

New South Wales

Courts and Other Justice Portfolio Legislation Amendment Bill 2015

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Civil Procedure Act 2005* in relation to payments attached to garnishee orders, persons under legal incapacity, judgment debts and interest paid on orders for costs,
- (b) to amend the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* as a consequence of amendments to the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth in relation to conditional cultural exemptions,
- (c) to amend the *Community Services (Complaints, Reviews and Monitoring) Act 1993* to extend reporting periods for child deaths and to require reports to be on all child deaths during the reporting period,
- (d) to amend the *Crimes (Sentencing Procedure) Act 1999* to make it clear that a court may consider work arrangements in another State or Territory when considering whether to make a community service order with respect to an offender,
- (e) to amend the *Criminal Procedure Act 1986* to clarify provisions relating to the commencement of proceedings for offences (including common law offences) by police officers and public officers,
- (f) to amend the *Evidence (Audio and Audio Visual Links) Act 1998* to make it clear that all parties' interests must be considered before the court makes a direction that a person may give evidence or make a submission by audio link or audio visual link,

- (g) to amend the *Fines Act 1996* to make it clear that a monetary penalty imposed by a court for contempt is a fine that may be collected by the State Debt Recovery Office,
- (h) to amend the *Government Information (Public Access) Act 2009* to provide that certain information held by the State Parole Authority is information for which there is a conclusive presumption against disclosure,
- (i) to amend the *Legal Aid Commission Act 1979* to ensure that the rights of appeal under that Act extend to the determination or redetermination of online applications,
- (j) to amend the *Legal Profession Uniform Law Application Act 2014* with respect to procedures for costs assessment and the appointment of acting and retired judges to the Legal Profession Admission Board,
- (k) to provide for fees for applications for orders under the *Community Land Management Act 1989* and the *Strata Schemes Management Act 1996* to be set under the *Civil and Administrative Tribunal Act 2013*.

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 the date of assent to the proposed Act, other than Schedule 1.6 which will commence on 1 January 2016.

Schedule 1 Amendments

Schedule 1.1, 1.4, 1.5, 1.15 and 1.16 transfer the power to set fees for applying for certain orders under the *Community Land Management Act 1989* and the *Strata Schemes Management Act 1996* to the *Civil and Administrative Tribunal Act 2013*.

Schedule 1.2 [1] amends the *Civil Procedure Act 2005* to provide that the approval of the court is not required for the compromise or settlement of any matter in dispute in proceedings commenced by or on behalf of, or against, a person under legal incapacity if, on the day the agreement for the compromise or settlement is made, that person has attained the age of 18 years and is not otherwise a person of legal incapacity or a person who is incapable of managing his or her own affairs.

Schedule 1.2 [2] amends the *Civil Procedure Act 2005* to provide for interest to be payable on costs ordered by a court at the same rate of interest as for judgment debts and from the date of the costs order, unless the court otherwise orders. Currently, interest is at the discretion of the court and is calculated as from the date or dates on which the costs concerned were paid.

Schedule 1.2 [3] amends the *Civil Procedure Act 2005* to make it clear that a garnishee is not required to pay an amount under any garnishee order that exceeds the greatest amount payable under a limited garnishee order attached to a wage or salary in respect of which other garnishee orders are attached.

Schedule 1.2 [4] amends the *Civil Procedure Act 2005* to enable a garnishee to retain, after the payment of each amount attached under a garnishee order, up to the amount prescribed by the *Uniform Civil Procedure Rules 2005* to cover the garnishee's expenses in complying with the garnishee order. The amount retained is in addition to the amount attached under the order. Currently, the garnishee may retain that amount out of each amount attached under the garnishee order, provided that the balance of the amount is paid to the judgment creditor within the time required by the Act.

Schedule 1.2 [5] amends the *Civil Procedure Act 2005* to insert a note to emphasise that a judgment debt can only be enforced by a charging order in the Supreme Court or the District Court, and not the Local Court.

Schedule 1.2 [6] inserts a savings and transitional provision consequent on the amendments made by **Schedule 1.2** to the proposed Act.

Schedule 1.3 amends the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* to make changes as a consequence of changes to the National Classification Scheme in respect of conditional cultural exemptions under the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth. Conditional cultural exemptions exempt certain demonstrations, exhibitions or screenings held at certain registered events and by approved cultural institutions from the provisions of the Act. **Schedule 1.3 [6]** makes a consequential amendment. **Schedule 1.3 [7]** provides for a transitional matter consequent on the changes.

