

First print



New South Wales

Courts Legislation Further Amendment Bill 1998

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to amend the *District Court Act 1973* to ensure that the District Court has jurisdiction to determine proceedings in respect of a cause of action that arises wholly or partly outside of the State if the defendant is duly served with the originating process (whether within the State or outside the State), and
 - (b) to amend the *Fines Act 1996*:
 - (i) to enable penalty reminder notices under the Act to include annexures and enclosures, and
 - (ii) to require all fines owing by a person whose licence has been suspended under the Act to be paid before the licence can be reinstated, and
 - (iii) to enable the State Debt Recovery Office to direct the Roads and Traffic Authority to take immediate enforcement action if a fine has not been paid by an extended due date, and
-

Explanatory note

- (c) to amend the *Industrial Relations Act 1996* to enable a single member of the Industrial Relations Commission to deal with interlocutory matters and other matters in relation to appeals to the Full Bench of the Commission, and
- (d) to amend the *Judicial Officers Act 1986* to remove the age limit for appointed members of the Judicial Commission, and
- (e) to amend the *Justices Act 1902* to extend the power of Local Courts to issue subpoenas and to make consequential amendments to the *Local Courts (Civil Claims) Act 1970*, and
- (f) to amend the *Land and Environment Court Act 1979* to change the name of the position of "conciliation and technical assessor" of the Court (also referred to as "assessor" in that Act) to "Commissioner", and
- (g) to amend the *Local Courts Act 1982* to ensure that acting Magistrates may not be appointed for a term that takes them beyond the age of 70 years, and
- (h) to amend the *Suitors' Fund Act 1951* to provide for the Suitors' Fund to form part of the Attorney General's Department Account instead of a separate account in the Special Deposits Account in the Treasury, and
- (i) to amend the *Supreme Court Act 1970* to abolish all existing Divisions of the Court other than the Common Law Division and the Equity Division, to provide for the assignment of proceedings to those remaining Divisions and to enable the Chief Justice to designate Judges of the Court to be List Judges, and
- (j) to make amendments to the above Acts of a savings or transitional nature.

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 a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to Acts set out in Schedules 1-10.

Clause 4 provides that matter appearing under the heading "Explanatory note" in the Schedules does not form part of the proposed Act.

Schedules 1-10 make the amendments to the Acts outlined above.

A detailed explanation of each of the amendments is set out in the Bill after the amendments concerned.

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Courts Legislation Further Amendment Bill 1998

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New South Wales

Courts Legislation Further Amendment Bill 1998

No. , 1998

A Bill for

An Act to make miscellaneous amendments to the *District Court Act 1973*, the *Fines Act 1996*, the *Industrial Relations Act 1996*, the *Judicial Officers Act 1986*, the *Justices Act 1902*, the *Land and Environment Court Act 1979*, the *Local Courts Act 1982*, the *Local Courts (Civil Claims) Act 1970*, the *Suitors' Fund Act 1951* and the *Supreme Court Act 1970*.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Courts Legislation Further Amendment Act 1998*.

2 Commencement

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

3 Amendment of Acts

The Acts specified in Schedules 1–10 are amended as set out in those Schedules.

4 Explanatory notes 10

The matter appearing under the heading "Explanatory note" in any of the Schedules does not form part of this Act.

**Schedule 1 Amendment of District Court Act 1973
No 9**

(Section 3)

[1] Section 47

Omit the section. Insert instead:

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47 Cause of action or defendant outside the State

(1) The Court has jurisdiction in accordance with this Act to hear and dispose of an action, and a registrar may exercise the powers conferred on the registrar by any of the rules prescribed for the purposes of this subsection, regardless of whether the cause of action to which the action relates arose wholly or partly outside New South Wales if the defendant has been duly served with the document commencing the action.

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(2) For the purposes of subsection (1), it is immaterial whether the defendant was within or outside New South Wales:

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(a) at the time the cause of action arose, or

(b) at the time of service of the document commencing the action.

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(3) For the purposes of this section, a defendant is duly served with a document commencing an action if the defendant is served with the document by or under this Act or in accordance with the *Service and Execution of Process Act 1992* of the Commonwealth.

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(4) In this section, *defendant* includes, if there are two or more defendants, any one of those defendants.

[2] Schedule 3 Savings and transitional provisions consequent on amendments to this Act

Insert in clause 1 (1) in alphabetical order:

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Courts Legislation Further Amendment Act 1998, but only in relation to the amendments made to this Act

[3] Schedule 3, Part 4

Insert after Part 3:

**Part 4 Provision consequent on enactment of
Courts Legislation Further Amendment Act
1998**

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**7 Application of jurisdictional amendment to causes of
action**

- (1) Section 47 of this Act (as inserted by Schedule 1 [1] to the amending Act) does not apply to any cause of action that arose before the commencement of that item. 10
- (2) Any rules prescribed for the purposes of section 47 (1) (as in force immediately before the commencement of Schedule 1 [1] to the amending Act) conferring powers on the registrar are taken to have been made for the purposes of section 47 (1) (as inserted by Schedule 1 [1] to the amending Act). 15
- (3) In this clause, *amending Act* means the *Courts Legislation Further Amendment Act 1998*.

Explanatory note

Item [1] replaces section 47 of the *District Court Act 1973* with a new section that ensures that the District Court has jurisdiction to determine proceedings in respect of a cause of action that arises wholly or partly outside the State if the defendant is duly served with the originating process (whether within the State or outside the State). The amendment takes up the suggestion of the New South Wales Court of Appeal in *Falls Creek Ski Lifts Pty Ltd v Yee* (1995) 37 NSWLR 344 for the reform of the section. 20
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Item [2] amends clause 1 (1) of Schedule 3 to the Act to ensure that regulations may be made of a savings or transitional nature consequent on the enactment of the amendments made to the Act by the proposed Act. Item [3] amends that Schedule to ensure that the new section 47 applies only to causes of action that arise after its commencement and to preserve certain rules made under section 47 before its substitution. 30

Schedule 2 Amendment of Fines Act 1996 No 99

(Section 3)

[1] Section 25 What is a penalty reminder notice?

