



New South Wales

# Courts Legislation Amendment Bill 2001

## 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 *Costs in Criminal Cases Act 1967* to provide that:
  - (i) a costs certificate may be granted under that Act in cases where, after a trial has commenced, a defendant has been acquitted or discharged, and
  - (ii) a prosecutor may adduce additional evidence to the Court, Judge or Justice or Justices determining whether to grant a costs certificate, being evidence that was in the possession of the prosecutor at the time the decision to institute criminal proceedings was made and that was not adduced in the proceedings,
- (b) to amend the *District Court Act 1973* to permit judges or former judges from other States and Territories to be appointed as judges or acting judges of the District Court,

- (c) to amend the *Judges' Pensions Act 1953* to make it clear that the Chief Judge of the Land and Environment Court is a "judge" for the purposes of that Act,
- (d) to amend the *Jury Act 1977* to permit courts and certain specified law enforcement agencies to solicit information from jurors and former jurors, and allow the sheriff to disclose information relating to jurors to courts and such law enforcement agencies, for the purposes of an investigation or prosecution of a contempt of court or an offence relating to jurors or juries,
- (e) to make amendments to the *Justices Act 1902* relating to committal proceedings and appeals,
- (f) to amend the *Legal Profession Act 1987*:
  - (i) to provide that the proper officer of the Supreme Court in relation to a costs assessment matter is the Manager, Costs Assessment in the Attorney General's Department, and
  - (ii) to enable lessees and mortgagors, who have been given a bill of costs for the lessor's or mortgagee's legal costs relating to the preparation of their lease or mortgage, to apply to the Manager, Costs Assessment of the Supreme Court for an assessment of those costs, and
  - (iii) to enable a court to which an appeal against a decision or determination of a costs assessor has been made to refer the appeal to a review panel if the matter has not previously been reviewed by a review panel,
- (g) to amend the *Local Courts (Civil Claims) Act 1970*:
  - (i) to provide that a judgment debtor subject to a writ of execution may keep ordinary tools of trade, plant and equipment, professional instruments and reference books to a value of \$2,000 (rather than \$500, as is currently the case), and
  - (ii) to provide that the Sheriff and bailiffs of a court may decline to seize or take property under a writ of execution if, in the opinion of the Sheriff or bailiff, the costs of the seizure, removal, storage and sale of the property to be seized or taken under that writ are likely to exceed the total sale price of that property,
- (h) to amend the *Victims Support and Rehabilitation Act 1996* with respect to the admissibility and use of certain documents relating to statutory compensation and approved counselling services under that Act.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides that the proposed Act commences on a day or days to be appointed by proclamation.

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

## **Schedule 1 Amendment of Costs in Criminal Cases Act 1967**

The *Costs in Criminal Cases Act 1967* provides that where:

- (a) a defendant in criminal proceedings, after a hearing on the merits, is acquitted or discharged, or has a conviction quashed on appeal, and
- (b) the defendant was discharged as to the indictment on which he or she was convicted or the information or complaint on which the defendant was convicted was dismissed,

the Court or Judge or Justice or Justices concerned (the *Court*) may grant to that defendant a costs certificate under that Act (section 2). A person to whom such a certificate is granted may apply to the Director-General of the Attorney General's Department for payment of the costs incurred in defending the proceedings to which the certificate relates (section 4).

The costs certificate must state that, in the opinion of the Court concerned:

- (a) if the prosecution had, before the proceedings were instituted, been in possession of evidence of all the relevant facts, it would not have been reasonable to institute the proceedings, and
- (b) that any act or omission of the defendant that contributed, or might have contributed, to the institution or continuation of the proceedings was reasonable in the circumstances (section 3).

In determining whether or not to grant a costs certificate the Court is to have regard to all the relevant facts established in the criminal proceedings together with any further relevant facts established by the defendant in the course of the defendant's application (but not any further facts established by the prosecutor) (section 3A).

**Schedule 1 [1] and [2]** amend section 2 of the *Costs in Criminal Cases Act 1967* to provide that a costs certificate may be granted under that Act if a defendant is acquitted or discharged at any time after a trial has commenced and not only after a hearing has concluded.

**Schedule 1 [3] and [4]** amend section 3A of the *Costs in Criminal Cases Act 1967* to allow a prosecutor to adduce evidence to the Court determining whether to grant a costs certificate, being evidence that was in the possession of the prosecutor at the time the decision to institute criminal proceedings was made and that was not adduced in the proceedings. The Court concerned may allow the defendant to comment on the evidence of those further adduced facts and, if it thinks it desirable to do so, allow the defendant to examine any witness giving evidence for the prosecutor.

**Schedule 1 [5]** inserts a savings and transitional provision into the *Costs in Criminal Cases Act 1967*.

## **Schedule 2 Amendment of District Court Act 1973**

Sections 13 and 18 of the *District Court Act 1973* allow the Governor to appoint persons as judges and acting judges of the District Court.

