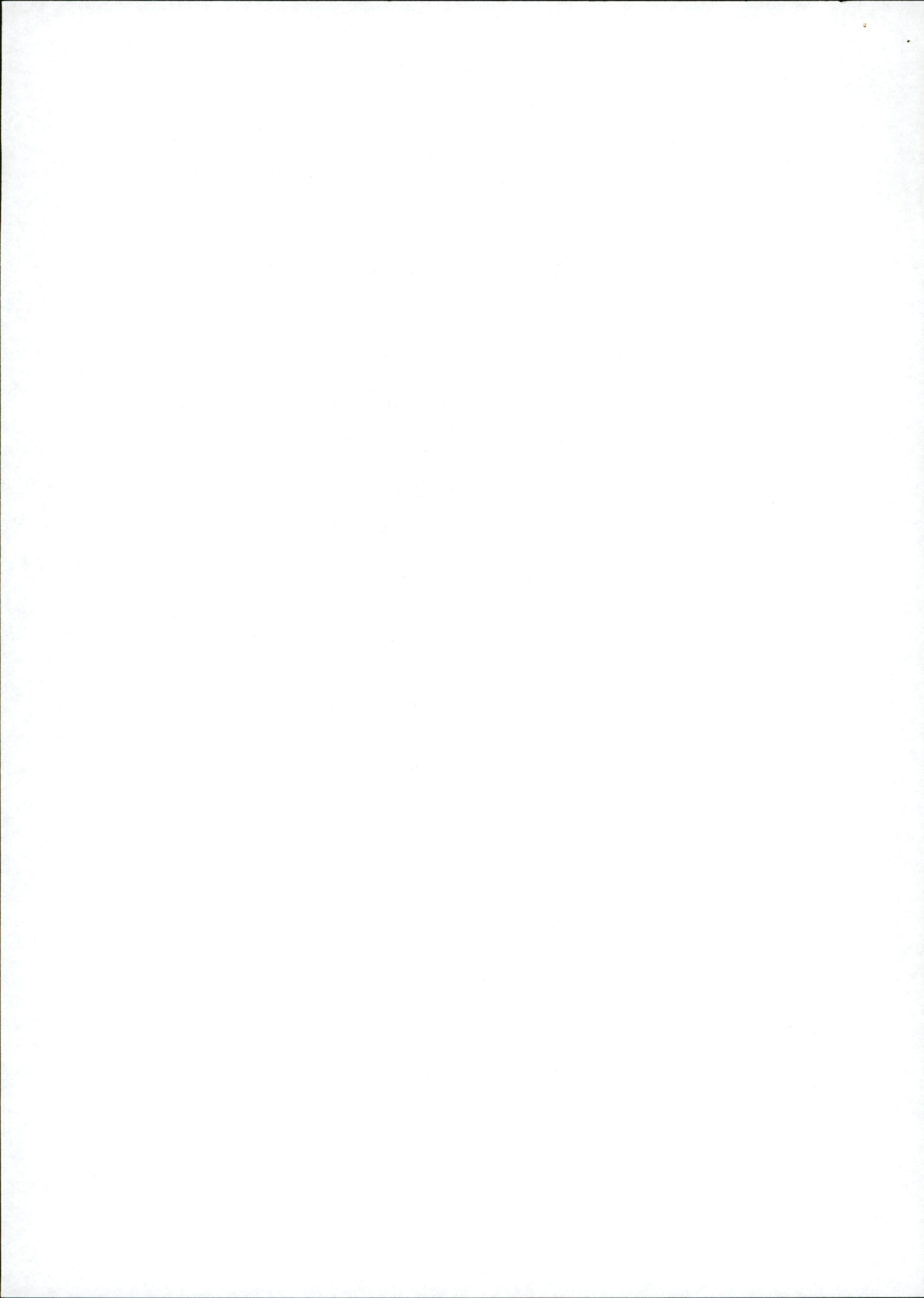
- g. AMEND SECTION 22 OF THE CRIMINAL APPEAL ACT 1912 TO INCREASE THE POWERS OF THE COURT WHEN CONSTITUTED BY A JUDGE SITTING ALONE.

