

# Inferior Courts Procedure Act 1909

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**An Act to make further provision for the validity of the judicial proceedings of inferior Courts notwithstanding technical or formal errors**

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### Note

This Act is administered in the Ministry of Justice

## 1 Short Title and commencement

This Act may be cited as the Inferior Courts Procedure Act 1909, and shall come into operation on the 1st day of January 1910.

## 2 Interpretation

In this Act the term **inferior Court** means—

- (a) A District Court;
- (b) A Disputes Tribunal constituted under the Disputes Tribunals Act 1988;
- (c) A District Court Judge, Justice of the Peace, Community Magistrate, Coroner, or Referee of a Disputes Tribunal in respect of the exercise of any judicial authority conferred upon him or her by any Act.

This section was substituted, as from 1 November 1976, by section 45 Small Claims Tribunals Act 1976.

Paragraph (a) was substituted, as from 1 April 1980, by section 2 Inferior Courts Procedure Amendment Act 1979 (1979 No 129).

Paragraph (c) was amended, as from 1 April 1980, by section 2 Inferior Courts Procedure Amendment Act 1979 (1979 No 129) by substituting the words “District Court Judge” for the word “Magistrate”.

This section was further substituted, as from 1 March 1989, by section 82(2) Disputes Tribunals Act 1988 (1988 No 110).

Subsection (2)(c) was amended, as from 30 June 1998, by section 7 District Courts Amendment Act 1998 (1998 No 76), by inserting the words “Community Magistrate,”.

## 3 Waiver of errors in civil proceedings before an inferior Court

- (1) In any civil proceedings before an inferior Court any error, irregularity, omission, or defect, whether it relates to the jurisdiction of the Court, or to the procedure therein, or to any other matter, and whether it appears on the face of the record or of the proceedings or not, and whether it is within the knowledge of the Court or not, may be waived or acquiesced in by any party to the proceedings.
- (2) When any such waiver or acquiescence by any party has taken place, the proceedings shall be as valid in all respects as against that party as if no such error, irregularity, omission, or defect had existed.

- (3) Nothing in this section shall apply so as to make valid any judgment or order which on the face thereof is of such a nature that the Court giving or making the same could not under any circumstances have jurisdiction to give or make it.
- (4) No such waiver or acquiescence by a party shall so operate as to preclude the Court in which the proceedings are taking place from refusing, in the exercise of its discretion, to give or make any judgment or order, or to do any other act, which, in the absence of such waiver or acquiescence, would be invalid for want of jurisdiction or for any other reason.

**4 Grounds of jurisdiction need not be stated**

No judgment, order, conviction, warrant, or other document or instrument made or issued by any inferior Court, or in pursuance of any proceedings in any such Court, shall, in any proceedings whatsoever, be quashed, or declared invalid, or held to be invalid because that judgment, order, conviction, warrant, document, or instrument does not state on the face of it the grounds of the jurisdiction by virtue of which it was so made or issued, or because it states those grounds imperfectly or erroneously; and it shall be presumed that sufficient grounds of jurisdiction existed unless it is proved or appears on the face thereof that the judgment, order, conviction, warrant, document, or instrument was made or issued without or in excess of jurisdiction.

**5 Exemptions need not be negatived**

It shall not be necessary in any judgment, order, conviction, or warrant given, made, or issued by an inferior Court to negative (either specially or by general words) any exemption, exception, proviso, or condition expressed in the statutes, regulations, bylaws, or other authorities in pursuance of which the judgment, order, conviction, or warrant is given, made, or issued.

**6 Sufficiency of description of offence**

No conviction by an inferior Court for any offence shall in any proceedings whatever be quashed, or declared to be invalid, or held to be invalid, because of any error or omission in

the description of the offence, provided that the conviction sufficiently describes the offence to enable it to be identified by reasonable intendment.

**7 Amendment by striking out part of conviction, etc**

If on any appeal, whether by way of case stated or otherwise, or on any application for a writ of certiorari or *habeas corpus*, or on the return of any such writ, or on any application for a writ of prohibition, or on any application to quash or discharge any conviction, order, judgment, or warrant made, given, or issued by any inferior Court, it is found that there is any ground of invalidity which affects any such conviction, order, judgment, or warrant in part only, the Court in which that appeal or application is heard or by which that writ has been issued may, on such terms as to costs and otherwise as it thinks fit, amend the conviction, order, judgment, or warrant by striking out that part thereof if it is severable from the residue, and may adjudicate thereon accordingly as if the part so struck out had not been inserted therein.

**8 Amendment by insertion of matter omitted**

If on any appeal, whether by way of case stated or otherwise, or on any application for a writ of certiorari or *habeas corpus*, or on the return of any such writ, or on any application for a writ of prohibition, or on any application to quash or discharge any conviction, order, judgment, or warrant made, given, or issued by any inferior Court, any objection is made on account of any omission or mistake in the drawing up of any such conviction, order, judgment, or warrant, and it is shown to the satisfaction of the Court in which that appeal or application is heard or by which that writ is issued that sufficient grounds were in proof before the inferior Court by which the conviction, order, judgment, or warrant was made, given, or issued, to have authorised the drawing up thereof free from omission or mistake, the Court in which that appeal is heard or by which that writ is issued may, on such terms as to costs and otherwise as it thinks fit, amend the conviction, order, judgment, or warrant, and adjudicate thereupon as if no such mistake or omission had existed.

