

Passed by both Houses



New South Wales

Courts and Other Legislation Amendment Bill 2014

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2014



New South Wales

Courts and Other Legislation Amendment Bill 2014

Act No , 2014

An Act to make miscellaneous amendments to certain legislation with respect to annual reports, justices of the peace, judicial and consular officers and certain other legislation administered by the Attorney General.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Courts and Other Legislation Amendment Act 2014*.

2 Commencement

- (1) This Act commences on the date of assent to this Act except as provided by subsection (2).
- (2) Schedule 3.2 is taken to have commenced on 1 July 2013.

Schedule 1 Amendments relating to annual reports

1.1 Anti-Discrimination Act 1977 No 48

Section 122 Annual report

Insert after section 122 (2):

- (3) If a House of Parliament is not sitting when the Minister seeks to lay the report before it, the Minister is to cause a copy of the report to be presented to the Clerk of that House of Parliament.
- (4) A report presented under subsection (3):
 - (a) is, on presentation and for all purposes, taken to have been laid before the House, and
 - (b) may be printed by authority of the Clerk of the House, and
 - (c) if so printed, is taken to be a document published by or under the authority of the House, and
 - (d) is to be recorded:
 - (i) in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, and
 - (ii) in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the copy of the report by the Clerk.

1.2 Inspector of Custodial Services Act 2012 No 55

[1] Section 13 Other reports to be provided to Parliament

Omit the section.

[2] Section 16 Provisions relating to reports to Parliament

Insert before section 16 (1):

- (1A) Any report to Parliament made by the Inspector under this Act is to be made by furnishing the report to the Presiding Officer of each House of Parliament.

[3] Section 16 (6) and (7)

Insert after section 16 (5):

- (6) If the report is an annual report under section 12 and a House of Parliament is not sitting when the Inspector seeks to make the report to that House, the Inspector may furnish the report to the Clerk of that House of Parliament rather than the Presiding Officer of that House.
- (7) A report presented under subsection (6):
 - (a) is, when furnished to the Clerk and for all purposes, taken to have been made to the House, and
 - (b) may be printed by authority of the Clerk of the House, and
 - (c) if so printed, is taken to be a document published by or under the authority of the House, and

- (d) is to be recorded:
 - (i) in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, and
 - (ii) in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the report by the Clerk.

1.3 Professional Standards Act 1994 No 81

Section 47 Annual report

Insert after section 47 (2):

- (2A) If a House of Parliament is not sitting when the Minister seeks to lay the report before it, the Minister is to cause a copy of the report to be presented to the Clerk of that House of Parliament.
- (2B) A report presented under subsection (2A):
 - (a) is, on presentation and for all purposes, taken to have been laid before the House, and
 - (b) may be printed by authority of the Clerk of the House, and
 - (c) if so printed, is taken to be a document published by or under the authority of the House, and
 - (d) is to be recorded:
 - (i) in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, and
 - (ii) in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the copy of the report by the Clerk.

1.4 Public Defenders Act 1995 No 28

Section 17 Annual report

Insert after section 17 (2):

- (3) If a House of Parliament is not sitting when the Attorney General seeks to lay the report before it, the Attorney General is to cause a copy of the report to be presented to the Clerk of that House of Parliament.
- (4) A report presented under subsection (3):
 - (a) is, on presentation and for all purposes, taken to have been laid before the House, and
 - (b) may be printed by authority of the Clerk of the House, and
 - (c) if so printed, is taken to be a document published by or under the authority of the House, and
 - (d) is to be recorded:
 - (i) in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, and

- (ii) in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly,
on the first sitting day of the House after receipt of the copy of the report by the Clerk.

