

Passed by both Houses



New South Wales

Courts Legislation Amendment (Disrespectful Behaviour) Bill 2016

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

Legislative Council
2016

Clerk of the Parliaments



New South Wales

Courts Legislation Amendment (Disrespectful Behaviour) Bill 2016

Act No , 2016

An Act to amend the *Supreme Court Act 1970*, the *Land and Environment Court Act 1979*, the *District Court Act 1973*, the *Local Court Act 2007* and the *Coroners Act 2009* to prohibit disrespectful behaviour in New South Wales courts and coronial proceedings.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Courts Legislation Amendment (Disrespectful Behaviour) Act 2016*.

2 Commencement

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

Schedule 1 Amendment of Supreme Court Act 1970 No 52

Section 131

Insert after section 130:

131 Disrespectful behaviour in Court

(1) **Offence**

A person is guilty of an offence against this section if:

- (a) the person is an accused person or defendant in, or a party to, proceedings before the Court or has been called to give evidence in proceedings before the Court, and
- (b) the person intentionally engages in behaviour in the Court during the proceedings, and
- (c) that behaviour is disrespectful to the Court or the Judge presiding over the proceedings (according to established court practice and convention).

Maximum penalty: 14 days imprisonment or 10 penalty units, or both.

(2) In this section, *behaviour* means any act or failure to act.

(3) This section does not apply to an Australian legal practitioner appearing in that capacity.

(4) **Proceedings for offences**

Proceedings against a person for an offence against this section are to be dealt with summarily before:

- (a) if the person is a child—the Children’s Court, or
- (b) if the person is not a child—the Local Court or the Supreme Court in its summary jurisdiction.

(5) Proceedings for an offence against this section may be brought at any time within 12 months after the date of the alleged offence.

(6) Proceedings for an offence against this section may be brought only by a person or a member of a class of persons authorised, in writing, by the Secretary of the Department of Justice for that purpose.

(7) A Judge may refer any disrespectful behaviour in proceedings over which the Judge is presiding to the Attorney General.

(8) Proceedings for an offence against this section may be commenced only with the authorisation of the Attorney General. Authorisation may be given by the Attorney General whether or not the disrespectful behaviour is referred to the Attorney General by a Judge under this section.

(9) **Evidence**

An official transcript or official audio or video recording of the proceedings in the Court is admissible in evidence in proceedings for an offence against this section and is evidence of the matter included in the transcript or audio or video recording.

(10) The Judge presiding over the proceedings in which the alleged disrespectful behaviour occurred cannot be required to give evidence in proceedings before any court for an offence against this section.

(11) **Contempt and double jeopardy**

This section does not affect any power with respect to contempt or the exercise of any such power.

- (12) A person cannot be prosecuted for an offence against this section and proceeded against for contempt in respect of essentially the same behaviour. However, nothing in this section prevents proceedings for contempt in respect of behaviour that constitutes an offence against this section.

Schedule 2 **Amendment of Land and Environment Court Act 1979 No 204**

Section 67A

Insert after section 67:

67A Disrespectful behaviour in Court

(1) **Offence**

A person is guilty of an offence against this section if:

- (a) the person is an accused person or defendant in, or a party to, proceedings before the Court or has been called to give evidence in proceedings before the Court, and
- (b) the person intentionally engages in behaviour in the Court during the proceedings, and
- (c) that behaviour is disrespectful to the Court or the Judge presiding over the proceedings (according to established court practice and convention).

Maximum penalty: 14 days imprisonment or 10 penalty units, or both.

(2) In this section, *behaviour* means any act or failure to act.

(3) This section does not apply to an Australian legal practitioner appearing in that capacity.

(4) **Proceedings for offences**

Proceedings against a person for an offence against this section are to be dealt with summarily before:

- (a) if the person is a child—the Children’s Court, or
- (b) if the person is not a child—the Local Court.

(5) Proceedings for an offence against this section may be brought at any time within 12 months after the date of the alleged offence.

(6) Proceedings for an offence against this section may be brought only by a person or a member of a class of persons authorised, in writing, by the Secretary of the Department of Justice for that purpose.