**Schedule 2 [1]** amends section 13 of that Act to provide that judges and former judges of the Federal Court of Australia and the Supreme Court, District Court or County Court of other States and Territories may be appointed as judges of the District Court. By operation of section 18 (2), persons qualified to be appointed as judges of the District Court are also qualified to be appointed as acting judges of that Court.

**Schedule 2 [2]** is a consequential amendment that provides that a judge or former judge of the Federal Court of Australia or of the Supreme Court, District Court or County Court of another State or Territory may be appointed as an acting judge of the District Court even though that judge or former judge has reached the age of 72 years (or will have reached that age before the appointment expires) but may not be appointed for any period that extends beyond the day on which he or she reaches the age of 75 years.

### **Schedule 3 Amendment of Judges' Pensions Act 1953**

The *Judges' Pensions Act 1953* makes provision for pensions for judges and for the widows and widowers of deceased judges and deceased retired judges. Section 2 (1) of that Act currently defines **Judge** to include a Judge of the Land and Environment Court, but does not specifically include a reference to the Chief Judge of that Court.

**Schedule 3 [1]** amends the definition of **Judge** in section 2 (1) of that Act to make it clear that the provisions of the Act applying to judges apply to the Chief Judge of the Land and Environment Court.

**Schedule 3 [2]** inserts a consequential provision into the *Judges' Pensions Act 1953* (proposed section 11B) that provides that the Chief Judge of the Land and Environment Court is taken from 1 September 1980 to have been a Judge for the purposes of this Act.

### **Schedule 4 Amendment of Jury Act 1977**

Section 68 of the *Jury Act 1977*, among other things, prohibits the disclosure of any information that is likely to lead to the identification of a juror or former juror in a particular trial or inquest. Section 68A of that Act, among other things, prohibits the soliciting of information from jurors or former jurors for the purpose of obtaining information on the deliberations of a jury.

**Schedule 4 [1]** amends section 68 of the *Jury Act 1977* to provide that the sheriff may disclose information relating to jurors to courts and certain specified law enforcement agencies for the purposes of an investigation or prosecution of a contempt of court or an offence relating to jurors or juries.

**Schedule 4 [2]** amends section 68A of the *Jury Act 1977* to provide that courts and certain specified law enforcement agencies may solicit information from jurors and former jurors for the purposes of an investigation or prosecution of a contempt of court or an offence relating to jurors or juries.

**Schedule 4 [3]** and **[4]** make amendments for savings and transitional purposes.

## **Schedule 5 Amendment of Justices Act 1902**

**Schedule 5 [1]** omits section 41 (1B) (d) (ii) of the *Justices Act 1902*. Section 41 (1B) (d) provides that a committal hearing may commence or continue in the absence of the defendant (after the defendant has appeared or been brought before the court in relation to the matter) if no good and proper reason has been shown for the absence of the defendant and a warrant for the apprehension of the defendant has been issued. **Schedule 5 [1]** omits the obligation on the prosecution to show the court that a warrant for the apprehension of the defendant has been issued.

**Schedule 5 [2]** inserts proposed section 41 (11) into the *Justices Act 1902* to provide that the Justice or Justices hearing committal proceedings may, at any time, on the application of the defendant and with the consent of the informant, commit the defendant for trial.

**Schedule 5 [3]** inserts proposed section 48E (1A) into the *Justices Act 1902* to provide that the Justice or Justices hearing committal proceedings must direct a witness who has given a written statement for the purposes of the committal to attend the proceedings, if an application is made by the defendant or the informant and the other party consents to the direction being given. **Schedule 5 [4]** makes a consequential amendment.

**Schedule 5 [5]** replaces section 48E (6) of the *Justices Act 1902*. Section 48E provides that the Justice or Justices hearing committal proceedings may direct that a witness who has given a written statement for the purposes of the committal must attend at the proceedings. The proposed section 48E (6) provides that any such direction given on the application of a defendant may be withdrawn only on the application, or with the consent, of the defendant, or if the defendant fails to appear, on the application of the other party.

**Schedule 5 [6]** omits section 100P of the *Justices Act 1902*. Section 100P is a machinery provision that restricts the ability of a person to make an application to a Local Court under section 100D or 100G of the *Justices Act 1902* for an annulment or review of the person's conviction.

**Schedule 5 [7]** inserts proposed section 120 (3) and (4) into the *Justices Act 1902*.

Proposed section 120 (3) provides that the prosecution may appeal to the District Court against an order by a Magistrate to pay any costs of a defendant in committal proceedings.

Section 120 (1) of the *Justices Act 1902* provides that any person may appeal to the District Court against a conviction or order made, or sentence imposed, by a Magistrate in summary proceedings. Proposed section 120 (4) provides that such

an appeal may be made only after a Magistrate has sentenced the person (whether the person is appealing the sentence or the conviction or any other order of the Magistrate).

**Schedule 5 [8]–[10]** amend section 123 of the *Justices Act 1902*.

Section 123 (2) provides that if a person has not exhausted all their rights of appeal under Part 4A of that Act, the person may appeal to the District Court under Division 2 of Part 5 of that Act only with the leave of that Court.