Schedule 1.6 amends the *Community Services (Complaints, Reviews and Monitoring) Act 1993* to require the Child Death Review Team whose convenor is the Ombudsman to report to Parliament every 2 years (instead of annually) and to report on child deaths that occurred during the reporting period (instead of deaths that were registered with the Team during the reporting period). The report must be provided as soon as practicable after 30 June following the reporting period (instead of within 4 months of the end of the period). The amendment aligns the child death review reporting requirements with the Ombudsman's reviewable death reporting requirements. As a transitional measure the amendment also requires the Team to report on child deaths that occurred during 2015 as soon as practicable after 30 June 2016 (instead of within 4 months after 30 June 2016 on child deaths that were registered with the Team).

Schedule 1.7 [1] amends the *Crimes (Sentencing Procedure) Act 1999* to provide that an intensive correction order commences on the date on which it is made. **Schedule 1.7 [2]** amends that Act to provide that a community service order may be made if arrangements exist in another State or Territory for the offender to perform community service work if the offender is able and willing to travel to that State or Territory.

Schedule 1.8 amends the *Criminal Procedure Act 1986* to clarify provisions relating to the commencement of proceedings for offences (including common law offences) by police officers and public officers. In particular, the amendments ensure that police officers and public officers have authority to commence proceedings for common law offences.

Schedule 1.9 amends the *Evidence (Audio and Audio Visual Links) Act 1998* to make it clear that the court must consider all parties to the proceeding in determining whether a direction to give evidence or make a submission by audio link or audio visual link would be unfair.

Schedule 1.10 extends the definition of *fine* in section 4 of the *Fines Act 1996* to include any monetary penalty imposed by a court for contempt of court, having the effect of enabling the State Debt Recovery Office to collect that penalty.

Schedule 1.11 amends the *Government Information (Public Access) Act 2009* to provide that the disclosure of information prohibited by section 194 of the *Crimes (Administration of Sentences) Act 1999* (relating to information held by the State Parole Authority) is information for which there is a conclusive presumption of overriding public interest against disclosure.

Schedule 1.12 [2] amends the *Legal Aid Commission Act 1979* to make it clear that the rights of appeal extend to the determination or redetermination of online applications. **Schedule 1.12 [1]** also makes it clear that if there is a right of appeal, the applicant must be given notice of that right and the reasons for the determination or redetermination must be recorded.

Schedule 1.13 [1] and [4] amend the *Legal Profession Uniform Law Application Act 2014* to enable costs assessors to hold oral hearings into applications for assessment of legal costs, but only in accordance with the costs assessment rules, and to enable those rules to confer power on costs assessors to take evidence orally or in writing and to examine witnesses and administer oaths.

Schedule 1.13 [2] and 1.14 transfer from the *Legal Profession Uniform Law Application Regulation 2015* to section 83 of the *Legal Profession Uniform Law Application Act 2014* the requirement that a party to a costs assessment apply for any review of the determination of the costs assessor within 30 days.

Schedule 1.13 [3] amends the *Legal Profession Uniform Law Application Act 2014* to confer an additional right to appeal to the Supreme Court against a decision on a review of a costs assessment. Leave is required if the disputed costs are less than \$100,000. A requirement to obtain

leave to appeal is also imposed for appeals to the District Court if the disputed costs are less than \$25,000.

Schedule 1.13 [5] amends the *Legal Profession Uniform Law Application Act 2014* to allow the Chief Justice of the Supreme Court to nominate an acting or retired judge of the Supreme Court for membership of the NSW Admission Board.

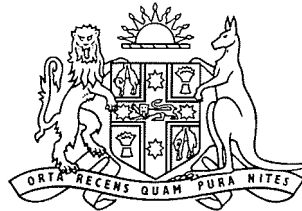


New South Wales

Courts and Other Justice Portfolio Legislation Amendment Bill 2015

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New South Wales

Courts and Other Justice Portfolio Legislation Amendment Bill 2015

No. , 2015

A Bill for

An Act to amend various Acts relating to courts and other Justice portfolio matters.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Courts and Other Justice Portfolio Legislation Amendment Act 2015</i> .	3
2 Commencement	4
(1) This Act commences on the date of assent to this Act, except as provided by subsection (2).	5 6
(2) Schedule 1.6 commences on 1 January 2016.	7

Schedule 1 Amendments

1.1 Civil and Administrative Tribunal Regulation 2013

[1] Clause 5 Fees generally

Omit clause 5 (2).