SECTION 22 OF THE CRIMINAL APPEAL ACT LISTS THE POWERS OF THE COURT EXERCISED BY A JUDGE OF THE COURT SITTING ALONE. WHERE APPLICATIONS

MADE BY AN APPELLANT UNDER SECTION 22 ARE REFUSED THERE IS AN AUTOMATIC RIGHT OF APPEAL TO THE COURT CONSTITUTED BY THREE JUDGES. IT IS PROPOSED THAT THE FOLLOWING BE ADDED TO THIS LIST:

- * THE POWER UNDER SECTION 12(A) TO ORDER THE PRODUCTION OF ANY DOCUMENT, EXHIBIT OR THING CONCERNED WITH THE PROCEEDINGS;
- * THE POWER UNDER SECTION 12(B) TO ORDER THE ATTENDANCE OF PERSONS BEFORE THE COURT FOR EXAMINATION;
- * THE SUMMARY DISMISSAL OF APPEALS FOR WANT OF PROSECUTION;
- * THE POWER UNDER SECTION 18(3) TO ORDER THAT WHERE AN APPEAL OR APPLICATION FOR LEAVE TO APPEAL IS ABANDONED, TIME SPENT IN CUSTODY IS TO COUNT TOWARDS THE SENTENCE IMPOSED.

IN ALL CASES IT IS PROPOSED THAT THE EXISTING RIGHT OF AN APPELLANT TO APPEAL TO THE COURT OF CRIMINAL APPEAL CONSTITUTED BY THREE JUDGES BE PRESERVED.



- h. AMEND SECTION 18(3) OF THE CRIMINAL APPEAL ACT 1912 TO CLARIFY THE BASIS UPON WHICH AN ORDER MAY BE MADE THAT TIME SERVED PENDING DETERMINATION OF AN APPEAL TO THE COURT IS NOT TO COUNT.

SECTION 18(1) OF THE CRIMINAL COURT OF APPEAL ACT PROVIDES THAT AN APPELLANT NOT ADMITTED TO BAIL PENDING DETERMINATION OF HIS APPEAL SHALL BE TREATED IN SUCH MANNER AS DIRECTED BY REGULATIONS MADE UNDER ACTS RELATING TO PRISONS.

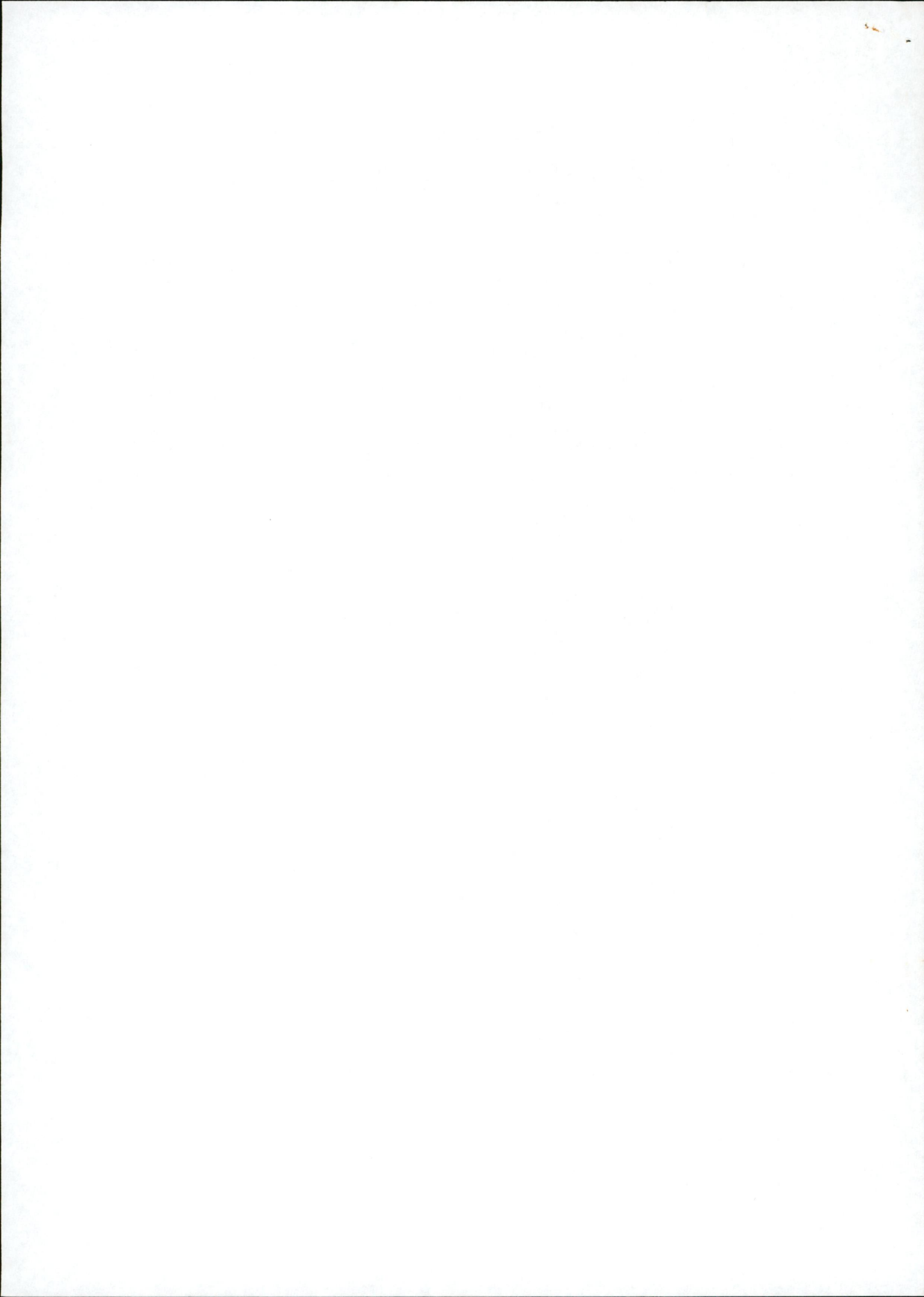
SUB-SECTION (3) PROVIDES THAT IF A PERSON IN CUSTODY PENDING A DETERMINATION OF AN APPEAL IS SPECIALLY TREATED, IN THE ABSENCE OF AN ORDER TO THE CONTRARY, TIME SPENT IN CUSTODY SHALL NOT COUNT, AND AN ORIGINAL SENTENCE SHALL RESUME, OR A SUBSTITUTED SENTENCE SHALL BEGIN TO RUN, FROM THE DATE UPON WHICH THE APPEAL IS DETERMINED.

