



New South Wales

# Courts Legislation Amendment Bill 2004

## Explanatory note

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

## Overview of Bill

The object of this Bill is to make miscellaneous amendments to the following Acts:

- (a) the *Children (Criminal Proceedings) Act 1987*,
- (b) the *Commercial Arbitration Act 1984*,
- (c) the *Crimes (Local Courts Appeal and Review) Act 2001*,
- (d) the *Crimes (Sentencing Procedure) Act 1999*,
- (e) the *Criminal Appeal Act 1912*,
- (f) the *Criminal Procedure Act 1986*,
- (g) the *District Court Act 1973*,
- (h) the *Jury Act 1977*,
- (i) the *Protected Estates Act 1983*.

## 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, except for Schedule 5 (and section 3 in its application to that Schedule), on the date on which the proposed Act receives the Royal Assent. Schedule 5 and section 3 in its application to that Schedule are to commence on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the amendments to the Acts set out in Schedules 1–9.

### **Schedule 1 Amendment of Children (Criminal Proceedings) Act 1987 No 55**

**Schedule 1** amends section 33 of the *Children (Criminal Proceedings) Act 1987* so as to remove the need for a person who is on a good behaviour bond as a condition of their release by the Children’s Court to inform that Court of any change in the person’s residential address. (The *Criminal Legislation Amendment Act 2001* made a similar amendment to the *Crimes (Sentencing Procedure) Act 1999* in respect of adults on good behaviour bonds.)

### **Schedule 2 Amendment of Commercial Arbitration Act 1984 No 160**

**Schedule 2** amends the *Commercial Arbitration Act 1984* by way of statute law revision in consequence of clause 45 of Schedule 8 to the *Legal Profession Act 1987 (the LPA)*. That clause provides that a reference in (among other things) any Act to the taxation of costs (however expressed) is taken to be a reference to the assessment of costs under Division 6 of Part 11 of the LPA.

**Schedule 2 [1]** inserts a definition of *assess* in section 4 of the Act.

At present, section 34 (1) (b) of the Act permits an arbitrator or umpire in an arbitration to “tax or settle” the amount of costs (or any part of those costs) to be paid in the arbitration. **Schedule 2 [2]** provides, instead, for the arbitrator or umpire to settle the costs or arrange for their assessment under the LPA.

**Schedule 2 [3]** replaces a reference to costs that are “taxed” with a reference to costs that are “assessed”.

**Schedule 2 [4]** and **[5]** replace references relating to the taxing of costs in the relevant Court with references to their being assessed under the LPA.

At present, section 35 (3) provides that the arbitrator or umpire and parties to the relevant arbitration agreement are entitled to appear and be heard on any taxation of costs. **Schedule 2 [6]** amends section 35 (3) so as to provide, instead, that those persons are entitled to make written submissions to the costs assessor in respect of the assessment of costs under the LPA (there being no appearances in the costs assessment process).

**Schedule 2 [7]** replaces a reference to such sum as may be found “reasonable on taxation” with a reference to such sum as may be found “fair and reasonable on assessment”.

**Schedule 2 [8]** makes it clear that, for the purposes of sections 34 and 35, Division 6 of Part 11 of the *Legal Profession Act 1987* applies with the necessary modifications.

### **Schedule 3 Amendment of Crimes (Local Courts Appeal and Review) Act 2001 No 120**

Section 4 of the *Crimes (Local Courts Appeal and Review) Act 2001* permits a defendant who was not in appearance before a Local Court when that court convicted, or imposed a sentence on, the defendant to apply to the same Local Court for annulment of the conviction or sentence. **Schedule 3 [1]** inserts proposed section 11A in the Act to permit the defendant to appeal to the District Court against any refusal of such an application by the Local Court.

**Schedule 3 [2]–[5]** make consequential amendments.

**Schedule 3 [6]** provides for the determination of the application by the District Court, requiring that Court to remit the matter to the Local Court if it grants the application. The Local Court is then to determine the matter as if the application under section 4 had been granted: that is, the Local Court must deal with the original matter afresh.

**Schedule 3 [7]** provides for the making of savings and transitional regulations consequent on the other amendments made by the Schedule.

**Schedule 3 [8]** inserts a transitional provision.

### **Schedule 4 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92**

At present, various provisions of the *Crimes (Sentencing Procedure) Act 1999* require certain documents (such as warrants of commitment) to be in (or to the effect of) “the form prescribed by the regulations”. **Schedule 4 [1]–[3]** amend the provisions concerned so as to remove that requirement.

**Schedule 4 [6]** inserts a new regulation-making power in the Act, which enables the regulations under the Act to make provision for or with respect to the following:

- (a) matter that is to be contained in any document under the Act,
- (b) requiring any such document to be in a form approved by the Minister,
- (c) the manner of service of any such document.

Section 86 (1) (e) of the Act currently prevents a court from making a community service order with respect to an offender unless the court is satisfied that (among other things) the offender has signed an undertaking (in the form prescribed by the regulations) to comply with the offender's obligations under the order. **Schedule 4 [4]** repeals section 86 (1) (e), and **Schedule 4 [5]** effectively replaces the repealed paragraph with a new subsection (section 86 (5)). The new subsection requires the offender to sign such an undertaking (without any reference to a prescribed form) as soon as practicable after the order is made. If the offender refuses, the court may revoke the community service order and impose such other sentence as it considers appropriate.

**Schedule 4 [7]** provides for the making of savings and transitional regulations consequent on the other amendments made by the Schedule.