Insert "(and any matter annexed to, or enclosed with, a notice)" after "notice" where secondly occurring.

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[2] Section 65 When enforcement action taken under this Division

Omit section 65 (1). Insert instead:

(1) Enforcement action is to be taken against a fine defaulter under this Division if:

(a) the fine defaulter has not paid a fine as required by the notice of the fine enforcement order served on the fine defaulter, or

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(b) the State Debt Recovery Office has extended the time for payment of a fine, and the fine defaulter has not paid the fine by the extended due date, or

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(c) the State Debt Recovery Office has allowed the payment of a fine by instalments, and the fine defaulter has not paid every such instalment at the time specified by the Office.

[3] Section 65 (4) and (5)

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Omit section 65 (4). Insert instead:

(4) The Roads and Traffic Authority is to cease enforcement action when directed to do so by the State Debt Recovery Office.

(5) The State Debt Recovery Office must not direct the Roads and Traffic Authority to cease enforcement action under this Division against a fine defaulter until all outstanding fines payable by the fine defaulter under any fine enforcement order have been satisfied.

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[4] Section 66 Suspension or cancellation of driver's licence

Insert after section 66 (1):

- (1A) The Roads and Traffic Authority must suspend the driver's licence of a fine defaulter even if the State Debt Recovery Office has: 5
- (a) granted an extension of time for the payment of the fine, or
 - (b) allowed the fine defaulter to pay the fine by instalments.
- after requiring the Roads and Traffic Authority to take enforcement action. 10

[5] Section 66 (2)

Omit the subsection. Insert instead:

- (2) If the driver's licence is suspended and:
- (a) where the State Debt Recovery Office has granted the fine defaulter an extension of time for payment of the fine, the fine remains unpaid for at least 6 months after the extended due date, or 15
 - (b) where the State Debt Recovery Office has allowed the payment of a fine by instalments, an instalment remains unpaid for at least 6 months, or 20
 - (c) in any other case, the fine concerned remains unpaid for at least 6 months.
- the Roads and Traffic Authority must, if the State Debt Recovery Office so directs, cancel the licence. 25

[6] Section 66 (3)

Insert at the end of the subsection:

The State Debt Recovery Office is not to make such a direction merely because a fine defaulter has been granted an extension of time for payment of a fine or has been allowed to pay a fine by instalments. 30

[7] Section 100 Time to pay

Insert after section 100 (5):

Note. A person, who has been granted an extension of time for payment of a fine or has been allowed to pay a fine by instalments after the State Debt Recovery Office has, in accordance with section 65, directed that the Roads and Traffic Authority take enforcement action, is not entitled to have a driver's licence suspension lifted until the fine is paid in full.

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Explanatory note

Division 3 of Part 3 of the *Fines Act 1996* provides procedures for the issue and service of penalty reminder notices. Section 27 of that Act prescribes the information that must be included in such a notice. For certain offences, the prescribed information will not fit onto a single document. Item [1] amends section 25 of the *Fines Act 1996* to expand the definition of penalty reminder notice to include any other matter annexed to, or enclosed with, a notice served under Division 3 of Part 3 of that Act.

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Sections 65 and 66 of the *Fines Act 1996* provide for enforcement action to be taken against a fine defaulter to suspend or cancel the defaulter's driver's licence where the defaulter has failed to pay an amount owing under a fine enforcement order. Item [3] substitutes section 65 (4) to make it clear that if the State Debt Recovery Office (SDRO) has directed the Roads and Traffic Authority (RTA) to take enforcement action (eg to suspend a driver's licence), the SDRO must not direct the RTA to cease that enforcement action until all outstanding fines under any enforcement orders are satisfied in full. In other words, all fines, not just the fine that precipitated the original enforcement action, must be paid or expiated before the RTA reinstates a suspended driver's licence.

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Section 100 of the *Fines Act 1996* allows the SDRO to grant a fine defaulter an extension of time for payment of a fine or to allow fine defaulters to pay a fine by instalments. Item [2] amends section 65 (1) to allow the SDRO to immediately direct the RTA to take enforcement action if the defaulter has failed to pay a fine by an extended due date (where the SDRO has granted an extension of time) or has failed to pay a fine instalment when due (where the SDRO has allowed payment by instalment). The SDRO is not required to issue a new fine enforcement order before taking such action. Item [5] makes a consequential amendment.

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Items [4] and [6] amend section 66 and item [7] inserts a note to section 100 of the *Fines Act 1996* to make it clear that where, after a direction to the RTA to take enforcement action has been made, the SDRO has granted an extension of time for payment of a fine or has allowed a fine defaulter to pay a fine by instalments, the fine defaulter is not entitled to have his or her driver's licence suspension lifted until the fine is satisfied in full.

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Schedule 3 Amendment of Industrial Relations Act 1996 No 17

(Section 3)

Section 190A

Insert after section 190: 5

190A Interlocutory and other matters in proceedings on appeal

- (1) If an appeal is made under this Part to a Full Bench of the Commission, the Commission constituted by the President (or by another member of the Commission nominated by the President) may do any one or more of the following for the purposes of, or in relation to, the appeal: 10
- (a) make any consent order in relation to the appeal,
 - (b) grant leave to withdraw or discontinue the appeal, 15
 - (c) give any directions in relation to the hearing of the appeal.
 - (d) deal with any interlocutory application in the appeal.
- (2) If the appeal is made to a Full Bench of the Commission in Court Session: 20
- (a) a non-judicial member may not constitute the Commission for the purposes of this section, and
 - (b) this section applies despite section 153 (2).
- (3) A member of the Commission who made a decision the subject of an appeal may not constitute the Commission for the purposes of this section. 25
- (4) This section does not authorise: 30
- (a) the Commission constituted in accordance with this section to grant leave to appeal, or
 - (b) the granting of a stay against the decision appealed against otherwise than under section 190.