Part 4A of the *Justices Act 1902* includes section 100G which provides that the Attorney General may, if satisfied that a question or doubt has arisen as to the guilt of a person or the person's liability for a penalty, refer a question relating to a conviction or an order (other than an interlocutory order) made against the person by a Magistrate or a sentence imposed on the person by a Magistrate in the absence of the person to the Local Court for review by that Court. Section 100G, therefore, creates a limited right of review in special circumstances.

**Schedule 5 [8]** amends section 123 (2) of the *Justices Act 1902* to provide that a person may appeal to the District Court (without seeking leave of that Court) even if the person has not exhausted his or her rights under section 100G. **Schedule 5 [9]** and **[10]** make consequential amendments.

**Schedule 5 [11]** inserts savings and transitional provisions into the *Justices Act 1902*.

## **Schedule 6 Amendment of Legal Profession Act 1987**

**Schedule 6 [1], [3], [5], [6]** and **[8]** amend various provisions of the *Legal Profession Act 1987* to provide that the proper officer of the Supreme Court in relation to costs assessment matters is the person holding office as the Manager, Costs Assessment in the Attorney General's Department.

**Schedule 6 [4]** amends the definition of *client* in section 199 (4) of the *Legal Profession Act 1987* to enable a lessee or mortgagor, who has been given a bill of costs for the lessor's or mortgagee's legal costs relating to the preparation of their lease or mortgage to apply, to the Manager, Costs Assessment of the Supreme Court for an assessment of those costs. **Schedule 6 [2]** makes a consequential amendment.

**Schedule 6 [7]** inserts proposed section 208NC into the *Legal Profession Act 1987* to enable a court or tribunal to which an appeal against a decision or determination of a costs assessor has been made to refer the appeal to a review panel under Subdivision 4A of Division 6 of Part 11 of that Act, if the matter has not previously been reviewed by such a panel.

**Schedule 6 [9]** inserts a savings and transitional provision into the *Legal Profession Act 1987*.

## **Schedule 7 Amendment of Local Courts (Civil Claims) Act 1970**

Section 59 (1) (a) of the *Local Courts (Civil Claims) Act 1970* currently provides that the Sheriff or a bailiff of a court may seize and take personal property under any writ of execution and cause it to be sold except for:

- (a) any wearing apparel and any bedroom or kitchen furniture, and
- (b) any ordinary tools of trade, plant and equipment, professional instruments and reference books, not exceeding in the aggregate \$500 in value,

being used as such by the judgment debtor concerned or any member of his or her family.

**Schedule 7 [1]** amends section 59 (1) (a) (ii) of the *Local Courts (Civil Claims) Act 1970* to increase the value of ordinary tools of trade, plant and equipment, professional instruments and reference books that a judgment debtor (or member of his or her family) may retain from \$500 to \$2,000.

**Schedule 7 [2]** inserts proposed section 59 (2A) into the *Local Courts (Civil Claims) Act 1970* to provide that the Sheriff and bailiffs of a court may decline to seize or take property under a writ of execution if, in the opinion of the Sheriff or bailiff, the costs of the seizure, removal, storage and sale of the property to be seized or taken under that writ are likely to exceed the total sale price of that property.

**Schedule 7 [3]** inserts a savings and transitional provision into the *Local Courts (Civil Claims) Act 1970*.



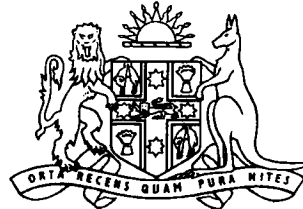
## **Schedule 8   Amendment of Victims Support and Rehabilitation Act 1996**

**Schedule 8 [1] and [2]** amend section 84 of the *Victims Support and Rehabilitation Act 1996* to clarify that:

- (a) applications for payment for approved counselling services under that Act, and
- (b) documents furnished to, or prepared by or on behalf of, the Victims Compensation Tribunal in connection with any such application,

are inadmissible in any criminal proceedings (other than proceedings against the applicant).

**Schedule 8 [3]–[5]** make amendments for savings and transitional purposes.



New South Wales

# Courts Legislation Amendment Bill 2001

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New South Wales

# Courts Legislation Amendment Bill 2001

No. , 2001

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## A Bill for

An Act to amend various Acts with respect to courts, court procedures, judicial officers and related matters; and for other purposes.

