

## Courts Legislation Further 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:

(a) to amend the *Civil Procedure Act 2005*:

(i) to remove the Crown's exemption from the payment of Sheriff's fees, and

(ii) to allow a court to order money recovered on behalf of a person under a legal incapacity to be paid to another person, and

(iii) to insert an explanatory note and to make other minor amendments of a statute law nature, and

(b) to amend the *Drug Court Act 1998* with respect to eligible convicted offenders, and

(c) to amend the *Land and Environment Court Act 1979* to permit third parties to be joined in certain appeals.

#### 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 Schedules 1–3.

**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

**Schedule 1 [1]** amends section 18 (2) of the *Civil Procedure Act 2005* (**the Act**) to remove the exemption in favour of the Crown on the payment of Sheriff's fees.

**Schedule 1 [2]** amends section 77 of the Act to permit a court to order that the whole or any part of money recovered on behalf of a person under a legal incapacity (or a person whom the court has found incapable of managing his or her affairs) be paid to such person as the court may direct, including, in the case of a minor, the Public Trustee or, in the case of a protected person, the manager of the person's estate. Currently in the case of a minor any such money must be paid to the minor or the Public Trustee only and in the case of a protected person to the protected person or the manager of the protected person's estate only.

**Schedule 1 [3]** inserts a note to clarify that Division 5 of Part 6 of the Act, which allows a court to make an interim payment in certain cases, does not apply to an award of damages to which Part 6 of the *Motor Accidents Act 1988* applies.

**Schedule 1 [4]** amends section 97 of the Act to clarify that a court may issue an arrest warrant for a failure to attend court or a failure to produce any document or thing to the court if the requirement to attend or produce the document or thing was under an order made under the Act or under any other law.

**Schedule 1 [5] and [6]** amend section 113 of the Act, which provides for the sale or mortgage by a judgment debtor of land that is subject to a registered writ for the levy of property. The proposed amendments clarify that on payment to the Sheriff, from money advanced under a mortgage, of the minimum amount required by the judgment debtor, the Sheriff is to endorse the mortgage instrument rather than the agreement for mortgage.

**Schedule 1 [7]** enables savings and transitional regulations to be made as a

consequence of the proposed Act.

## **Schedule 2 Amendment of Drug Court Act 1998 No 150**

Section 5A and Part 2A of the *Drug Court Act 1998* (**the Act**) are to be inserted into the Act by Schedule 1 [5] and [6] to the *Compulsory Drug Treatment Correctional Centre Act 2004*. Section 5A sets out who is an eligible convicted offender for the purposes of the Act. Part 2A provides that an eligible convicted offender must be referred to the Drug Court by certain courts when sentencing the offender. The Drug Court may order that the offender serve his or her sentence by way of compulsory drug treatment detention. However, before making any such order the Drug Court is to refer the offender to a multi-disciplinary team for assessment.

**Schedule 2 [1]** amends section 5A (1) (b) to clarify that when looking at a person's sentence to determine whether the person is an eligible convicted offender, the person must have a sentence with an unexpired non-parole period of at least 18 months at the time the sentence is imposed and an unexpired non-parole period of no more than 3 years at the time that the Drug Court determines whether to make an order in respect of the person.

**Schedule 2 [2]** amends section 5A (1) (c) to reduce the number of offences that a person must have been convicted of to be an eligible convicted offender, from at least 3 others in the 5 year period before he or she is sentenced to at least 2 others in that period.

**Schedule 2 [3]** omits certain redundant subjective requirements from the definition of **eligible convicted offender**. These require the Drug Court to be of the opinion that the person has a long term dependency on the use of prohibited drugs and that the offence for which the person has been sentenced was related to that drug dependency. The Drug Court is already required to assess these matters subjectively as section 18D (1) (b) (ii) requires the Drug Court to be satisfied that the person is an eligible convicted offender.

**Schedule 2 [4]** removes section 5A (2) (d) which states that a person cannot be an eligible convicted offender if the person has been convicted of any offence that, in the opinion of the Drug Court, involves serious violence. **Schedule 2 [5]** instead inserts proposed section 18E (2) (c1) which requires the multi-disciplinary team to take into account the offender's history of committing offences involving violence when determining whether the offender is a suitable person to serve a sentence by way of compulsory drug treatment detention.

## **Schedule 3 Amendment of Land and Environment Court Act 1979 No 204**

**Schedule 3** amends section 39A of the *Land and Environment Court Act 1979* which permits the Land and Environment Court to join parties to an appeal in certain circumstances. The proposed amendment extends the application of the provision to appeals under sections 96 (6), 96AA (3) and 96A (5) of the *Environmental Planning and Assessment Act 1979*, which are appeals in relation to the modification of a development consent.