[2] Schedule 2 Fees

Insert “, unless otherwise prescribed by this Schedule” after “strata proceedings” in Item 2 of the table.

[3] Schedule 2

Insert at the end of the table:

13	Lodgment of an application under section 62 of the <i>Community Land Management Act 1989</i> for an order under Division 3 or Division 4 of Part 4 of the Act for settlement of a dispute or complaint:		
(a)	if the application includes an application for an interim order under section 72 of that Act	\$163	—
(b)	if the application does not include an application referred to in paragraph (a)	\$81	—
14	Lodgment of an application under section 124 of the <i>Strata Schemes Management Act 1996</i> for order by an Adjudicator	\$81	—
15	Lodgment of an application under section 124 of the <i>Strata Schemes Management Act 1996</i> requesting an interim order by an Adjudicator	\$81	—

1.2 Civil Procedure Act 2005 No 28

[1] Section 76 Settlement of proceedings commenced by or on behalf of, or against, person under legal incapacity

Insert after section 76 (3):

- (3A) However, the approval of the court is not required in relation to any agreement for the compromise or settlement of any matter in dispute in proceedings commenced by, or on behalf of, or against, a person under legal incapacity if, on the day the agreement for the compromise or settlement is made, that person has attained the age of 18 years and is not otherwise a person referred to in subsection (1). Accordingly, subsections (4)–(6) do not apply in relation to any such agreement.

[2] Section 101 Interest after judgment

Omit section 101 (4) and (5). Insert instead:

- (4) Unless the court orders otherwise, interest is payable on an amount payable under an order for the payment of costs.
- (5) Interest on an amount payable under an order for the payment of costs is to be calculated, at the prescribed rate or at any other rate that the court orders, as from the date the order was made or any other date that the court orders.

[3] Section 121 Maximum payment under one of several concurrent garnishee orders	1
Omit section 121 (1) and (2). Insert instead:	2
(1) This section applies to a garnishee in respect of a wage or salary that is attached by one or more garnishee orders of which one or more (but not all) are limited garnishee orders.	3 4 5
(2) Unless the court orders otherwise, a garnishee to whom this section applies is not required to pay an amount under any garnishee order that exceeds the greatest amount payable by the garnishee under any limited garnishee order attached to the relevant wage or salary.	6 7 8 9
Note. Section 122 specifies the maximum total payment payable under one or more garnishee orders in respect of a wage or salary.	10 11
[4] Section 123 Payments by garnishee	12
Omit section 123 (2). Insert instead:	13
(2) The garnishee may, after the payment of each amount attached under the garnishee order, retain up to the amount prescribed by the uniform rules to cover the garnishee's expenses in complying with the garnishee order. The amount retained by the garnishee is in addition to the amount attached under the order.	14 15 16 17 18
(2A) If sufficient funds are not available to cover the prescribed amount referred to in subsection (2), the garnishee may retain that amount as soon as sufficient funds become available.	19 20 21
[5] Section 126 Operation of charging order in relation to specified security interests	22
Insert at the end of the section:	23
Note. Section 106 (1) (c) provides that a judgment debt may be enforced by a charging order only in the case of a judgment of the Supreme Court or the District Court.	24 25
[6] Schedule 6 Savings, transitional and other provisions	26
Insert at the end of the Schedule:	27
Part 8 Provisions consequent on enactment of Courts and Other Justice Portfolio Legislation Amendment Act 2015	28 29 30
21 Pending proceedings	31
The amendments made to this Act by Schedule 1.2 to the <i>Courts and Other Justice Portfolio Legislation Amendment Act 2015</i> do not extend to proceedings commenced before the commencement of that Subschedule and those proceedings may continue as if those amendments had not been enacted.	32 33 34 35
1.3 Classification (Publications, Films and Computer Games) Enforcement Act 1995 No 63	36 37
[1] Section 4 Definitions	38
Insert in alphabetical order in section 4 (1):	39
<i>subject to a conditional cultural exemption</i> has the same meaning as in the Commonwealth Act.	40 41