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|--|--------|
| <b>The Legislature of New South Wales enacts:</b>                              | 1      |
| <b>1 Name of Act</b>   | 2      |
| This Act is the <i>Courts Legislation Amendment Act 2001</i> .                 | 3      |
| <b>2 Commencement</b>  | 4      |
| This Act commences on a day or days to be appointed by proclamation.           | 5<br>6 |
| <b>3 Amendment of Acts</b>   | 7      |
| The Acts specified in Schedules 1–8 are amended as set out in those Schedules. | 8<br>9 |

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|-------------------|--|----|
| <b>Schedule 1</b> | <b>Amendment of Costs in Criminal Cases</b>                              | 1  |
|                   | <b>Act 1967 No 13</b>  | 2  |
|                   | (Section 3)  | 3  |
| <b>[1]</b>        | <b>Section 2 Certificate may be granted</b>                              | 4  |
|                   | Omit section 2 (a). Insert instead:                                      | 5  |
|                   | (a) where, after the commencement of a trial in the                      | 6  |
|                   | proceedings, a defendant is acquitted or discharged in                   | 7  |
|                   | relation to the offence concerned, or                                    | 8  |
| <b>[2]</b>        | <b>Section 2 (2) and (3)</b>   | 9  |
|                   | Insert after section 2:  | 10 |
|                   | (2) For the avoidance of doubt, a certificate may be granted in          | 11 |
|                   | accordance with subsection (1) (a) following an acquittal or             | 12 |
|                   | discharge of a defendant at any time during a trial, whether a           | 13 |
|                   | hearing on the merits of the proceedings has occurred or not.            | 14 |
|                   | (3) In this section, <i>trial</i> , in relation to proceedings, includes | 15 |
|                   | preliminary proceedings that form part of the trial, for example,        | 16 |
|                   | a <i>voir dire</i> .   | 17 |
| <b>[3]</b>        | <b>Section 3A Evidence of further relevant facts may be adduced</b>      | 18 |
|                   | Omit section 3A (1). Insert instead:                                     | 19 |
|                   | (1) For the purpose of determining whether or not to grant a             | 20 |
|                   | certificate under section 2 in relation to any proceedings, the          | 21 |
|                   | reference in section 3 (1) (a) to <i>all the relevant facts</i> is a     | 22 |
|                   | reference to:  | 23 |
|                   | (a) the relevant facts established in the proceedings, and               | 24 |
|                   | (b) any relevant facts that the defendant has, on the                    | 25 |
|                   | application for the certificate, established to the                      | 26 |
|                   | satisfaction of the Court or Judge or Justice or Justices,               | 27 |
|                   | and  | 28 |

- (c) any relevant facts that the prosecutor, or in the absence of the prosecutor, any person authorised to represent the Minister on the application, has established to the satisfaction of the Court or Judge or Justice or Justices that:
  - (i) relate to evidence that was in the possession of the prosecutor at the time that the decision to institute proceedings was made, and
  - (ii) were not adduced in the proceedings.

**[4] Section 3A (3)** 10

Insert after section 3A (2): 11

- (3) If, in response to an application for a certificate under section 2 in relation to any proceedings, the prosecutor or, in the absence of the prosecutor, any person authorised to represent the Minister on the application adduces evidence to establish further relevant facts that were not established in those proceedings, the Court or Judge or Justice or Justices to which or to whom the application is made may:
  - (a) order that leave be given to the defendant to comment on the evidence of those relevant facts, and
  - (b) if the Court or Judge or Justice or Justices think it desirable to do so after taking into consideration any of those comments, order that leave be given to the defendant to examine any witness giving evidence for the prosecutor or that authorised person.

**[5] Section 7** 26

Insert after section 6B: 27

**7 Savings and transitional provisions relating to Courts Legislation Amendment Act 2001** 28  
29

- (1) Sections 2 and 3A, as amended by the *Courts Legislation Amendment Act 2001*, apply to and in respect of proceedings not finally determined before the commencement of the relevant amendment. 30  
31  
32  
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- (2) Sections 2 and 3A, as in force immediately before their amendment by the *Courts Legislation Amendment Act 2001*, continue to apply to and in respect of proceedings finally determined before the relevant amendment commenced. 1  
2  
3  
4

|                   |   |  |
|-------------------|---|--|
| <b>Schedule 2</b> | <b>Amendment of District Court Act 1973</b>   | 1                                      |
|                   | <b>No 9</b>   | 2                                      |
|                   | (Section 3)   | 3                                      |
| <b>[1]</b>        | <b>Section 13 Appointment and qualification of Judges</b>   | 4                                      |
|                   | Omit section 13 (1). Insert instead:  | 5                                      |
|                   | (1) The Governor may, by commission under the public seal of the State, appoint any qualified person as a Judge.  | 6<br>7                                 |
|                   | (2) In this section:  | 8                                      |
|                   | <i>qualified person</i> means any of the following persons:   | 9                                      |
|                   | (a) a person who is a legal practitioner of at least 7 years' standing,   | 10<br>11                               |
|                   | (b) a person who is or has been a Magistrate,   | 12                                     |
|                   | (c) a person who is or has been a judge of the Federal Court of Australia,  | 13<br>14                               |
|                   | (d) a person who is or has been a judge of the Supreme Court, District Court or County Court of another State or Territory.   | 15<br>16<br>17                         |
| <b>[2]</b>        | <b>Section 18 Acting Judges</b>   | 18                                     |
|                   | Insert after section 18 (4):  | 19                                     |
|                   | (4A) A person who is or has been a judge of the Federal Court of Australia or of the Supreme Court, District Court or County Court of another State or Territory may be so appointed even though that person has reached the age of 72 years (or will have reached that age before the appointment expires), but may not be so appointed for any period that extends beyond the day on which he or she reaches the age of 75 years. | 20<br>21<br>22<br>23<br>24<br>25<br>26 |



