

## Courts Legislation Amendment Bill 2003

### 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 *Crimes (Local Courts Appeal and Review) Act 2001* to confirm the power of an appeal court under that Act to take into account any period of suspension of a driver licence under section 34 of the *Road Transport (General) Act 1999*, and any other periods during which the defendant was or was not licensed to drive, when deciding whether to backdate the commencement of a disqualification from holding a driver licence that it confirms or varies on appeal,
- (b) to amend the *Criminal Procedure Act 1986* to extend the classes of persons who may take depositions from dangerously ill persons in order to preserve evidence of indictable offences for court proceedings,
- (c) to amend the *District Court Act 1973* to enable the Court to sit in places directed by the Chief Judge of the Court even if those places are not proclaimed places within the meaning of that Act,
- (d) to amend the *Industrial Relations Act 1996*:
  - (i) to confer power on a judicial member of the Industrial Relations Commission to order the commencement of proceedings for contempt of the Commission, and
  - (ii) to confirm the powers of the Commission to make orders prohibiting or restricting the disclosure or publication of matters before the Commission,
- (e) to amend the *Jury Act 1977*:
  - (i) to make it clear that a court may make an order for the separation of a jury in criminal proceedings after it retires even if the jury is not present when the order is made, and
  - (ii) to increase the penalties for the offence of wilfully disclosing the address or identity of a juror,
- (f) to amend the *Local Courts (Civil Claims) Act 1970*:
  - (i) to increase the jurisdictional limit of the General Division of a Local Court from \$40,000 to \$60,000, and
  - (ii) to update an outdated reference to an auctioneer licensed under the repealed *Auctioneers and Agents Act 1941*,
- (g) to amend the *Oaths Act 1900* to authorise barristers (as well as solicitors) to witness statutory declarations and take and receive affidavits,
- (h) to amend the *Supreme Court Act 1970*:
  - (i) to remove the power of the Court to refer matters for neutral evaluation, and
  - (ii) to provide greater flexibility in relation to the nomination and appointment of mediators by the Court.

#### 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 a day or days to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the amendments to the Acts referred to in the Overview and set out in Schedules 1–8.

#### **Schedule 1 Amendment of Crimes (Local Courts Appeal and Review) Act 2001 No 120**

Section 68 of the *Crimes (Local Courts Appeal and Review) Act 2001* enables an appeal court under that Act to backdate a conviction or sentence that it confirms or varies.

**Schedule 1 [1]** amends section 3 of the Act to ensure that a note included in the amendment to section 68 of the Act does not form part of the Act.

**Schedule 1 [2]** amends section 68 of the Act to confirm the power of an appeal court under that section to take into account any period of suspension of a driver licence under section 34 of the *Road Transport (General) Act 1999* when deciding whether to backdate the commencement of a disqualification from holding a driver licence that it confirms or varies on appeal.

It also enables the appeal court to take into account any other periods after committing the offence to which the sentence relates during which the defendant held, or did not hold, a driver licence that would have permitted the defendant to drive a motor vehicle. For example, a defendant may have obtained a driver licence after lodging an appeal because section 63 of the Act stays the operation of a sentence under appeal.

**Schedule 1 [3]** amends Schedule 1 to the Act to enable the making of savings and transitional regulations consequent on the enactment of the proposed amendments to the Act.

**Schedule 1 [4]** inserts a new Part in Schedule 1 to the Act to ensure that the amendment made to section 68 of the Act extends to appeals commenced, but not finally determined, before the commencement of that amendment.

#### **Schedule 2 Amendment of Criminal Procedure Act 1986 No 209**

Section 284 of the *Criminal Procedure Act 1986* enables a Judge to take a deposition from a dangerously ill person who has material information about an indictable offence in circumstances where the person's evidence will probably be lost if it is not taken immediately.

A Judge for the purposes of this section is defined in section 275 of the Act to include a Magistrate, a Children's Court Magistrate, a Licensing Magistrate, a warden of a Warden's Court, the President or a judicial member of the Industrial Relations Commission and an Industrial Magistrate and any other person of a class prescribed by the regulations.