Explanatory note

The amendment to the *Industrial Relations Act 1996* inserts a new section 190A in the Act to enable a single member of the Commission (either the President or a member nominated by the President) to deal with interlocutory matters in relation to appeals to the Full Bench of the Commission. It also enables the President or such a member to grant consent orders and to grant leave to withdraw or discontinue an appeal.

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**Schedule 4 Amendment of Judicial Officers Act
1986 No 100**

(Section 3)

- [1] **Schedule 1 Provisions relating to the appointed members of the Commission** 5
Omit clause 2.
- [2] **Schedule 1, clause 5 (1) (f)**
Insert "or" after "Minister:".
- [3] **Schedule 1, clause 5 (1) (g)** 10
Omit the paragraph.
- Explanatory note**
Item [1] omits clause 2 of Schedule 1 to the *Judicial Officers Act 1986* to enable a person to be appointed as an appointed member of the Judicial Commission regardless of his or her age. At present, a person cannot be an appointed member if he or she is of or above 72 years of age. Items [2] and [3] make consequential amendments to clause 5 of Schedule 1 to ensure that an appointed member does not vacate office on attaining 72 years of age. 15

**Schedule 5 Amendment of Justices Act 1902
No 27**

(Section 3)

- [1] **Section 26 Summons to give evidence or to produce document etc** 5
Omit the section.
- [2] **Section 27 Form of summons**
Omit “, or to testify what he knows concerning the matter of the information, or to produce the document or writing, as the case may be” from section 27 (d). 10
- [3] **Section 29 Form of warrant**
Omit “, or to testify what he knows concerning the matter of the information, or to produce the document or writing, as the case may be” from section 29 (1) (e).
- [4] **Section 31 On non-appearance to summons, warrants may be issued** 15
Omit “and where such person is required to be examined as a witness or to produce a document or writing, if no just excuse is offered for his non-appearance,” from section 31 (1).
- [5] **Section 31 (2) (as amended by Schedule 2 [3] to the Criminal Procedure Legislation Amendment (Bail Agreements) Act 1998)** 20
Omit “or section 26”.
- [6] **Section 31 (4) (as inserted by Schedule 2 [3] to the Criminal Procedure Legislation Amendment (Bail Agreements) Act 1998)**
Omit the subsection. 25
- [7] **Sections 37 and 61**
Omit the sections.

- [8] Section 62 Form of summons**
Omit "or to testify what he knows concerning the matter of the information or complaint, or to produce the document or writing, as the case may be" from section 62 (d).
- [9] Section 63 Manner of service of summons** 5
Omit "or" where secondly occurring in section 63 (2A) (d).
- [10] Section 63 (2A) (f) and (g)**
Insert at the end of section 63 (2A) (e):
(f) as an officer or employee of an area health service constituted under the *Health Services Act 1997*, or 10
(g) as an officer of the Commonwealth.
- [11] Section 64 Form of warrant**
Omit "., or to testify what he knows concerning the matter of the information or complaint, or to produce the document or writing as the case may be" from section 64 (1) (e). 15
- [12] Section 66 On non-appearance to summons, warrants may be issued**
Omit section 66 (1) (b) (ii).
- [13] Section 66 (2) (as amended by Schedule 2 [5] to the Criminal Procedure Legislation Amendment (Bail Agreements) Act 1998)** 20
Omit "., section 61".
- [14] Section 66 (4) (as inserted by Schedule 2 [5] to the Criminal Procedure Legislation Amendment (Bail Agreements) Act 1998)**
Omit the subsection.

[15] Section 71 How witness refusing to give evidence to be dealt with

Omit the section.

[16] Section 98 One Justice may receive information etc and issue summonses and warrants 5

Omit "summons" where secondly occurring in section 98 (1).
Insert instead "subpoena".

[17] Part 4, Division 4 (sections 100AH–100AQ)

Insert after section 100AG:

Division 4 Attendance of witnesses and production of evidence 10

100AH Definitions

In this Division:

person named in relation to a subpoena means the person to whom the subpoena is addressed. 15

subpoena means any of the following issued under section 100AJ:

- (a) a subpoena to give evidence.
- (b) a subpoena for production.
- (c) a subpoena both to give evidence and for production. 20

subpoena both to give evidence and for production means a written order requiring the person named to attend as directed by the order as a witness to give evidence and to produce a document or thing. 25

subpoena for production means a written order requiring the person named to attend as directed by the order and produce a document or thing.

subpoena to give evidence means a written order requiring the person named to attend as directed by the order as a witness to give evidence. 30

100AI Application of Division

- (1) This Division applies to proceedings before a Local Court except proceedings before a Local Court that are commenced under the *Local Courts (Civil Claims) Act 1970* or any other Act that provides for a procedure to compel the attendance of persons to give evidence, or produce documents or things, or both, at those proceedings. 5
- (2) This Division does not permit a subpoena to be issued to a person who: 10
- (a) has made a written statement for the purposes of Subdivision 7A (Written statements in committal proceedings) of Division 1, and
- (b) is not the subject of a direction under section 48E (Direction to witness to attend). 15

