



New South Wales

# Courts and Other Legislation Amendment Bill 2011

## 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 (Sentencing Procedure) Act 1999* to require a retired Magistrate to be appointed as a member of the New South Wales Sentencing Council,
- (b) to amend the *Director of Public Prosecutions Act 1986* to provide for the superannuation entitlements of a Director who is appointed to that office following a period of service as a judge,
- (c) to amend the *Land and Environment Court Act 1979*:
  - (i) to provide for the allocation of certain jurisdiction of the Court to particular classes of the Court's jurisdiction, and
  - (ii) to enable certain proceedings brought under the *Environmental Planning and Assessment Act 1979* and *Trees (Disputes Between Neighbours) Act 2006* to be dealt with by means of on-site hearings,
- (d) to make an amendment to the *Environmental Planning and Assessment Regulation 2000* that is consequential on the amendments made to the *Land and Environment Court Act 1979*,

- (e) to amend the *Law Reform Commission Act 1967* to require reports of the Commission to be tabled in Parliament within 14 sitting days of their receipt by the Minister,
- (f) to amend the *NSW Trustee and Guardian Act 2009* to confirm the meaning of certain definitions,
- (g) to amend the *Privacy and Personal Information Protection Act 1998* to provide for the Office of the Sheriff of New South Wales to be a law enforcement agency for the purposes of that Act,
- (h) to amend the *Surrogacy Act 2010* to make the registration (as opposed to simply the notification) of the birth of a child a precondition for the making of a parentage order under that Act,
- (i) to make amendments to the *Trustee Companies Act 1964* that are consequential on recent amendments made to the *Corporations Act 2001* of the Commonwealth.

The amendments to each of these Acts and the Regulation are explained in detail in the explanatory note relating to the Act or Regulation concerned set out in Schedule 1.

## 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 to the proposed Act.

**Clause 3** makes it clear that the explanatory notes contained in Schedule 1 do not form part of the proposed Act.

## Schedule 1 Amendment of legislation

**Schedule 1** contains the amendments to various Acts and the Regulation referred to in the Overview.

First print



New South Wales

# Courts and Other Legislation Amendment Bill 2011

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New South Wales

# Courts and Other Legislation Amendment Bill 2011

No. , 2011

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## **A Bill for**

An Act to make miscellaneous amendments to certain legislation with respect to courts and certain other legislation administered by the Attorney General.

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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 and Other Legislation Amendment Act 2011</i> .	3
<b>2 Commencement</b>	4
This Act commences on the date of assent to this Act.	5
<b>3 Explanatory notes</b>	6
The matter appearing under the heading “Explanatory note” in Schedule 1 does not form part of this Act.	7 8