**Schedule 2** amends section 284 of the Act to enable any of the following persons to take such depositions:

- (a) a Judge,
- (b) a justice of the peace who is a registrar of a Local Court or the Drug Court,
- (c) a justice of the peace who is an employee of the Attorney General's Department authorised in writing by the Attorney General to be an authorised person for the purposes of the section.

#### **Schedule 3 Amendment of District Court Act 1973 No 9**

Currently, sections 32 and 173 of the *District Court Act 1973* limit the power of the Chief Judge of the Court to direct where the Court will sit in its civil and criminal jurisdiction respectively to proclaimed places. Under the Act, a proclaimed place is a place that has been proclaimed by the Governor under section 18F of the Act as a place at which the Court may sit.

**Schedule 3 [2]** re-enacts section 32 of the Act to enable the Chief Judge of the Court to direct that sittings of the Court in its civil jurisdiction be held at places other than proclaimed places as well as proclaimed places.

**Schedule 3 [4]** re-enacts section 173 of the Act to enable the Chief Judge of the Court to direct that sittings of the Court in its criminal jurisdiction be held at places other than proclaimed places as well as proclaimed places.

**Schedule 3 [1]** inserts a definition of **sitting place** in section 4 (1) of the *District Court Act 1973*. A sitting place is defined to mean:

- (a) any proclaimed place, and
- (b) in relation to the Court's civil jurisdiction—any place (other than a proclaimed place) that is the subject of a direction in force under the reenacted section 32, and
- (c) in relation to the Court's criminal jurisdiction—any place (other than a proclaimed place) that is the subject of a direction in force under the reenacted section 173.

**Schedule 3 [3], [5] and [6]** amend sections 33, 174 and 175 of the Act respectively to replace references to proclaimed places with references to the newly defined term **sitting place** to reflect the fact that the Court may sit in places other than proclaimed places if the Chief Judge so directs.

**Schedule 3 [7]** amends Schedule 3 to the Act to enable the making of savings and transitional regulations consequent on the enactment of the proposed amendments to the Act.

**Schedule 3 [8]** inserts a new Part in Schedule 3 to the Act to ensure that the proclaimed places that were the subject of a sittings direction by the Chief Judge under section 32 or 173 of the Act before the re-enactment of those sections continue to be subject to a direction after the commencement of those re-enacted sections.

#### **Schedule 4 Amendment of Industrial Relations**

##### **Act 1996 No 17**

##### **Commencement of proceedings for contempt**

Currently, section 153 (2) of the *Industrial Relations Act 1996* provides that the functions of the Industrial Relations Commission relating to proceedings for contempt may be exercised only by a Full Bench of the Commission in Court Session.

**Schedule 4 [2]** amends section 153 of the Act to provide that the functions of the Commission relating to the commencement of contempt proceedings may be exercised by a judicial member as well as by the Full Bench of the Commission in Court Session. However, all other functions of the Commission relating to contempt proceedings will continue to be exclusive to the Full Bench. **Schedule 4 [1] and [3]** make consequential amendments to sections 153 and 164 of the Act respectively.

##### **Non-disclosure orders**

**Schedule 4 [4]** inserts section 164A in the Act to confirm the power of the Commission to make certain orders prohibiting or restricting the disclosure or publication of certain matters relating to proceedings before the Commission. The Commission in Court Session will be empowered to make such orders if it is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other reason.

The Commission (other than in Court Session) will be able to make such orders only if:

- (a) in relation to proceedings under the *Child Protection (Prohibited Employment) Act 1998*—it is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other reason, or
- (b) in relation to any other proceedings—it is satisfied that it is necessary to do so in the interests of justice.

The proposed section is intended to be an exhaustive statement of the powers of the Commission (other than in Court Session), but is not intended to limit the powers that the Commission in Court Session may have apart from the proposed section.

##### **Savings and transitional provisions**

**Schedule 4 [5]** amends Schedule 4 to the Act to enable the making of savings

and transitional regulations consequent on the enactment of the proposed amendments to the Act.