**Schedule 4 [8]** inserts a transitional provision.

## **Schedule 5 Amendment of Criminal Appeal Act 1912 No 16**

At present, section 10 of the *Criminal Appeal Act 1912* (Method and time for making appeal) requires all documentation in relation to appeals to the Court of Criminal Appeal (such as notices of intention to appeal) to be given to that Court. **Schedule 5 [4]** repeals and re-enacts section 10 so as to require, instead, that the documentation be lodged with any of the following:

- (a) the registrar of the Court of Criminal Appeal,
- (b) the person in charge of the place where the appellant is in custody,
- (c) the registrar of the *court of trial* (that is, the court that dealt with the matter that gave rise to the appeal), unless that court was the Drug Court or the Land and Environment Court.

**Schedule 5 [1]–[3]** make consequential amendments.

**Schedule 5 [5]** repeals and re-enacts section 19 (3) (as section 19 (3) and (4)) so as to update outdated references to “prisoners” and “governors” of “prisons”.

**Schedule 5 [6]** inserts a transitional provision.

## **Schedule 6 Amendment of Criminal Procedure Act 1986 No 209**

**Schedule 6 [1]** and **[2]** (relating to committal proceedings) and **[3]** and **[4]** (relating to trial proceedings) make it clear that both magistrates and registrars of the relevant court may extend the period during which court attendance notices in respect of such proceedings are required to be served.

**Schedule 6 [5]–[7]** make it clear that certain provisions of the Act that relate to public officers (as defined in the Act) in their capacity as prosecutors in criminal proceedings extend to police officers in that capacity. The sections concerned are section 218 (which provides an indemnity from personal liability for costs awarded against a public officer prosecutor), section 222 (which permits a public officer prosecutor to issue subpoenas in connection with the proceedings) and section 224 (which dispenses with the requirement for the tendering of conduct money in relation to a subpoena issued by a public officer prosecutor).

## **Schedule 7 Amendment of District Court Act 1973 No 9**

**Schedule 7 [1]** inserts a definition of *Principal Registrar* (being “the registrar for Sydney”) in section 4 (Definitions: general) of the Act. **Schedule 7 [3]** and **[5]** amend references to “the registrar for Sydney” to references to the “Principal Registrar”. **Schedule 7 [4]** and **[6]** make consequential amendments.

**Schedule 7 [2]** inserts a new Subdivision (proposed sections 18FA–18FC) in Division 5 (Registrars) of Part 2 of the Act. The new Subdivision provides for the new office of Judicial Registrar. **Schedule 7 [8]** and **[9]** make consequential amendments.

Proposed section 18FA sets out the qualifications for the new office and provides for appointment to it.

Proposed section 18FB deals with the powers of the Judicial Registrar.

Proposed section 18FC provides for the appointment of an Acting Judicial Registrar if there is a vacancy in the office of Judicial Registrar or if the incumbent is absent from duty.

**Schedule 7 [10]** inserts a Schedule of provisions relating to the Judicial Registrar. That Schedule deals with the term of office of the Judicial Registrar, the remuneration and leave entitlements of the Judicial Registrar and the circumstances that give rise to a vacancy in the office of Judicial Registrar.

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**Schedule 7 [7]** inserts a new Division (proposed sections 142G–142P) in Part 3 (The civil jurisdiction of the Court) of the Act to provide for the exercise by the District Court of the jurisdiction (the ***residual jurisdiction***) newly conferred on it by operation of the *Compensation Court Repeal Act 2002* (with effect from 1 January 2004). The residual jurisdiction is the following:

- (a) jurisdiction to examine, hear and determine all coal miner matters (within the meaning of the *Workplace Injury Management and Workers Compensation Act 1998*) except matters arising under Part 5 of the *Workers Compensation Act 1987*,
- (b) jurisdiction to make determinations under section 216A of the *Police Act 1990*, section 21 of the *Police Regulation (Superannuation) Act 1906*, section 29 of the *Sporting Injuries Insurance Act 1978* and sections 16 and 30 of the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*,
- (c) jurisdiction to determine appeals under section 8I of the *Workers' Compensation (Dust Diseases) Act 1942*.

Proposed section 142G defines ***residual jurisdiction*** for the purposes of the new Division.

Proposed section 142H provides that certain other provisions of Part 3 do not apply to or in respect of proceedings under the new Division.

Proposed section 142I provides that, for the purposes of exercising its residual jurisdiction, the District Court has the same powers, authorities, duties and functions as the Compensation Court had under the *Compensation Court Act 1984* immediately before the repeal of that Act.

Proposed section 142J deals with decisions of the District Court in the exercise of its residual jurisdiction.

Proposed section 142K provides that section 112 of the *Workplace Injury Management and Workers Compensation Act 1998* (Costs) applies in respect of all proceedings in the residual jurisdiction of the District Court.

Proposed section 142L provides for the admission, in proceedings in the residual jurisdiction of the District Court, of certain evidence concerning exposure of workers to noise in employment, being evidence that has been admitted in earlier proceedings (whether before the Compensation Court or before the District Court in its residual jurisdiction) whether or not those proceedings were between the same parties.

Proposed section 142M defines ***award*** for the purposes of Subdivision 3 (Appeals) of the new Division.

Proposed section 142N provides for certain appeals to the Court of Appeal against awards of the District Court in the exercise of its residual jurisdiction.

Proposed section 142O permits the District Court (subject to any order of the Supreme Court) to order a stay of proceedings in respect of any award the subject of an appeal to the Court of Appeal, and provides that, in the absence of such an order, the appeal does not operate as a stay of proceedings.