**9 Amendment of convictions or orders for 2 offences or matters**

If on any appeal, whether by way of case stated or otherwise, or on any application for a writ of certiorari or *habeas corpus*, or on the return of any such writ, or on any application for a writ of prohibition, or on any application to quash or discharge any conviction, order, judgment, or warrant made, given, or issued by an inferior Court, an objection is made that any such conviction, order, judgment, or warrant wrongly comprises more than one offence or matter, whether alternatively or cumulatively, the Court in which that appeal or application is heard or by which that writ has been issued may, on such terms as to costs and otherwise as it thinks fit, amend the conviction, order, judgment, or warrant in that respect by striking out such part thereof as the Court thinks fit, and may adjudicate thereon as if that part had not been inserted therein.

**10 Amendment of conviction by substituting one offence for another**

If on any appeal, whether by way of case stated or otherwise, from a conviction made by an inferior Court for any offence it appears to the Court in which the appeal is heard that the evidence in the inferior Court was insufficient to support a conviction for that offence, but was sufficient to support a conviction for some offence of a similar character within the jurisdiction of the inferior Court, and that the appellant has not been misled or prejudiced in his defence by the course of trial in the inferior Court, the Court in which the appeal is heard may, on such terms as to costs or otherwise as it thinks fit, amend the conviction by substituting the last-mentioned offence for the offence mentioned in the conviction, and shall thereupon adjudicate upon the appeal in the same manner as if the conviction had originally been made in its amended form on an information duly charging the appellant with the offence so substituted.

**11 Convictions, etc, may be remitted to inferior Court for amendment**

In any of the cases mentioned in any of the 4 last preceding sections, the Court in which the appeal or application is heard or by which the writ is issued may, on such terms as to costs and otherwise as it thinks fit, instead of amending the conviction, order, judgment, or warrant, remit the same for amendment to the inferior Court by which the same was made, given, or issued, and may thereafter, if the same is duly amended accordingly, adjudicate thereupon as if no such mistake or omission had existed.

**12 Power of Justices and District Court Judges to amend convictions or orders**

- (1) If any omission or mistake is made in any conviction or order drawn up by any Justice of the Peace or District Court Judge, and sufficient grounds were in proof before him to have authorised the drawing up of that conviction or order free from that omission or mistake, the Justice or District Court Judge may at any time thereafter, before the conviction or order has been quashed by the High Court or by any other Court having jurisdiction in that behalf, draw up an amended conviction or order in lieu of that in which the omission or mistake exists, and lodge the amended conviction or order with the Registrar of the High Court, to be filed by him in accordance with the Summary Proceedings Act 1957.
- (1A) If any omission or mistake is made in any conviction or order drawn up by any Community Magistrate, and sufficient grounds were in proof before that Community Magistrate to have authorised the drawing up of that conviction or order free from that omission or mistake, that Community Magistrate may at any time thereafter, before the conviction or order has been quashed by a District Court presided over by a District Court Judge or by any other Court having jurisdiction in that behalf, draw up an amended conviction or order in lieu of that in which the omission or mistake exists, and lodge the amended conviction or order with the Registrar of the District Court, to be filed by that Registrar in accordance with the Summary Proceedings Act 1957.

- (2) The powers hereby conferred upon a Justice of the Peace or Community Magistrate or District Court Judge may be exercised notwithstanding the fact that the defective conviction or order has been theretofore already lodged and filed in the High Court, or removed into the High Court or any other Court of competent jurisdiction in that behalf by certiorari or otherwise, and notwithstanding the fact that proceedings by way of certiorari or otherwise have been theretofore already commenced in respect of that conviction or order.
- (3) The powers hereby conferred upon a Justice of the Peace or Community Magistrate or District Court Judge may be exercised by him from time to time in respect of the same conviction or order.
- (4) When any proceedings are already pending in the High Court or any other Court in respect of the validity of any conviction or order at the time when any such amended conviction or order is substituted therefor under the provisions hereinbefore contained in that behalf, the said Court may adjudicate in the matter as if the amended conviction or order had been substituted for the defective conviction or order before the commencement of those proceedings, and as if those proceedings related to the amended conviction or order accordingly.

The references in this section to “High Court” and “District Court Judge” replace earlier references to “Supreme Court” and “Magistrate”, pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124) and section 18(1) District Courts Amendment Act 1979 (1979 No 125), respectively.

Subsection (1A) was inserted, as from 30 June 1998, by section 7 District Courts Amendment Act 1998 (1998 No 76).

Subsections (2) and (3) were amended, as from 30 June 1998, by section 7 District Courts Amendment Act 1998 (1998 No 76), by inserting the words “or Community Magistrate”.

### **13 Informations and complaints may be in the alternative** *[Repealed]*

Section 13 was repealed, as from 1 April 1958, by section 214(1) Summary Proceedings Act 1957.

**14 This Act not to restrict other statutory provisions**

Nothing in this Act shall be so construed as to restrict or exclude the operation of any other statutory provisions for the amendment or validity of the proceedings of an inferior Court.

**15 Repeals**

- (1) The Acts mentioned in the Schedule hereto are hereby repealed to the extent indicated in that Schedule.
- (2) The repeal of sections 318 to 322 of the Justices of the Peace Act 1908 shall not be so construed as to take away or affect the powers of the High Court to issue a writ of prohibition in respect of any proceedings of Justices of the Peace or District Court Judges without or in excess of their jurisdiction in the same manner in which that Court might have heretofore issued such a writ independently of the sections so repealed.

The Justices of the Peace Act 1908 referred to in subsection (2) was repealed by section 390 Justices of the Peace Act 1927, and that Act was repealed by section 214(1) Summary Proceedings Act 1957.

The reference in subsection (2) to “the High Court” replaces an earlier reference to “the Supreme Court”, pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

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**Schedule**  
**Enactments repealed**

Section 15(1)

- 1908, No 89—The Judicature Act 1908: Section 76.
- 1908, No 91—The Justices of the Peace Act 1908: Section 324, and sections 318 to 322.
- 1908, No 120—The Mining Act 1908: Section 354.