100AJ Issue of subpoenas

- (1) On request by a party to any proceedings to which this Division applies, and subject to and in accordance with the rules, a Justice, other than a Justice sitting as a Local Court, is to issue to the person named: 20
- (a) a subpoena to give evidence, or
- (b) a subpoena for production, or
- (c) a subpoena both to give evidence and for production.
- (2) Subsection (1) does not prevent the issue of a subpoena to give evidence and a subpoena for production to the same person in the same proceedings. 25
- (3) A party may require a subpoena for production to be returnable:
- (a) on any day on which the proceedings are listed before a Local Court, or any day not more than 21 days before any such day, or 30
- (b) with the leave of the Local Court or a Justice, other than a Justice sitting as a Local Court, on any other day. 35

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- (4) Unless a Local Court otherwise orders, a subpoena issued at the request of a party who is not the prosecuting authority in the proceedings is not to require the person named to attend or produce any document or thing on any day on which his or her attendance is required unless an amount prescribed by the rules for the expenses of complying with the subpoena in relation to that day is paid or tendered to the person at the time of service of the subpoena or not later than a reasonable time before that day. 5
- (5) The person named is not required to produce any document or thing if: 10
- (a) it is not specified or sufficiently described in the subpoena, or
- (b) the person named would not be required to produce the document or thing on a subpoena for production in the Supreme Court. 15

100AK Production by non-party

- (1) If the person named in a subpoena for production is not a party in the proceedings, the subpoena is, unless a Local Court otherwise orders, to permit the person to produce the document or thing to the Local Court specified in the subpoena not later than the day before the first day on which the person's attendance is required, instead of attending and producing the document or thing as required by the subpoena. 20
- (2) If a document or thing is produced under subsection (1), a Justice, other than a Justice sitting as a Local Court, is: 25
- (a) to give a receipt to the person producing the document or thing, and 30
- (b) to produce the document or thing as the nature of the case requires or as the Local Court may direct.

- (3) If a document or thing is produced under subsection (1), a Justice, other than a Justice sitting as a Local Court, may, if the Justice thinks fit, order that the subpoena is no longer to be of any force or effect and return the document or thing to the person who produced it in the following circumstances: 5
- (a) the hearing of the proceedings is adjourned before the document or thing is tendered to the Local Court.
- (b) the document or thing is produced in compliance with a subpoena that is returnable under subsection 100AJ (3) on a day other than a day on which the proceedings are heard. 10
- (4) Subsection (3) does not operate to prevent the issue of a further subpoena requiring the production of a document or thing returned under that subsection. 15
- (5) This section and section 100AJ do not affect the operation of Division 1 of Part 4.6 of the *Evidence Act 1995* (Requests to produce documents or call witnesses).

100AL Subpoena may be set aside 20

- (1) A Local Court may, on application by the person named in a subpoena, set aside the subpoena wholly or in part.
- (2) Notice of an application under subsection (1) is to be filed and served as prescribed by the rules on the party on whose request the subpoena was issued. 25

100AM Inspection of subpoenaed documents or things

- (1) A party or a party's solicitor or barrister may, if a Local Court so orders: 30
- (a) inspect documents or things produced in compliance with a subpoena, and
- (b) take copies of any documents so inspected.
- (2) Any such order may be made on such terms and conditions as the Local Court thinks fit.

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- (3) The function of a Local Court to make an order under subsection (1) may be exercised by a Justice, other than a Justice sitting as a Local Court, unless:
- (a) the Local Court otherwise orders, or
 - (b) a party, the person named in the subpoena or a person claiming privilege in respect of the document has notified the Local Court in the manner prescribed by the rules that the party or person objects to the making of an order under subsection (1).

100AN Warrant may issue for failure to comply with subpoena

- (1) A Local Court may, on the application of a party who requested the issue of a subpoena, or on the Local Court's own motion, order that a warrant be issued directing that the person named in the subpoena be apprehended and brought before a Local Court as soon as practicable if:
- (a) the person named has not complied with the subpoena, and
 - (b) the Local Court is satisfied that the requirements of this Division for subpoenas were complied with and that no just cause or reasonable excuse has been offered for the failure to comply.
- (2) The Local Court before whom a person is brought after having been apprehended under a warrant referred to in subsection (1):
- (a) subject to the *Bail Act 1978*, must order that a warrant be issued for the committal of the person to a correctional centre or other place of security, and
 - (b) must order the person to be brought before a Local Court at such time and place as is specified in the order, and
 - (c) must give due notice of the time and place so specified to the person who commenced the proceedings to which the subpoena relates.

- (3) The *Bail Act 1978* applies to a person who is brought before a Local Court after having been apprehended under a warrant referred to in subsection (1) in the same way as it applies to an accused person, and for that purpose, bail may be granted to the person with respect to the period between: 5
- (a) the person's being brought before a Local Court under a warrant for the purpose of being examined as a witness or producing a document or thing, and
 - (b) the person's being examined as a witness or producing the document or thing. 10
- (4) A warrant under this section may be issued by any Justice.
- (5) Sections 64 (Form of warrant) and 65 (No objection for defect or variance) apply to and in respect of a warrant referred to in subsection (1), with any necessary modifications, in the same way as they apply to and in respect of a warrant issued under Division 2. 15

100AO How witness refusing to give evidence to be dealt with

- (1) This section applies to a person who: 20
- (a) appears before a Local Court on a subpoena, or
 - (b) appears before a Local Court on bail after being apprehended under a warrant referred to in section 100AN (1), or
 - (c) is brought before a Local Court under a warrant referred to in section 100AN (2) (a). 25
- to give evidence, or produce any document or thing, or both.
- (2) The Local Court may order that a warrant be issued for the committal of a person to whom this section applies to a correctional centre for a period not exceeding 7 days if the person refuses, without offering any just cause or reasonable excuse: 30
- (a) to be examined on oath, or
 - (b) to take an oath, or 35

- (c) to answer, after having taken an oath, any questions that are put to the person concerning the subject-matter of the proceedings, or
- (d) to produce the document or thing.
- (3) However, the person is to be released before the expiration of those 7 days if the person:
 - (a) consents to be examined on oath and to answer questions concerning the subject-matter of the proceedings, or
 - (b) produces the document or thing.
- (4) A warrant under this section may be issued by any Justice.
- (5) This section and section 100AN apply in relation to a subpoena to the exclusion of section 194 (Witnesses failing to attend proceedings) of the *Evidence Act 1995*.
- (6) In this section, a reference to a person who appears before a Local Court on bail after being apprehended under a warrant referred to in section 100AN (1) includes a reference to a person in respect of whom the requirement for bail has been dispensed with after being so apprehended.