Proposed section 142P authorises any matter relating to the functions of the District Court in its residual jurisdiction to be referred to the WorkCover Authority for an inquiry or a report.

**Schedule 7 [11]** provides for the making of savings and transitional regulations consequent on the other amendments made by the Schedule.

## **Schedule 8 Amendment of Jury Act 1977 No 18**

**Schedule 8 [1]** amends sections 13 and 26 of the *Jury Act 1977* so as to remove the requirement under those sections that certain documents be “in the form prescribed by the regulations”.

**Schedule 8 [2]** inserts a new regulation-making power in the Act, which enables the regulations under the Act to make provision for or with respect to the following:

- (a) matter that is to be contained in any document under the Act,
- (b) requiring any such document to be in a form approved by the Minister,
- (c) the manner of service of any such document.

**Schedule 8 [3]** inserts a transitional provision.

## **Schedule 9 Amendment of Protected Estates Act 1983 No 179**

**Schedule 9** amends the *Protected Estates Act 1983* so as to extend the power of the Protective Commissioner to authorise persons appointed as managers of estates of protected persons to exercise certain functions and to direct the managers in the exercise of their functions.

**Schedule 9 [1]** makes the appropriate amendment to section 30 (1), which is concerned with persons appointed as managers under section 22 of the Act.

**Schedule 9 [2]** makes the appropriate amendment to section 30 (3), which is concerned with persons appointed as managers under section 25M of the *Guardianship Act 1987*. Both amendments specifically authorise the Protective Commissioner to make orders, and give authorities and directions, of the kind

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that the Supreme Court may make and give under sections 32 and 33 of the Act (such as an order that any property of the protected person be sold or otherwise dealt with in order to pay the protected person's debts).

**Schedule 9 [3]** further extends section 30 (1) and (3), without limiting the generality of section 30 (1) or (3), so as to permit the Protective Commissioner to authorise a manager to have functions of the same kind as are specified in section 24 (2) of the Act in respect of the Protective Commissioner in relation to estates committed to the management of the Protective Commissioner.

**Schedule 9 [4]** provides for the making of savings and transitional regulations consequent on the other amendments made by the Schedule.





New South Wales

# Courts Legislation Amendment Bill 2004

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Acts	2
Schedule 1 Amendment of Children (Criminal Proceedings) Act 1987 No 55	3
Schedule 2 Amendment of Commercial Arbitration Act 1984 No 160	4
Schedule 3 Amendment of Crimes (Local Courts Appeal and Review) Act 2001 No 120	6
Schedule 4 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92	8
Schedule 5 Amendment of Criminal Appeal Act 1912 No 16	10
Schedule 6 Amendment of Criminal Procedure Act 1986 No 209	13
Schedule 7 Amendment of District Court Act 1973 No 9	14
Schedule 8 Amendment of Jury Act 1977 No 18	23
Schedule 9 Amendment of Protected Estates Act 1983 No 179	24

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New South Wales

# Courts Legislation Amendment Bill 2004

No. , 2004

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## A Bill for

An Act to amend certain Acts with respect to courts and court procedures and proceedings; to amend the *Protected Estates Act 1983* with respect to the powers of the Protective Commissioner; to amend the *Commercial Arbitration Act 1984* by way of statute law revision; and for other purposes.

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**The Legislature of New South Wales enacts:**

**1    Name of Act**

This Act is the *Courts Legislation Amendment Act 2004*.

**2    Commencement**

- (1) This Act commences on the date of assent, except as provided by this section.
- (2) Schedule 5, and section 3 in its application to that Schedule, commences on a day or days to be appointed by proclamation.

**3    Amendment of Acts**

The Acts specified in Schedules 1–9 are amended as set out in those Schedules.

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**Schedule 1   Amendment of Children (Criminal  
Proceedings) Act 1987 No 55**

(Section 3)

**Section 33 Penalties**

Omit section 33 (1A) (b). Insert instead:

- (b)   must contain a condition to the effect that, during the  
term of the bond, the person under bond will be of good  
behaviour, and

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**Schedule 2    Amendment of Commercial Arbitration  
Act 1984 No 160**

(Section 3)

**[1]    Section 4 Definitions**

Insert in alphabetical order in section 4 (1):

*assess*, in relation to costs, means assess under Division 6 of  
Part 11 of the *Legal Profession Act 1987*.

**[2]    Section 34 Costs**

Omit section 34 (1) (b). Insert instead:

(b)    settle the amount (or any part of the amount) of costs to  
be so paid, or arrange for the assessment of those costs  
(or any part of them), and

**[3]    Section 34 (1) (c)**

Omit “taxed”. Insert instead “assessed”.

**[4]    Section 34 (2)**

Omit “shall, except so far as taxed or settled by the arbitrator or umpire,  
be taxable in the Court”.

Insert instead “are to be assessed (except to the extent that they have been  
settled by the arbitrator or umpire)”.

**[5]    Section 35 Assessment of arbitrator’s or umpire’s fees and  
expenses**

Omit “taxed in the Court” wherever occurring in section 35 (1) (b), (2) and  
(4).

Insert instead “assessed”.

**[6]    Section 35 (3)**

Omit “appear and be heard on any taxation under this section”.

Insert instead “make written submissions to the costs assessor in respect  
of any assessment required by this section”.