<b>Schedule 1</b>	<b>Amendment of legislation</b>	1
<b>1.1</b>	<b>Crimes (Sentencing Procedure) Act 1999 No 92</b>	2
<b>[1]</b>	<b>Section 100I Constitution of New South Wales Sentencing Council</b>	3
	Omit “15” from section 100I (2). Insert instead “16”.	4
<b>[2]</b>	<b>Section 100I (2) (a) and (a1)</b>	5
	Omit section 100I (2) (a). Insert instead:	6
	(a) one is to be a retired judicial officer (not being a retired Magistrate), and	7
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	(a1) one is to be a retired Magistrate, and	9
<b>[3]</b>	<b>Schedule 1A Provisions relating to membership and procedure of New South Wales Sentencing Council</b>	10
	Omit “8 members” from clause 10.	11
	Insert instead “a majority of its members for the time being”.	12
<b>[4]</b>	<b>Schedule 2 Savings, transitional and other provisions</b>	13
	Insert at the end of clause 1 (1):	14
	<i>Courts and Other Legislation Amendment Act 2011</i> (but only to the extent that it amends this Act)	15
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<b>[5]</b>	<b>Schedule 2</b>	18
	Insert at the end of the Schedule (with appropriate Part and clause numbers):	19
<b>Part</b>	<b>Provisions consequent on enactment of Courts and Other Legislation Amendment Act 2011</b>	20
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	<b>Effect of amendments</b>	23
	Without limiting section 53 of the <i>Interpretation Act 1987</i> , the amendment of section 100I by the <i>Courts and Other Legislation Amendment Act 2011</i> does not affect the appointment of any existing member of the Sentencing Council (including the appointment of the existing Chairperson of the Council).	24
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	<b>Explanatory note</b>	29
	Item [2] of the proposed amendments to the <i>Crimes (Sentencing Procedure) Act 1999 (the Act)</i> will require a retired Magistrate to be appointed as a member of the New South Wales Sentencing Council. Items [1] and [3] of the proposed amendments to the	30
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Act makes consequential amendments to reflect the increased membership of the Council.	1 2
Item [4] of the proposed amendments to the Act enables the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed amendments to the Act.	3 4 5
Item [5] of the proposed amendments to the Act confirms existing appointments to the Sentencing Council despite the proposed amendments.	6 7
<b>1.2 Director of Public Prosecutions Act 1986 No 207</b>	8
<b>[1] Section 36 Savings and transitional provisions</b>	9
Insert after section 36 (4):	10
(5) Clause 10 of Schedule 1 (as amended by the <i>Courts and Other Legislation Amendment Act 2011</i> ) extends to any appointment to the office of Director made on or after the day on which the Bill for that Act was first introduced into Parliament.	11 12 13 14
<b>[2] Schedule 1 Provisions relating to Senior Officers</b>	15
Omit clause 10 (2). Insert instead:	16
(2) The following provisions apply if a person who is or was a judge becomes Director or a person who is or was Director becomes a judge:	17 18 19
(a) in the case of a Director or former Director who becomes a judge (whether or not for the first time):	20 21
(i) any period served by that person as Director is, for the purposes of the <i>Judges' Pensions Act 1953</i> , to be computed as portion of the person's service as a judge in the judicial office that the person holds immediately before the person's retirement as a judge or death before such retirement (as the case may be), and	22 23 24 25 26 27 28
(ii) the right to any pension that the person is receiving, or is entitled to receive, under the <i>Judges' Pensions Act 1953</i> (as applied by this clause) in his or her capacity as Director or a former Director ceases,	29 30 31 32
(b) in the case of a judge or former judge who becomes Director:	33 34
(i) any period served by that person as a judge is, for the purposes of the <i>Judges' Pensions Act 1953</i> as applied by this clause, to be computed as portion of the person's service as Director where the person holds that office immediately before the person's	35 36 37 38 39



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	retirement as Director or death before such retirement (as the case may be), and	1 2
	(ii) the right to any pension that the person is receiving, or is entitled to receive, under the <i>Judges' Pensions Act 1953</i> in his or her capacity as a judge or former judge ceases.	3 4 5 6
<b>[3]</b>	<b>Schedule 1, clause 10 (6)</b>	7
	Omit the subclause. Insert instead:	8
	(6) In this clause:	9
	<i>judge</i> has the same meaning as in the <i>Judges' Pensions Act 1953</i> .	10
	<i>spouse</i> has the same meaning as in the <i>Judges' Pensions Act 1953</i> .	11 12
	<b>Explanatory note</b>	13
	Item [2] of the proposed amendments to the <i>Director of Public Prosecutions Act 1986 (the Act)</i> makes it clear that if a judge or former judge is appointed as Director, then his or her prior judicial service counts towards any judicial pension to which the Director would be entitled under the Act. Item [3] of the proposed amendments to the Act makes a consequential amendment.	14 15 16 17 18
	Item [1] of the proposed amendments to the Act extends the new superannuation provisions to any appointment to the office of Director made on or after the day on which the Bill for the proposed Act is first introduced into Parliament.	19 20 21
<b>1.3</b>	<b>Environmental Planning and Assessment Regulation 2000</b>	22
	<b>Schedule 7 Savings and transitional provisions</b>	23
	Omit clause 23.	24
	<b>Explanatory note</b>	25
	The proposed amendment to the <i>Environmental Planning and Assessment Regulation 2000</i> is consequential on the amendment made by Schedule 1.4 [1].	26 27
<b>1.4</b>	<b>Land and Environment Court Act 1979 No 204</b>	28
<b>[1]</b>	<b>Section 17 Class 1—environmental planning and protection appeals</b>	29
	Omit “96, 96AA, 96A, 97,” from section 17 (d).	30
	Insert instead “96A, 97, 97AA,”.	31
<b>[2]</b>	<b>Section 20 Class 4—environmental planning and protection and development contract civil enforcement</b>	32 33
	Insert after section 20 (1) (cia):	34
	(cj) proceedings that have been transferred to the Court under section 149B of the <i>Civil Procedure Act 2005 (transferred civil proceedings)</i> ,	35 36 37