MOST APPELLANTS IN CUSTODY ARE "SPECIALLY TREATED". IT IS UNDERSTOOD THAT THE POLICY

BEHIND S18(3) WAS THE DETERRENCE OF UNARGUABLE OR FRIVOLOUS APPEALS.

IT IS PROPOSED TO AMEND THE SUB-SECTION TO MAKE IT CLEAR THAT NORMALLY THE EXERCISE OF THE DISCRETION PROVIDED IN SECTION 18(3) WILL INVOLVE AN ORDER THAT TIME COUNT EXCEPT WHERE THE APPEAL WAS UNARGUABLE OR FRIVOLOUS.

I MOVE THIS BILL BE READ A SECOND TIME.



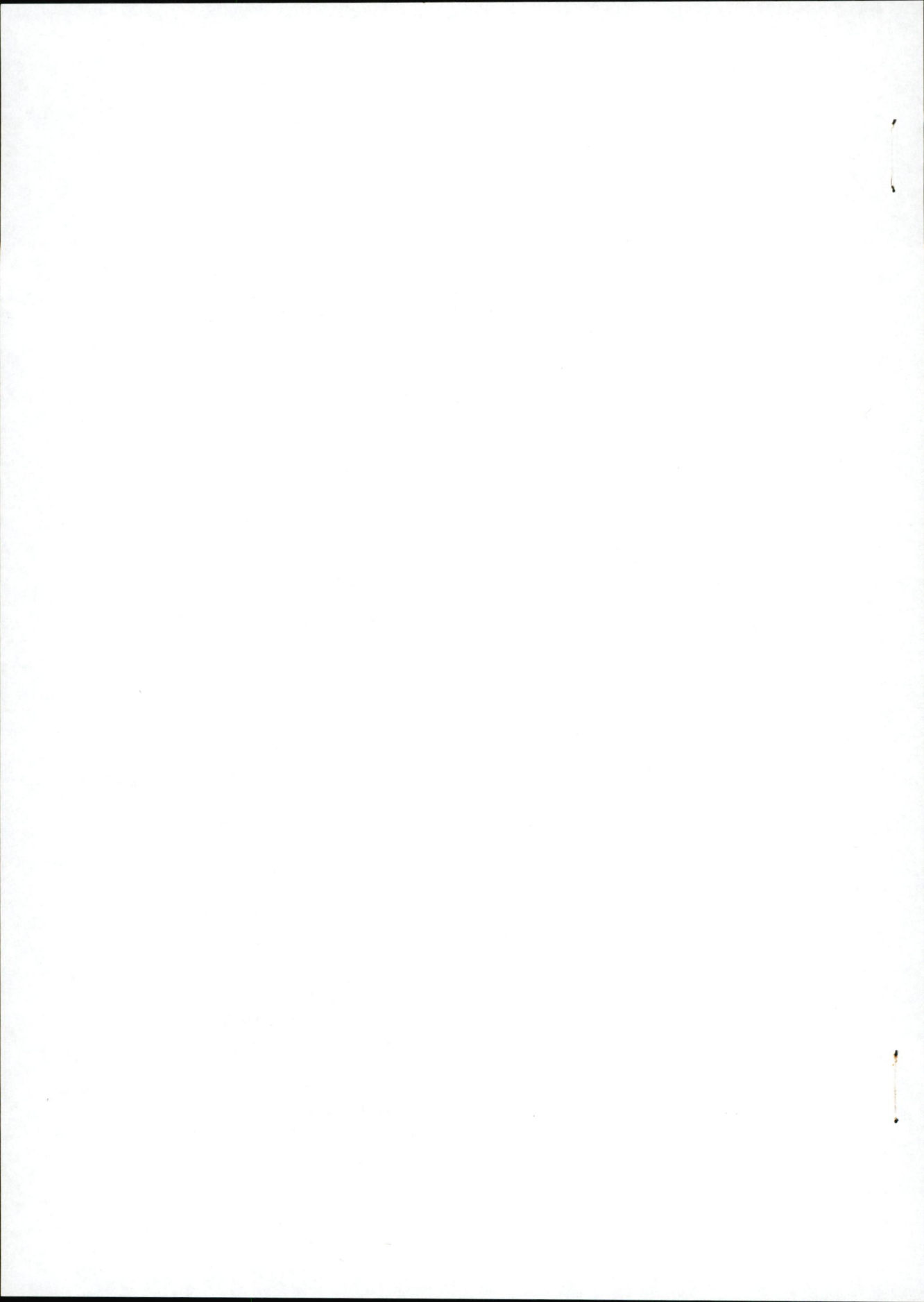


New South Wales

Courts Legislation Further Amendment Act 1995 No 88

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New South Wales

Courts Legislation Further Amendment Act 1995 No 88

Act No 88, 1995

An Act to amend certain Acts in relation to appeals to the Supreme Court and various other aspects of court procedure; and for other purposes.
[Assented to 19 December 1995]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Courts Legislation Further Amendment Act 1995*.

2 Commencement

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

3 Amendment of Acts

The Acts specified in Schedule 1 are amended as set out in that Schedule.

4 Explanatory notes

Matter appearing under the heading **Explanatory note** in this Act does not form part of this Act.

Schedule 1 Amendment of Acts

(Section 3)

1.1 Coroners Act 1980 No 27

Section 19 Procedure at inquest or inquiry involving indictable offence

Omit section 19 (3).

Explanatory note