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|                   |  |    |
|-------------------|--|----|
| <b>Schedule 3</b> | <b>Amendment of Judges' Pensions Act 1953</b>                            | 1  |
|                   | <b>No 41</b>   | 2  |
|                   | (Section 3)  | 3  |
| <b>[1]</b>        | <b>Section 2 Definitions</b>   | 4  |
|                   | Insert "Chief Judge or" before "Judge of the Land and Environment Court" | 5  |
|                   | in the definition of <i>Judge</i> in section 2 (1).                      | 6  |
| <b>[2]</b>        | <b>Section 11B</b>   | 7  |
|                   | Insert after section 11A:  | 8  |
| <b>11B</b>        | <b>Provision consequent on enactment of Courts Legislation</b>           | 9  |
|                   | <b>Amendment Act 2001</b>  | 10 |
|                   | The Chief Judge of the Land and Environment Court is taken               | 11 |
|                   | from 1 September 1980 to have been a Judge for the purposes              | 12 |
|                   | of this Act.   | 13 |

|                   |  |    |
|-------------------|--|----|
| <b>Schedule 4</b> | <b>Amendment of Jury Act 1977 No 18</b>  | 1  |
|                   | (Section 3)  | 2  |
| <b>[1]</b>        | <b>Section 68 Disclosure etc of identity or address of juror</b>   | 3  |
|                   | Insert after section 68 (3):   | 4  |
|                   | (4) Subsection (1) does not apply to the disclosure of information by the sheriff to any of the following bodies or persons for the purposes of an investigation or prosecution of a contempt of court or an offence relating to a juror or a jury:          | 5  |
|                   |  | 6  |
|                   |  | 7  |
|                   |  | 8  |
|                   | (a) a court,   | 9  |
|                   | (b) the New South Wales Crime Commission,  | 10 |
|                   | (c) the Independent Commission Against Corruption,   | 11 |
|                   | (d) the Police Integrity Commission,   | 12 |
|                   | (e) the National Crime Authority,  | 13 |
|                   | (f) the Director of Public Prosecutions,   | 14 |
|                   | (g) the Police Service,  | 15 |
|                   | (h) the Australian Federal Police,   | 16 |
|                   | (i) any other person or body prescribed for the purposes of this subsection.   | 17 |
|                   |  | 18 |
|                   | (5) In this section:   | 19 |
|                   | <i>court</i> includes any tribunal, authority or person having power to require the production of documents or the answering of questions.   | 20 |
|                   |  | 21 |
|                   |  | 22 |
| <b>[2]</b>        | <b>Section 68A Soliciting information from or harassing jurors or former jurors</b>  | 23 |
|                   |  | 24 |
|                   | Insert after section 68A (3):  | 25 |
|                   | (4) Subsection (1) does not prohibit any of the following bodies or persons from soliciting information from a juror or former juror for the purposes of an investigation or prosecution of a contempt of court or an offence relating to a juror or a jury: | 26 |
|                   |  | 27 |
|                   |  | 28 |
|                   |  | 29 |
|                   | (a) a court,   | 30 |
|                   | (b) the New South Wales Crime Commission,  | 31 |

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|            |  |                            |
|------------|--|----------------------------|
| (c)        | the Independent Commission Against Corruption,   | 1                          |
| (d)        | the Police Integrity Commission,   | 2                          |
| (e)        | the National Crime Authority,  | 3                          |
| (f)        | the Director of Public Prosecutions,   | 4                          |
| (g)        | the Police Service,  | 5                          |
| (h)        | the Australian Federal Police,   | 6                          |
| (i)        | any other person or body prescribed for the purposes of<br>this subsection.  | 7<br>8                     |
| (5)        | In this section:   | 9                          |
|            | <i>court</i> includes any tribunal, authority or person having power<br>to require the production of documents or the answering of<br>questions.   | 10<br>11<br>12             |
| <b>[3]</b> | <b>Schedule 8 Transitional and savings provisions</b>  | 13                         |
|            | Insert at the end of clause 1A (1):  | 14                         |
|            | <i>Courts Legislation Amendment Act 2001</i> (but only to the extent<br>that it amends this Act)   | 15<br>16                   |
| <b>[4]</b> | <b>Schedule 8, Part 7</b>  | 17                         |
|            | Insert after Part 6:   | 18                         |
|            | <b>Part 7 Transitional and savings provisions<br/>consequent on enactment of Courts<br/>Legislation Amendment Act 2001</b>   | 19<br>20<br>21             |
| <b>16</b>  | <b>Disclosing and soliciting information regarding jurors and jury<br/>deliberations</b>   | 22<br>23                   |
|            | Sections 68 and 68A, as amended by Schedule 4 to the <i>Courts<br/>Legislation Amendment Act 2001</i> , apply to acts, matters or<br>things done, and in relation to jurors and jury deliberations in<br>criminal proceedings, that were finally determined before, on<br>or after the commencement of those amendments. | 24<br>25<br>26<br>27<br>28 |

