



New South Wales

# Courts and Other Legislation Amendment Bill 2014

## Explanatory note

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

## Overview of Bill

The objects of this Bill are as follows:

- (a) to permit annual reports under the *Anti-Discrimination Act 1977*, *Inspector of Custodial Services Act 2012*, *Professional Standards Act 1994*, *Public Defenders Act 1995* and *Workplace Surveillance Act 2005* to be laid before a House of Parliament when the House is not sitting,
- (b) to provide for the re-appointment and suspension of justices of the peace and to provide that the office of justice of the peace is not a public office under the *State Records Act 1998*,
- (c) to clarify that the former President of the Industrial Relations Commission is not taken to be the President when continuing to deal with matters that have been heard, or partly heard,
- (d) to set out the circumstances in which a report about an investigation of a complaint against a judicial officer is to be given to the judicial officer and to the complainant,
- (e) to make provision for an increase in the superannuation guarantee from 9% to 9.25% with respect to the pensions of judges and acting judges,
- (f) to permit oaths, declarations and affidavits to be taken or made before certain employees in Australian overseas posts and for such employees to be able to verify or certify instruments,
- (g) to extend by 2 months the time within which the State Coroner is required to give an annual report on deaths in custody to the Attorney General,
- (h) to permit information to be disclosed to the Bureau of Crime Statistics and Research despite the existence of a suppression order,

- (i) to provide for the qualifications required to be held by commissioners of the Land and Environment Court with respect to matters under the *Aboriginal Land Rights Act 1983*,
- (j) to clarify the application of a provision of the *Supreme Court Act 1970* that stays the execution of sentences.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act, except for amendments to the *Judges' Pensions Act 1953* which are taken to have commenced on 1 July 2013.

## Schedule 1 Amendments relating to annual reports

**Schedule 1** amends the *Anti-Discrimination Act 1977*, the *Inspector of Custodial Services Act 2012*, the *Professional Standards Act 1994*, the *Public Defenders Act 1995* and the *Workplace Surveillance Act 2005* to permit the annual report that is required to be prepared under each of those Acts to be laid before a House of Parliament when the House is not sitting. This is consistent with the process under the *Annual Reports (Departments) Act 1985* and the *Annual Reports (Statutory Bodies) Act 1984* which cover a significant number of annual reports required to be prepared by Government departments and statutory bodies.

## Schedule 2 Amendments relating to justices of the peace

**Schedule 2.1** amends the *Justices of the Peace Act 2002* to permit regulations to be made to provide for the extension or shortening of the term of office of particular justices of the peace. It is envisaged that this will be used for the purpose of ensuring that the workload of processing appointments and re-appointments of justices of the peace is more evenly spread (it should be noted that there are currently more than 90,000 justices of the peace in New South Wales). The proposed amendments also provide for the suspension of a person from the office of justice of the peace if the person is charged with certain offences, or if there are circumstances in which the person may be removed from office or in other circumstances prescribed by regulations made under that Act. The proposed amendments also provide for regulations under the *Justices of the Peace Act 2002* to contain provisions of a savings or transitional nature consequent on the enactment of that Act or any Act that amends that Act (including the proposed Act).

**Schedule 2.2** amends the *State Records Act 1998* to provide that the office of justice of the peace is not a public office for the purposes of that Act and is therefore not subject to the records management responsibilities under that Act.

## Schedule 3 Amendments relating to judicial officers

**Schedule 3.1** amends the *Industrial Relations Act 1996* to clarify that a former President of the Industrial Relations Commission of New South Wales who continues to deal with matters relating to proceedings that have been heard, or partly heard, cannot exercise the functions of the President and nor is the former President taken to be the President.

**Schedule 3.2** amends the *Judges' Pensions Act 1953* to take account of the increase in the superannuation guarantee from 9% to 9.25% on 1 July 2013. The proposed amendments allow for future changes to the superannuation guarantee to be taken into account without the need for further amendment to that Act. The proposed amendments also provide for regulations under the *Judges' Pensions Act 1953* to contain provisions of a savings or transitional nature consequent on the enactment of that Act or any Act that amends that Act (including the proposed Act).

**Schedule 3.3** amends the *Judicial Officers Act 1986* to require the Conduct Division of the Judicial Commission to provide a report to the Judicial Commission of how it has dealt with a complaint about a judicial officer that has been referred to it. The Judicial Commission must give

a copy of the report to the judicial officer concerned and may give a copy of the report (or a summary of the report) to the complainant unless the Conduct Division has notified the Judicial Commission that this should not occur. The proposed amendments also provide for regulations under the *Judicial Officers Act 1986* to contain provisions of a savings or transitional nature consequent on the enactment of that Act or any Act that amends that Act (including the proposed Act).

#### **Schedule 4 Amendments relating to consular officers**

**Schedule 4** amends the *Oaths Act 1900*, the *Conveyancing Act 1919* and the *Powers of Attorney Regulation 2011* to expand the class of persons who are to be Australian Consular Officers for the purposes of certain provisions of those Acts and Regulation. Australian Consular Officers now include those employees of the Commonwealth or of the Australian Trade Commission who have been authorised by the Secretary of the Commonwealth Department of Foreign Affairs and Trade. This means that oaths, declarations or affidavits can now be taken or made before any such person for the purposes of the *Oaths Act 1900* and any such person can verify or certify instruments under the *Conveyancing Act 1919* or the *Powers of Attorney Regulation 2011*.

#### **Schedule 5 Other amendments**

**Schedule 5.1** amends the *Coroners Act 2009* to extend, by 2 months, the period within which the State Coroner is in each year to make an annual report to the Attorney General containing a summary of the details of the deaths or suspected deaths that have occurred in custody or as a result of police operations.

**Schedule 5.2** amends the *Court Suppression and Non-publication Orders Act 2010* to permit the disclosure of information to the Bureau of Crime Statistics and Research despite the existence of a suppression order under that Act.

**Schedule 5.3** amends the *Land and Environment Court Act 1979* to provide that a Commissioner can hear matters under the *Aboriginal Land Rights Act 1983* if the Commissioner has suitable knowledge of matters concerning land rights for Aborigines and qualifications and experience suitable for the determination of disputes involving Aborigines. Any such Commissioner who has no other qualification that would permit the person to be appointed as a Commissioner may only exercise functions under the *Land and Environment Court Act 1979* in relation to proceedings under the *Aboriginal Land Rights Act 1983*.

**Schedule 5.4** amends section 69C (Stay of execution of conviction, order or sentence pending review) of the *Supreme Court Act 1970* to make it clear that section 69C (2) applies to stay the execution of a sentence and to stay the execution of an order. The amendment to that subsection also provides that an apprehended violence order is not stayed. Section 69C is also amended to clarify that a reference in that section 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.