100AP Service of subpoenas

- (1) A subpoena is to be served within a reasonable time.
- (2) Without affecting subsection (1), a subpoena may not be served on the person named later than 5 days before the first day on which the person is required to attend or produce any document or thing unless a Local Court or a Justice, other than a Justice sitting as a Local Court, otherwise orders.
- (3) Service of a subpoena may be effected by delivering a copy of the subpoena to the person named or in such other manner as may be prescribed by the rules.
- (4) Without limiting subsection (3), the rules may provide for substituted service to be effected in such manner and in such circumstances as may be prescribed by the rules.

100AQ Defects in subpoenas

- (1) No objection is to be taken or allowed to a subpoena for any alleged defect in substance or in form.
- (2) Nothing in this section affects the operation of section 100AL (Subpoena may be set aside).

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[18] Section 147A Sufficiency of seal printed on summons, warrant or subpoena

Omit "summons or warrant" wherever occurring.
Insert instead "summons, warrant or subpoena".

[19] Section 147A

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Omit "warrant or summons".
Insert instead "summons, warrant or subpoena".

[20] Section 154A Rules

Insert after section 154A (1):

- (1A) In particular, rules may be made for or with respect to the form of subpoenas issued under Division 4 of Part 4.

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[21] 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 Further Amendment Act 1998

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Definition

In this Part, *amending Act* means the *Courts Legislation Further Amendment Act 1998*.

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Existing proceedings

- (1) Division 4 of Part 4, as inserted by the amending Act, extends to proceedings commenced before the commencement of that Division.

- (2) However, the provisions of Divisions 1 and 2 as in force immediately before the commencement of the amendments made to those Divisions by the amending Act continue to apply to and in respect of a summons issued under section 26 or 61 and in force immediately before the commencement of those amendments as if those amendments had not been made. 5

Validation

- (1) The issue of a subpoena before the commencement of Division 4 of Part 4, as inserted by the amending Act, is validated to the extent of any invalidity if the issue of the subpoena would have been valid had the Division been in force at the time the subpoena was issued. 10
- (2) Any act, matter or thing done after the issue of such a subpoena is validated to the extent of any invalidity if the act, matter or thing would have been validly done had the Division been in force at the time it was done. 15

Explanatory note

Item [17] inserts new Division 4 (Attendance of witnesses and production of evidence) of Part 4 in the Act containing proposed sections 100AH–100AQ. 20

The proposed Division provides for the issue of subpoenas to persons to attend to give evidence, or to produce documents or things, or both, in relation to proceedings before a Local Court. (Currently, sections 26 and 61 of the Act provide for a summons to issue, in certain circumstances, to persons to give evidence or to attend to produce documents or other things but only in proceedings for indictable offences, summary offences and complaints.) However, the proposed Division does not apply in relation to proceedings before a Local Court commenced under the *Local Courts (Civil Claims) Act 1970* or any other Act that provides for a procedure to compel the attendance of persons to give evidence, or produce documents or things, or both, at the proceedings. 25 30

The proposed Division also provides for the apprehension of a person who fails to comply with a subpoena. Items [1]–[8], [11]–[16] and [18]–[20] make consequential amendments.

Item [21] adds to the schedule of savings, transitional and other provisions in the Act. It includes a provision validating, to the extent of any invalidity, subpoenas issued before the commencement of the proposed Division if the subpoenas could have been issued were the proposed Division in force. 35

Item [10] amends the definition of **public officer** in section 63 to include officers and employees of area health services constituted under the *Health Services Act 1997* and officers of the Commonwealth as persons who may serve summons by post in respect of proceedings for summary offences. Item [9] makes a consequential amendment. 40

Schedule 6 Amendment of Land and Environment Court Act 1979 No 204

(Section 3)

- [1] **The whole Act (except section 52 and in provisions as amended or omitted elsewhere in this Schedule)** 5
- Omit "assessor", "assessors" and "assessor's" wherever occurring. Insert instead "Commissioner", "Commissioners" and "Commissioner's" respectively.
- [2] **Section 4 Definitions** 10
- Omit the definition of *assessor* from section 4 (1).
- [3] **Section 4 (1)**
- Insert in alphabetical order:
- Commissioner* means a person appointed as a Commissioner of the Court under Division 3 of Part 2.
- [4] **Part 2, Division 3, heading** 15
- Omit "Assessors". Insert instead "Commissioners".
- [5] **Section 12 Commissioners**
- Omit "conciliation and technical assessor" from section 12 (1). Insert instead "Commissioner".
- [6] **Sections 12 (3) and 36 (4) (a) and (b)** 20
- Omit "senior assessor" wherever occurring. Insert instead "Senior Commissioner".