[2] Section 4A Application of Act	1
Insert at the end of section 4A (b):	2
, or	3
(c) a publication, film or computer game that is subject to a conditional cultural exemption.	4
Note. A publication, film or computer game is subject to a conditional cultural exemption only in relation to the relevant demonstration, exhibition or screening (see sections 6C and 6E of the Commonwealth Act).	5
[3] Section 46 Calling in submittable publications for classification	6
Insert at the end of section 46 (1) (b):	7
and	8
(c) the publication is not subject to a conditional cultural exemption,	9
[4] Section 46A Calling in films for classification	10
Insert at the end of section 46A (1) (b):	11
and	12
(c) the film is not subject to a conditional cultural exemption,	13
[5] Section 47 Calling in computer games for classification	14
Insert at the end of section 47 (1) (b):	15
and	16
(c) the computer game is not subject to a conditional cultural exemption,	17
[6] Section 51 Exemptions	18
Omit the section.	19
[7] Schedule 1 Savings and transitional provisions	20
Insert at the end of the Schedule:	21
Part 7 Provisions consequent on Courts and Other Justice Portfolio Legislation Amendment Act 2015	22
14 Exemptions	23
(1) An exemption under section 51 that was in force immediately before the repeal of that section by the <i>Courts and Other Justice Portfolio Legislation Amendment Act 2015</i> remains in force according to its terms and section 51, as in force immediately before its repeal, continues to apply in respect of that exemption.	24
(2) If an application made under section 51 has not been decided before the repeal of that section, the application is taken never to have been made.	25
1.4 Community Land Management Act 1989 No 202	26
Section 63 Application for order to be made to principal registrar	27
Omit “prescribed by the regulations” from section 63 (1) (c).	28
Insert instead “prescribed under the <i>Civil and Administrative Tribunal Act 2013</i> ”.	29

1.5 Community Land Management Regulation 2007	1
Schedule 2 Fees	2
Omit the matter relating to Item 3.	3
1.6 Community Services (Complaints, Reviews and Monitoring) Act 1993 No 2	4
Section 34G Biennial child death review report	6
Omit section 34G (1). Insert instead:	7
(1) The Team is required to prepare and to provide to the Presiding Officer of each House of Parliament:	8
(a) as soon as practicable after 30 June 2016, a report consisting of data collected and analysed in relation to child deaths that occurred during 2015, and	9
(b) as soon as practicable after 30 June 2018 (and as soon as practicable after 30 June every 2 years after that), a report consisting of data collected and analysed in relation to child deaths that occurred during the previous 2 calendar years.	10
1.7 Crimes (Sentencing Procedure) Act 1999 No 92	17
[1] Section 71	18
Omit the section. Insert instead:	19
71 Commencement of ICOs	20
An intensive correction order commences on the date on which it is made.	21
[2] Section 86 Suitability of offender for community service work	22
Insert “, or in another State or Territory (but only if the offender is able and willing to travel to that State or Territory),” after “intends to reside” in section 86 (1) (c).	23
1.8 Criminal Procedure Act 1986 No 209	25
[1] Section 3 Definitions	26
Insert “(including a common law offence)” after “State” in the definition of <i>offence</i> in section 3 (1).	27
[2] Section 48 Commencement of proceedings by police officer or public officer	29
Omit “If a police officer or public officer is authorised under section 14 of this Act or under any other law to commence committal proceedings, the officer may commence”.	30
Insert instead “A police officer or public officer may commence”.	31
[3] Section 49 Commencement of private prosecutions	33
Omit “If a person other than a police officer or public officer is authorised under section 14 of this Act or under any other law to commence committal proceedings against a person for an offence, the person may commence the proceedings” from section 49 (1).	34
Insert instead “A person other than a police officer or public officer may commence committal proceedings against a person for an offence”.	35
	36
	37
	38