Section 19 of the *Coroners Act 1980* imposes certain obligations on a coroner if, at any time during the course of an inquest or inquiry, the coroner is of the opinion that the evidence given establishes a prima facie case against any known person for an indictable offence. If the indictable offence is one in which the question in issue is whether the person caused the death, fire or explosion the subject of the inquest or inquiry, the coroner is required to forward certain evidence to the Director of Public Prosecutions and to inform the Director of the name of the relevant person.

The proposed amendment removes an obligation on the Director of Public Prosecutions to then inform the Attorney General as to whether or not the Director intends to proceed with criminal charges against the person concerned.

1.2 Criminal Appeal Act 1912 No 16

[1] Section 18 Release of appellant on bail and custody when attending court

Insert “(which is referred to in this section as *special treatment*)” after “prisons” in section 18 (1).

[2] Section 18 (2) and (3)

Omit subsection (3). Insert instead:

- (2) The time during which an appellant is at liberty on bail (pending the determination of his or her appeal) does not count as part of any term of imprisonment or penal servitude under the appellant's sentence.

- (3) The time during which an appellant receives special treatment counts as part of any term of imprisonment or penal servitude under the appellant's sentence. However, if the court is satisfied that the appeal was unarguable or frivolous, the court may order that the time in custody with special treatment does not count.