-
- [7] **Sections 12 (2), 13 (2) and (3), 14, 30 (3), 34 (9), 36 (1) (b), 37 (4) (a), 56A (1), 57 (3) (a) and 66 and Schedule 1, clauses 3, 6, 8 (2), (3) and (4) and 9 (2)**
- Omit "an assessor" wherever occurring.
Insert instead "a Commissioner". 5
- [8] **Section 13 Acting Commissioners**
- Omit "conciliation and technical assessor" from section 13 (1).
Insert instead "Commissioner".
- [9] **Section 14 (1) and Schedule 1, clauses 2 (b), 7 and 8 (2), (3) and (4)** 10
- Omit "the assessor" wherever occurring.
Insert instead "the Commissioner".
- [10] **Sections 30 (2A) and (2B), 34 (8), 35 (5) and (6), 37 (3), 69 (8) and Schedule 1, clauses 1 (1) and (2), 2, 7 and 8 (5)**
- Omit "An assessor" wherever occurring. 15
Insert instead "A Commissioner".
- [11] **Section 30 (2A) and Schedule 1, clauses 1 (2), 3 and 8 (2), (3) and (4)**
- Omit "the assessor's" wherever occurring. 20
Insert instead "the Commissioner's".
- [12] **Sections 30 (3), 36 (4) (a) and (b), 56A (1), 57 (3) (a) and 69 (8)**
- Omit "assessors" wherever occurring.
Insert instead "Commissioners".
- [13] **Section 30 (3) (a)**
- Omit "remaining assessor". 25
Insert instead "remaining Commissioner".

[14] Schedule 1, heading

Omit "The assessors". Insert instead "The Commissioners".

[15] Schedule 1, clauses 8 (2) and (3) and 9

Omit "as assessor" wherever occurring.
Insert instead "as Commissioner".

5

[16] Schedule 3 Savings, transitional and other provisions

Insert at the end of Schedule 3:

**2 Provisions consequent on enactment of Courts
Legislation Further Amendment Act 1998**

- (1) In this clause, *amending Act* means the *Courts
Legislation Further Amendment Act 1998*. 10
- (2) A person appointed as an assessor immediately before
the commencement of Schedule 6 [3] to the amending
Act is taken to be duly appointed as a Commissioner
under section 12 for the balance of the term of his or her
appointment. 15
- (3) The person appointed as senior assessor immediately
before the commencement of Schedule 6 [3] to the
amending Act is taken to be duly appointed as Senior
Commissioner under section 12 (3). 20
- (4) On and from the commencement of Schedule 6 [3] to the
amending Act, a reference in any other Act or any
instrument to an assessor of the Land and Environment
Court is taken to be a reference to a Commissioner.

Explanatory note

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Items [1]–[15] amend the *Land and Environment Court Act 1979* to change the name of the position of "conciliation and technical assessor" of the Court (also referred to as "assessor" in that Act) to "Commissioner". Item [6] specifically changes the reference to "senior assessor" to "Senior Commissioner". Item [16] inserts into Schedule 3 to that Act certain savings and transitional provisions consequent on those amendments.

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**Schedule 7 Amendment of Local Courts Act 1982
No 164**

(Section 3)

[1] Section 13 Appointments for limited tenure

Insert "(not being a term continuing past the date on which the Magistrate will attain the age of 70 years)" after "term of office" in section 13 (1) (a).

5

[2] Schedule 1 Savings and transitional provisions

Insert "or any of the following Acts:" after "*Miscellaneous Acts (Local Courts) Amendment Act 1982*" in clause 8 (1).

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[3] Schedule 1, clause 8 (1)

Insert at the end of the clause:

Courts Legislation Further Amendment Act 1998, but only in relation to the amendments made to this Act

[4] Schedule 1, clause 9

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Insert after clause 8:

9 Application of age limits to appointments of existing acting Magistrates

The amendment made to section 13 of this Act by Schedule 7 [1] to the *Courts Legislation Further Amendment Act 1998* does not affect the validity of any appointment made before the commencement of the amendment that is still in force on that commencement.

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Courts Legislation Further Amendment Bill 1998

Schedule 7 Amendment of Local Courts Act 1982 No 164

Explanatory note

Item [1] amends section 13 of the *Local Courts Act 1982* to ensure that acting Magistrates may not be appointed for a term that takes them beyond the age of 70 years.

Item [3] amends clause 8 (1) of Schedule 1 to the Act to ensure that regulations may be made of a savings or transitional nature consequent on the enactment of the amendments made to the Act by the proposed Act. Item [2] makes an amendment to the same subclause that is consequential on the amendment made by item [3]. 5

Item [4] ensures that section 13 (as amended) does not affect appointments made before the commencement of the amendment. 10

Schedule 8 Amendment of Local Courts (Civil Claims) Act 1970 No 11

(Section 3)

[1] Section 72 Witnesses

Omit "summons or" from section 72 (2).

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[2] Section 72 (3) (a)

Omit the paragraph.

[3] Section 72 (5) (as inserted by Schedule 3.8 to the Criminal Procedure Legislation Amendment (Bail Agreements) Act 1998)

Omit "66 (2), (3) and (4)".
Insert instead "66 (2) and (3)".

10

Explanatory note

Items [1]–[3] make amendments to the *Local Courts (Civil Claims) Act 1970* that are consequential on the amendments made to the *Justices Act 1902* by Schedule 5.

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**Schedule 9 Amendment of Suitors' Fund Act 1951
No 3**

(Section 3)

[1] Section 3 Suitors' Fund

Omit "shall be established in the Special Deposits Account in the Treasury" from section 3 (1). 5

Insert instead "is to be established in the Attorney General's Department Account".

[2] Section 3 (2B)

Omit "paid into the Attorney General's Department Account". 10
Insert instead "used".

[3] Schedule 1 Savings and transitional provisions

Insert at the end of the Schedule:

**3 Transfer of money consequent on enactment of Courts
Legislation Further Amendment Act 1998** 15

(1) As soon as practicable after the commencement of Schedule 9 [1] to the amending Act, the balance standing to the credit of the account which, immediately before that commencement, was required by section 3 to be established in the Special Deposits Account in the Treasury, is to be transferred to the Attorney General's Department Account and the account from which the balance is transferred is to be closed. 20

(2) The account established under subclause (1) is a continuation of, and is taken to be the same fund as, the Suitors' Fund established and operating under section 3 of this Act immediately before the commencement of Schedule 9 [1] to the amending Act. 25

(3) In this clause, *amending Act* means the *Courts Legislation Further Amendment Act 1998*. 30

Explanatory note

Items [1] and [3] amend the *Suitors' Fund Act 1951* to provide that the Suitors' Fund, established under section 3 of that Act, is no longer to be a separate account in the Special Deposits Account in the Treasury but is instead to form part of the Attorney General's Department Account. 35

Item [2] makes a consequential amendment.

