

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 *Administrative Decisions Tribunal Act 1997* so that a document signed by the parties may be admitted as evidence of an agreement or arrangement reached during a mediation session,

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

(i) to expand the membership of the Uniform Rules Committee to include a representative of the Land and Environment Court, and

(ii) to provide for the appointment of deputies for all members of the Uniform Rules Committee, and

(iii) to apply that Act to civil proceedings in certain classes of the jurisdiction of the Land and Environment Court, and

(iv) to include provisions dealing with the transfer of civil proceedings from the Supreme Court to the Land and Environment Court,

(c) to amend the *Confiscation of Proceeds of Crime Act 1989* with respect to the Local Court's jurisdiction in relation to drug proceeds orders, forfeiture orders and freezing notices,

(d) to amend the *Coroners Act 1980* to allow the State Coroner to provide assistance to, and request assistance from, a coroner in another State or Territory,

(e) to amend the *District Court Act 1973* to enable the registrar of a Local Court to exercise the functions of a registrar of the District Court (and to make similar provision with respect to the deputy registrars and officers),

(f) to amend the *Land and Environment Court Act 1979* following the application of the *Civil Procedure Act 2005* to civil proceedings in certain classes of the Land and Environment Court's jurisdiction and to make provision with respect to various other matters including the removal and referral of matters before Commissioners and the removal of the Divisions of the Court,

(g) to amend the *Local Courts Act 1982* to enable a registrar of the District Court to exercise the functions of the registrar of a Local Court (and to make similar provision with respect to assistant registrars and officers) and to make provision with respect to the civil jurisdiction of the Court,

(h) to amend the *Supreme Court Act 1970* with respect to the appointment of an Acting Chief Justice and to enable the registrar of the Court of Criminal Appeal to exercise the powers of a registrar of the Supreme Court (and to make similar provision with respect to the officers),

(i) to make other miscellaneous amendments, including amendments for the purpose of achieving consistency with the *Civil Procedure Act 2005*, amendments in the nature of statute law revision, consequential amendments to other Acts and instruments 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 on the date of assent, subject to specified exceptions.

Clause 3 is a formal provision that gives effect to the amendments to the Acts specified in Schedules 1–8.

Clause 4 is a formal provision that gives effect to the consequential amendments to the Act and instrument specified in Schedule 9.

Clause 5 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 Administrative Decisions

Tribunal Act 1997 No 76

Schedule 1 [1] inserts proposed section 91A into the *Administrative Decisions Tribunal Act 1997* to provide for the issue of practice notes by the President of the Administrative Decisions Tribunal.

Schedule 1 [2] provides that any document signed by the parties is admissible, as evidence of an agreement or arrangement reached during a mediation session, on an application to the Tribunal for orders to give effect to any such agreement or arrangement. The proposed amendment ensures that the *Administrative Decisions Tribunal Act 1997* is consistent with the *Civil Procedure Act 2005* in this respect.

Schedule 1 [3] and [4] also amend the provision of the *Administrative Decisions Tribunal Act 1997* concerning privilege for this purpose and as a consequence of the amendment in **Schedule 1 [2]**.

Schedule 2 Amendment of Civil Procedure Act 2005

No 28

Schedule 2 [2] makes provision for an additional member of the Uniform Rules Committee established by the *Civil Procedure Act 2005*, being the Chief Judge of the Land and Environment Court or a Judge nominated for the time being by the Chief Judge. **Schedule 2 [1] and [10]** make consequential amendments.

Schedule 2 [9] provides for the application of Parts 3–9 of the *Civil Procedure Act 2005* to proceedings in Class 1, 2, 3 or 4 of the jurisdiction of the Land and Environment Court (subject to the uniform rules under that Act which can exclude any class of civil proceedings from the operation of all or any of the provisions of Parts 3–9). **Schedule 2 [8]** inserts Division 2A into Part 9 (Transfer of proceedings between courts) of the *Civil Procedure Act 2005* to allow for proceedings to be transferred from the Supreme Court to the Land and Environment Court if the Supreme Court is satisfied that the proceedings could properly have been commenced in the Land and Environment Court.

