

Second print



New South Wales

Courts Legislation Further Amendment Bill 1997

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This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

*Clerk of the Legislative Assembly.
Legislative Assembly*



New South Wales

Courts Legislation Further Amendment Bill 1997

Act No , 1997

An Act to make miscellaneous amendments to various Acts administered by the Attorney General.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Courts Legislation Further Amendment Act 1997*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation. 5

3 Amendments

Each Act specified in Schedule 1 is amended as set out in that Schedule.

Schedule 1 Amendments

(Section 3)

1.1 Administrative Decisions Tribunal Act 1997 No 76

[1] Section 4 Definitions

Omit "section 145" from the definition of *application* in section 4 (1). 5
Insert instead "section 142".

[2] Section 42 When can an application for an original decision be made?

Omit "or on behalf of" from section 42 (a). 10

[3] Section 53 Internal reviews

Omit section 53 (9). Insert instead:

(9) When an internal review is finalised

An internal review is taken to be finalised if:

- (a) the applicant is notified of the outcome of the review under subsection (6), or 15
- (b) the applicant is not notified of the outcome of the review within 14 days after the application for the review is lodged (or such other period as the administrator and person agree on). 20

Note. Section 55 provides that an interested person may apply for a review of a reviewable decision once an internal review of the decision is taken to be finalised under this subsection.

[4] Section 55 When can an application for a review be made?

Omit "or on behalf of" from section 55 (1) (a). 25

[5] Section 55 (1) (b)

Omit the paragraph. Insert instead:

- (b) an internal review is taken to have been finalised under section 53 (9), and

[6] Section 55 (1) (d)

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Omit the paragraph. Insert instead:

- (d) the application is made within such period as may be prescribed by the rules of the Tribunal following the date on which the internal review is taken to have been finalised under section 53 (9). 10

[7] Section 58 Duty of administrator to lodge material documents with Tribunal where decision reviewed

Insert "or (4)" after "subsection (1)" in section 58 (6).

[8] Section 73 Procedure of the Tribunal generally

Insert "or otherwise misconceived or lacking in substance" after "vexatious" in section 73 (5) (h). 15

[9] Section 82A

Insert after section 82:

82A Recovery of civil or other penalties

A civil or other penalty ordered to be paid by the Tribunal may be registered as a judgment debt in a court of competent jurisdiction and is enforceable accordingly. 20

[10] Schedule 3 Provisions relating to members of Tribunal

Insert "specified in the member's instrument of appointment" after "3 years" in clause 2. 25

[11] Schedule 3, clause 14

Omit the clause. Insert instead:

14 Disclosure of pecuniary and other interests

- (1) If a member is, or is to be, a member of the Tribunal as constituted for the purposes of proceedings and the member has or acquires an interest (pecuniary or otherwise) that could conflict with the proper performance of the functions of the member in relation to the proceedings: 5
 - (a) the member must disclose the nature of the interest to the parties to the proceedings, and 10
 - (b) the member must not take part in the proceedings or exercise any powers in relation to the making by the Tribunal of the decision to which the proceedings relate unless all of the parties to the proceedings consent to it. 15
- (2) If the President becomes aware that a member is, or is to be, a member of the Tribunal as constituted for the purposes of proceedings and that the member has in relation to the proceedings an interest referred to in subclause (1): 20
 - (a) if the President considers that the member should not take part, or should not continue to take part, in the proceedings, the President is to give a direction to the member accordingly, or 25
 - (b) in any other case, the President is to cause the interest of the member to be disclosed to the parties to the proceedings where the interest has not already been disclosed under subclause (1).
- (3) For the purposes of this clause, the expertise or experience of a member in relation to a class of matters in relation to which the Tribunal has jurisdiction does not constitute an interest that could conflict with the proper performance of the functions of the member. 30
- (4) A failure to comply with this clause does not affect the validity of any decision made by the Tribunal. 35

[12] Schedule 5 Savings and transitional provisions

Insert at the end of clause 1 (1):

Courts Legislation Further Amendment Act 1997

[13] Schedule 5, clause 14 (2A)

Insert after clause 14 (2):

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- (2A) A decision made under this clause is taken to be an appealable decision for the purposes of Part 1 of Chapter 7.

[14] Schedule 5, clause 14A

Insert after clause 14:

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14A Appeals to courts from decision of abolished bodies

- (1) This clause applies to a decision of an abolished body in respect of which:

(a) an appeal to a court under a provision of another Act could have been lodged immediately before the commencement of the amendment of the provision by an appeal amendment, and

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(b) no such appeal was pending before the court immediately before the commencement of the appeal amendment.

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- (2) Despite anything in section 30 of the *Interpretation Act 1987* or any other law, no appeal lies from a decision to which this clause applies to the court that, immediately before the commencement of the appeal amendment, had jurisdiction to hear and determine an appeal from such a decision.