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<b>[7] Section 35 (4)</b>	1
Omit “reasonable on taxation”.	2
Insert instead “fair and reasonable on assessment”.	3
<b>[8] Section 35A</b>	4
Insert after section 35:	5
<b>35A Application of Division 6 of Part 11 of Legal Profession Act 1987</b>	6
	7
For the purposes of sections 34 and 35, Division 6 of Part 11	8
of the <i>Legal Profession Act 1987</i> applies with any necessary	9
modifications.	10

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**Schedule 3    Amendment of Crimes (Local Courts  
Appeal and Review) Act 2001 No 120**

(Section 3)

**[1]    Section 11A**

Insert after section 11:

**11A    Appeals as of right against Local Court's refusal of application  
for annulment of conviction or sentence**

- (1) Any defendant whose application under section 4 for annulment of a conviction or sentence has been refused by the Local Court may appeal to the District Court against the refusal.
- (2) An appeal under this section must be made within 28 days after the Local Court notifies the defendant of its refusal of the application.
- (3) Not more than one appeal may be made under this section in respect of any particular conviction or sentence.

**[2]    Section 13 Late applications for leave to appeal**

Insert after section 13 (1) (a):

- (a1) by any defendant by whom an appeal could be made under section 11A, but for section 11A (2), and

**[3]    Section 13 (2)**

Insert “, or the relevant application under section 4 is refused, as the case may require” after “made or imposed”.

**[4]    Section 14 Lodgment of appeals and applications for leave to appeal**

Insert “or 11A” after “section 11” in section 14 (1).

**[5]    Section 14 (4)**

Insert “, 11A” after “section 11”.



<b>[6] Section 16A</b>	1
Insert after section 16:	2
<b>16A Determination of appeals against Local Court's refusal of application for annulment of conviction or sentence</b>	3
(1) The District Court may determine an application under section 11A by dismissing the application or by granting it.	4
(2) Pending the determination of the application, the District Court may stay the execution of the sentence concerned subject to such terms and conditions as it thinks fit.	5
(3) If the District Court grants the application, the District Court must remit the matter to the Local Court.	6
(4) The Local Court is to deal under section 9 with any matter remitted to it under this section as if the application under section 4 in respect of the matter had been granted by the Local Court.	7
<b>[7] Schedule 1 Savings, transitional and other provisions</b>	8
Insert at the end of clause 1 (1):	9
<i>Courts Legislation Amendment Act 2004</i> , but only in relation to the amendments made to this Act	10
<b>[8] Schedule 1</b>	11
Insert at the end of the Schedule, with appropriate Part and clause numbers:	12
<b>Part Provision consequent on enactment of Courts Legislation Amendment Act 2004</b>	13
<b>Appeal against refusal of application under section 4</b>	14
Sections 11A and 16A, as inserted by the <i>Courts Legislation Amendment Act 2004</i> , and sections 13 and 14 as amended by that Act, extend to apply to and in respect of an application under section 4 that was refused by the Local Court before the commencement of Schedule 3 to that Act, unless, on that commencement, an appeal against the relevant conviction or sentence is pending in the District Court or has been dealt with by that Court.	15

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**Schedule 4    Amendment of Crimes (Sentencing  
                         Procedure) Act 1999 No 92**

(Section 3)

**[1]    Section 32 Prosecutor may file list of additional charges**

Omit section 32 (4) (a).

**[2]    Sections 62 and 73**

Omit “in or to the effect of the form prescribed by the regulations and”  
from section 62 (2) and 73 (2) wherever occurring.

**[3]    Sections 66 and 78**

Omit”, in the form prescribed by the regulations,” from sections 66 (1) (f)  
and 78 (1) (c) and (d) wherever occurring.

**[4]    Section 86 Suitability of offender for community service work**

Omit section 86 (1) (e).

**[5]    Section 86 (5)**

Insert after section 86 (4):

- (5)    If a court makes a community service order in respect of an  
         offender, the offender must, as soon as practicable (having  
         regard to sections 92 and 93) after the order is made, sign an  
         undertaking to comply with the offender’s obligations under  
         the order. If the offender refuses to sign such an undertaking,  
         the offender may be brought before the court and the court  
         may revoke the community service order and impose such  
         other sentence as it considers appropriate.

**[6]    Section 103 Regulations**

Insert at the end of section 103:

- (2)    In particular, the regulations may make provision for or with  
         respect to the following:
- (a)    the information or other matter to be contained in any  
         notice, order, warrant, undertaking or other document  
         that by or under this Act is required or permitted to be  
         prepared,

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(b)	requiring any such document to be in a form approved by the Minister,	1
		2
(c)	the manner of service of any such document.	3
<b>[7]</b>	<b>Schedule 2 Savings, transitional and other provisions</b>	4
	Insert at the end of clause 1 (1):	5
	<i>Courts Legislation Amendment Act 2004</i> (but only to the extent that it amends this Act)	6
		7
<b>[8]</b>	<b>Schedule 2</b>	8
	Insert at the end of the Schedule, with appropriate Part and clause numbers:	9
		10
<b>Part</b>	<b>Provision consequent on enactment of Courts Legislation Amendment Act 2004</b>	11
		12
	<b>Prescribed forms</b>	13
	A form to the effect of a form prescribed for the purpose of section 32, 62, 66, 73 or 78 by a regulation in force immediately before the commencement of Schedule 4 to the <i>Courts Legislation Amendment Act 2004</i> may be used for the purpose of the relevant section until such time as regulations are made under section 103 (2).	14
		15
		16
		17
		18
		19

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## **Schedule 5    Amendment of Criminal Appeal Act 1912                   No 16**

(Section 3)

### **[1]    Section 9 Revesting and restitution of property**

Omit “giving the court” from section 9 (1) (a).

