

Passed by both Houses



New South Wales

Courts Legislation Amendment Bill 2001

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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, , 2001*



New South Wales

Courts Legislation Amendment Bill 2001

Act No , 2001

An Act to amend various Acts with respect to courts, court procedures, judicial officers and related matters; 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 2001*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Acts

The Acts specified in Schedules 1–8 are amended as set out in those Schedules.

Schedule 1 Amendment of Costs in Criminal Cases Act 1967 No 13

(Section 3)

[1] Section 2 Certificate may be granted

Omit section 2 (a). Insert instead:

- (a) where, after the commencement of a trial in the proceedings, a defendant is acquitted or discharged in relation to the offence concerned, or

[2] Section 2 (2) and (3)

Insert after section 2:

- (2) For the avoidance of doubt, a certificate may be granted in accordance with subsection (1) (a) following an acquittal or discharge of a defendant at any time during a trial, whether a hearing on the merits of the proceedings has occurred or not.
- (3) In this section, *trial*, in relation to proceedings, includes preliminary proceedings that form part of the trial, for example, a *voir dire*.

[3] Section 3A Evidence of further relevant facts may be adduced

Omit section 3A (1). Insert instead:

- (1) For the purpose of determining whether or not to grant a certificate under section 2 in relation to any proceedings, the reference in section 3 (1) (a) to *all the relevant facts* is a reference to:
 - (a) the relevant facts established in the proceedings, and
 - (b) any relevant facts that the defendant has, on the application for the certificate, established to the satisfaction of the Court or Judge or Justice or Justices, and

- (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)

Insert after section 3A (2):

- (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

Insert after section 6B:

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

- (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.

- (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.

Schedule 2 Amendment of District Court Act 1973 No 9

(Section 3)

[1] Section 13 Appointment and qualification of Judges

Omit section 13 (1). Insert instead:

- (1) The Governor may, by commission under the public seal of the State, appoint any qualified person as a Judge.
- (2) In this section:
qualified person means any of the following persons:
 - (a) a person who is a legal practitioner of at least 7 years' standing,
 - (b) a person who is or has been a Magistrate,
 - (c) a person who is or has been a judge of the Federal Court of Australia,
 - (d) a person who is or has been a judge of the Supreme Court, District Court or County Court of another State or Territory.

[2] Section 18 Acting Judges

Insert after section 18 (4):

- (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.

**Schedule 3 Amendment of Judges' Pensions Act 1953
No 41**

(Section 3)

[1] Section 2 Definitions

Insert "Chief Judge or" before "Judge of the Land and Environment Court" in the definition of *Judge* in section 2 (1).

[2] Section 11B

Insert after section 11A:

**11B Provision consequent on enactment of Courts Legislation
Amendment Act 2001**

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 No 18

(Section 3)

[1] Section 68 Disclosure etc of identity or address of juror

Insert after section 68 (3):

- (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:
 - (a) a court,
 - (b) the New South Wales Crime Commission,
 - (c) the Independent Commission Against Corruption,
 - (d) the Police Integrity Commission,
 - (e) the National Crime Authority,
 - (f) the Director of Public Prosecutions,
 - (g) the Police Service,
 - (h) the Australian Federal Police.
- (5) Subsection (1) does not apply to the disclosure of information by the sheriff to a person in accordance with an authority granted by the Attorney General for the conduct of a research project into matters relating to juries or jurors.
- (6) In this section:

court includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

[2] Section 68A Soliciting information from or harassing jurors or former jurors

Insert after section 68A (3):

- (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:

- (a) a court,
- (b) the New South Wales Crime Commission,
- (c) the Independent Commission Against Corruption,
- (d) the Police Integrity Commission,
- (e) the National Crime Authority,
- (f) the Director of Public Prosecutions,
- (g) the Police Service,
- (h) the Australian Federal Police.

(5) In this section:

court includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

[3] Schedule 8 Transitional and savings provisions

Insert at the end of clause 1A (1):

Courts Legislation Amendment Act 2001 (but only to the extent that it amends this Act)

[4] Schedule 8, Part 7

Insert after Part 6:

**Part 7 Transitional and savings provisions
consequent on enactment of Courts
Legislation Amendment Act 2001**

16 Disclosing and soliciting information regarding jurors and jury deliberations

Sections 68 and 68A, as amended by Schedule 4 to the *Courts Legislation Amendment Act 2001*, apply to acts, matters or things done, and in relation to jurors and jury deliberations in criminal proceedings, that were finally determined before, on or after the commencement of those amendments.

Schedule 5 Amendment of Justices Act 1902 No 27

(Section 3)

[1] Section 41 Procedure on hearing of charge of indictable offence

Omit from section 41 (1B) (d):

if:

- (i) no good and proper reason is shown for the absence of the defendant, and
- (ii) a warrant for the apprehension of the defendant is issued.

Insert instead “if no good and proper reason is shown for the absence of the defendant”.

[2] Section 41 (11)

Insert after section 41 (10):

- (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.

[3] Section 48E Direction to witness to attend

Insert after section 48E (1):

- (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.

[4] Section 48E (2)

Omit “The Justice”. Insert instead “In any other circumstance, the Justice”.