Schedule 2 [11] makes provision for a deputy to be appointed for each member of the Uniform Rules Committee. **Schedule 2 [12]** makes it clear that the deputy for the Chief Justice of the Supreme Court (or the Judge nominated for the time being by the Chief Justice) is not entitled to preside at a meeting of the Uniform Rules Committee.

Schedule 2 [3]–[7] make amendments by way of statute law revision.

Schedule 2 [13] enables regulations to be made of a savings and transitional nature and **Schedule 2 [14]** contains consequential provisions.

Schedule 3 Amendment of Confiscation of Proceeds of Crime Act 1989 No 90

Schedule 3 [1] amends section 87 of the *Confiscation of Proceeds of Crime Act 1989* to make it clear that a Local Court may not make a drug proceeds order under section 29 of that Act against a person for an amount that exceeds the jurisdictional limit of a Local Court when sitting in its General Division (being \$60,000 at present).

Schedule 3 [2] provides that nothing in section 87 of the *Confiscation of Proceeds of Crime Act 1989* prevents a Local Court from exercising its jurisdiction in relation to a freezing notice issued under section 42C of that Act (to be inserted by the *Confiscation of Proceeds of Crime Amendment Act 2005*) in relation to land or in relation to property whose value exceeds the jurisdictional limit of a Local Court when sitting in its General Division.

Schedule 3 [2] also provides that proceedings on an application for a forfeiture order or drug proceeds order or proceedings on an application for confirmation or setting aside of a freezing notice, that are before the Local Court, are to be dealt with by the Local Court sitting in its General Division.

Schedule 4 Amendment of Coroners Act 1980 No 27

Section 54A of the *Coroners Act 1980* currently allows the State Coroner to use any

of his or her powers as State Coroner or as a coroner to assist a coroner of another State or Territory to investigate a death, suspected death, fire or explosion. **Schedule 4** substitutes section 54A to expand and revise this provision. Section 54A, as substituted, allows:

(a) the State Coroner to request, in writing, the assistance of a person holding a corresponding office in another State or Territory (or a coroner in another State or Territory) in connection with the exercise of any power under that Act, and

(b) the State Coroner to assist a person holding a corresponding office in another State or Territory (or a coroner in another State or Territory), in connection with the exercise of a power under the law of that State or Territory, at the written request of that person.

Schedule 5 Amendment of District Court Act 1973

No 9

Schedule 5 [3] inserts proposed section 18L into the *District Court Act 1973*. The proposed section enables (subject to the rules) the registrar of a Local Court to exercise the functions of a registrar of the District Court, the deputy registrar of a Local Court to exercise the functions of an assistant registrar of the District Court and an officer of a Local Court to exercise the functions of an officer of the District Court.

Schedule 7 [1] makes a similar amendment to the *Local Courts Act 1982*.

Schedule 5 [4] clarifies that the civil jurisdiction of the District Court is not limited to money claims.

Schedule 5 [1] and [2] make consequential amendments.

Schedule 6 Amendment of Land and Environment

Court Act 1979 No 204

Schedule 6 [2] and [23]–[34] make amendments consequential on the amendment of the *Civil Procedure Act 2005* in **Schedule 2 [9]** (which provides for the application of Parts 3–9 of that Act to proceedings in Class 1, 2, 3 or 4 of the jurisdiction of the Land and Environment Court) and in order to achieve consistency with the *Civil Procedure Act 2005*.

Schedule 6 [3], [4], [6]–[9], [11], [16]–[18], [20], [21] and [35] make amendments by way of statute law revision.

Schedule 6 [5] confirms that an Acting Commissioner of the Land and Environment Court (*the Court*) has the functions of, and is deemed to be, a Commissioner.