**Schedule 10 Amendment of Supreme Court Act
1970 No 52**

(Section 3)

[1] Sections 27 and 28

Omit section 28. Insert instead:

5

27 Chief Judges

(1) The Governor may, by commission under the public seal of the State, appoint any Judge to be:

(a) Chief Judge of the Common Law Division (whose title is Chief Judge at Common Law), or

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(b) Chief Judge of the Equity Division (whose title is Chief Judge in Equity).

(2) A Judge may be appointed a Chief Judge either at the time of his or her appointment as a Judge or at any time afterwards.

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(3) A Chief Judge holds that office so long as he or she holds office as a Judge.

(4) A Chief Judge may, with the approval of the Governor, resign that office without resigning his or her office as a Judge.

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28 List Judges

(1) The Chief Justice may, by instrument in writing, designate a Judge to be a List Judge within a Division.

(2) A List Judge within a Division has (subject to any direction from the Chief Justice or the Chief Judge of the Division) the function of managing such class or classes of proceedings in the Division as may be specified in the instrument designating the Judge to be a List Judge or by the rules.

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- (3) A Judge may be designated to be a List Judge within a Division under this section even though the Judge is not appointed or nominated to the Division. Any such Judge is taken to be appointed to the Division for the purposes of exercising his or her functions as a List Judge. 5
- (4) An instrument designating a Judge to be a List Judge may specify a title for the Judge to use while exercising the functions of a List Judge.
- (5) The Chief Justice may at any time, by instrument in writing, revoke a Judge's designation as a List Judge. 10
- (6) The designation of a Judge to be a List Judge under this section does not affect the rank, title, status and precedence as a Judge that he or she had immediately before any such designation.
- [2] Section 38 Divisions of Court** 15
Omit section 38 (b) (iii)–(ix).
- [3] Section 41 Judges in the Divisions**
Omit section 41 (1) (c)–(h).
- [4] Section 53** 20
Omit the section. Insert instead:
- 53 Assignment of business**
- (1) Subject to the rules, there are assigned to the Common Law Division all proceedings:
- (a) that, immediately before the commencement of this section, were assigned to the Division by or under any Act, or 25
- (b) that are required by or under any Act from time to time in force to be commenced, heard or determined in that Division, or
- (c) that are assigned to the Division by operation of Part 8 of the Fourth Schedule, or 30

-
- (d) that are not assigned to the Equity Division by or under this Act.
- (2) Subject to the rules, there are assigned to the Equity Division all proceedings:
- (a) that, immediately before the commencement of this section, were assigned to the Division by or under any Act, or 5
- (b) that are required by or under any Act from time to time in force to be commenced, heard or determined in that Division, or 10
- (c) that are assigned to the Division by operation of Part 8 of the Fourth Schedule.
- (3) Subject to the rules, there are assigned to each Division proceedings for the punishment of contempt of the Court, but only if the contempt consists of: 15
- (a) contempt in the face of, or in the hearing of, the Court in that Division, or
- (b) disobedience of a judgment or order of the Court in that Division, or
- (c) breach of an undertaking given to the Court in that Division. 20
- including proceedings in which the Court is constituted by a master.
- (4) Without limiting subsection (1) (d), the proceedings assigned to the Common Law Division include proceedings for contempt of the Court or of any other court (other than proceedings referred to in subsection (3) or section 48 (2) (i)). 25
- [5] Section 124 Rule-making power**
- Insert after section 124 (2): 30
- (3) The rules may make provision for or with respect to the assignment of proceedings to the Court of Appeal or a Division. The assignment by the rules of any proceedings to the Court of Appeal or any Division has effect despite any contrary provision of this or any other Act or law. 35

[6] Fourth Schedule Savings and transitional provisions

Insert before clause 1 (and then renumber clause 1 as clause 1A):

Part 1 General

1 Regulations

- | | | |
|-----|---|----|
| (1) | The Governor may make regulations for the purposes of this Part. | 5 |
| (2) | The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
<i>Courts Legislation Further Amendment Act 1998</i> , but only in relation to the amendments made to this Act | 10 |
| (3) | Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date. | |
| (4) | 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: | 15 |
| | (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 | 20 |
| | (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. | 25 |

Part 2 Provisions consequent on enactment of Supreme Court (Amendment) Act 1994

[7] Fourth Schedule, Part 3, heading

Insert before clause 2:

Part 3 Provisions consequent on enactment of Courts Legislation Further Amendment Act 1995 30

[8] **Fourth Schedule, Part 4, heading**

Insert after clause 2:

**Part 4 Provisions consequent on enactment of
Courts Legislation Amendment Act 1996**

[9] **Fourth Schedule, Part 5, heading**

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Insert after clause 3:

**Part 5 Provisions consequent on enactment of
Courts Legislation Amendment Act 1997**

[10] **Fourth Schedule, Part 6, heading**

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Insert after clause 4:

**Part 6 Provisions consequent on enactment of
Traffic Legislation Amendment Act 1997**

[11] **Fourth Schedule, Part 7, heading**

Insert after clause 5:

**Part 7 Provisions consequent on enactment of
Courts Legislation Further Amendment Act
1997**

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[12] **Fourth Schedule, Part 8**

Insert after clause 6 (as renumbered by the *Statute Law
(Miscellaneous Provisions) Act (No 2) 1998*):

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**Part 8 Provisions consequent on enactment of
Courts Legislation Further Amendment Act
1998**

7 Definitions

(1) In this Part:

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abolished Division means a Division of the Court
abolished by clause 8.

amending Act means the *Courts Legislation Further Amendment Act 1998*.