Explanatory note

The *Criminal Appeal Act 1912* deals with appeals against convictions and sentences in criminal cases. Section 18 (1) of the Act provides that an appellant who is not released on bail pending determination of his or her appeal is to be treated in a special manner, as set out in the regulations. At present, section 18 (3) provides that, if a person in custody pending a determination of an appeal is specially treated, time spent in custody does not count, and an original sentence resumes (or a substituted sentence begins to run) from the date the appeal is determined. There is some discretion for the Court of Criminal Appeal to make an order that the time spent in custody does count.

The proposed amendments reverse the present position, so that time in custody under special treatment will count as part of the sentence unless the Court of Criminal Appeal is satisfied that it should not count. In addition, the rule will not apply to substituted sentences, which generally specify the date on which the substituted sentence is to commence.

[3] Section 22

Omit the section. Insert instead:

22 Powers of a judge sitting alone

- (1) The following powers of the court may be exercised by any judge of the court in the same manner as they may be exercised by the court, and subject to the same provisions:
- (a) the power to give leave to appeal,
 - (b) the power to extend the time in which notice of appeal may be given,
 - (c) the power to extend the time in which notice of an application for leave to appeal may be given,

- (d) the power to allow the appellant to be present at any proceedings (in cases where the appellant is not entitled to be present without leave),
 - (e) the power to order the production of any document, exhibit or other thing concerned with proceedings,
 - (f) the power to order any person who would have been a compellable witness at the trial to attend and be examined before the court,
 - (g) the power to order any such person to be examined,
 - (h) the power to admit any deposition taken as evidence,
 - (i) the power to dispose of an appeal for failure to prosecute the appeal diligently,
 - (j) the power to order that time spent by an appellant in custody is not to count towards the sentence imposed when an appeal, or an application for leave to appeal, is abandoned.
- (2) If the judge refuses an application on the part of the appellant to exercise any such power in the appellant's favour, the appellant is entitled to have the application determined by the court.

Explanatory note

Section 22 of the *Criminal Appeal Act 1912* lists the powers of the Court of Criminal Appeal that can be exercised by a judge of the court sitting alone. If an application made by an appellant under section 22 is refused, there is an automatic right of appeal to the court constituted by 3 judges. The proposed amendment adds to the list of powers exercisable by a single judge (by the inclusion of paragraphs (e)–(j) in section 22 (1)).

[4] Schedule 1 Savings and transitional provisions

Insert after clause 1:

2 Courts Legislation Further Amendment Act 1995

The amendments made to section 18 by the *Courts Legislation Further Amendment Act 1995* apply to any appellant whose appeal is determined, or abandoned, on or after the commencement of the amendments.

1.3 District Court Act 1973 No 9

[1] Section 4 Definitions: general

Insert after section 4 (10):

- (11) A reference in this or any other Act, or in any instrument, to the registrar of the District Court for a proclaimed place is, if there are 2 registrars for that place, a reference to either registrar.

[2] Section 18G Registrars

Omit section 18G (4). Insert instead:

- (4) The Minister may, by order published in the Gazette, direct that there can be 2 registrars for a particular proclaimed place, each having the functions specified in that order.

Explanatory note

At present, section 18G (4) of the *District Court Act 1973* provides that if 2 registrars of the District Court are appointed for any proclaimed place, one is to be the registrar of the court in its civil jurisdiction and the other is to be the registrar of the court in its criminal jurisdiction. The proposed amendment removes this distinction between jurisdictions. If 2 registrars are appointed for a particular place each will be the registrar for the entire jurisdiction of the court, each having the functions specified in the Ministerial order permitting the appointment of 2 registrars.

[3] Section 18H Functions of registrars

Insert at the end of the section:

- (2) The registrar for a proclaimed place may exercise any or all of those functions in respect of that proclaimed place only.
- (3) The registrar for Sydney may exercise any or all of those functions in respect of any place in the State.

[4] Section 18J Functions of assistant registrars

Insert “, and may exercise any or all of those functions in respect of that proclaimed place only” after “criminal procedure rules” in section 18J (1).

[5] Section 18J (1A)

Insert after section 18J (1):

- (1A) An assistant registrar for Sydney may exercise any or all of the functions of any registrar for Sydney in respect of any place in the State.

Explanatory note

At present, section 18H of the *District Court Act 1973* provides that a registrar for a proclaimed place can exercise certain prescribed functions. Section 18J provides that an assistant registrar for a proclaimed place has such functions of the registrar for that proclaimed place as may be specified in the civil procedure rules or the criminal procedure rules.

