

## **Explanatory note**

This explanatory note relates to this Bill as introduced into Parliament.

The *Miscellaneous Acts (Local Court) Amendment Bill 2007* is cognate with this Bill.

### Overview of Bill

The object of this Bill is to replace the separate Local Courts within New South Wales with a single Local Court (sittings of which will be held at various locations within New South Wales). The Bill repeals the *Local Courts Act 1982* and enacts new provisions relating to the Local Court of New South Wales (***the Court***).

### The Bill:

(a) contains provisions for the appointment of Magistrates and other officers of the Court (existing Magistrates and other officers will continue to hold office),

(b) requires at least 5 years' experience as an Australian lawyer for appointment as a Magistrate,

(c) brings the provisions for appointment of acting Magistrates into line with those applicable to acting Judges of the District Court,

(d) continues the existing Local Court jurisdiction (the Court, like the current Local Courts, will have a civil and criminal jurisdiction and a special jurisdiction relating to application proceedings).

### Outline of provisions

#### **Part 1 Preliminary**

**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** defines certain words and expressions used in the proposed Act.

**Clause 4** enables the Governor to make regulations in relation to the proposed Act.

**Clause 5** repeals the *Local Courts Act 1982* and gives effect to proposed Schedule 4 (Savings, transitional and other provisions).

**Clause 6** requires the proposed Act to be reviewed 5 years after it is assented to and a report on the outcome of the review to be tabled in Parliament.

#### **Part 2 The Local Court of New South Wales**

##### **Division 1 Constitution and jurisdiction**

**Clause 7** establishes the Local Court of New South Wales (***the Court***) and provides that it is to be a court of record.

**Clause 8** provides that the Court is to be constituted by a Magistrate sitting alone unless otherwise provided by or under the proposed Act or any other Act or law.

**Clause 9** provides that the Court has a civil jurisdiction, a special jurisdiction and a criminal jurisdiction.

**Clause 10** divides the Court into the General Division and the Small Claims Division for the purposes of the exercise of its civil jurisdiction.

**Clause 11** provides that the Court has State-wide jurisdiction.

##### **Division 2 Magistrates**

See also proposed Schedule 1 for provisions relating to Magistrates.

**Clause 12** provides that the Court is to be composed of a Chief Magistrate and such other Magistrates as may be appointed from time to time.

**Clause 13** allows the Governor to appoint any person who is an Australian lawyer of at least 5 years' standing (or a current or former judicial officer) to be a Magistrate and provides that a Magistrate is taken to be a justice of the peace.

**Clause 14** provides that the Governor may appoint a Magistrate to be Chief Magistrate.

**Clause 15** provides that the Governor may appoint a Magistrate to be a Deputy Chief Magistrate.

**Clause 16** provides that the Governor may appoint a person eligible to be appointed as a Magistrate to act as a Magistrate for a term not exceeding 12 months. A former judicial officer may be appointed until the age of 75 years.

### **Division 3 Assessors**

See also proposed Schedule 2 for provisions relating to Assessors.

**Clause 17** allows the Minister to appoint any person who is an Australian lawyer to be an Assessor.

### **Division 4 Registrars and other officers**

**Clause 18** provides for the employment of registrars and deputy registrars under Chapter 1A of the *Public Sector Employment and Management Act 2002* and allows the appointment of a registrar as the registrar for a designated place.

**Clause 19** provides that a registrar has the functions conferred by or under the proposed Act, the rules or any other Act or law and that those functions may be exercised in respect of any place in the State (regardless of whether a registrar is the registrar for a designated place).

**Clause 20** allows a registrar, assistant registrar or other officer of the District Court to, subject to the rules, exercise the functions of a person holding a corresponding position in the Local Court.

**Clause 21** provides that a reference in any other Act or instrument to the relevant registrar of the Local Court is a reference to the registrar for a particular place or the registrar authorised to exercise a particular function or the registrar for the place at which the proceedings are being, or have been, heard (depending on the context in which the phrase is used).

### **Division 5 Exercise of jurisdiction**

**Clause 22** allows for sittings of the Court to be held at such places and times as are directed by the Chief Magistrate.