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- (3) However:

(a) a decision to which this clause applies is taken to be an appealable decision of the ADT for the purposes of Part 1 of Chapter 7, and

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(b) a party to the proceedings before the abolished body concerned is taken to have been a party to proceedings in which an appealable decision of the ADT was made.

- (4) In this clause, *appeal amendment* means an amendment to a provision of another Act by the amending Act the effect of which is to remove a right to appeal to a court from a decision of an abolished body.

1.2 Bail Act 1978 No 161

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[1] Section 48B

Omit the section. Insert instead:

48B Special limited review—bail conditions reviewable by justice

- (1) In this section: 10
- bail reporting condition* means a bail condition requiring the accused person to report to a police station while at liberty on bail.
- bail residence condition* means a bail condition requiring the accused person to reside at a specified address. 15
- justice* means a justice employed in the Attorney General's Department.
- (2) A justice may review a decision of any court relating to a bail reporting condition or bail residence condition. 20
- (3) On any such review, the justice may do any one or more of the following:
- (a) the justice may vary the days on which, or the times at which, the accused person must report to a police station under a bail reporting condition, 25
- (b) the justice may vary the police station to which the accused person must report under a bail reporting condition,

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Schedule 1 Amendments

- (c) the justice may reduce the number of days on which the accused person must report to a police station under a bail reporting condition,
 - (d) the justice may revoke a bail reporting condition,
 - (e) the justice may vary the address at which the accused person must reside under a bail residence condition. 5
- (4) Action under subsection (3) (a) or (b) may not be taken at any time before the determination of summary or committal proceedings if: 10
 - (a) the informant or complainant in the proceedings has not been notified of the proposed action, or
 - (b) an objection to the proposed action has been made by any person appearing at the review on behalf of the informant or complainant in the proceedings. 15
- (5) Action under subsection (3) (c), (d) or (e) may not be taken:
 - (a) at any time before the determination of summary or committal proceedings, if:
 - (i) the informant or complainant in the proceedings has not been notified of the proposed action, or 20
 - (ii) an objection to the proposed action has been made by any person appearing at the review on behalf of the informant or complainant in the proceedings, or 25
 - (b) at any time before the determination of summary or committal proceedings against the accused person, in respect of a bail reporting condition or bail residence condition imposed by the Supreme Court under section 45, or 30
 - (c) at any time after the determination of summary or committal proceedings against the accused person.

- (6) The justice may not, on any such review, vary or revoke a bail reporting condition, or vary a bail residence condition, if the court imposing the condition has directed that the condition must not be varied or revoked under this section.

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[2] Schedule 1 Savings and transitional provisions

Insert after Part 3:

Part 4 Courts Legislation Further Amendment Act 1997

7 Application of amendments

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- (1) Section 48B, as inserted by Schedule 1.2 [1] to the *Courts Legislation Further Amendment Act 1997*, applies to a bail decision made before the commencement of that section, as so inserted, in the same way it applies to a bail decision made after that commencement.

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- (2) In this clause, ***bail decision*** means a decision of a court relating to a bail reporting condition or bail residence condition.

1.3 Compensation Court Act 1984 No 89

[1] Section 13 Acting commissioners

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Insert after section 13 (1):

- (1A) A person who is of or above the age of 70 years is not qualified to be appointed as an acting commissioner, and a person's appointment as an acting commissioner ceases to have effect on the date on which the person attains the age of 70 years.

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[2] Section 14AA

Insert after section 14:

14AA Appointment of acting registrars

- (1) The Minister may, by order in writing, appoint a person to act in the office of registrar during: 5
 - (a) an absence from duty of the registrar, or
 - (b) a vacancy of not more than 6 months' duration in the office of registrar.
- (2) The Minister may delegate to the Director-General of the Attorney General's Department the Minister's power of appointment under this section. 10
- (3) While acting in the office of registrar, a person so appointed has and may exercise all the functions of that office.
- (4) Any act, matter or thing done by a person while acting in the office of registrar is taken to have been done by the registrar. 15
- (5) Any act, matter or thing done by a person while purporting to exercise a function conferred by this section is not ineffective or invalid by reason only that either of the circumstances referred to in subsection (1) (a) or (b) did not exist when the act, matter or thing was done. 20

[3] Section 32 Appeal to Court of Appeal from Judge on question of law

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Insert after section 32 (3):

- (4) The following appeals under this section may be made only by leave of the Court of Appeal:
 - (a) an appeal from an interlocutory decision,
 - (b) an appeal from a decision as to costs only, 30
 - (c) an appeal from a final decision or award, other than an appeal that involves (directly or indirectly) a claim for, or a question relating to, an amount of \$20,000 or more.

