

New South Wales

# 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.

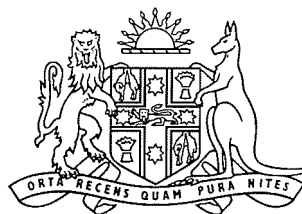
**Schedule 2 [3]** omits certain redundant subjective requirements from the definition of *eligible convicted offender*. These require the Drug Court to be of the opinion that the person has a long term dependency on the use of prohibited drugs and that the offence for which the person has been sentenced 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.





New South Wales

# Courts Legislation Further Amendment Bill 2006

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New South Wales

# Courts Legislation Further Amendment Bill 2006

No. , 2006

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## A Bill for

An Act to amend the *Civil Procedure Act 2005*, the *Drug Court Act 1998* and the *Land and Environment Court Act 1979* with respect to courts, court procedures and other matters; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1    Name of Act</b>	2
This Act is the <i>Courts Legislation Further Amendment Act 2006</i> .	3
<b>2    Commencement</b>	4
(1)    This Act commences on the date of assent except as provided by subsection (2).	5 6
(2)    Schedule 2 commences on the commencement of Schedule 1 [5] to the <i>Compulsory Drug Treatment Correctional Centre Act 2004</i> .	7 8
<b>3    Amendment of Acts</b>	9
Each Act set out in Schedules 1–3 is amended as set out in those Schedules.	10 11
<b>4    Repeal of Act</b>	12
(1)    This Act is repealed on the day following the day on which all the provisions of this Act have commenced.	13 14
(2)    The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	15 16



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## Schedule 1      Amendment of Civil Procedure Act 2005 No 28

(Section 3)

### [1]    Section 18 Fees

Omit “, (d) or (e)” from section 18 (2). Insert instead “or (d)”.

### [2]    Section 77 Payment of money recovered on behalf of person under legal incapacity

Omit section 77 (3) and (4). Insert instead:

(3)    Despite subsection (2), the court may order that the whole or any part of such money not be paid into court but be paid instead to such person as the court may direct, including:

(a)    if the person is a minor, to the Public Trustee, or

(b)    if the person is a protected person, to the manager of the protected person’s estate.

(4)    Money paid into court under subsection (2) is to be paid to such person as the court may direct, including:

(a)    if the person is a minor, to the Public Trustee, or

(b)    if the person is a protected person, to the manager of the protected person’s estate.

### [3]    Section 81 Definitions and application

Insert after section 81 (2):

**Note.** Clause 11 of Schedule 6 to this Act provides that the reference in subsection (2) to an award of damages to which Chapter 5 of the *Motor Accidents Compensation Act 1999* applies includes a reference to an award of damages to which Part 6 of the *Motor Accidents Act 1988* applies.

### [4]    Section 97 Arrest warrants

Omit “this or any other Act or under rules of court” from section 97 (1) (a).

Insert instead “this Act or any other law”.

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<b>[5]    Section 113 Sale or mortgage by judgment debtor of land affected by order</b>	1 2
Omit section 113 (6) (b). Insert instead:	3
(b)    the Sheriff, on production of the agreement for the sale or the mortgage instrument, must endorse:	4 5
(i)    in the case of a sale, the agreement for sale, or	6
(ii)   in the case of a mortgage, the mortgage instrument.	7
<b>[6]    Section 113 (7)</b>	8
Omit “agreement”. Insert instead “agreement or mortgage instrument”.	9
<b>[7]    Schedule 6 Savings, transitional and other provisions</b>	10
Insert at the end of clause 1 (1):	11
<i>Courts Legislation Further Amendment Act 2006</i> (but only to the extent that it amends this Act)	12 13

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

(Section 3)

### **[1]    Section 5A Definition of “eligible convicted offender”**

Omit section 5A (1) (b). Insert instead:

- (b) the person has been sentenced to a term of imprisonment for the offence to be served by way of full-time detention and the unexpired non-parole period in relation to that sentence is:
  - (i) at the time the Drug Court is determining whether to make a compulsory drug treatment order with respect to the person—a period of no more than 3 years, and
  - (ii) at the time that the sentence was imposed—a period of at least 18 months, and

### **[2]    Section 5A (1) (c)**

Omit “3 other offences”. Insert instead “2 other offences”.

### **[3]    Section 5A (1) (d) and (e)**

Omit “in the opinion of the Drug Court,” wherever occurring.

### **[4]    Section 5A (2) (d)**

Omit the paragraph.

### **[5]    Section 18E Assessment of eligibility and suitability by the multi-disciplinary team**

Insert after section 18E (2) (c):

- (c1) the offender’s history of committing offences involving violence,

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

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(Section 3)

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**Section 39A Joinder of parties in certain appeals**

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Insert “96 (6), 96AA (3), 96A (5),” after “under section”.

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