Insert instead “lodging”.

### **[2]    Section 9 (1) (b) and (4) (b)**

Omit “given” wherever occurring. Insert instead “lodged”.

### **[3]    Section 9 (1) (b)**

Omit “giving”. Insert instead “lodgment”.

### **[4]    Section 10**

Omit the section. Insert instead:

#### **10    Method and time for making appeal**

- (1) The provisions of this section apply to an appeal, or application for leave to appeal, under this Act against a person’s conviction or sentence.
- (2) The appellant is required to lodge the relevant notice of intention with:
  - (a) the registrar of the court, or
  - (b) the person in charge of the place where the appellant is in custody, or
  - (c) the registrar of the court of trial (but not if the court of trial was the Drug Court or the Land and Environment Court).
- (3) The relevant notice of intention:
  - (a) must comply with the rules of court, and
  - (b) must be lodged within 28 days after the relevant conviction or the imposition of the relevant sentence (as the case may require).

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|-----|--|--|
| (4) | The court may, at any time, extend the time within which the relevant notice of intention is required to be lodged or, if the rules of court so permit, dispense with the requirement for the notice.  | 1<br>2<br>3<br>4                       |
| (5) | The appeal, or application for leave to appeal, is to be lodged with the registrar of the court or the registrar of the court of trial (unless that court was the Drug Court or the Land and Environment Court) in accordance with the rules of court, which may include:  | 5<br>6<br>7<br>8<br>9                  |
| (a) | provision with respect to any statement of grounds of appeal, transcripts, exhibits or other documents or things to accompany the appeal or application, and   | 10<br>11<br>12                         |
| (b) | provision with respect to the timely institution and prosecution of the appeal or application, and   | 13<br>14                               |
| (c) | provision with respect to the period during which the relevant notice of intention has effect.   | 15<br>16                               |
| (6) | For the purposes of any other Act or statutory instrument (whether enacted or made before or after the commencement of this subsection):   | 17<br>18<br>19                         |
| (a) | the period provided for making or lodging an appeal or notice of appeal to the court against a conviction or sentence is taken to be the period for lodging the relevant notice of intention with the registrar of the court, the person in charge of the place where the appellant is in custody or the registrar of the court of trial, and  | 20<br>21<br>22<br>23<br>24<br>25<br>26 |
| (b) | an appeal against a conviction or sentence is taken to be pending in the court if the relevant notice of intention has been duly lodged with the registrar of the court, the person in charge of the place where the appellant is in custody or the registrar of the court of trial, unless the appeal or application has not been made within any time it is required to be made by the rules of court. | 27<br>28<br>29<br>30<br>31<br>32<br>33 |
| (7) | In this clause:  | 34                                     |
|     | <b><i>relevant notice of intention</i></b> means:  | 35                                     |
| (a) | a notice of intention to appeal, or  | 36                                     |
| (b) | a notice of intention to apply for leave to appeal.  | 37                                     |
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*rules of court* means rules of court made for the purposes of this Act.

**[5] Section 19 Duties of registrar with respect to notices of appeal**

Omit section 19 (3). Insert instead:

- (3) The registrar must furnish the necessary forms and instructions in relation to notices of intention to appeal, or to apply for leave to appeal, under this Act to the following:
  - (a) any person who demands them,
  - (b) officers of courts,
  - (c) persons in charge of places where convicted persons are in custody,
  - (d) such other officers or persons as the registrar thinks fit.
- (4) A person in charge of a place where convicted persons are in custody must ensure that:
  - (a) the forms and instructions referred to in subsection (3) are placed at the disposal of all such convicted persons at that place, and
  - (b) any such notice that is given to the person is forwarded to the registrar of the court.

**[6] Schedule 1 Savings and transitional provisions**

Insert after clause 8:

**9 Courts Legislation Amendment Act 2004**

- (1) This Act, as amended by Schedule 5 to the *Courts Legislation Amendment Act 2004*, applies in respect of any appeal made after the commencement of that Schedule.
- (2) Subclause (1) extends to apply in respect of an appeal in respect of which a relevant notice of intention (within the meaning of section 10) has been given before the commencement of the Schedule referred to in that subclause, but does not so apply as to require a further relevant notice of intention to be lodged.

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## **Schedule 6 Amendment of Criminal Procedure Act 1986 No 209**

(Section 3)

### **[1] Section 52 Service of court attendance notices**

Insert “of a Magistrate or a registrar” after “except with leave” in section 52 (4).

### **[2] Section 52 (5)**

Insert after section 52 (4):

- (5) Leave may be granted under subsection (4) after the expiry of the 7-day period referred to in that subsection.

### **[3] Section 177 Service of court attendance notices**

Insert “of a Magistrate or a registrar” after “except with the leave” in section 177 (4).

### **[4] Section 177 (5)**

Insert after section 177 (4):

- (5) Leave may be granted under subsection (4) after the expiry of the 7-day period referred to in that subsection.

### **[5] Section 218 Public officers and police officers not personally liable for costs**

Insert “or a police officer” after “public officer” wherever occurring in section 218 (1).

### **[6] Section 222 Issue of subpoenas**

Omit “If the prosecutor in proceedings is a public officer, the public officer may” from section 222 (2).

Insert instead “If the prosecutor in proceedings is a public officer or a police officer, the officer may”.

### **[7] Section 224 Conduct money**

Insert “or a police officer” after “public officer”.