[4] Schedule 2 Commissioners

Omit "65" wherever occurring in clauses 1 and 9 (f).
Insert instead "70".

[5] Schedule 2, clause 2

Omit "59" and "60" from clause 2 (1) (a).
Insert instead "64" and "65" respectively.

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[6] Schedule 4 Savings and transitional provisions

Insert at the end of clause 1 (1):

Courts Legislation Further Amendment Act 1997

[7] Schedule 4, Part 5

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Insert after Part 4:

Part 5 Courts Legislation Further Amendment Act 1997

8 Age qualifications for commissioners etc

The amendments made by the *Courts Legislation Further Amendment Act 1997* to section 13 and Schedule 2 apply to persons appointed before the commencement of those amendments in the same way as they apply to persons appointed after that commencement.

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9 Appeals to the Court of Appeal

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Section 32 (4), as inserted by the *Courts Legislation Further Amendment Act 1997*, applies to decisions of the Court made before the commencement of that subsection in the same way as it applies to decisions of the Court made after that commencement.

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1.4 Costs in Criminal Cases Act 1967 No 13

Section 3 Form of certificate

Omit section 3 (2).

1.5 District Court Act 1973 No 9

[1] Section 4 Definitions: general

Omit the definition of *motor accident claim* from section 4 (1).
Insert instead:

motor accident claim means a claim for damages arising 5
from the death of, or injury to, a person where the death
or injury has been caused by an act or omission of the
owner or driver of a motor vehicle in the use or
operation of the vehicle.

[2] Section 44 Actions 10

Omit section 44 (1) (a) and (b). Insert instead:

- (a) any action of a kind:
 - (i) which, if brought in the Supreme Court,
would be assigned to the Common Law
Division of that Court, and 15
 - (ii) in which the amount claimed does not
exceed \$750,000, whether on a balance of
account or after an admitted set-off or
otherwise,
- other than an action referred to in paragraph (d) or 20
(e),

[3] Section 44 (1) (e)

Insert after section 44 (1) (d):

- (e) any proceedings transferred to the Court under
section 143 (1), irrespective of the amount (if any) 25
claimed in those proceedings.

[4] Section 51 Consent jurisdiction

Omit "(or, in the case of an action commenced before 1 July 1993,
\$100,000)" from section 51 (2).

[5] Section 51 (2A)

Insert after section 51 (2):

(2A) The reference in subsection (2) to \$750,000 is taken to be a reference to:

- (a) \$100,000, in the case of an action commenced before 1 July 1993, and 5
- (b) \$250,000, in the case of an action commenced after 1 July 1993 but before 18 July 1997.

[6] Section 127 Right of appeal to Supreme Court

Omit section 127 (2) (c). Insert instead: 10

- (c) an appeal from a final judgment or order, other than an appeal that involves (directly or indirectly) a claim for, or a question relating to, an amount of \$100,000 or more.

[7] Section 183C

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Insert after section 183B:

183C Provisions consequent on enactment of Courts Legislation Further Amendment Act 1997

Section 127, as amended by the *Courts Legislation Further Amendment Act 1997*, applies to judgments and orders given or made before the commencement of Schedule 1.5 [6] to that Act in the same way as it applies to judgments and orders given or made after that commencement. 20

1.6 District Court Amendment Act 1997 No 58

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Schedule 2 Consequential amendment of other Acts

Omit Schedule 2.2 and 2.4.

1.7 Family Provision Act 1982 No 160

Section 6 Definitions

Omit the definition of *Court* from section 6 (1).

Insert instead:

Court means:

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(a) the Supreme Court, in relation to any matter (including a matter referred to in paragraph (b)), or

(b) the District Court, in relation to a matter for which it has jurisdiction under section 134 of the *District Court Act 1973*.

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1.8 Legal Profession Act 1987 No 109

[1] Section 48L Miscellaneous provisions—ss 48I–48K

Omit section 48L (2). Insert instead:

(2) On making an order under section 48I or 48J, or on determining an application for approval under section 48K, the Tribunal may make orders for costs.

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(2A) An order for costs:

(a) may be for a specified amount or an unspecified amount, and

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(b) if for an unspecified amount, may specify the basis on which the amount is to be determined, and

(c) may specify the terms on which costs must be paid.

[2] Section 171E Award of costs by Tribunal

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Omit “such amounts by way of” from section 171E (1).

[3] Section 171E (1)

Omit "as it determines".

[4] Section 171E (2)

Omit "such amount, by way of costs, as it determines".
Insert instead "the legal practitioner's costs".

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[5] Section 171E (3)

Insert after section 171E (2):

(3) An order for costs:

- (a) may be for a specified amount or an unspecified amount, and
- (b) if for an unspecified amount, may specify the basis on which the amount is to be determined, and
- (c) may specify the terms on which costs must be paid.