<b>[3] Section 20 (3A)</b>	1
Insert after section 20 (3):	2
(3A) The Court (constituted by a Judge) may, by order, declare that any proceedings in the Court that it considers to be related or ancillary to transferred civil proceedings are to be dealt with together with the transferred civil proceedings. In the event of such an order being made, the proceedings that are the subject of the declaration may be dealt with under this Act as if they belonged to Class 4 of the Court's jurisdiction even if they belong to a different class of the Court's jurisdiction.	3 4 5 6 7 8 9 10
<b>[4] Section 34A Proceedings to which on-site hearing procedures apply</b>	11
Omit section 34A (1) (a) and (b).	12
<b>[5] Section 34A (1) (c1)</b>	13
Insert after section 34A (1) (c):	14
(c1) proceedings in Class 1 of the Court's jurisdiction that are brought under section 97AA of the <i>Environmental Planning and Assessment Act 1979</i> ,	15 16 17
<b>[6] Section 34A (1) (g)</b>	18
Insert after section 34A (1) (f):	19
(g) proceedings in Class 2 of the Court's jurisdiction that are brought under section 14B of the <i>Trees (Disputes Between Neighbours) Act 2006</i> .	20 21 22
<b>[7] Schedule 3 Savings, transitional and other provisions</b>	23
Insert at the end of the Schedule (with appropriate clause numbering):	24
<b>Provisions consequent on enactment of Courts and Other Legislation Amendment Act 2011</b>	25 26
(1) The amendment of section 17 (d) by the amending Act does not affect the continued allocation of proceedings brought under repealed section 96 or 96AA of the <i>Environmental Planning and Assessment Act 1979</i> (as in force before the commencement of section 97AA of that Act) to Class 1 of the Court's jurisdiction.	27 28 29 30 31
(2) Section 34A (as amended by the amending Act) extends to:	32
(a) appeals under section 97AA of the <i>Environmental Planning and Assessment Act 1979</i> lodged (but not yet heard) before the commencement of section 34A (1) (c1), and	33 34 35 36

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- (b) applications under section 14B of the *Trees (Disputes Between Neighbours) Act 2006* made (but not yet heard) before the commencement of section 34 (1) (g). 1  
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  - (3) Section 34A (as in force immediately before the repeal of section 34A (1) (a) and (b) by the amending Act) continues to apply in relation to appeals made under repealed section 96 or 96AA of the *Environmental Planning and Assessment Act 1979* (as in force before the commencement of section 97AA of that Act). 4  
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  - (4) In this clause: 10  
    - amending Act* means the *Courts and Other Legislation Amendment Act 2011*. 11  
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**Explanatory note** 13