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**Schedule 7 Amendment of District Court Act 1973 No 9**  
(Section 3)

**[1] Section 4 Definitions: general**

Insert in alphabetical order in section 4 (1):

*Principal Registrar* means the registrar for Sydney.

**[2] Part 2, Division 5, Subdivision 1**

Insert before section 18G:

**Subdivision 1 Judicial Registrar**

**18FA Appointment and qualifications of Judicial Registrar**

- (1) The Minister may appoint any qualified person to be the Judicial Registrar of the Court.
- (2) A person is qualified for appointment as the Judicial Registrar if the person is, or is eligible to be, admitted as a legal practitioner of any court of a State or Territory or of the High Court.
- (3) The Judicial Registrar is to devote the whole of his or her time to the office of Judicial Registrar.
- (4) The *Public Sector Employment and Management Act 2002* does not apply to or in respect of the Judicial Registrar and, in particular, Chapter 5 of that Act does not apply to the person appointed to the office of Judicial Registrar.
- (5) The Judicial Registrar is an officer of the Court.
- (6) Schedule 1A has effect with respect to the Judicial Registrar.

**18FB Powers of Judicial Registrar**

- (1) The Judicial Registrar may, subject to the direction of the Chief Judge, exercise such powers of the Court as are, by or under this or any other Act, conferred on the Judicial Registrar. The Judicial Registrar constitutes the Court for the purpose of the exercise of those powers.
- (2) A judgment given, or an order (other than an interlocutory order) made, by the Judicial Registrar may be set aside or varied by the Court.



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	(3) Subject to subsection (2), a judgment given or an order made or a direction given by the Judicial Registrar has effect as a judgment or order or direction of the Court, whether or not the judgment, order or direction is within the powers of the Judicial Registrar.	1 2 3 4 5
<b>18FC</b>	<b>Acting Judicial Registrar</b>	6
	(1) If there is a vacancy in the office of Judicial Registrar, or the Judicial Registrar is absent from duty, the Minister may appoint a person who is qualified for appointment as the Judicial Registrar to act in the position of Judicial Registrar for the period of the vacancy or absence from duty.	7 8 9 10 11
	(2) A person appointed under subsection (1) has, for the period of the appointment, all the entitlements, powers, authorities, functions and duties of the Judicial Registrar and, for that period, is taken to be the Judicial Registrar.	12 13 14 15
	<b>Subdivision 2 Other registrars</b>	16
<b>[3]</b>	<b>Section 18G Registrars</b>	17
	Omit “The registrar for Sydney, and for any other proclaimed place” from section 18G (2).	18 19
	Insert instead “The Principal Registrar, and the registrar for any proclaimed place”.	20 21
<b>[4]</b>	<b>Section 18G (3)</b>	22
	Insert “(other than Sydney)” after “any proclaimed place”.	23
<b>[5]</b>	<b>Section 18H Functions of registrars</b>	24
	Omit “The registrar for Sydney” from section 18H (3).	25
	Insert instead “The Principal Registrar”.	26
<b>[6]</b>	<b>Section 18J Functions of assistant registrars</b>	27
	Omit section 18J (1A). Insert instead:	28
	(1A) An assistant Principal Registrar may exercise any or all of the functions of the Principal Registrar in respect of any place in the State.	29 30 31

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<b>[7] Part 3, Division 8A</b>	1
Insert after section 142F:	2
<b>Division 8A Residual jurisdiction of Court</b>	3
<b>Subdivision 1 General</b>	4
<b>142G Definition</b>	5
In this Division:	6
<i>residual jurisdiction</i> means the jurisdiction conferred on the District Court by operation of the <i>Compensation Court Repeal Act 2002</i> .	7
<b>Note.</b> The jurisdiction conferred on the District Court by operation of the <i>Compensation Court Repeal Act 2002</i> is the following jurisdiction:	8
(a) jurisdiction to examine, hear and determine all coal miner matters (within the meaning of the <i>Workplace Injury Management and Workers Compensation Act 1998</i> ) except matters arising under Part 5 of the <i>Workers Compensation Act 1987</i> ,	9
(b) jurisdiction to make determinations under section 216A of the <i>Police Act 1990</i> , section 21 of the <i>Police Regulation (Superannuation) Act 1906</i> , section 29 of the <i>Sporting Injuries Insurance Act 1978</i> and sections 16 and 30 of the <i>Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987</i> ,	10
(c) jurisdiction to determine appeals under section 8I of the <i>Workers' Compensation (Dust Diseases) Act 1942</i> .	11
<b>142H Non-application of other Divisions</b>	12
Subject to this Act and the rules, nothing in Division 2, 3, 7 or 8 (except for Subdivisions 6 and 7 of Division 3), and nothing in Division 9 or 9A, applies to or in respect of any proceedings under this Division.	13
<b>Subdivision 2 Exercise of residual jurisdiction</b>	14
<b>142I Powers of Court when exercising residual jurisdiction</b>	15
For the purposes of exercising its residual jurisdiction, the District Court has the same powers, authorities, duties and functions as the Compensation Court had under the <i>Compensation Court Act 1984</i> immediately before 1 January 2004. The powers conferred by this section are not limited by any other provisions of this Division.	16

**142J Decisions of Court when exercising residual jurisdiction**

- (1) The following apply in the exercise of the Court's residual jurisdiction:
  - (a) a decision of the Court in any matter is to be on the real merits and justice of the case,
  - (b) the Court is not bound to follow strict legal precedent,
  - (c) subject to Subdivision 3:
    - (i) a decision or proceeding of the Court is not vitiated by reason of any informality or want of form, and
    - (ii) a decision or proceeding of the Court is not liable to be appealed against, reviewed, quashed or called in question by any court, and
    - (iii) no proceedings, whether for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, lie in respect of any decision or proceeding of the Court relating to, or on the face of the proceedings appearing to relate to, any matter within its residual jurisdiction, and
    - (iv) the validity of any decision or proceeding of the Court cannot be challenged in any manner.
- (2) Nothing in subsection (1) prevents the Court from reconsidering any matter that has been dealt with by it in its residual jurisdiction (or had been dealt with by the Compensation Court), or from rescinding, altering or amending any decision previously made or given by the Court in the exercise of that jurisdiction (or by the Compensation Court), all of which the Court has authority to do.
- (3) In this section, **decision** includes award, order, determination, ruling and direction.