The proposed amendments clarify that a registrar or assistant registrar for a proclaimed place may exercise functions only in respect of that proclaimed place. However, the amendments do not apply this limitation to the exercise of functions of any registrar or assistant registrar appointed for Sydney. Such a registrar or assistant registrar may exercise his or her functions in respect of any place.

[6] Section 64 Subpoenas

Insert after section 64 (1):

- (1A) A subpoena for production of a document or thing may authorise compliance with the subpoena by the production of the document or thing to a specified person at a specified place. However, the person who is required by the subpoena to produce a document or thing can still elect to produce the document or thing at the specified hearing of the action or of proceedings ancillary to the action.

[7] Section 64 (2)

Insert “at a hearing” after “subpoena for production”.

[8] Section 64 (4)

Insert after section 64 (3):

- (4) This section does not affect the operation of Division 1 of Part 4.6 of the *Evidence Act 1995* (Requests to produce documents or call witnesses).

Explanatory note

The proposed amendments to section 64 of the *District Court Act 1973* will allow the District Court to issue a subpoena requiring a person to produce documents and other things to a specified person at a specified place, which need not be a court. Presently, documents may only be required to be produced at a hearing.

[9] Section 85 Interest on judgment debt

Insert after section 85 (3):

- (4) If an order is made for the payment of costs, the Court may order that interest is to be paid on the amount so ordered, at the prescribed rate, from the date or dates when the amount in respect of costs was duly paid.

Explanatory note

At present, interest is generally payable on a judgment debt arising under the *District Court Act 1973*. That interest is calculated from the date when the judgment debt came into being, or from a later specified date. The proposed amendment deals with the calculation of interest on that part of the judgment debt which is an order as to the payment of costs. The proposed amendment will allow the District Court to order a party to pay interest on the other party's costs from the date on which the successful party paid the amount in respect of costs.

[10] Sections 127 and 128

Omit the sections. Insert instead:

127 Right of appeal to Supreme Court

- (1) A party who is dissatisfied with a decision of a Judge may appeal to the Supreme Court.

- (2) The following appeals lie only by leave of the Supreme Court:
 - (a) an appeal from an interlocutory judgment or order,
 - (b) an appeal from a judgment or order as to costs only,
 - (c) an appeal from a final judgment or order, in respect of any property or any civil right, for an amount less than \$10,000.
- (3) In any other case, an appeal lies as of right.

128 Stay of proceedings on appeal to Supreme Court

- (1) This section applies if, after judgment in an action, the Court orders that proceedings be stayed during the period within which an appeal may be brought.
- (2) If during that period:
 - (a) an appeal is brought in respect of proceedings that have been stayed, and
 - (b) security is given to the satisfaction of the registrar for the amount of the judgment debt (if any) payable by the appellant, including an amount assessed by the registrar in respect of any costs forming part of the judgment debt,the stay of proceedings is to continue until the appeal is disposed of or until the Court or the Supreme Court otherwise orders.
- (3) An appeal does not operate to stay proceedings in any other way.
- (4) This section does not affect the operation of section 156 (1).

[11] Section 129 Agreement not to appeal

Omit "under section 128 (1), (2A) or (5A)".
Insert instead "to the Supreme Court".

[12] Sections 130 and 131

Omit the sections.

[13] Section 183A

Insert after section 183:

**183A Provision consequent on enactment of Courts
Legislation Further Amendment Act 1995**

The substitution of sections 127 and 128 by the *Courts Legislation Further Amendment Act 1995* does not operate to require leave to appeal against a decision of the Court if, when the decision was made, an appeal lay as of right.

Explanatory note

The proposed amendments simplify the provisions of the *District Court Act 1973* relating to appeals against decisions of the District Court. The appeals will be to the Supreme Court. Section 48 of the *Supreme Court Act 1970* assigns such an appeal to the Court of Appeal. As a result of the amendments, most appeals will lie as of right while some will require the leave of the Supreme Court. In addition a person will no longer be able to make an application to the Supreme Court for a new trial.

1.4 Dust Diseases Tribunal Act 1989 No 63

[1] Section 32

Omit the section. Insert instead:

32 Right of appeal to Supreme Court

- (1) A party who is dissatisfied with a decision of the Tribunal may appeal to the Supreme Court.
- (2) The following appeals lie only by leave of the Supreme Court:
 - (a) an appeal from an interlocutory decision,
 - (b) an appeal from a decision as to costs only,
 - (c) an appeal from a final decision awarding an amount less than \$10,000.
- (3) In any other case, an appeal lies as of right.