Item [1] of the proposed amendments to the *Land and Environment Court Act 1979 (the Act)* expressly provides for appeals against modifications of development consents made under section 97AA of the *Environmental Planning and Assessment Act 1979* to be dealt with as part of the Court's Class 1 jurisdiction. The proposed amendment recognises what is already the position by virtue of the updating of references effected by clause 23 of Schedule 7 to the *Environmental Planning and Assessment Regulation 2000* (which is to be repealed by Schedule 1.3). 14  
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Item [2] of the proposed amendments to the Act provides for civil proceedings that have been transferred to the Court from the Supreme Court under section 149B of the *Civil Procedure Act 2005* to be dealt with as part of the Court's Class 4 jurisdiction. Item [3] of the proposed amendments to the Act enables the Court to deal with proceedings in the Court that are related or ancillary to the transferred proceedings as Class 4 matters. 21  
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Item [5] of the proposed amendments to the Act enables appeals under section 97AA of the *Environmental Planning and Assessment Act 1979* to be dealt with by means of on-site hearings. Section 97AA of the *Environmental Planning and Assessment Act 1979* enables an applicant for a modification of a development consent to appeal to the Court against the determination of the application by the consent authority. Item [4] of the proposed amendments repeals provisions that are now outdated because of the enactment of section 97AA. 26  
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Item [6] of the proposed amendments to the Act enables proceedings on applications made to the Court under section 14B of the *Trees (Disputes Between Neighbours) Act 2006* to be dealt with by means of on-site hearings. Section 14B of the *Trees (Disputes Between Neighbours) Act 2006* enables an owner of land to apply to the Court for an order to remedy, restrain or prevent a severe obstruction of sunlight or views by high hedges. 33  
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Item [7] of the proposed amendments allows appeals under section 97AA of the *Environmental Planning and Assessment Act 1979* and applications under section 14B of the *Trees (Disputes Between Neighbours) Act 2006* that have been lodged or made (but not yet heard) to be dealt with by means of on-site hearings. The item also deals with other matters of a savings or transitional nature. 39  
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<b>1.5 Law Reform Commission Act 1967 No 39</b>	1
<b>Section 13 Reports</b>	2
Omit “Minister for tabling in Parliament” from section 13 (5).	3
Insert instead “Minister. Any report furnished to the Minister must be tabled in each House of Parliament within 14 sitting days after the Minister receives the report.”	4 5 6
<b>Explanatory note</b>	7
The proposed amendment to the <i>Law Reform Commission Act 1967</i> will require any report provided to the Minister by the Commission to be tabled in each House of Parliament within 14 sitting days of its receipt by the Minister.	8 9 10
<b>1.6 NSW Trustee and Guardian Act 2009 No 49</b>	11
<b>[1] Section 35 Reciprocal arrangements for intestacy</b>	12
Omit the definition of <i>reciprocating State</i> from section 35 (1). Insert instead:	13
<i>reciprocating State</i> means:	14
(a) any other State or a Territory of Australia, or	15
(b) any country prescribed by the regulations as a reciprocating State for the purposes of this section.	16 17
<b>[2] Section 81 Reciprocal arrangements for management of estates</b>	18
Omit the definition of <i>reciprocating State</i> from section 81 (1). Insert instead:	19
<i>reciprocating State</i> means:	20
(a) any other State or a Territory of Australia, or	21
(b) any country prescribed by the regulations as a reciprocating State for the purposes of this section.	22 23
<b>Explanatory note</b>	24
The amendments to the <i>NSW Trustee and Guardian Act 2009</i> confirm that other States and the Territories are reciprocating States for the purposes of the making of reciprocal arrangements in relation to an intestacy or the management of an estate.	25 26 27