|  |    |
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| <b>Schedule 5 Amendment of Justices Act 1902 No 27</b>   | 1  |
| (Section 3)  | 2  |
| <b>[1] Section 41 Procedure on hearing of charge of indictable offence</b>   | 3  |
| Omit from section 41 (1B) (d):   | 4  |
| if:  | 5  |
| (i) no good and proper reason is shown for the absence of the defendant, and   | 6  |
| (ii) a warrant for the apprehension of the defendant is issued.  | 8  |
| Insert instead “if no good and proper reason is shown for the absence of the defendant”.   | 10 |
| <b>[2] Section 41 (11)</b>   | 12 |
| Insert after section 41 (10):  | 13 |
| (11) Despite any other provision of this section, the Justice or Justices may, at any time, on the application of the defendant and with the consent of the informant, commit the defendant for trial. | 14 |
| <b>[3] Section 48E Direction to witness to attend</b>  | 18 |
| Insert after section 48E (1):  | 19 |
| (1A) The Justice or Justices must give the direction if an application is made by the defendant or the informant and the other party consents to the direction being given.                            | 20 |
| <b>[4] Section 48E (2)</b>   | 23 |
| Omit “The Justice”. Insert instead “In any other circumstance, the Justice”.   | 24 |

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|--|----|
| <b>[5] Section 48E (6)</b>   | 1  |
| Omit the subsection. Insert instead:   | 2  |
| (6) A direction given under subsection (1) on the application of a defendant or informant may be withdrawn:  | 3  |
| (a) only on the application, or with the consent, of the applicant, or   | 4  |
| (b) if the applicant fails to appear, on the application of the other party.   | 5  |
|  | 6  |
|  | 7  |
|  | 8  |
| <b>[6] Section 100P Application prohibited if decision has been appealed to another court</b>  | 9  |
|  | 10 |
| Omit the section.  | 11 |
| <b>[7] Section 120 When an appeal can be made by a defendant or other person</b>   | 12 |
|  | 13 |
| Insert after section 120 (2):  | 14 |
| (3) <b>Appeals against costs orders after committal proceedings</b>  | 15 |
| An appeal may be made under this Division to the District Court by an informant against an order by a Magistrate at the conclusion of committal proceedings to pay any costs of a defendant in the proceedings.                      | 16 |
|  | 17 |
|  | 18 |
|  | 19 |
| (4) <b>Appeal may be made only after sentencing</b>  | 20 |
| An appeal by a person under subsection (1) to the District Court may be made only after a Magistrate has sentenced the person (whether the person is appealing the sentence or the conviction or any other order of the Magistrate). | 21 |
|  | 22 |
|  | 23 |
|  | 24 |
| <b>Note.</b> See section 117 for the expanded meaning of <i>sentence</i> in this Part.   | 25 |
| <b>[8] Section 123 Matters in which an appeal can be made only with leave of District Court</b>  | 26 |
|  | 27 |
| Insert “(other than an application under section 100G)” after “Part 4A” in section 123 (2).  | 28 |
|  | 29 |
| <b>[9] Section 123 (4)</b>   | 30 |
| Insert “(other than an application under section 100G)” after “Part 4A” where firstly occurring.   | 31 |
|  | 32 |

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|---|----------------------------------|
| <b>[10] Section 123 (4)</b>   | 1                                |
| Insert “under this section” after “leave to appeal”.  | 2                                |
| <b>[11] Second Schedule Savings, transitional and other provisions</b>  | 3                                |
| Insert at the end of the Schedule with appropriate Part and clause numbers:   | 4                                |
| <br>  |                                  |
| <b>Part Provisions consequent on enactment of<br/>Courts Legislation Amendment Act 2001</b>   | 5<br>6                           |
| <br>  |                                  |
| <b>Regulations</b>  | 7                                |
| (1) The regulations may contain provisions of a savings or<br>transitional nature consequent on the enactment of the <i>Courts<br/>        Legislation Amendment Act 2001</i> (but only to the extent that it<br>amends this Act).  | 8<br>9<br>10<br>11               |
| (2) Any such provision may, if the regulations so provide, take<br>effect from the date of assent to the Act concerned or a later<br>date.  | 12<br>13<br>14                   |
| (3) To the extent to which any such provision takes effect from a<br>date that is earlier than the date of its publication in the Gazette,<br>the provision does not operate so as:   | 15<br>16<br>17                   |
| (a) to affect, in a manner prejudicial to any person (other<br>than the State or an authority of the State), the rights of<br>that person existing before the date of its publication, or   | 18<br>19<br>20                   |
| (b) to impose liabilities on any person (other than the State<br>or an authority of the State) in respect of anything done<br>or omitted to be done before the date of its publication.   | 21<br>22<br>23                   |
| <br>  |                                  |
| <b>Application of provisions</b>  | 24                               |
| (1) The amendments made to this Act by the <i>Courts Legislation<br/>        Amendment Act 2001</i> apply to or in respect of committal<br>proceedings for offences, whether committed before, on or after<br>the commencement of this clause, but do not apply to or in<br>respect of committal proceedings commenced before the<br>commencement of this clause. | 25<br>26<br>27<br>28<br>29<br>30 |