[2] Schedule 3 Savings, transitional and other provisions

Insert after clause 2:

3 Appeals

The substitution of section 32 by the *Courts Legislation Further Amendment Act 1995* does not operate to require leave to appeal against a decision of the Tribunal if, when the decision was made, an appeal lay as of right.

Explanatory note

At present, an appeal lies to the Supreme Court against a decision of the Dust Diseases Tribunal. Section 48 of the *Supreme Court Act 1970* assigns such an appeal to the Court of Appeal. The proposed amendments simplify the provisions of the *Dust Diseases Tribunal Act 1989* relating to appeals. As a result of the amendments, most appeals will lie as of right while some will require the leave of the Supreme Court.

1.5 Land and Environment Court Act 1979 No 204

[1] Section 58 Class 4 proceedings—appeals

Insert “, or an order or decision as to costs only,” after “interlocutory order or decision” in section 58 (3).

[2] Section 58 (4)

Insert after section 58 (3):

- (4) The amendment made to this section by the *Courts Legislation Further Amendment Act 1995* does not operate to require leave to appeal against an order or decision of the Court if, when the order or decision was made, an appeal lay as of right.

Explanatory note

At present, a party may appeal to the Supreme Court against an order or decision in proceedings in Class 4 of the jurisdiction of the Land and Environment Court (which is concerned with environmental planning and protection and with development contract civil enforcement). At present, an appeal against an order or decision as to costs only lies as of right. The proposed amendment will have the effect that such an appeal will lie only with the leave of the Supreme Court.

1.6 Legal Profession Act 1987 No 109

[1] Section 171F Appeal against order of Tribunal

Omit section 171F (4).

Explanatory note

At present, an appeal lies to the Supreme Court against any determination of a complaint by the Legal Services Tribunal. Presently, section 171F (4) of the *Legal Profession Act 1987* provides that an appeal is by way of a new hearing and further evidence may be given. The proposed amendment removes that provision from the Act. Section 75A of the *Supreme Court Act 1970* will then apply in relation to the appeal. Under that section, the Supreme Court may receive further evidence only on special grounds. Any appeal will be heard by way of rehearing.

[2] Section 208V

Insert after section 208U:

208V Application of Division

This Division does not apply to an amount of interest ordered on a judgment debt (being an order for the payment of costs) under section 85 (4) of the *District Court Act 1973* or section 95 (4) of the *Supreme Court Act 1970*.

Explanatory note

The proposed amendment is consequential on the amendments made by this Act to the *District Court Act 1973* and the *Supreme Court Act 1970*, dealing with the payment of interest on a judgment debt.

1.7 Local Courts Act 1982 No 164

Section 10 Clerks of the Local Courts

Insert after section 10 (4):

- (4A) The Minister may delegate in writing to the Director-General of the Attorney General's Department the Minister's power of appointment under subsection (4).

Explanatory note

Section 10 (4) of the *Local Courts Act 1982* empowers the Minister to appoint a person to act temporarily in the office of Clerk of a Local Court. The proposed amendment will empower the Director-General of the Attorney General's Department to also appoint such persons, but only if the Minister has delegated the power.

1.8 Supreme Court Act 1970 No 52

[1] Section 43 Sittings

Omit section 43 (5).

[2] Section 43A

Insert after section 43:

43A Multiple sittings

More than one sitting of the Court of Appeal (constituted by 2 or more Judges of Appeal) may be held at the same time.

Explanatory note

The proposed amendments clarify that the principle that more than one sitting of the Court of Appeal may be held at the same time applies to a sitting of the Court constituted by 2 Judges of Appeal as it does to a sitting of the Court constituted by 3 Judges of Appeal.

[3] Section 46B

Insert after section 46A:

46B Certain other matters may be heard by 2 Judges

- (1) This section applies to the following applications:
 - (a) applications for leave to appeal,
 - (b) applications involving a question of practice and procedure in an appeal or other matter in the Court of Appeal (being applications that are not capable of being dealt with by a single Judge of Appeal).
- (2) The Chief Justice may direct that such an application be heard and determined by such 2 Judges of Appeal as the President of the Court of Appeal directs.

