



New South Wales

Courts Legislation Amendment Bill 2002

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 various Acts to provide that a person is qualified for appointment as a judicial officer of various courts and tribunals if the person holds or has held a judicial office of this State or of the Commonwealth, another State or a Territory (as an alternative to the existing qualification of a period of standing as a legal practitioner), and
- (b) to amend the *Judicial Officers Act 1986* to provide that the doctrine of incompatibility of office does not operate to prevent the holder of a judicial office (the *original office*) from being appointed to act in another judicial office and does not operate to surrender or vacate the original office when such an acting appointment is made.

The Bill also amends the *Judicial Officers Act 1986* to extend these amendments to past appointments.

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.

Clause 3 is a formal provision giving effect to the amendments set out in Schedules 1–8.

Schedules 1–7 amend the following Acts to make the amendments described in paragraph (a) of the Overview:

Supreme Court Act 1970

Land and Environment Court Act 1979

District Court Act 1973

Compensation Court Act 1984

Industrial Relations Act 1996

Government and Related Employees Appeal Tribunal Act 1980

Administrative Decisions Tribunal Act 1997

Schedule 8 amends the *Judicial Officers Act 1986* to make the amendment referred to in paragraph (b) of the Overview and the further amendment referred to in the Overview.



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New South Wales

Courts Legislation Amendment Bill 2002

No. , 2002

A Bill for

An Act to amend various Acts to make further provision for the qualifications for appointment to judicial office and for acting judicial office appointments; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Courts Legislation Amendment Act 2002</i> .	3
2 Commencement	4
This Act commences on the date of assent.	5
3 Amendment of Acts	6
The Acts specified in the Schedules to this Act are amended as set out in those Schedules.	7 8

Schedule 1	Supreme Court Act 1970 No 52	1
	(Section 3)	2
[1]	Section 26 Appointment and qualifications: Chief Justice and other Judges	3
	Omit section 26 (2) and (3). Insert instead:	4
	(2) A person is qualified for appointment as Chief Justice or as a Judge if the person:	5
	(a) holds or has held a judicial office of this State or of the Commonwealth, another State or a Territory, or	6
	(b) is a legal practitioner of at least 7 years' standing.	7
[2]	Section 111 Appointment of masters and acting masters	8
	Omit section 111 (3). Insert instead:	9
	(3) Each person so appointed is to be a person who:	10
	(a) holds or has held a judicial office of this State or of the Commonwealth, another State or a Territory, or	11
	(b) is a legal practitioner of at least 5 years' standing.	12

Schedule 2	Land and Environment Court Act 1979	1
	No 204	2
	(Section 3)	3
Section 8	Appointment and qualifications of Judges	4
	Omit section 8 (2) (a) and (b). Insert instead:	5
	(a) holds or has held a judicial office of this State or of the	6
	Commonwealth, another State or a Territory, or	7

Schedule 3	District Court Act 1973 No 9	1
	(Section 3)	2
Section 13	Appointment and qualifications of Judges	3
	Omit paragraphs (b), (c) and (d) of the definition of <i>qualified person</i> in section 13 (2).	4
	Insert instead:	5
	(b) a person who holds or has held a judicial office of this State or of the Commonwealth, another State or a Territory.	6
		7
		8
		9

Schedule 4 Compensation Court Act 1984 No 89	1
(Section 3)	2
Section 8 Appointment and qualification of Judges	3
Omit section 8 (2) (a). Insert instead:	4
(a) holds or has held a judicial office of this State or of the Commonwealth, another State or a Territory, or	5 6

Schedule 5 Industrial Relations Act 1996 No 17	1
(Section 3)	2
Section 149 Judicial members	3
Omit section 149 (2) (a). Insert instead:	4
(a) a person who holds or has held a judicial office of this	5
State or of the Commonwealth, another State or a	6
Territory, or	7

Schedule 6	Government and Related Employees	1
	Appeal Tribunal Act 1980 No 39	2
	(Section 3)	3
Section 7 Senior Chairperson		4
Omit section 7 (2) (a). Insert instead:		5
(a)	holds or has held a judicial office of this State or of the	6
	Commonwealth, another State or a Territory, or	7

Schedule 7	Administrative Decisions Tribunal Act 1997	1
	No 76	2
	(Section 3)	3
Section 17	Qualifications for membership	4
	Omit section 17 (2) (a). Insert instead:	5
	(a) a person who holds or has held a judicial office of this	6
	State or of the Commonwealth, another State or a	7
	Territory, or	8

Schedule 8	Judicial Officers Act 1986 No 100	1
	(Section 3)	2
[1]	Section 43A	3
	Insert after section 43:	4
	43A Judicial office not affected by appointment to act in another judicial office	5 6
	(1) The doctrine of incompatibility of office does not operate to prevent the holder of a judicial office (the <i>original office</i>) from being appointed to act in another judicial office, and does not operate to effect or require the surrender or vacation of the original office as a result of such an appointment.	7 8 9 10 11
	(2) This section applies:	12
	(a) whether or not an appeal lies from a decision of the court of the original office to the court of the acting appointment, and	13 14 15
	(b) whether or not the court of the acting appointment is a court of higher status than the court of the original office, and	16 17 18
	(c) even if the original office is an acting judicial office.	19
	(3) In this section:	20
	<i>court</i> includes tribunal.	21
	<i>judicial office</i> is not limited by the definition of <i>judicial officer</i> in this Act.	22 23
[2]	Schedule 6 Savings and transitional provisions	24
	Insert before clause 1:	25
	Part 1 Preliminary	26

[3] Schedule 6, clause 1 Regulations	1
Insert at the end of clause 1 (1):	2
<i>Courts Legislation Amendment Act 2002</i> , to the extent that it	3
amends this Act	4
[4] Schedule 6	5
Insert before clause 2:	6
Part 2 Provisions consequent on enactment of Judicial Officers Amendment Act 1998	7 8
[5] Schedule 6	9
Insert after clause 2:	10
Part 3 Provisions consequent on enactment of Courts Legislation Amendment Act 2002	11 12
3 Application of amendments to existing appointments	13
(1) Section 43A (Judicial office not affected by appointment to act in another judicial office) extends to apply to an appointment made before the commencement of that section, and applies to such an appointment as if that section had been in force when the appointment was made.	14 15 16 17 18
(2) An amendment made to a provision of an Act by the <i>Courts Legislation Amendment Act 2002</i> extends to an appointment made or purporting to have been made under the provision before the commencement of the amendment, and applies to such an appointment as if the amendment had been in force when the appointment was made.	19 20 21 22 23 24