

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the Judicial Officers Act 1986:

(a) to enact in NSW model national provisions approved by the Standing Committee of Attorneys-General relating to the temporary exchange of judicial officers between various courts and tribunals in Australia and other countries, and

(b) to extend to all judicial or quasi-judicial offices (including offices subject to any such temporary exchanges and offices to which permanent appointments are made) the existing provisions of that Act that make it clear that judicial officers may be appointed to act in other judicial offices without having to surrender or vacate their original judicial office.

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.

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Schedule 1 Amendment of Judicial Officers Act 1986

No 100

Judicial exchange arrangements

Schedule 1 [3] inserts a new Part 7A into the Judicial Officers Act 1986. Division 1 of Part 7A contains the model national provisions approved by the Standing Committee of Attorneys-General relating to the temporary exchange of judicial officers between various courts and tribunals in Australia and other countries.

Proposed section 43B contains definitions. A corresponding court is defined as a court of another jurisdiction outside NSW that is listed in the proposed Schedule 4A in relation to a NSW court. A participating jurisdiction is defined as the Commonwealth, another State or Territory or another country if, under the law of that other jurisdiction, a judicial exchange arrangement may be entered into with the NSW Attorney General.

Proposed section 43C enables the NSW Attorney General to enter into arrangements with the Attorney General of a participating jurisdiction for the temporary transfer of judicial officers between NSW courts and corresponding courts (a judicial exchange arrangement). However, such an arrangement cannot provide for the transfer of a judicial officer to a federal court of the Commonwealth.

Proposed section 43D enables the senior judicial officer of a NSW court to appoint a judicial officer from a corresponding court as a judicial officer of a NSW court. Such an appointment must be in accordance with a judicial exchange arrangement and with the concurrence of the senior judicial officer of the corresponding court. An appointment cannot be for a term longer than 6 months at any one time and cannot extend beyond the retirement age for a judicial officer of the NSW court. The appointment may be terminated at any time in accordance with the arrangement.

Proposed section 43E provides that a judicial officer from a corresponding court who is appointed to act as a judicial officer of the NSW court is taken for all purposes to be a judicial officer of the NSW court, and has all the applicable powers, authorities, privileges and immunities. However, NSW laws in relation to remuneration, superannuation and removal or suspension from office do not apply to such an officer.

Proposed section 43F provides that, for the purposes of laws relating to remuneration, superannuation and removal or suspension from office, the service of a NSW judicial officer in a corresponding court is taken to be service as a judicial

officer of the NSW court.

Schedule 1 [4] inserts proposed Schedule 4A into the Judicial Officers Act 1986 that contains the NSW courts and corresponding courts for the purposes of judicial exchange arrangements. Proposed section 43H provides that the regulations may amend or replace this Schedule.

Schedule 1 [1] makes a consequential amendment to a definition.

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Appointments to additional offices

Schedule 1 [3] also inserts proposed Division 2 of Part 7A into the Judicial Officers Act 1986 (which replaces section 43A repealed by Schedule 1 [2]). The proposed Division confirms that the doctrine of incompatibility of office does not prevent a judicial officer appointed to a court or tribunal from being appointed to any other court or tribunal and that such an appointment does not result in the surrender or vacation of the first judicial office. The new provision extends to all tribunals having judicial or quasi-judicial functions. It also applies to all permanent, acting or temporary appointments and to appointments in other jurisdictions outside New South Wales (which is not currently the case under existing section 43A).

Savings and transitional provisions

Schedule 1 [5] enables savings and transitional regulations to be made consequent on the enactment of the proposed Act.

Schedule 1 [6] ensures that proposed Division 2 of Part 7A applies to appointments made before the commencement of the Division.