(7) A Judge may refer any disrespectful behaviour in proceedings over which the Judge is presiding to the Attorney General.

(8) Proceedings for an offence against this section may be commenced only with the authorisation of the Attorney General. Authorisation may be given by the Attorney General whether or not the disrespectful behaviour is referred to the Attorney General by a Judge under this section.

(9) **Evidence**

An official transcript or official audio or video recording of the proceedings in the Court is admissible in evidence in proceedings for an offence against this section and is evidence of the matter included in the transcript or audio or video recording.

(10) The Judge presiding over the proceedings in which the alleged disrespectful behaviour occurred cannot be required to give evidence in proceedings before any court for an offence against this section.

(11) **Contempt and double jeopardy**

This section does not affect any power with respect to contempt or the exercise of any such power.

(12) A person cannot be prosecuted for an offence against this section and proceeded against for contempt in respect of essentially the same behaviour. However, nothing in this section prevents proceedings for contempt in respect of behaviour that constitutes an offence against this section.

(13) This section does not apply in Class 1, 2, 3 or 4 of the Court's jurisdiction.

Schedule 3 Amendment of District Court Act 1973 No 9

Section 200A

Insert after section 200:

200A Disrespectful behaviour in Court

(1) **Offence**

A person is guilty of an offence against this section if:

- (a) the person is an accused person or defendant in, or a party to, proceedings before the Court or has been called to give evidence in proceedings before the Court, and
- (b) the person intentionally engages in behaviour in the Court during the proceedings, and
- (c) that behaviour is disrespectful to the Court or the Judge presiding over the proceedings (according to established court practice and convention).

Maximum penalty: 14 days imprisonment or 10 penalty units, or both.

(2) In this section, *behaviour* means any act or failure to act.

(3) This section does not apply to an Australian legal practitioner appearing in that capacity.

(4) **Proceedings for offences**

Proceedings against a person for an offence against this section are to be dealt with summarily before:

- (a) if the person is a child—the Children’s Court, or
- (b) if the person is not a child—the Local Court.

(5) Proceedings for an offence against this section may be brought at any time within 12 months after the date of the alleged offence.

(6) Proceedings for an offence against this section may be brought only by a person or a member of a class of persons authorised, in writing, by the Secretary of the Department of Justice for that purpose.

(7) A Judge may refer any disrespectful behaviour in proceedings over which the Judge is presiding to the Attorney General.

(8) Proceedings for an offence against this section may be commenced only with the authorisation of the Attorney General. Authorisation may be given by the Attorney General whether or not the disrespectful behaviour is referred to the Attorney General by a Judge under this section.

(9) **Evidence**

An official transcript or official audio or video recording of the proceedings in the Court is admissible in evidence in proceedings for an offence against this section and is evidence of the matter included in the transcript or audio or video recording.

(10) The Judge presiding over the proceedings in which the alleged disrespectful behaviour occurred cannot be required to give evidence in proceedings before any court for an offence against this section.

(11) **Contempt and double jeopardy**

This section does not affect any power with respect to contempt or the exercise of any such power.

- (12) A person cannot be prosecuted for an offence against this section and proceeded against for contempt in respect of essentially the same behaviour. However, nothing in this section prevents proceedings for contempt in respect of behaviour that constitutes an offence against this section.

Schedule 4 Amendment of Local Court Act 2007 No 93

Section 24A

Insert after section 24:

24A Disrespectful behaviour in Court

(1) **Offence**

A person is guilty of an offence against this section if:

- (a) the person is an accused person or defendant in, or a party to, proceedings before the Court or has been called to give evidence in proceedings before the Court, and
- (b) the person intentionally engages in behaviour in the Court during the proceedings, and
- (c) that behaviour is disrespectful to the Court or the Magistrate presiding over the proceedings (according to established court practice and convention).

Maximum penalty: 14 days imprisonment or 10 penalty units, or both.

(2) In this section, *behaviour* includes any act or failure to act.

