

[Act 2001 No 120]



New South Wales

# Crimes (Local Courts Appeal and Review) Bill 2001

## Explanatory note

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

This Bill is cognate with the *Criminal Procedure Amendment (Justices and Local Courts) Bill 2001*.

## Overview of Bill

The object of this Bill is to re-enact Parts 4A, 5, 5A and 5B of the *Justices Act 1902* in connection with the repeal of that Act by the *Justices Legislation Repeal and Amendment Bill 2001*.

The re-enacted provisions are substantially the same as those they replace, but the opportunity has been taken to simplify and standardise their form. They will apply to Local Courts and other courts of comparable jurisdiction, such as the Children's Court, a Warden's Court and a Licensing Court. A number of changes have been made. These are as follows:

- (a) The provisions of the proposed Act with respect to appeals from decisions of Local Courts deal only with appeals from criminal proceedings. They do not deal with appeals from other proceedings (such as proceedings under Part 6
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of the *Local Courts Act 1982*, as amended by the proposed *Justices Legislation Repeal and Amendment Act 2001*). However, consequential amendments to that Act and other Acts have the effect of applying Parts 2, 3, 4 and 5 of the proposed Act to such appeals. For the purpose of applying those Parts to appeals on non-criminal matters, the proposed Act authorises the making of regulations to prescribe the modifications to be made to those Parts in their application to such appeals.

- (b) The definition of *environmental offence*, relevant to the apportionment of jurisdiction between the Land and Environment Court and the Supreme Court, has been expanded so as to include any offence for which proceedings can be taken in the Land and Environment Court in the exercise of its summary jurisdiction.
- (c) As part of the process of simplification, the expressions “defendant” and “prosecutor” are used throughout the proposed Act (rather than “accused”, “applicant” and “informant” as they appear in some of the provisions being replaced).
- (d) As part of the process of simplification, references to the Attorney General have been removed where they would otherwise augment references to the Director of Public Prosecutions. There is instead a provision that simply states that any function of the Director of Public Prosecutions under the proposed Act may be exercised by the Attorney General.

The Bill also enacts various savings and transitional provisions.

## Outline of provisions

### **Part 1 Preliminary**

Part 1 (clauses 1–3) contains provisions with respect to the citation, commencement and interpretation of the proposed Act.

### **Part 2 Local Court review of Local Court decisions**

Part 2 corresponds to Part 4A of the *Justices Act 1902*, and contains provisions with respect to the review by a Local Court of Local Court decisions. Applications for annulment of conviction or sentence may be made to a Local Court (clause 4) or to the Minister (clause 5). Notice of when and where the application is to be

heard is to be given to the applicant and all interested parties (clause 6). A procedure is established for dealing with applications (clause 7), and circumstances specified in which an application is to be granted (clause 8). If an application is granted, the relevant conviction or sentence is annulled and the matter heard afresh (clause 9). On being annulled, a conviction or sentence ceases to have effect, and enforcement action taken in respect of any sentence is to be reversed (clause 10).

### **Part 3 Appeals from Local Court to District Court**

Part 3 corresponds to Part 5A of the *Justices Act 1902*, and contains provisions with respect to appeals from a Local Court to the District Court.

**Division 1** deals with appeals by defendants, Subdivision 1 with respect to the making of appeals and Subdivision 2 with respect to their determination.

The provisions of **Subdivision 1** prescribe the matters in respect of which an appeal may be made as of right (clause 11) and those that require leave (clause 12) (with a 28-day period for appeal in either case), provide for the making of late appeals and applications (clause 13), set out the procedure for lodging an appeal or application (clause 14) and for the subsequent notification of other parties (clause 15).

The provisions of **Subdivision 2** deal with the determination of applications for leave to appeal (clause 16), the manner of hearing an appeal against sentence (clause 17) or conviction (clause 18), the giving of evidence by witnesses (clause 19), the determination of appeals (clause 20), the notification procedures following dismissal of an appeal or application (clause 21) and the procedure for applying to have an order of dismissal revoked (clause 22).

**Division 2** deals with appeals by prosecutors, Subdivision 1 with respect to the making of appeals and Subdivision 2 with respect to their determination.

The provisions of **Subdivision 1** deal with the matters in respect of which an appeal may be made (clause 23) (with a 28-day period for appeal), set out the procedure for lodging an appeal (clause 24) and for the subsequent notification of other parties (clause 25).

The provisions of **Subdivision 2** deal with the manner of hearing an appeal (clause 26) and the determination of appeals (clause 27).

**Division 3** confers miscellaneous powers on the District Court with respect to appeals (clause 28), imposes certain limits on appeals (clause 29) and provides for the making of rules of court (clause 30).

## **Part 4 Appeals from Local Court to Land and Environment Court**

Part 4 corresponds to Part 5B of the *Justices Act 1902*, and contains provisions with respect to appeals from a Local Court to the Land and Environment Court.

**Division 1** deals with appeals by defendants, Subdivision 1 with respect to the making of appeals and Subdivision 2 with respect to their determination.