- (2) A reference in this Part to proceedings being assigned to a Division is a reference to the proceedings being assigned to that Division by or under this or any other Act. 5

8 Abolition of certain Divisions

On the commencement of Schedule 10 [2] to the amending Act, the following Divisions of the Court (within the meaning of this Act as in force immediately before that commencement) are abolished: 10

- (a) the Administrative Law Division.
- (b) the Admiralty Division.
- (c) the Commercial Division.
- (d) the Criminal Division, 15
- (e) the Family Law Division.
- (f) the Probate Division.
- (g) the Protective Division.

9 Assignment of proceedings and Judges in abolished Divisions to Common Law Division 20

- (1) The following proceedings are assigned to the Common Law Division on the commencement of Schedule 10 [2] to the amending Act:
- (a) any proceedings that were assigned to the Administrative Law Division by or under this or any other Act immediately before that commencement. 25
 - (b) any proceedings that were assigned to the Criminal Division by or under this or any other Act immediately before that commencement. 30
- (2) If proceedings are pending in an abolished Division referred to in subclause (1) immediately before its abolition, the proceedings are taken for all purposes to have been commenced in the Common Law Division.

-
- (3) Subject to subclause (4), a Judge who, immediately before the abolition of an abolished Division referred to in subclause (1), was appointed or nominated to the Division under this or any other Act is taken for the purposes of this Act to have been appointed or nominated to the Common Law Division. 5
 - (4) A Judge who, immediately before the commencement of Schedule 10 [1] to the amending Act, held office under section 28 of this Act (as in force immediately before that commencement) as the Chief Judge at Common Law is taken to hold office as Chief Judge at Common Law under section 27 (as inserted by the amending Act). 10

10 Assignment of proceedings and Judges in abolished Divisions to Equity Division

- (1) The following proceedings are assigned to the Equity Division on the commencement of Schedule 10 [2] to the amending Act: 15
 - (a) any proceedings that were assigned to the Admiralty Division by or under this or any other Act immediately before that commencement. 20
 - (b) any proceedings that were assigned to the Commercial Division by or under this or any other Act immediately before that commencement.
 - (c) any proceedings that were assigned to the Family Law Division by or under this or any other Act immediately before that commencement. 25
 - (d) any proceedings that were assigned to the Probate Division by or under this or any other Act immediately before that commencement.
 - (e) any proceedings that were assigned to the Protective Division by or under this or any other Act immediately before that commencement. 30
- (2) If proceedings are pending in an abolished Division referred to in subclause (1) immediately before its abolition, the proceedings are taken for all purposes to have been commenced in the Equity Division. 35

- (3) Subject to subclause (4), a Judge who, immediately before the abolition of an abolished Division referred to in subclause (1), was appointed or nominated under this or any other Act to the Division is taken for the purposes of this Act to have been appointed or nominated to the Equity Division. 5
- (4) A Judge who, immediately before the commencement of Schedule 10 [1] to the amending Act, held office under section 28 of this Act (as in force immediately before that commencement) as the Chief Judge in Equity is taken to hold office as Chief Judge in Equity under section 27 (as inserted by the amending Act). 10

11 Existing Probate Judge

A Judge who, immediately before the abolition of the Probate Division, held office as Probate Judge under section 28 of this Act (as in force immediately before that abolition) retains the rank, title, status and precedence he or she had immediately before that abolition. 15

12 References to abolished Divisions 20

- (1) A reference in another Act (other than the amending Act), in an instrument made under an Act or in any other document to an abolished Division is to be read as a reference to the corresponding Division for the abolished Division. 25
- (2) In this clause, *corresponding Division* for an abolished Division means:
- (a) in relation to the Administrative Law Division or the Criminal Division—the Common Law Division, or 30
- (b) in relation to the Admiralty Division, the Commercial Division, the Family Law Division, the Probate Division or the Protective Division—the Equity Division.

13 Nothing in Part affects certain powers and other matters

Nothing in this Part affects:

- (a) the operation of section 124 (3) of this Act, or
- (b) the rank, title, status and precedence of any Judge of the Court who, immediately before the commencement of this clause, had that rank, title, status and precedence.

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Explanatory note

Item [2] amends section 38 of the *Supreme Court Act 1970* to ensure that the Court has only two Divisions (namely, the Common Law Division and the Equity Division). Item [4] replaces section 53 of the Act with a new section that specifies the kinds of proceedings that will be assigned to each of these two remaining Divisions. Item [3] makes a consequential amendment to section 41 of the Act. Item [5] inserts section 124 (3) in the Act to make it clear that rules may provide for the assignment of proceedings in a different manner.

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Item [1] replaces section 28 of the Act with a new section 27 to ensure that only two Divisional Chief Judges may be appointed, namely, the Chief Judge at Common Law and the Chief Judge in Equity. It also inserts a new section 28 in the Act to enable the Chief Justice to designate Judges to manage Lists relating to discrete kinds of proceedings within each Division.

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Item [6] inserts a provision in the Fourth Schedule to the Act to ensure that the regulations may make provision for matters of a savings or transitional nature consequent on the enactment of the provisions of the proposed Act that amend the *Supreme Court Act 1970*. Item [12] inserts a new Part in the Schedule dealing with matters of a savings or transitional nature concerning the assignment of proceedings and Judges to the two remaining Divisions of the Court and preserving in office as Chief Judge at Common Law and Chief Judge in Equity the current office holders. Items [7]–[11] insert appropriate Part headings in the Schedule.

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