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1.9 Local Courts Act 1982 No 164

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Section 21 Additional terms of office

Omit "65" from section 21 (1).
Insert instead "70".

1.10 Suitors' Fund Act 1951 No 3

[1] Section 2 Definitions

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Omit the definition of *Secretary* from section 2 (1).
Insert instead, in alphabetical order:

Director-General means:

- (a) the Director-General of the Attorney General's Department, or
- (b) any person employed within that Department who is authorised in writing by the Director-General to exercise the powers and perform the functions of the Director-General under this Act.

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[2] Section 6 Costs of certain appeals

Omit section 6 (2A). Insert instead:

- (2A) The maximum amount payable from the Fund for any one appeal is:
 - (a) \$20,000 in the case of an appeal to the High Court, or 5
 - (b) \$10,000 in the case of any other appeal.
- (2B) If more than one indemnity certificate has been issued in connection with the same appeal, the maximum amount payable from the Fund with respect to any one indemnity certificate is: 10
 - (a) an amount equal to the maximum amount payable from the Fund for that appeal divided by the number of indemnity certificates issued in connection with that appeal, or 15
 - (b) subject to subsection (2A), such other amount as may be determined by the court by which the indemnity certificate is issued.
- (2C) Subsections (2A) and (2B) do not apply to appeals lodged before the commencement of those subsections. 20

[3] The whole Act

Omit "Secretary" and "Secretary's" wherever occurring.
 Insert instead "Director-General" and "Director-General's" respectively.

1.11 Supreme Court Act 1970 No 52 25

[1] Section 46A Appeal against damages may be heard by 2 Judges of Appeal

Omit section 46A (1). Insert instead:

- (1) This section applies to an appeal to the Court of Appeal:
 - (a) from any court, where the appeal relates solely to the amount of damages awarded in respect of the death of, or bodily injury to, a person, or 30

- (b) from the Compensation Court, where the appeal relates solely to the amount of compensation awarded by that Court.

[2] Section 101 Appeal in proceedings before the Court

Omit section 101 (2) (r). Insert instead:

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- (r) a final judgment or order in proceedings of the Court, other than an appeal that involves (directly or indirectly) a claim for, or a question relating to, an amount of \$100,000 or more.

[3] Section 110A Proceedings to which video link facilities apply

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Insert “(referred to in this Part as the *person on remand*)” after “conducted” in section 110A (1A).

[4] Section 110AA

Insert after section 110A:

110AA Use of video link facilities

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Video link facilities may be used in bail proceedings to facilitate communication between:

- (a) any person who is present at the place where the Court is sitting, and
- (b) any person (including the person on remand, that person’s representative in the proceedings and any witness called to appear at the proceedings) who is present at the place where the facilities are being operated.

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[5] Fourth Schedule Savings and transitional provisions

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Insert after clause 4:

5 Courts Legislation Further Amendment Act 1997

- (1) Section 46A, as amended by the *Courts Legislation Further Amendment Act 1997*, applies to awards of compensation made by the Compensation Court before the commencement of Schedule 1.11 [1] to that Act in the same way as it applies to awards of compensation made after that commencement.

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- (2) Section 101, as amended by the *Courts Legislation Further Amendment Act 1997*, applies to judgments and orders given or made before the commencement of Schedule 1.11 [2] to that Act in the same way as it applies to judgments and orders given or made after that commencement. 5

1.12 Testator's Family Maintenance and Guardianship of Infants Act 1916 No 41

Section 2 Definitions

Omit the definition of *Court*. Insert instead: 10

Court means:

- (a) the Supreme Court, in relation to any matter (including a matter referred to in paragraph (b)), or
- (b) the District Court, in relation to a matter for which it has jurisdiction under section 134 of the *District Court Act 1973*. 15

1.13 Uncollected Goods Act 1995 No 68

[1] Section 3 Definitions

Insert “, and includes goods held by the Sheriff following their seizure under a writ of execution” after “bailment” in the definition of *bailed goods*. 20

[2] Section 18 Exercise of jurisdiction by District Court or Supreme Court

Insert “by the District Court, but only with the leave of the District Court, or” after “exercised” in section 18 (1). 25

[3] Section 18 (1A)

Insert after section 18 (1):

- (1A) The District Court may exercise that jurisdiction even though the value of the uncollected goods exceeds the jurisdictional limit of a Local Court, but may not exercise that jurisdiction if that value exceeds the amount of the limit of the District Court's jurisdiction in an action for the recovery of a debt under the *District Court Act 1973*. 5

[4] Section 18 (3) 10

Insert "District Court or" before "Supreme Court".

[5] Section 18 (4) (a)

Omit "Supreme Court".

Insert instead "District Court or Supreme Court, as the case requires". 15