**142K Costs under other Acts**

Section 112 of the *Workplace Injury Management and Workers Compensation Act 1998* extends to any proceedings in the residual jurisdiction of the Court (not just proceedings under that Act), and in its application to proceedings under any other Act, is not limited by section 111A (Costs provisions apply only to existing claim matters) of that Act.

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**142L Special provision for evidence of exposure to noise**

Historical evidence and general medical or other expert evidence concerning exposure of workers to noise in employment with particular employers or in employment of a particular class, that has been admitted in any proceedings before the Compensation Court or before the Court in its exercise of its residual jurisdiction, may, with the leave of the Court, be received as evidence in any other proceedings before the Court in its exercise of that jurisdiction, whether or not the proceedings are between the same parties.

**Subdivision 3 Appeals**

**142M Definition**

- (1) In this Subdivision, *award* includes interim award, order, decision, determination, ruling and direction.
- (2) A reference in this Subdivision to the making of an award includes, where the award is a ruling or direction, a reference to the giving of the ruling or direction.

**142N Appeal to Court of Appeal on question of law**

- (1) If a party to any proceedings before the Court in its residual jurisdiction is aggrieved by an award of the Court in point of law or on a question as to the admission or rejection of evidence, that party may appeal to the Court of Appeal.
- (2) The Court of Appeal may, on the hearing of any appeal under this section, remit the matter to the District Court in its residual jurisdiction for determination by that Court in accordance with any decision of the Court of Appeal and may make such other order in relation to the appeal as the Court of Appeal sees fit.
- (3) A decision of the Court of Appeal on an appeal under this section is binding on the District Court and on all the parties to the proceedings in respect of which the appeal was made.
- (4) The following appeals under this section may be made only by leave of the Court of Appeal:
  - (a) an appeal from an interlocutory decision,
  - (b) an appeal from a decision as to costs only,

- 
- (c) an appeal from a final decision or award, other than an appeal that involves (directly or indirectly) a claim for, or a question relating to, an amount of \$20,000 or more,
  - (d) an appeal from a decision or award made with the consent of the parties.

#### **Subdivision 4 Stay of proceedings**

##### **142O Stay of proceedings**

- (1) The Court may, subject to any order of the Supreme Court, order a stay of proceedings (on such terms as the Court thinks fit) in respect of any award the subject of an appeal under this Division.
- (2) In the absence of a stay of proceedings ordered by the Supreme Court or by the District Court, a notice of appeal does not operate as a stay of proceedings.
- (3) If a stay of proceedings is ordered by the Supreme Court or the District Court in respect of an appeal against an award of weekly payments of compensation, the stay of proceedings does not operate to affect the liability to make those payments under the award to the extent that the payments are in respect of a period after the award is made.
- (4) If the decision of the Supreme Court or District Court on any such appeal is to terminate liability to make the weekly payments of compensation, that Court may:
  - (a) order that the Uninsured Liability and Indemnity Scheme established under the *Workers Compensation Act 1987* bear the whole or a specified part of the liability to make those payments, and
  - (b) give such directions as are necessary to give effect to the order.

#### **Subdivision 5 Miscellaneous**

##### **142P Liaison with WorkCover Authority**

- (1) The Chief Judge may refer to the WorkCover Authority for inquiry or report any matter relating to the functions of the Court in its residual jurisdiction.

(2)	A Judge may refer to the WorkCover Authority:	1
(a)	a report on suspected fraud or contravention of the <i>Workers Compensation Act 1987</i> or the <i>Workplace Injury Management and Workers Compensation Act 1998</i> or the regulations under either of those Acts by any party to proceedings in the residual jurisdiction of the Court, and	2 3 4 5 6 7
(b)	a report on any neglect in the provision of rehabilitation for an injured worker, and	8 9
(c)	any other matter the Judge considers appropriate to refer to the Authority.	10 11
<b>[8]</b>	<b>Section 161 Civil procedure rules</b>	12
	Omit “registrars” from section 161 (2) (a) where firstly occurring.	13
	Insert instead “the Judicial Registrar, other registrars”.	14
<b>[9]</b>	<b>Section 171 Criminal procedure rules</b>	15
	Omit “the registrars” from section 171 (2) (a).	16
	Insert instead “the Judicial Registrar, other registrars”.	17
<b>[10]</b>	<b>Schedule 1A</b>	18
	Insert after Schedule 1:	19
	<b>Schedule 1A Provisions relating to Judicial Registrar</b>	20 21 22
	(Section 18FA (6))	
<b>1</b>	<b>Term of office</b>	23
	Subject to this Schedule, a Judicial Registrar holds office for such period (not exceeding 5 years) as is specified in the Judicial Registrar’s instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.	24 25 26 27
<b>2</b>	<b>Remuneration</b>	28
	A Judicial Registrar is entitled to be paid the following:	29
(a)	such remuneration as is from time to time determined under the <i>Statutory and Other Offices Remuneration</i>	30 31