The provisions of **Subdivision 1** prescribe the matters in respect of which an appeal may be made as of right (clause 31) and those that require leave (clause 32) (with a 28-day period for appeal in either case), provide for the making of late appeals and applications (clause 33), set out the procedure for lodging an appeal or application (clause 34) and for the subsequent notification of other parties (clause 35).

The provisions of **Subdivision 2** deal with the determination of applications for leave to appeal (clause 36), the manner of hearing an appeal (clause 37), the giving of evidence by witnesses (clause 38), the determination of appeals (clause 39), the notification procedures following dismissal of an appeal or application (clause 40) and the procedure for applying to have an order of dismissal revoked (clause 41).

**Division 2** deals with appeals by prosecutors, Subdivision 1 with respect to the making of appeals and Subdivision 2 with respect to their determination.

The provisions of **Subdivision 1** deal with the matters in respect of which an appeal may be made as of right (clause 42) and those that require leave (clause 43) (with a 28-day period for appeal in either case), set out the procedure for lodging an appeal (clause 44) and for the subsequent notification of other parties (clause 45).

The provisions of **Subdivision 2** deal with the determination of applications for leave to appeal (clause 46), the manner of hearing an appeal (clause 47) and the determination of appeals (clause 48).

**Division 3** confers miscellaneous powers on the Land and Environment Court with respect to appeals (clause 49), imposes certain limits on appeals (clause 50) and provides for the making of rules of court (clause 51).

## **Part 5 Appeals from Local Court to Supreme Court**

Part 5 corresponds to Part 5 of the *Justices Act 1902*, and contains provisions with respect to appeals from a Local Court to the Supreme Court.

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**Division 1** deals with appeals by defendants, Subdivision 1 with respect to the making of appeals and Subdivision 2 with respect to their determination.

The provisions of **Subdivision 1** prescribe the matters in respect of which an appeal may be made as of right (clause 52) and those that require leave (clause 53).

The provisions of **Subdivision 2** deal with the determination of applications for leave to appeal (clause 54), the determination of appeals (clause 55).

**Division 2** deals with appeals by prosecutors, Subdivision 1 with respect to the making of appeals and Subdivision 2 with respect to their determination.

The provisions of **Subdivision 1** deal with the matters in respect of which an appeal may be made as of right (clause 56) and those that require leave (clause 57).

The provisions of **Subdivision 2** deal with the determination of applications for leave to appeal (clause 58), the determination of appeals (clause 59).

**Division 3** imposes certain limits on appeals (clause 60) and provides for the making of rules of court (clause 61).

## **Part 6 Provisions common to all appeals**

Part 6 contains provisions common to all appeals under proposed Parts 3, 4 and 5. These provisions:

- (a) allow courts to overlook or cure technical defects in notices of appeal and applications for leave to appeal (clause 62), and
- (b) provide for an automatic stay of execution of sentence following the lodgment of an appeal (clause 63), and
- (c) allow an appeal court dealing with an appeal in respect of one conviction or sentence to deal also with appeals against other convictions or sentences imposed at the same time (clause 64), and
- (d) provide that convictions and sentences are not to be set aside on narrow technical grounds (clause 65), and
- (e) allow any matter that is remitted to a Local Court following an appeal to be dealt with by another Magistrate if the original Magistrate is unavailable (clause 66), and
- (f) allow an appeal to be withdrawn with the leave of the appeal court (clause 67), and
- (g) allow an appeal court to backdate a conviction or sentence (clause 68), and

- (h) ensure that a good behaviour bond continues in force following confirmation of sentence (clause 69), and
- (i) restrict the circumstances in which costs can be awarded against the prosecutor (clause 70), and
- (j) prevent an appeal court from imposing a penalty that could not have been imposed by the Local Court (clause 71), and
- (k) regulate the form of an appeal court's costs orders (clause 72), and
- (l) ensure that a certificate from the registrar of an appeal court as to the appeal court's setting aside of a conviction or sentence is sufficient evidence that the conviction or sentence has been set aside (clause 73).

## **Part 7 Miscellaneous**

Part 7 contains a number of machinery provisions with respect to the operation and administration of the proposed Act. These provisions:

- (a) deal with applications and appeals in relation to children (clause 74), and
- (b) preserve the prerogative of mercy (clause 75), and
- (c) empower the Attorney General to exercise the functions conferred by the proposed Act on the Director of Public Prosecutions (clause 76), and
- (d) exclude a Magistrate's ministerial functions from the operation of the proposed Act (clause 77), and
- (e) confirm the paramountcy of the *Bail Act 1978* (clause 78), and
- (f) empower the Governor to make regulations for the purposes of the proposed Act (clause 79), and
- (g) give effect to a schedule of savings and transitional provisions (clause 80), and
- (h) require the proposed Act to be reviewed at the end of 5 years after it is assented to (clause 81).

## **Schedule 1 Savings, transitional and other provisions**

Schedule 1 contains consequential provisions of a savings or transitional nature, including a provision that allows the regulations under the proposed Act to make further such provision.