(3) This section does not apply to the following persons:

- (a) an Australian legal practitioner appearing in that capacity,
- (b) a police prosecutor or other public official responsible for the conduct of the prosecution, but only when acting in that capacity.

(4) **Proceedings for offences**

Proceedings against a person for an offence against this section are to be dealt with summarily before:

- (a) if the person is a child—the Children’s Court, or
- (b) if the person is not a child—the Local Court.

(5) Proceedings for an offence against this section may be brought at any time within 12 months after the date of the alleged offence.

(6) Proceedings for an offence against this section may be brought only by a person or a member of a class of persons authorised, in writing, by the Secretary of the Department of Justice for that purpose.

(7) A Magistrate may refer any disrespectful behaviour in proceedings over which the Magistrate is presiding to the Attorney General.

(8) Proceedings for an offence against this section may be commenced only with the authorisation of the Attorney General. Authorisation may be given by the Attorney General whether or not the disrespectful behaviour is referred to the Attorney General by a Magistrate under this section.

(9) **Evidence**

An official transcript or official audio or video recording of the proceedings in the Court is admissible in evidence in proceedings for an offence against this section and is evidence of the matter included in the transcript or audio or video recording.

(10) The Magistrate presiding over the proceedings in which the alleged disrespectful behaviour occurred cannot be required to give evidence in proceedings before any court for an offence against this section.

(11) **Contempt and double jeopardy**

This section does not affect any power with respect to contempt or the exercise of any such power.

- (12) A person cannot be prosecuted for an offence against this section and proceeded against for contempt in respect of essentially the same behaviour. However, nothing in this section prevents proceedings for contempt in respect of behaviour that constitutes an offence against this section.

Schedule 5 Amendment of Coroners Act 2009 No 41

Section 103A

Insert after section 103:

103A Disrespectful behaviour in coronial proceedings

(1) **Offence**

A person is guilty of an offence against this section if:

- (a) the person is appearing in or being represented in coronial proceedings or has been called to give evidence in coronial proceedings, and
- (b) the person intentionally engages in behaviour during those proceedings, and
- (c) that behaviour is disrespectful to the coronial proceedings or the coroner or assistant coroner presiding over the coronial proceedings (according to established practice and convention for coronial proceedings).

Maximum penalty: 14 days imprisonment or 10 penalty units, or both.

(2) In this section, *behaviour* means any act or failure to act.

(3) This section does not apply to the following persons:

- (a) an Australian legal practitioner appearing in that capacity,
- (b) a person assisting the coroner, but only when acting in that capacity.

(4) **Proceedings for offences**

Proceedings against a person for an offence against this section are to be dealt with summarily before:

- (a) if the person is a child—the Children’s Court, or
- (b) if the person is not a child—the Local Court.

(5) Proceedings for an offence against this section may be brought at any time within 12 months after the date of the alleged offence.

(6) Proceedings for an offence against this section may be brought only by a person or a member of a class of persons authorised, in writing, by the Secretary of the Department of Justice for that purpose.

(7) A coroner may refer any disrespectful behaviour in proceedings over which the coroner is presiding to the Attorney General.

(8) An assistant coroner cannot refer a matter to the Attorney General under this section, but may instead refer the matter to a coroner.

(9) Proceedings for an offence against this section may be commenced only with the authorisation of the Attorney General. Authorisation may be given by the Attorney General whether or not the disrespectful behaviour is referred to the Attorney General by a coroner under this section.

(10) **Evidence**

An official transcript or official audio or video recording of the coronial proceedings is admissible in evidence in proceedings for an offence against this section and is evidence of the matter included in the transcript or audio or video recording.

- (11) The coroner or assistant coroner presiding over the coronial proceedings in which the alleged disrespectful behaviour occurred cannot be required to give evidence in proceedings before any court for an offence against this section.
- (12) **Contempt and double jeopardy**
This section does not affect any power with respect to contempt or the exercise of any such power.
- (13) A person cannot be prosecuted for an offence against this section and proceeded against for contempt in respect of essentially the same behaviour. However, nothing in this section prevents proceedings for contempt in respect of behaviour that constitutes an offence against this section.