	<i>Act 1975 in respect of a Senior Commissioner under the</i>	1
	<i>Land and Environment Court Act 1979,</i>	2
(b)	such travelling and subsistence allowances as the	3
	Minister administering the <i>Land and Environment</i>	4
	<i>Court Act 1979</i> from time to time determines in respect	5
	of such a Commissioner.	6
<b>3</b>	<b>Leave</b>	7
(1)	A Judicial Registrar is entitled to such leave:	8
(a)	as may be specified in respect of the Judicial Registrar	9
	in the Judicial Registrar's instrument of appointment,	10
	or	11
(b)	if no leave is specified in the instrument of	12
	appointment—as is determined by the Minister.	13
(2)	For the purposes of subclause (1), leave may be specified or	14
	determined by reference to the leave entitlement of the holder	15
	of any other office or class of office.	16
<b>4</b>	<b>Vacancy in office</b>	17
(1)	The office of Judicial Registrar becomes vacant if the Judicial	18
	Registrar:	19
(a)	dies, or	20
(b)	completes a term of office and is not re-appointed, or	21
(c)	resigns the office by instrument in writing addressed to	22
	the Minister, or	23
(d)	is removed from office by the Minister under this	24
	clause, or	25
(e)	becomes bankrupt, applies to take the benefit of any law	26
	for the relief of bankrupt or insolvent debtors,	27
	compounds with his or her creditors or makes an	28
	assignment of his or her remuneration for their benefit,	29
	or	30
(f)	becomes a mentally incapacitated person, or	31
(g)	is convicted in New South Wales of an offence that is	32
	punishable by imprisonment for 12 months or more or	33
	is convicted elsewhere than in New South Wales of an	34
	offence that, if committed in New South Wales, would	35
	be an offence so punishable.	36

Courts Legislation Amendment Bill 2004

Schedule 7      Amendment of District Court Act 1973 No 9

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- (2)    The Minister may remove a Judicial Registrar from office at  
any time for incapacity, incompetence or misbehaviour.

**[11]    Schedule 3 Savings and transitional provisions consequent on  
amendments to this Act**

Insert at the end of clause 1 (1):

*Courts Legislation Amendment Act 2004*, but only in relation  
to the amendments made to this Act

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## Schedule 8 Amendment of Jury Act 1977 No 18

(Section 3)

### [1] Sections 13 and 26

Omit “in the form prescribed by the regulations” from sections 13 (1) and 26 (1) wherever occurring.

### [2] Section 76 Regulations

Insert after section 76 (1):

(1A) In particular, the regulations may make provision for or with respect to the following:

- (a) the information or other matter to be contained in any notice, summons or other document that by or under this Act is required or permitted to be prepared,
- (b) requiring any such document to be in a form approved by the Minister,
- (c) the manner of service of any such document.

### [3] Schedule 8 Transitional and savings provisions

Insert at the end of the Schedule, with appropriate Part and clause numbers:

## Part Provision consequent on enactment of Courts Legislation Amendment Act 2004

### Prescribed forms

A form to the effect of a form prescribed for the purpose of section 13 or 26 by a regulation in force immediately before the commencement of Schedule 8 to the *Courts Legislation Amendment Act 2004* may be used for the purpose of the relevant section until such time as regulations are made under section 76 (1A).

## Schedule 9 Amendment of Protected Estates Act 1983 No 179

(Section 3)

### [1] Section 30 Protective Commissioner may authorise and direct functions of managers

Omit section 30 (1) (a) and (b). Insert instead:

- (a) authorise the person appointed as manager to have:
  - (i) all, or any specified, functions necessary and incidental to the management and care of the estate, and
  - (ii) such other functions as the Protective Commissioner may direct or authorise the manager to have or exercise, and
- (b) make such orders, and give such authorities and directions, of the kind referred to in section 32 or 33 as appear to the Protective Commissioner to be necessary or expedient or that the Protective Commissioner thinks fit (as if a reference in those sections to the Court were a reference to the Protective Commissioner), and
- (c) give the person appointed as manager such directions in respect of the orders, authorities and directions authorised by this subsection as the Protective Commissioner thinks fit.

### [2] Section 30 (3) (a)–(c)

Omit section 30 (3) (a) and (b). Insert instead:

- (a) authorise the person appointed as manager to have:
  - (i) all, or any specified, functions necessary and incidental to the management and care of the estate, and
  - (ii) such other functions as the Protective Commissioner may direct or authorise the manager to have or exercise, and
- (b) make such orders, and give such authorities and directions, of the kind referred to in section 32 or 33 as appear to the Protective Commissioner to be necessary or expedient or that the Protective Commissioner thinks fit (as if a reference in those sections to the Court were a reference to the Protective Commissioner), and

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- (c) give the person appointed as manager such directions in respect of the orders, authorities and directions authorised by this subsection as the Protective Commissioner thinks fit.

**[3] Section 30 (5)**

Insert after section 30 (4):

- (5) Without limiting the generality of subsection (1) or (3), the Protective Commissioner may authorise the person appointed as manager of the estate of a protected person to have functions of the same kind as those specified in section 24 (2) in respect of an estate committed to management by the Protective Commissioner without the limitation referred to in section 24 (3).

**[4] Schedule 1 Savings and transitional provisions**

Insert at the end of clause 1 (1):

*Courts Legislation Amendment Act 2004*, to the extent that it amends this Act