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(2) This Act, as in force before the commencement of this clause,  
continues to apply to or in respect of committal proceedings  
commenced before the commencement of this clause. 1  
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**Appeals by defendants and other persons to District Court** 4

Section 120, as amended by Schedule 5 [7] to the *Courts  
Legislation Amendment Act 2001*, applies to and in respect of  
all proceedings, whether finally determined before, on or after  
the commencement of that amendment. 5  
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|                   |   |                      |
|-------------------|---|----------------------|
| <b>Schedule 6</b> | <b>Amendment of Legal Profession Act 1987</b>   | 1                    |
|                   | <b>No 109</b>   | 2                    |
|                   | (Section 3)   | 3                    |
| <b>[1]</b>        | <b>Section 3 Definitions</b>  | 4                    |
|                   | Insert in appropriate order in section 3 (1):   | 5                    |
|                   | <i>Manager, Costs Assessment</i> means the person holding office, under Part 2 of the <i>Public Sector Management Act 1988</i> , as “Manager, Costs Assessment” in the Attorney General’s Department.   | 6<br>7<br>8<br>9     |
| <b>[2]</b>        | <b>Section 197 Regulations to provide for amounts of costs passed on to other parties</b>   | 10<br>11             |
|                   | Omit “For example, the regulations may prescribe legal services relating to the preparation of mortgages or leases.” from section 197 (1).  | 12<br>13             |
| <b>[3]</b>        | <b>Sections 198B (2) and (3), 199 (1), 200 (1), 201 (1), 202 (1) and (2), 203 (4) and (5), 204, 206 (1), 208A (4), 208F (5), 208JA (1), (2) and (5), 208KA (1), (3) and (4), 208KB (1), 208KE (1), 208KH (7), (8) and (10), 208NB, 208SA and 208U (2)</b> | 14<br>15<br>16<br>17 |
|                   | Omit “proper officer of the Supreme Court” wherever occurring.<br>Insert instead “Manager, Costs Assessment”.   | 18<br>19             |
| <b>[4]</b>        | <b>Section 199 Applications by clients for assessment of costs in bills</b>   | 20                   |
|                   | Omit section 199 (4). Insert instead:   | 21                   |
|                   | (4) In this section, <i>client</i> includes:  | 22                   |
|                   | (a) any person who is a party to a costs agreement relating to legal services for which the bill of costs is given (other than the barrister or solicitor who gave the bill or provided the services), and  | 23<br>24<br>25<br>26 |
|                   | (b) any person, being a lessee under a lease, who is given a bill of costs, concerning legal services relating to the preparation of that lease, by a barrister or solicitor acting on behalf of the lessor, and  | 27<br>28<br>29<br>30 |



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|              |   |                                  |
|--------------|---|----------------------------------|
| (c)          | any person, being a mortgagor under a mortgage, who is given a bill of costs, concerning legal services relating to the preparation of that mortgage, by a barrister or solicitor acting on behalf of the mortgagee.  | 1<br>2<br>3<br>4                 |
| <b>[5]</b>   | <b>Sections 204 and 208SA</b>   | 5                                |
|              | Omit “the proper officer” where secondly occurring.   | 6                                |
|              | Insert instead “the Manager, Costs Assessment”.   | 7                                |
| <b>[6]</b>   | <b>Section 206 (2)–(5)</b>  | 8                                |
|              | Omit “the proper officer” wherever occurring in each section.   | 9                                |
|              | Insert instead “the Manager, Costs Assessment”.   | 10                               |
| <b>[7]</b>   | <b>Section 208NC</b>  | 11                               |
|              | Insert after section 208NB:   | 12                               |
| <b>208NC</b> | <b>Court may refer unreviewed determination to review panel</b>   | 13                               |
| (1)          | If an appeal is made under section 208M against a determination of a costs assessor and the determination to which the appeal relates has not been reviewed by a panel in accordance with Subdivision 4A, the court or tribunal to which the appeal is made may refer the appeal to the Manager, Costs Assessment for a review by a panel under that Subdivision. | 14<br>15<br>16<br>17<br>18<br>19 |
| (2)          | For the purposes of Subdivision 4A, the referral of an appeal by a court or tribunal under subsection (1) to the Manager, Costs Assessment is taken to be a duly made application for a review under that Subdivision.  | 20<br>21<br>22<br>23             |
| <b>[8]</b>   | <b>Section 208S Costs assessors</b>   | 24                               |
|              | Omit “Proper Officer of the Supreme Court” from section 208S (5).   | 25                               |
|              | Insert instead “Manager, Costs Assessment”.   | 26                               |