**Clause 23** makes provision for the Chief Magistrate to make arrangements for the business of the Court by giving directions concerning the exercise of jurisdiction and functions, sittings and the establishment of circuits. However, before making a direction that would substantially alter the frequency of sittings at a particular place relative to the previous calendar year the Chief Magistrate must consult with the Attorney General.

**Clause 24** gives the Court the same powers as the District Court in dealing with a person who appears to be, or is accused of being, guilty of contempt of court and also allows the Court to refer such a matter to the Supreme Court for determination.

### **Division 6 Rules of court and practice notes**

**Clause 25** establishes the Local Court Rule Committee and specifies the members who are to comprise the Committee.

**Clause 26** gives the Rule Committee the power to make rules in relation to the practice and procedure of the Court.

**Clause 27** allows the Chief Magistrate to issue practice notes in relation to any matter with respect to which rules may be made (subject to the rules).

**Clause 28** provides that the Court may give directions, in relation to particular proceedings, with respect to any aspect of practice or procedure not otherwise provided for by the proposed Act or any other Act.

## **Part 3 Civil jurisdiction**

### **Division 1 Preliminary**

**Clause 29** defines certain expressions used in the proposed Part.

### **Division 2 Jurisdiction**

**Clause 30** confers jurisdiction on the Court sitting in its General Division to hear and determine proceedings on any money claim or proceedings to recover detained goods so long as the amount claimed does not exceed \$60,000. The proposed section also confers jurisdiction on the Court sitting in its Small Claims Division to hear and determine such proceedings so long as the amount claimed does not exceed \$10,000.

**Clause 31** allows the Court, when sitting in its General Division, to exceed the jurisdictional limit of \$60,000 by up to 20 per cent in specified circumstances.

**Clause 32** allows the Court, upon application in proceedings concerning a contract,

to exercise the same jurisdiction as the Supreme Court to refuse to enforce any or all of the provisions of the contract under section 7 (1) (a) of the *Contracts Review Act 1980*.

**Clause 33** specifies certain proceedings that are excluded from the jurisdiction of the Court.

**Clause 34** makes provision with respect to the jurisdiction of the Court to hear and determine proceedings with respect to a cause of action that arose outside of the State and with respect to a defendant that is not within the State.

#### **Division 3 Proceedings in Small Claims Division**

**Clause 35** provides that the jurisdiction of the Court sitting in its Small Claims Division may be exercised by a Magistrate or an Assessor. The proposed section also provides that proceedings are not required to be recorded and are to be conducted with as little formality and technicality as possible, without application of the rules of evidence and generally without the cross-examination of witnesses.

**Clause 36** requires a Magistrate or an Assessor to attempt to bring the parties to proceedings in the Small Claims Division to a settlement before giving final judgment or making a final order in those proceedings.

**Clause 37** provides that the Court sitting in its Small Claims Division has no power to award costs (except as provided by the rules).

#### **Division 4 Appeals from the Local Court**

**Clause 38** provides that all judgments and orders of the Court in its exercise of civil jurisdiction are final and conclusive.

**Clause 39** deals with appeals as of right. A party to proceedings before the Court sitting in its General Division who is dissatisfied with a judgment or order of the Court in point of law may appeal to the Supreme Court. A party to proceedings before the Court sitting in its Small Claims Division who is dissatisfied with a judgment or order of the Court on the ground of lack of jurisdiction or denial of natural justice may appeal to the Supreme Court.

**Clause 40** deals with appeals requiring leave. A party to proceedings before the Court sitting in its General Division who is dissatisfied with a judgment or order of the Court on a ground that involves a question of mixed law and fact, or an interlocutory judgment or order, or a judgment or order made by consent, or a costs order, may appeal to the Supreme Court but only by leave of the Supreme Court.

**Clause 41** sets out how the Supreme Court may deal with appeals under the proposed Division.

#### **Division 5 Rules**

**Clause 42** allows rules to be made for or with respect to specified matters relating to the civil jurisdiction of the Court (provided they are not inconsistent with the uniform rules under the *Civil Procedure Act 2005* and do not relate to any costs matter that is regulated by Division 11 of Part 3.2 of the *Legal Profession Act 2004*).