1.5 Workplace Surveillance Act 2005 No 47

Section 42 Annual report

Insert after section 42 (1):

- (1A) If a House of Parliament is not sitting when the Minister seeks to lay the report before it, the Minister is to cause a copy of the report to be presented to the Clerk of that House of Parliament.
- (1B) A report presented under subsection (1A):
 - (a) is, on presentation and for all purposes, taken to have been laid before the House, and
 - (b) may be printed by authority of the Clerk of the House, and
 - (c) if so printed, is taken to be a document published by or under the authority of the House, and
 - (d) is to be recorded:
 - (i) in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, and
 - (ii) in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly,
on the first sitting day of the House after receipt of the copy of the report by the Clerk.

Schedule 2 Amendments relating to justices of the peace

2.1 Justices of the Peace Act 2002 No 27

[1] Section 4 Appointment of justices of the peace

Insert “(subject to the regulations)” after “appointment” in section 4 (3).

[2] Section 4 (3A)

Insert after section 4 (3):

- (3A) A regulation under subsection (3) cannot provide for a reduction of the term of office of any justice of the peace by more than 1 year and cannot provide for an extension of the term of office of any justice of the peace by more than 2 years.

[3] Section 4 (4)

Omit “subsection (3)”. Insert instead “subsections (3) and (3A)”.

[4] Section 9A

Insert after section 9:

9A Suspension

- (1) The Minister may at any time suspend a justice of the peace from office.
- (2) Without limiting subsection (1), the Minister may at any time suspend a justice of the peace from office:
 - (a) if the person is charged with an offence referred to in section 9 (3) (c), or
 - (b) in any of the circumstances set out in section 9 (3) (a)–(d), or
 - (c) in any other circumstances prescribed by the regulations.
- (3) A suspension takes effect on the day on which written notice of the suspension is given to the justice of the peace concerned or at such later time as may be specified in the notice.
- (4) A person who is suspended under this section is taken not to be a justice of the peace and cannot exercise any function of a justice of the peace during that suspension.
- (5) The purported exercise of any function by a justice of the peace during any period that the justice of the peace is suspended cannot be used to challenge or call into question any document or other thing unless the person relying on the document or other thing knew, or ought reasonably to have known, that the justice of the peace was suspended when purporting to exercise the relevant function.
- (6) A suspension ceases to have effect when it is withdrawn by the Minister by notice in writing given to the person who is suspended.

[5] Schedule 1 Savings and transitional provisions

Omit clause 1 (1). Insert instead:

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.

[6] Schedule 1, clause 4

Insert after clause 3:

4 Amendments made by Courts and Other Legislation Amendment Act 2014

Section 4 (3A) as inserted by the *Courts and Other Legislation Amendment Act 2014* extends to a term of office of a justice of the peace that was commenced before the commencement of that subsection.

2.2 State Records Act 1998 No 17

Section 3 Definitions

Insert “or a justice of the peace within the meaning of the *Justices of the Peace Act 2002*” after “*Workers Compensation Act 1987*” in the definition of ***public office*** in section 3 (1).

Schedule 3 Amendments relating to judicial officers

3.1 Industrial Relations Act 1996 No 17

Schedule 2 Provisions relating to members of Commission

Insert after clause 10A (3):

- (3A) For the avoidance of doubt, a former member who held office as the President cannot exercise the functions of the President and is not taken to be the President.

3.2 Judges' Pensions Act 1953 No 41

[1] Section 13 Calculation of lump sum benefits

Omit "0.09" from the formula in section 13 (1). Insert instead "S".

[2] Section 13 (1)

Insert after "**B** represents the amount to be ascertained.":

S represents the superannuation guarantee.

[3] Section 13 (1A)

Insert after section 13 (1):

- (1A) More than one calculation is required under subsection (1) if the superannuation guarantee level changes during the years of service of a judge or acting judge. In such a case, separate calculations are to be made in respect of each such level with Y being limited to the years of service (calculated on a daily basis) of the judge or acting judge during the period when the superannuation guarantee is at that particular level.

[4] Section 13 (2)

Insert in alphabetical order:

superannuation guarantee means:

- (a) before 1 July 2013—9%, or
(b) for any other time—the charge percentage specified at the time in section 19 (2) of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth.