[5] Section 48E (6)

Omit the subsection. Insert instead:

- (6) A direction given under subsection (1) on the application of a defendant or informant may be withdrawn:
 - (a) only on the application, or with the consent, of the applicant, or
 - (b) if the applicant fails to appear, on the application of the other party.

[6] Section 100P Application prohibited if decision has been appealed to another court

Omit the section.

[7] Section 120 When an appeal can be made by a defendant or other person

Insert after section 120 (2):

- (3) **Appeals against costs orders after committal proceedings**
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.
- (4) **Appeal may be made only after sentencing**
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).

Note. See section 117 for the expanded meaning of *sentence* in this Part.

[8] Section 123 Matters in which an appeal can be made only with leave of District Court

Insert “(other than an application under section 100G)” after “Part 4A” in section 123 (2).

[9] Section 123 (4)

Insert “(other than an application under section 100G)” after “Part 4A” where firstly occurring.

[10] Section 123 (4)

Insert “under this section” after “leave to appeal”.

[11] Second Schedule Savings, transitional and other provisions

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

**Part Provisions consequent on enactment of
Courts Legislation Amendment Act 2001**

Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the *Courts Legislation Amendment Act 2001* (but only to the extent that it amends this Act).
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Application of provisions

- (1) The amendments made to this Act by the *Courts Legislation Amendment Act 2001* apply to or in respect of committal proceedings for offences, whether committed before, on or after the commencement of this clause, but do not apply to or in respect of committal proceedings commenced before the commencement of this clause.

- (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.

Appeals by defendants and other persons to District Court

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.

Schedule 6 Amendment of Legal Profession Act 1987 No 109

(Section 3)

[1] Section 3 Definitions

Insert in appropriate order in section 3 (1):

Manager, Costs Assessment means the person holding office, under Part 2 of the *Public Sector Management Act 1988*, as “Manager, Costs Assessment” in the Attorney General’s Department.

[2] Section 197 Regulations to provide for amounts of costs passed on to other parties

Omit “For example, the regulations may prescribe legal services relating to the preparation of mortgages or leases.” from section 197 (1).

[3] 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)

Omit “proper officer of the Supreme Court” wherever occurring.
Insert instead “Manager, Costs Assessment”.

[4] Section 199 Applications by clients for assessment of costs in bills

Omit section 199 (4). Insert instead:

(4) In this section, *client* includes:

- (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
- (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

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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.

[5] Sections 204 and 208SA

Omit “the proper officer” where secondly occurring.
Insert instead “the Manager, Costs Assessment”.

[6] Section 206 (2)–(5)

Omit “the proper officer” wherever occurring in each section.
Insert instead “the Manager, Costs Assessment”.

[7] Section 208NC

Insert after section 208NB:

208NC Court may refer unreviewed determination to review panel

- (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.
- (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.

[8] Section 208S Costs assessors

Omit “Proper Officer of the Supreme Court” from section 208S (5).
Insert instead “Manager, Costs Assessment”.

[9] Schedule 8 Savings, transitional and other provisions

Insert at the end of Schedule 8 with appropriate Part and clause numbers:

**Part Provisions consequent on enactment of
Courts Legislation Amendment Act 2001**

**Referral of unreviewed determinations to review panel:
section 208NC**

Section 208NC, as inserted by the *Courts Legislation Amendment Act 2001*, applies to an appeal under section 208M made before the commencement of that section.

Schedule 7 Amendment of Local Courts (Civil Claims) Act 1970 No 11

(Section 3)

[1] Section 59 Sheriff or bailiff to take under writ of execution

Omit "\$500" from section 59 (1) (a) (ii). Insert instead "\$2,000".

[2] Section 59 (2A)

Insert after section 59 (2):

(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.

[3] Schedule 2 Savings and transitional provisions

Insert after Part 7 of the Schedule:

Part 8 Provisions consequent on enactment of Courts Legislation Amendment Act 2001

1 Sheriff or bailiff to take under writ of execution

- (1) Section 59, as amended by Schedule 7 to the *Courts Legislation Amendment Act 2001*, applies to and in respect of writs of execution issued on or after the commencement of that amendment.
- (2) Section 59, as in force immediately before its amendment by the *Courts Legislation Amendment Act 2001* continues to apply to and in respect of writs of execution issued before the commencement of that amendment.

Schedule 8 Amendment of Victims Support and Rehabilitation Act 1996 No 115

(Section 3)

[1] Section 84 Inadmissibility and use of certain evidence in subsequent criminal proceedings

Insert “or for payment for approved counselling services” after “statutory compensation” in section 84 (1) (a).

[2] Section 84 (1) (b)

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”.

[3] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Courts Legislation Amendment Act 2001 (but only to the extent that it amends this Act)

[4] Schedule 3, clause 3A

Omit the clause.

[5] Schedule 3, Part 5

Insert after Part 4:

Part 5 Provision consequent on enactment of Courts Legislation Amendment Act 2001

20 Inadmissibility and use of certain evidence in criminal proceedings

- (1) Section 84, as amended by Schedule 8 to the *Courts Legislation Amendment Act 2001*, 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.

- (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.