### **Part 4 Special jurisdiction**

#### **Division 1 Preliminary**

**Clause 43** defines certain expressions used in the proposed Part.

**Clause 44** provides that the proposed Part applies to any proceedings with respect to matters for which jurisdiction is conferred on the Court by or under any other Act or law, other than criminal proceedings or proceedings with respect to any matter for which jurisdiction is conferred on the Court by proposed Part 3 (Civil jurisdiction), defined as **application proceedings** in proposed section 43 (and also known as application proceedings in the *Local Courts Act 1982*).

#### **Division 2 Commencement of proceedings**

**Clause 45** provides that application proceedings commence upon issuing and filing an application notice.

**Clause 46** allows a police officer or public officer to commence application proceedings, if authorised to do so, by issuing an application notice and filing the

notice in accordance with the proposed Division.

**Clause 47** allows a person to commence application proceedings by issuing an application notice, signed by a registrar, and filing the notice in accordance with the proposed Division.

**Clause 48** provides that an application notice may not relate to more than one matter.

**Clause 49** deals with service of an application notice.

**Clause 50** provides that application proceedings are taken to have commenced on the date on which an application notice is filed and allows for the filing of an application notice in the absence of service in certain circumstances.

**Clause 51** requires application proceedings to be brought within 6 years from the date that the matter to which the application relates is alleged to have arisen.

**Clause 52** allows application proceedings to be commenced, in the event that another Act or statutory rule provides for application proceedings to be commenced otherwise than by application notice, in accordance with that Act or statutory rule or in accordance with proposed Part 4.

### **Division 3 Hearing of proceedings**

**Clause 53** requires the Court, on the first return date in application proceedings or at a later time determined by the Court, to set a date, time and place for hearing and determining the proceedings. If the respondent is not present at the first return date, the Court may advise the respondent of the date, time and place for hearing or it may proceed to hear and determine the matter.

**Clause 54** provides for application proceedings to be heard in open court.

**Clause 55** allows the Court to change the venue of application proceedings if appropriate.

**Clause 56** confirms the respondent's right to defend application proceedings and any ancillary proceedings.

**Clause 57** provides that a party may appear personally or by an Australian legal practitioner or other representative empowered by an Act or other law to appear for the applicant or respondent. A police officer who is an applicant may also appear by a police prosecutor.

**Clause 58** specifies who may conduct the case.

**Clause 59** confirms that evidence is to be on oath.

**Clause 60** requires application proceedings to be recorded.

**Clause 61** gives the Court the power to adjourn application proceedings to a specified time and place.

**Clause 62** allows the Court to make directions with respect to procedural irregularities.

**Clause 63** allows the Court to dispense with any requirement of the rules if it is in the interests of justice to do so.

**Clause 64** permits the Court to stay application proceedings (including the enforcement of an order) permanently or to a specified day.

**Clause 65** gives the Magistrate the power to issue a warrant for the arrest of a respondent during proceedings if he or she fails to appear.

**Clause 66** applies Part 3 of Chapter 4 of the *Criminal Procedure Act 1986* to application proceedings (that Part deals with the attendance of witnesses and production of evidence).

**Clause 67** applies Part 4 of Chapter 4 of the *Criminal Procedure Act 1986* to warrants of arrest and warrants of commitment issued in application proceedings.

**Clause 68** provides that an order for the payment of money by a party to application proceedings may be enforced in a court of competent jurisdiction.

**Clause 69** enables the Court to award costs in application proceedings at its discretion.

**Clause 70** sets out the appeal procedures in relation to any order arising from an application notice.

**Division 4 Rules and forms**

**Clause 71** specifies matters relating to application proceedings with respect to which rules may be made.

**Clause 72** enables the Chief Magistrate to approve forms to be used in connection with application proceedings.

**Schedule 1 Provisions relating to Magistrates**

**Schedule 1** sets out matters relating to the appointment of Magistrates including part-time arrangements, vacation of office, remuneration, superannuation, accrued leave and conditions of service.

**Schedule 2 Provisions relating to Assessors**

**Schedule 2** sets out matters relating to the employment of Assessors, including term of office, remuneration, leave, vacation of office and removal from office.

**Schedule 3 Provisions relating to Rule Committee**

**Schedule 3** sets out the matters relating to membership of the Rule Committee (including term of office, vacancy of office and deputies) and meetings of the Rule Committee (including procedures, chairperson and quorum).

**Schedule 4 Savings, transitional and other provisions**

**Schedule 4** contains savings, transitional and other provisions consequent on the enactment of the proposed Act.