



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.