

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).

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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.

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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.

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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.