[4] Section 173 Commencement of proceedings by police officer or public officer	1
Omit “If a police officer or public officer is authorised under section 14 of this Act or under any other law to commence proceedings for an offence against a person, the officer may commence the proceedings”.	2
	3
	4
Insert instead “A police officer or public officer may commence proceedings for an offence against a person”.	5
	6
[5] Section 174 Commencement of private prosecutions	7
Omit “If a person other than a police officer or public officer is authorised under section 14 of this Act or under any other law to commence proceedings for an offence against a person, the person may commence the proceedings” from section 174 (1).	8
	9
	10
Insert instead “A person other than a police officer or public officer may commence proceedings against a person for an offence”.	11
	12
1.9 Evidence (Audio and Audio Visual Links) Act 1998 No 105	13
Section 5B Taking evidence and submissions from outside courtroom or place where court is sitting—proceedings generally	14
	15
Omit “the party” from section 5B (2) (c). Insert instead “any party to the proceeding”.	16
1.10 Fines Act 1996 No 99	17
Section 4 Meaning of “fine”	18
Insert after section 4 (1) (a):	19
(a1) any monetary penalty imposed by a court for contempt of court, or	20
1.11 Government Information (Public Access) Act 2009 No 52	21
Schedule 1 Information for which there is conclusive presumption of overriding public interest against disclosure	22
	23
Insert “section 194 (Security of certain information) and” after “ <i>Crimes (Administration of Sentences) Act 1999—</i> ” in clause 1 (1).	24
	25
1.12 Legal Aid Commission Act 1979 No 78	26
[1] Section 34 Determination of application	27
Omit section 34 (4) and (5). Insert instead:	28
(4) If there is a right of appeal to a Legal Aid Review Committee against a determination or redetermination of an application:	29
	30
(a) the notice required under subsection (2) must inform the applicant of that right, and	31
	32
(b) the reasons for the determination or redetermination are to be recorded.	33
[2] Section 56 Appeals	34
Insert “(including the determination or redetermination of an online application)” after “application” in section 56 (1) (a).	35
	36

1.13 Legal Profession Uniform Law Application Act 2014 No 16	1
[1] Section 69 Consideration of applications	2
Insert after section 69 (1):	3
(1A) A costs assessor may hold an oral hearing for the purposes of an application in accordance with the costs assessment rules.	4 5
[2] Section 83 Application by party for review	6
Omit section 83 (1). Insert instead:	7
(1) A party to a costs assessment may, within 30 days after the issue of a certificate of determination by a costs assessor, apply for a review of the determination.	8 9
(1A) The Manager, Costs Assessment may extend the period for lodging an application.	10 11
[3] Section 89 Appeals on matters of law and fact	12
Omit section 89 (1)–(3). Insert instead:	13
(1) A party to a costs assessment that has been the subject of a review under this Part may appeal against a decision of the review panel concerned to:	14 15
(a) the District Court, in accordance with the rules of the District Court, but only with the leave of the Court if the amount of costs in dispute is less than \$25,000, or	16 17 18
(b) the Supreme Court, in accordance with the rules of the Supreme Court, but only with the leave of the Court if the amount of costs in dispute is less than \$100,000.	19 20 21
(2) The District Court or the Supreme Court (as the case requires) has all the functions of the review panel.	22 23
(3) The Supreme Court may, on the hearing of an appeal or application for leave to appeal under this section, remit the matter to the District Court for determination by that Court in accordance with any decision of the Supreme Court and may make such other order in relation to the appeal as the Supreme Court thinks fit.	24 25 26 27 28
(3A) The Supreme Court may, before the conclusion of any appeal or application for leave to appeal under this section in the District Court, order that the proceedings be removed into the Supreme Court.	29 30 31
[4] Section 93 Costs assessment rules	32
Insert after section 93 (1) (b) (i):	33
(ia) conferring power on costs assessors to take evidence orally or in writing and to examine witnesses and administer oaths, and	34 35
[5] Schedule 3 Legal Profession Admission Board	36
Insert after clause 1 (2):	37
(3) A reference in this clause to a Judge of the Supreme Court includes a reference to the following:	38 39
(a) an acting Judge appointed under section 37 of the <i>Supreme Court Act 1970</i> ,	40 41
(b) a retired Judge (within the meaning of the <i>Judges' Pensions Act 1953</i>) of the Supreme Court.	42 43

1.14 Legal Profession Uniform Law Application Regulation 2015	1
Clause 45 Application for review of determination	2
Omit clause 45 (2) and (3).	3
1.15 Strata Schemes Management Act 1996 No 138	4
Section 124 Applications for order to be made to principal registrar	5
Omit “prescribed fee” from section 124 (c).	6
Insert instead “fee prescribed under the <i>Civil and Administrative Tribunal Act 2013</i> ”.	7
1.16 Strata Schemes Management Regulation 2010	8
Schedule 1 Fees	9
Omit the matter relating to Items 1 and 2.	10