**Schedule 4 [6]** inserts transitional provisions in Schedule 4 to the Act consequential on the enactment of the amendments described above.

#### **Schedule 5 Amendment of Jury Act 1977 No 18**

##### **Order for separation of jury after retiring to consider verdict**

Section 54 (b) of the *Jury Act 1977* currently provides that the jury in criminal proceedings may, if the court so orders, be permitted to separate at any time after the jury retires to consider its verdict.

In *R v Radju* (2001) 53 NSWLR 471, the New South Wales Court of Criminal Appeal held that it was proper practice for an order under section 54 (b) of the Act to be made in the presence of the jury.

**Schedule 5 [1]** amends section 54 of the Act to make it clear that a court may make an order for the separation of the jury even if it is not present when the order is made.

##### **Penalty increases for offences under section 68 of Act**

Section 68 (1) of the Act provides that the penalties for the offence of wilfully disclosing the address or identity of a juror is 50 penalty units for a corporation (currently, \$5,500) and 20 penalty units in any other case (currently, \$2,200).

**Schedule 5 [2]** amends section 68 (1) of the Act to increase the penalty for corporations to \$250,000 and the penalty in other cases to 2 years imprisonment or 50 penalty units (or both).

**Schedule 5 [3]** amends section 71 of the Act to provide that proceedings for such offences by corporations may be dealt with summarily by the Supreme Court or a Local Court. However, if dealt with by a Local Court, the maximum monetary penalty that the Local Court may impose on a corporation for such an offence is \$10,000.

#### **Schedule 6 Amendment of Local Courts (Civil Claims)**

##### **Act 1970 No 11**

##### **Increasing jurisdictional limit of Local Courts sitting in their General Divisions**

**Schedule 6 [1]** amends section 12 of the *Local Courts (Civil Claims) Act 1970* to increase the jurisdictional limit of the General Division of a Local Court from \$40,000 to \$60,000. **Schedule 6 [3]** makes a consequential amendment to Schedule 2 (Savings and transitional provisions) to the Act to make it clear that the new jurisdictional limit does not apply to proceedings commenced before the amendment of the section.

##### **Updating outdated reference to auctioneers**

**Schedule 6 [2]** amends section 59A of the Act to replace a reference to an auctioneer licensed under the repealed *Auctioneers and Agents Act 1941* with a reference to an accredited auctioneer under the *Property, Stock and Business Agents Act 2002*.

#### **Schedule 7 Amendment of Oaths Act 1900 No 20**

**Schedule 7** amends sections 21 and 27 of the *Oaths Act 1900* to authorise barristers (as well as solicitors) to witness statutory declarations and take and receive affidavits. Currently, solicitors but not barristers are so authorised.

#### **Schedule 8 Amendment of Supreme Court Act 1970**

##### **No 52**

##### **Neutral evaluations**

**Schedule 8 [5]** amends section 110K of the *Supreme Court Act 1970* to remove the power of the Court to refer matters for neutral evaluation. Currently, the Court may refer matters for either mediation or neutral evaluation. **Schedule 8 [1]–[4], [7], [8], [10]–[14] and [16]** make consequential amendments to the Act.

##### **Nomination and appointment of mediators**

**Schedule 8 [9]** re-enacts section 110O of the Act to provide that the Chief Justice may issue practice notes with respect to the nomination and appointment of mediators by the Court. Any such practice note may provide for nomination of suitable persons by other persons or bodies. The new system for the nomination of mediators will replace the current system where mediators are often (but not always) selected from a list of mediators maintained by the Chief Justice. **Schedule 8 [6] and [15]** make consequential amendments to sections 110K and 110R of the Act respectively. In particular, the amendment to section 110R will confer an immunity from civil liability on any mediator acting in good faith who is nominated in accordance with any such practice note.

**Savings and transitional provisions**

**Schedule 8 [17]** amends the Fourth Schedule to the Act to enable the making of savings and transitional regulations consequent on the enactment of the proposed amendments to the Act.

**Schedule 8 [18]** inserts transitional provisions in the Fourth Schedule to the Act consequential on the removal of the power of the Court to refer matters for neutral evaluation.