

Courts Legislation Amendment Bill 2006

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 amend the *Civil Procedure Act 2005* to provide that proceedings taken to have been dismissed under clause 18 of the *Civil Procedure Regulation 2005* before the repeal of that clause by the *Civil Procedure Amendment (Savings and Transitional) Regulation 2005* are taken to have never been dismissed,
- (b) to amend the *Criminal Procedure Act 1986*:
 - (i) to provide that an accused person served with a court attendance notice is not required to attend court if a written plea of guilty or not guilty is lodged not later than 7 days prior to the first date on which the accused person is required to attend the court (rather than the 5 days currently required), and
 - (ii) to prevent costs from being awarded to the prosecution in relation to an offence for which a penalty notice has been issued where the accused person has elected to have the matter dealt with by a court and has lodged a written plea of guilty within that 7-day period, and
 - (iii) to provide for the Supreme Court, the Land and Environment Court and the Industrial Relations Commission of New South Wales to make orders for costs against a prosecutor and on adjournments (in relation to unreasonable conduct or delays) in summary criminal proceedings on the same basis as a Local Court in such proceedings,
- (c) to amend the *Crown Prosecutors Act 1986* and the *Public Defenders Act 1995* to enable Crown Prosecutors and Public Defenders to exercise their functions on a part-time basis by arrangement with the Director of Public Prosecutions or the Senior Public Defender, as the case may be,
- (d) to amend the *District Court Act 1973* to confer a right of appeal to the Supreme Court against a judgment or order of the Judicial Registrar of the District Court (currently the District Court may set aside or vary a judgment or order of the Judicial Registrar other than an interlocutory order),
- (e) to amend the *Judges' Pensions Act 1953* to enable judges' pensions to be paid fortnightly instead of monthly,
- (f) to amend the *Land and Environment Court Act 1979* to enable Commissioners of the Land and Environment Court to make costs orders with the concurrence of any judge of the Court rather than just the Chief Judge,
- (g) to amend the *Local Courts Act 1982* to alter the relevant age restriction from 72 years to 75 years in respect of the appointment of Magistrates for limited tenure or the reinstatement of Magistrates for additional terms of office,
- (h) to amend the *Public Trustee Act 1913* to allow the Public Trustee to receive money paid into court in a Local Court, the District Court, the Supreme Court or the Dust Diseases Tribunal for investment in the Public Trustee's common fund,
- (i) to make other miscellaneous amendments, including amendments in the nature of statute law revision, consequential amendments to other Acts and amendments 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.

Clause 3 is a formal provision that gives effect to the amendments to the Acts set out

in the Schedules.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced, the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Civil Procedure Act 2005

No 28

Proceedings taken to have never been dismissed

Schedule 1 [3] inserts proposed Part 3 in Schedule 6 to provide that proceedings taken to have been dismissed under clause 18 of the *Civil Procedure Regulation 2005* before the repeal of that clause by the *Civil Procedure Amendment (Savings and Transitional) Regulation 2005* are taken to have never been dismissed.

Other amendments

Schedule 1 [1] makes an amendment in the nature of statute law revision to insert a word inadvertently omitted from section 64.

Schedule 1 [2] amends clause 1 (1) of Schedule 6 to provide for the making of regulations of a savings or transitional nature as a consequence of the enactment of the proposed Act.

Schedule 2 Amendment of Criminal Procedure

Act 1986 No 209

Accused person not to pay costs if written plea of guilty lodged in relation to offence for which penalty notice issued

Schedule 2 [5] inserts proposed section 215 (1A) to provide that a court may not order an accused person to pay professional costs in summary proceedings before a lower court if the conviction or order concerned relates to an offence for which a penalty notice has been issued and in respect of which the person has elected to have the matter dealt with by a court and has lodged a written plea of guilty not later than 7 days prior to the first date the person is required to attend court. Proposed section 215 (1A) does not apply in relation to occupational health and safety proceedings.

Date for lodgment of written pleas

Schedule 2 [1] amends section 182 (3) to provide that an accused person served with a court attendance notice is not required to attend court if a written plea of guilty or not guilty is lodged not later than 7 days prior to the first date on which the person is required to attend court (rather than the 5 days currently provided for).

Professional costs

Schedule 2 [2], [3], [4] and [5] make, or include, amendments inserting the word “professional” to make clear those circumstances in which professional costs, as defined in section 211, are payable in summary criminal proceedings before a lower court, as opposed to costs in general or court costs.

Schedule 2 [3] also makes an amendment to section 213 in the nature of statute law revision.

Costs in summary criminal proceedings in superior courts

Schedule 2 [9] inserts proposed Division 4, a division dealing with costs, in Part 5 of Chapter 4, the Part dealing with summary criminal proceedings in superior courts.

The object of this amendment is to provide for the Supreme Court, the Land and Environment Court and the Industrial Relations Commission of New South Wales to make orders in summary criminal proceedings for costs against a prosecutor and on adjournments (in relation to unreasonable conduct or delays) on the same basis as a Local Court in such proceedings.

Proposed section 257A inserts a definition of **professional costs** for the purpose of the proposed Division.

Proposed section 257B provides for costs to be awarded to the prosecutor if the court convicts the accused person or makes an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999* in respect of the offence. The costs payable are

such costs as the court specifies or, if the conviction or order directs, as may be determined under proposed section 257G.

Proposed section 257C provides that a court may order that the prosecutor pay professional costs to the registrar of the court, for payment to the accused person, if the matter is dismissed or withdrawn. The amount of costs is to be such costs as the court specifies or, if the order directs, as may be determined under section 257G.