Schedule 6 [10] omits provisions of the *Land and Environment Court Act 1979* (*LEC Act*) so that the Court will no longer be divided into Divisions. **Schedule 6 [1], [13] and [14]** make consequential amendments.

Schedule 6 [12] substitutes section 31 of the LEC Act. The section, as substituted, applies if the Court determines that proceedings before it are not being dealt with in the manner appropriate to the class of jurisdiction to which they belong. In such circumstances, the Court may order that the proceedings be dismissed or that the proceedings be dealt with in the appropriate manner.

Schedule 6 [15] substitutes section 34 of the LEC Act:

(a) to ensure that the LEC Act is consistent with the *Civil Procedure Act 2005*, and
(b) in order that preliminary conferences be renamed conciliation conferences, and

(c) to enable the Commissioner to adjourn such a conference if there is good reason to, and

(d) to provide that any document signed by the parties is admissible, as evidence of an agreement or arrangement reached during a conciliation conference, in proceedings for the disposal of the matter by a Commissioner in accordance with the agreement, and

(e) to further provide that such a document and any other evidence as to an agreement reached during a conciliation conference is not, except in further

specified circumstances, admissible in evidence in any proceedings.

Schedule 6 [22] provides that proceedings that are before a Commissioner under section 34 or 36 of the LEC Act may be referred or removed for hearing and determination before a Judge in the same way as proceedings before an associate Judge may be referred or removed for hearing and determination before a Judge in the Supreme Court (subject to any contrary order of the Chief Judge). **Schedule 6 [19]** makes a consequential amendment.

Schedule 6 [36] enables regulations to be made of a savings and transitional nature.

Schedule 6 [37] inserts a savings provision.

Schedule 7 Amendment of Local Courts Act 1982

No 164

Schedule 7 [1] inserts proposed section 10CA into the *Local Courts Act 1982*. The proposed section enables (subject to the rules) a registrar of the District Court to exercise the functions of the registrar of the Local Court, an assistant registrar of the District Court to exercise the functions of a deputy registrar of the Local Court and an officer of the District Court to exercise the functions of an officer of the Local Court. **Schedule 5 [3]** makes a similar amendment to the *District Court Act 1973*.

Schedule 7 [4] provides that the Local Court sitting in its General Division has jurisdiction to hear and determine proceedings required by any other Act to be dealt with by the Local Court sitting in that Division.

Schedule 7 [2] and [3] make statute law revision amendments.

Schedule 7 [5] enables regulations to be made of a savings and transitional nature.

Schedule 8 Amendment of Supreme Court Act 1970

No 52

Schedule 8 [1] amends section 35 of the *Supreme Court Act 1970* to enable the Governor to appoint, by commission under seal, the President of the Court of Appeal, any Judge of Appeal or any Judge to be Acting Chief Justice if there is a vacancy in the office of the Chief Justice (in addition to whenever the Chief Justice is absent from duty). **Schedule 8 [2]** also amends this section so that the President of the Court of Appeal is taken to be the Acting Chief Justice while the Chief Justice is absent from Australia and an Acting Chief Justice has not been appointed by commission under seal.

Schedule 8 [3] inserts proposed section 120A (1A) and (1B) into the *Supreme Court Act 1970*. The proposed subsections enable (subject to the rules) the registrar of the Court of Criminal Appeal to exercise the powers of a registrar of the Supreme Court and an officer of the Court of Criminal Appeal to exercise the powers of an officer of the Supreme Court. A similar provision currently exists in the *Criminal Appeal Act 1912* in respect of registrars and officers of the Supreme Court.

Schedule 8 [4] amends section 123 of the *Supreme Court Act 1970* to cure any defect in the form of the appointment of members of the Rule Committee who attended meetings of the Committee held on or after 1 July 2005 and before 1 July 2007.

Schedule 9 Consequential amendments

Schedule 9.1 contains a consequential amendment to the *Community Land Management Act 1989*.

Schedule 9.2 contains a consequential amendment to the *Legal Profession Regulation 2005*.