[5] Schedule 1 Savings and transitional provisions

Omit clause 1 (1). Insert instead:

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.

3.3 Judicial Officers Act 1986 No 100

[1] Section 26 Dismissal of complaint by Conduct Division

Insert at the end of the section:

- (2) If the Conduct Division dismisses a complaint it must give a report to the Commission setting out the Division's conclusions.
(3) The Commission must give a copy of the report to the judicial officer concerned.

- (4) The Commission may give a copy of the report (or a summary of the report) to the complainant unless the Conduct Division has notified the Commission in writing that this should not occur.

[2] Section 28 Substantiation of complaint

Insert after section 28 (3):

- (4) A copy of a report under subsection (2) must also be given to the Commission.
- (5) The Commission must give a copy of the report to the judicial officer concerned.
- (6) The Commission may give a copy of the report (or a summary of the report) to the complainant unless the Conduct Division has notified the Commission in writing that this should not occur.

[3] Schedule 6 Savings and transitional provisions

Omit clause 1 (1). Insert instead:

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.

Schedule 4 Amendments relating to consular officers

4.1 Conveyancing Act 1919 No 6

Section 168 Verification of instruments executed out of New South Wales

Omit the definition of *Australian Consular Officer* from section 168 (5). Insert instead:

Australian Consular Officer has the same meaning as in section 26 of the *Oaths Act 1900*.

4.2 Oaths Act 1900 No 20

Section 26 Before whom oaths and affidavits may be taken

Omit the definition of *Australian Consular Officer* from section 26 (2). Insert instead:

Australian Consular Officer means a person referred to in section 3 (a)–(d) of the *Consular Fees Act 1955* of the Commonwealth.

Note. Those paragraphs refer to:

- (a) an Australian Diplomatic Officer or an Australian Consular Officer, or
- (b) the person holding or acting in the office of Secretary of the Department of Foreign Affairs and Trade or an officer of the Department acting with the authority of the Secretary, or
- (c) an employee of the Commonwealth authorised, in writing, by the Secretary, or
- (d) an employee of the Australian Trade Commission authorised, in writing, by the Secretary.

4.3 Powers of Attorney Regulation 2011

Schedule 1 Persons who may endorse documents under section 44 (1) (a) (ii) of the Act

Omit “Australian or British Consular Officers” from Part 2.

Insert instead “Australian Consular Officers, or British Consular Officers, within the meaning of section 26 of the *Oaths Act 1900*,”.

Schedule 5 Other amendments

5.1 Coroners Act 2009 No 41

Section 37 State Coroner to report on deaths in custody

Omit “2 months” from section 37 (2). Insert instead “4 months”.

5.2 Court Suppression and Non-publication Orders Act 2010 No 106

Section 15 Disclosures that are not prevented by suppression orders

Insert at the end of the section:

- (2) A suppression order does not prevent the disclosure of information to the Bureau of Crime Statistics and Research if the disclosure is not by publication and the disclosure is made for the purposes of the compilation of statistical data about crime and criminal justice.

5.3 Land and Environment Court Act 1979 No 204

[1] Section 30 Arrangement of business of the Court

Omit “the qualification for the Commissioner’s appointment was” from section 30 (2A).

Insert instead “the Commissioner has”.

[2] Section 30 (2B)

Omit “for appointment was”. Insert instead “under section 12 (2) or (2AA) is”.

5.4 Supreme Court Act 1970 No 52

[1] Section 69C Stay of execution of conviction, order or sentence pending review

Omit section 69C (2). Insert instead:

- (2) The execution of the following is stayed when proceedings seeking judicial review are commenced:
 - (a) a sentence imposed as a consequence of a conviction,
 - (b) any order other than an apprehended violence order under the *Crimes (Domestic and Personal Violence) Act 2007*.

[2] Section 69C (6)

Insert after section 69C (5):

- (6) In this section, a reference to a person who is in custody includes a reference to a person who is the subject of an intensive correction order, or home detention order, within the meaning of the *Crimes (Administration of Sentences) Act 1999*.