Proposed section 257D provides that professional costs are not to be awarded in favour of an accused person unless the court is satisfied as to the existence of certain circumstances, for example, the investigation into the alleged offence having been conducted in an unreasonable or improper manner. The proposed section does not apply to the awarding of costs against a prosecutor acting in a private capacity.

The proposed section also provides that it does not apply in relation to occupational health and safety proceedings.

Proposed section 257E provides that a public officer or a police officer is entitled to be indemnified by the State for any costs awarded against the officer personally as the prosecutor in any criminal proceedings in which the officer is acting in his or her capacity as a public officer or a police officer.

Proposed section 257F provides that a court may, at its discretion or on the application of a party, order that one party pay costs if the matter is adjourned. An order may be made only if the court is satisfied that the other party has incurred additional costs because of the unreasonable conduct or delays of the party against whom the order is made.

Proposed section 257G provides that the costs payable by a prosecutor or accused person in accordance with an order directing that the amount of costs is to be determined under the proposed section are to be determined by agreement or in accordance with Division 11 of Part 3.2 of the *Legal Profession Act 2004* (with or without modifications prescribed by the regulations). Under Division 4 of Part 2 of Chapter 4 of the *Criminal Procedure Act 1986*, the relevant costs payable in such proceedings before a lower court are such professional costs as the court considers to be just and reasonable.

Schedule 2 [6], [7] and [8] make consequential amendments to sections 249, 253 and 254, respectively.

Other amendments

Schedule 2 [10] amends clause 1 (1) of Schedule 2 to provide for the making of regulations of a savings or transitional nature as a consequence of the enactment of the proposed Act.

Schedule 2 [11] inserts proposed Part 11 in Schedule 2, the proposed Part containing provisions of a savings or transitional nature.

Schedule 3 Amendment of Crown Prosecutors

Act 1986 No 208

Schedule 3 [2] inserts proposed section 4 (3A) to provide for a Crown Prosecutor to exercise his or her functions on a part-time basis by arrangement with the Director of Public Prosecutions.

Schedule 3 [1] makes a consequential amendment by inserting a definition in section 3 (1).

Schedule 3 [3] amends section 14 by inserting proposed section 14 (8) and (9), provisions of a savings or transitional nature.

Schedule 4 Amendment of District Court Act 1973

No 9

Schedule 4 [3] amends section 127 to confer a right of appeal to the Supreme Court against a judgment or order of the Judicial Registrar of the District Court.

Schedule 4 [1] omits section 18FB (2), a provision that currently confers a power on the District Court to set aside or vary a judgment or order (other than an interlocutory order) of the Judicial Registrar of the District Court.

Schedule 4 [2] makes a consequential amendment to section 18FB (3).

Schedule 4 [4] amends clause 1 (1) of Schedule 3 to provide for the making of regulations of a savings or transitional nature as a consequence of the enactment of the proposed Act.

Schedule 4 [5] inserts proposed Part 8 in Schedule 3, the proposed Part containing provisions of a savings or transitional nature.

Schedule 5 Amendment of Judges' Pensions

Act 1953 No 41

Schedule 5 [1] amends section 10 (1) (b) to provide for judges' pensions to be paid fortnightly, instead of monthly as is currently the case.

Schedule 5 [2] amends clause 1 (1) of Schedule 1 to provide for the making of regulations of a savings or transitional nature as a consequence of the enactment of the proposed Act.

Schedule 6 Amendment of Land and Environment

Court Act 1979 No 204

Schedule 6 [1] amends section 69 (8) to enable Commissioners of the Land and Environment Court to make costs orders with the concurrence of any judge of the Court rather than just the Chief Judge.

Schedule 6 [2] inserts proposed clause 7 in Schedule 3, a provision of a savings or transitional nature.

Schedule 7 Amendment of Legal Profession

Act 2004 No 112

Schedule 7 amends section 353 (3) to make an amendment consequential on the amendment made by **Schedule 2 [9]**.

Schedule 8 Amendment of Local Courts Act 1982

No 164

Schedule 8 [1] and [2] amend section 13 to change the relevant age restriction from 72 years to 75 years in respect of the appointment of a Magistrate for limited tenure.

Schedule 8 [3] and [4] amend section 21 to change the relevant age restriction from 72 years to 75 years in respect of the reinstatement of a Magistrate for an additional term of office.

Schedule 8 [5] inserts a note to section 21 as a consequential amendment.

Schedule 8 [6] amends clause 8 (1) of Schedule 1 to provide for the making of regulations of a savings or transitional nature as a consequence of the enactment of the proposed Act.

Schedule 8 [7] inserts proposed clause 18 in Schedule 1, a provision of a savings or transitional nature.

Schedule 9 Amendment of Public Defenders

Act 1995 No 28

Schedule 9 [2] inserts proposed section 6 (2A) to enable a Public Defender to exercise his or her functions on a part-time basis by arrangement with the Senior Public Defender.

Schedule 9 [1] makes a consequential amendment by inserting a definition in section 3.

Schedule 9 [3] amends clause 1 (1) of Schedule 3 to provide for the making of regulations of a savings or transitional nature as a consequence of the enactment of the proposed Act.

Schedule 9 [4] inserts proposed clause 6 in Schedule 3, a provision of a savings or transitional nature.

Schedule 10 Amendment of Public Trustee Act 1913

No 19

Schedule 10 [2] omits and re-inserts section 36G to provide for the Public Trustee to receive money paid into court in a Local Court, the District Court, the Supreme Court or the Dust Diseases Tribunal for investment in the Public Trustee's common fund.

Schedule 10 [1], [3] and [4] make amendments to sections 11, 55 and 56, being amendments in the nature of statute law revision to correct incorrect references to the Supreme Court.