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<b>1.7 Privacy and Personal Information Protection Act 1998</b>	1
<b>No 133</b>	2
<b>Section 3 Definitions</b>	3
Insert after paragraph (g) of the definition of <i>law enforcement agency</i> in section 3 (1):	4
(g1) the Office of the Sheriff of New South Wales,	5
<b>Explanatory note</b>	6
The proposed amendment to the <i>Privacy and Personal Information Protection Act 1998</i> adds the Office of the Sheriff of New South Wales as a law enforcement agency for the purposes of that Act.	7
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<b>1.8 Surrogacy Act 2010 No 102</b>	11
<b>[1] Section 38 Birth of child must be registered</b>	12
Omit “notified or” wherever occurring.	13
<b>[2] Schedule 1 Savings, transitional and other provisions</b>	14
Insert at the end of the Schedule (with appropriate Part and clause numbers):	15
<b>Part Provision consequent on enactment of</b>	16
<b>Courts and Other Legislation Amendment</b>	17
<b>Act 2011</b>	18
<b>Application of amendments</b>	19
The amendments made to section 38 by the <i>Courts and Other Legislation Amendment Act 2011</i> apply in relation to the making of parentage orders on or after the day on which the amendments commence.	20
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<b>Explanatory note</b>	24
Item [1] of the proposed amendments to the <i>Surrogacy Act 2010 (the Act)</i> will make the registration of the birth of a child in an appropriate register of births, deaths and marriages a precondition for the making of a parentage order under the Act. Currently, it is sufficient if the birth has only been notified.	25
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Item [2] of the proposed amendments to the Act makes it clear that the amendments made to section 38 of the Act will only apply in relation to the making of parentage orders on or after the commencement of the amendments.	29
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<b>1.9 Trustee Companies Act 1964 No 6</b>	1
<b>[1] Section 34A Transfer determinations</b>	2
Omit section 34A (1) (a). Insert instead:	3
(a) the Australian Securities and Investments Commission ( <b>ASIC</b> ) makes a determination under section 601WBA of the <i>Corporations Act 2001</i> of the Commonwealth that there is to be a transfer of estate assets and liabilities from a specified trustee company (the <b>transferring company</b> ) to another licensed trustee company (the <b>receiving company</b> ), and	4 5 6 7 8 9 10
<b>[2] Section 34A (1)</b>	11
Insert at the end of section 34A (1):	12
<b>Note.</b> Section 601WBA of the <i>Corporations Act 2001</i> of the Commonwealth enables ASIC to make a transfer determination if:	13 14
(a) ASIC has cancelled the licence of the transferring company (in which case the determination is called a <b>compulsory transfer determination</b> ), or	15 16 17
(b) the transferring company has applied for such a determination (in which case the determination is called a <b>voluntary transfer determination</b> ).	18 19 20
<b>Explanatory note</b>	21
Section 601WBA of the <i>Corporations Act 2001</i> of the Commonwealth (as recently amended by the <i>Corporations and Other Legislation Amendment (Trustee Companies and Other Measures) Act 2011</i> of the Commonwealth) enables the Australian Securities and Investments Commission ( <b>ASIC</b> ) to make a determination that there is to be a transfer of estate assets and liabilities from a trustee company (the <b>transferring company</b> ) to another licensed trustee company (the <b>receiving company</b> ). To make this determination, ASIC must be satisfied (amongst other things) that legislation to facilitate the transfer that satisfies the requirements of section 601WBC of the <i>Corporations Act 2001</i> has been enacted in the State or Territory in which the transferring company and receiving company are situated.	22 23 24 25 26 27 28 29 30 31
Prior to the recent amendments made to section 601WBA of the <i>Corporations Act 2001</i> , ASIC could only make a transfer determination if ASIC had cancelled the transferring company's registration. These kinds of determinations are called <b>compulsory transfer determinations</b> . Following the amendments, ASIC may also make a transfer determination on the application of the transferring company. These new kinds of determinations are called <b>voluntary transfer determinations</b> .	32 33 34 35 36 37
Section 34A of the <i>Trustee Companies Act 1964</i> ( <b>the Act</b> ) was originally enacted to satisfy the requirements of section 601WBC of the <i>Corporations Act 2001</i> for New South Wales legislation in relation to compulsory transfer determinations.	38 39 40

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The proposed amendments to section 34A of the Act ensure that the section will now extend to voluntary transfer determinations made by ASIC as well as to compulsory transfer determinations.

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