

Passed by both Houses



New South Wales

Courts Legislation Amendment Bill 2002

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2002*



New South Wales

Courts Legislation Amendment Bill 2002

Act No , 2002

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.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Courts Legislation Amendment Act 2002*.

2 Commencement

This Act commences on the date of assent.

3 Amendment of Acts

The Acts specified in the Schedules to this Act are amended as set out in those Schedules.

Schedule 1 Supreme Court Act 1970 No 52

(Section 3)

[1] Section 26 Appointment and qualifications: Chief Justice and other Judges

Omit section 26 (2) and (3). Insert instead:

- (2) A person is qualified for appointment as Chief Justice or as a Judge if the person:
 - (a) holds or has held a judicial office of this State or of the Commonwealth, another State or a Territory, or
 - (b) is a legal practitioner of at least 7 years' standing.

[2] Section 111 Appointment of masters and acting masters

Omit section 111 (3). Insert instead:

- (3) Each person so appointed is to be a person who:
 - (a) holds or has held a judicial office of this State or of the Commonwealth, another State or a Territory, or
 - (b) is a legal practitioner of at least 5 years' standing.

**Schedule 2 Land and Environment Court Act 1979
No 204**

(Section 3)

Section 8 Appointment and qualifications of Judges

Omit section 8 (2) (a) and (b). Insert instead:

- (a) holds or has held a judicial office of this State or of the Commonwealth, another State or a Territory, or

Schedule 3 District Court Act 1973 No 9

(Section 3)

Section 13 Appointment and qualifications of Judges

Omit paragraphs (b), (c) and (d) of the definition of *qualified person* in section 13 (2).

Insert instead:

- (b) a person who holds or has held a judicial office of this State or of the Commonwealth, another State or a Territory.

Schedule 4 Compensation Court Act 1984 No 89

(Section 3)

Section 8 Appointment and qualification of Judges

Omit section 8 (2) (a). Insert instead:

- (a) holds or has held a judicial office of this State or of the Commonwealth, another State or a Territory, or

Schedule 5 Industrial Relations Act 1996 No 17

(Section 3)

Section 149 Judicial members

Omit section 149 (2) (a). Insert instead:

- (a) a person who holds or has held a judicial office of this State or of the Commonwealth, another State or a Territory, or

**Schedule 6 Government and Related Employees
Appeal Tribunal Act 1980 No 39**

(Section 3)

Section 7 Senior Chairperson

Omit section 7 (2) (a). Insert instead:

- (a) holds or has held a judicial office of this State or of the Commonwealth, another State or a Territory, or

**Schedule 7 Administrative Decisions Tribunal Act 1997
No 76**

(Section 3)

Section 17 Qualifications for membership

Omit section 17 (2) (a). Insert instead:

- (a) a person who holds or has held a judicial office of this State or of the Commonwealth, another State or a Territory, or

Schedule 8 Judicial Officers Act 1986 No 100

(Section 3)

[1] Section 43A

Insert after section 43:

43A Judicial office not affected by appointment to act in another judicial office

- (1) 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 effect or require the surrender or vacation of the original office as a result of such an appointment.
- (2) This section applies:
 - (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
 - (b) whether or not the court of the acting appointment is a court of higher status than the court of the original office, and
 - (c) even if the original office is an acting judicial office.
- (3) In this section:

court includes tribunal.

judicial office is not limited by the definition of *judicial officer* in this Act.

[2] Schedule 6 Savings and transitional provisions

Insert before clause 1:

Part 1 Preliminary

[3] Schedule 6, clause 1 Regulations

Insert at the end of clause 1 (1):

Courts Legislation Amendment Act 2002, to the extent that it amends this Act

[4] Schedule 6

Insert before clause 2:

**Part 2 Provisions consequent on enactment of
Judicial Officers Amendment Act 1998**

[5] Schedule 6

Insert after clause 2:

**Part 3 Provisions consequent on enactment of
Courts Legislation Amendment Act 2002**

3 Application of amendments to existing appointments

- (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.
- (2) An amendment made to a provision of an Act by the *Courts Legislation Amendment Act 2002* 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.