|   |             |
|---|-------------|
| <b>[9] Schedule 8 Savings, transitional and other provisions</b>  | 1           |
| Insert at the end of Schedule 8 with appropriate Part and clause numbers:   | 2           |
| <br>  |             |
| <b>Part Provisions consequent on enactment of<br/>Courts Legislation Amendment Act 2001</b>   | 3<br>4      |
| <br>  |             |
| <b>Referral of unreviewed determinations to review panel:<br/>section 208NC</b>   | 5<br>6      |
| Section 208NC, as inserted by the <i>Courts Legislation<br/>Amendment Act 2001</i> , applies to an appeal under section 208M<br>made before the commencement of that section. | 7<br>8<br>9 |

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|-------------------|---|--------------------------|
| <b>Schedule 7</b> | <b>Amendment of Local Courts (Civil Claims) Act 1970 No 11</b>  | 1                        |
|                   |   | 2                        |
|                   | (Section 3)   | 3                        |
| <b>[1]</b>        | <b>Section 59 Sheriff or bailiff to take under writ of execution</b>  | 4                        |
|                   | Omit “\$500” from section 59 (1) (a) (ii). Insert instead “\$2,000”.  | 5                        |
| <b>[2]</b>        | <b>Section 59 (2A)</b>  | 6                        |
|                   | Insert after section 59 (2):  | 7                        |
|                   | (2A) If, in the opinion of the Sheriff or a bailiff of any court, the cost of seizing, removing, storing and selling property to be seized or taken under a writ of execution is likely to exceed the total sale price of that property, the Sheriff or bailiff concerned may decline to execute that writ. | 8<br>9<br>10<br>11<br>12 |
| <b>[3]</b>        | <b>Schedule 2 Savings and transitional provisions</b>   | 13                       |
|                   | Insert after Part 7 of the Schedule:  | 14                       |
|                   | <b>Part 8 Provisions consequent on enactment of Courts Legislation Amendment Act 2001</b>   | 15<br>16                 |
| <b>1</b>          | <b>Sheriff or bailiff to take under writ of execution</b>   | 17                       |
|                   | (1) Section 59, as amended by Schedule 7 to the <i>Courts Legislation Amendment Act 2001</i> , applies to and in respect of writs of execution issued on or after the commencement of that amendment.   | 18<br>19<br>20<br>21     |
|                   | (2) Section 59, as in force immediately before its amendment by the <i>Courts Legislation Amendment Act 2001</i> continues to apply to and in respect of writs of execution issued before the commencement of that amendment.   | 22<br>23<br>24<br>25     |

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|-------------------|--|----|
| <b>Schedule 8</b> | <b>Amendment of Victims Support and Rehabilitation Act 1996 No 115</b>   | 1  |
|                   |  | 2  |
|                   | (Section 3)  | 3  |
| <b>[1]</b>        | <b>Section 84 Inadmissibility and use of certain evidence in subsequent criminal proceedings</b>   | 4  |
|                   |  | 5  |
|                   | Insert “or for payment for approved counselling services” after “statutory compensation” in section 84 (1) (a).  | 6  |
|                   |  | 7  |
| <b>[2]</b>        | <b>Section 84 (1) (b)</b>  | 8  |
|                   | Insert “or any documents furnished to, or prepared by or on behalf of, the Tribunal at any time in connection with the application” after “lodged”.  | 9  |
|                   |  | 10 |
| <b>[3]</b>        | <b>Schedule 3 Savings, transitional and other provisions</b>   | 11 |
|                   | Insert at the end of clause 1 (1):   | 12 |
|                   | <i>Courts Legislation Amendment Act 2001</i> (but only to the extent that it amends this Act)  | 13 |
|                   |  | 14 |
| <b>[4]</b>        | <b>Schedule 3, clause 3A</b>   | 15 |
|                   | Omit the clause.   | 16 |
| <b>[5]</b>        | <b>Schedule 3, Part 5</b>  | 17 |
|                   | Insert after Part 4:   | 18 |
|                   |  |    |
|                   | <b>Part 5 Provision consequent on enactment of Courts Legislation Amendment Act 2001</b>   | 19 |
|                   |  | 20 |
|                   | <b>20 Inadmissibility and use of certain evidence in criminal proceedings</b>  | 21 |
|                   |  | 22 |
|                   | (1) Section 84, as amended by Schedule 8 to the <i>Courts Legislation Amendment Act 2001</i> , applies to and in respect of an application for statutory compensation or for payment for approved counselling services, whether made before, on or after the commencement of that amendment. | 23 |
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- (2) Despite clause 3 of this Schedule, section 84, as amended by Schedule 8 to the *Courts Legislation Amendment Act 2001*, applies to and in respect of an application for compensation made under Part 3 of the *Victims Compensation Act 1987* as if that application were an application for statutory compensation made under this Act.
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