- (3) For the purpose of hearing and determining an application the subject of a direction under this section, the Court of Appeal is constituted by the 2 Judges directed by the President of the Court of Appeal.
- (4) The decision of the Court of Appeal when constituted by 2 Judges of Appeal is to be in accordance with the opinion of those Judges.
- (5) If the judges are divided in opinion, the application is to be reheard and determined by the Court of Appeal constituted by 3 Judges of Appeal.

Explanatory note

The proposed amendment will allow 2 Judges of Appeal to deal with applications for leave to appeal, and applications involving questions of practice and procedure in appeals and other matters in the Court which cannot be dealt with by a bench constituted by a single judge.

[4] Section 95 Interest on debt under judgment or order

Insert after section 95 (3):

- (4) If an order is made for the payment of costs, the Court may order that interest is to be paid on the amount so ordered, at the prescribed rate, from the date or dates when the amount in respect of costs was duly paid.

Explanatory note

At present, interest is generally payable on a judgment debt arising under the *Supreme Court Act 1970*. That interest is calculated from the date when the judgment debt came into being, or from a later specified date. The proposed amendment deals with the calculation of interest on that part of the judgment debt which is an order as to the payment of costs. The proposed amendment will allow the Supreme Court to order a party to pay interest on the other party's costs from the date on which the successful party paid the amount in respect of costs.

[5] Section 101 Appeal in proceedings in the Court

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

- (h) a judgment or order of the Court in a Division on appeal from, or in proceedings relating to or arising from, proceedings in a court or tribunal that is not a specified tribunal (within the meaning of section 48),

[6] Section 101 (2) (j) and (k)

Omit the paragraphs.

Explanatory note

Section 48 of the *Supreme Court Act 1970* specifies those tribunals from which an appeal lies to the Court of Appeal as of right. Parties may appeal against a judgment or order of a court or tribunal that is not a specified tribunal to a Division of the Supreme Court. Parties may then, by leave of the Court of Appeal, appeal to the Court of Appeal. The proposed amendments consolidate several existing provisions relating to leave to appeal. The new paragraph will apply to all appeals to the Court of Appeal from decisions of the Supreme Court arising in turn from appeals or reviews of decisions of a court or tribunal (other than those from a specified court or tribunal). The new paragraph will apply to require leave to appeal in relation to proceedings in the Local Court, the Licensing Court, the Residential Tenancies Tribunal, the Commercial Tribunal and the Mental Health Tribunal, among other courts and tribunals.

[7] Section 101 (2)

Insert after section 101 (2) (l):

- (m) a judgment or order of the Court on an application under section 74K, 74MA or 74O of the *Real Property Act 1900*,
- (n) a judgment or order of the Court in a Division for the winding up of a corporation,
- (o) a judgment or order of the Court in a Division restraining or refusing to restrain the presentation or advertisement of an application for the winding up of a corporation,
- (p) a judgment or order of the court on an application under section 459G of the *Corporations Law*.

Explanatory note

The proposed amendment introduces a requirement to obtain the leave of the Court of Appeal in order to appeal against certain judgments or orders of the Supreme Court involving caveats under the *Real Property Act 1900*, the winding up of a corporation or an application to set aside a statutory demand made under the *Corporations Law*.

[8] Fourth Schedule Savings and transitional provisions

Insert after clause 1:

2 Courts Legislation Further Amendment Act 1995

The amendments made to section 101 (2) by the *Courts Legislation Further Amendment Act 1995* do not operate to require leave to appeal against a judgment or order of the Court if, when the judgment or order was made, an appeal lay as of right.

1.9 Veterinary Surgeons Act 1986 No 55

Section 34 Appeal against order of Disciplinary Tribunal

Omit section 34 (3).

Explanatory note

The proposed amendment limits the right to adduce further evidence in an appeal to the Supreme Court from the Veterinary Surgeon's Disciplinary Tribunal. At present, an appeal lies to the Supreme Court against any order of the Veterinary Surgeon's Disciplinary Tribunal. Presently, section 34 (3) of the *Veterinary Surgeons Act 1986* provides that an appeal is by way of a new hearing and further evidence may be given. The proposed amendment removes that provision from the Act. Section 75A of the *Supreme Court Act 1970* will then apply in relation to the appeal. Under that section, the Supreme Court may receive further evidence only on special grounds. Any appeal will be heard by way of rehearing.

[Minister's second reading speech made in—
Legislative Assembly on 22 November 1995
Legislative Council on 7 December 1995]