



New South Wales

# Courts and Other Legislation Amendment Bill 2012

## 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 simplify the process for referring forfeiture orders under the *Bail Act 1978* to the State Debt Recovery Office for enforcement,
- (b) to ensure that the language used to define carers is consistent in both the *Children (Protection and Parental Responsibility) Act 1997* and the *Children and Young Persons (Care and Protection) Act 1998*,
- (c) to allow the senior judicial officer of a court to direct the registrar or other court official to exercise any of the court's functions,
- (d) to provide for the making of regulations that prescribe additional items, or classes of items, that a security officer may require a person entering or on court premises to deposit with the officer while the person remains on the premises,
- (e) to allow for the making of regulations relating to the payment of court fees by NSW Government agencies and statutory bodies representing the Crown,
- (f) to make it clear that, for the purposes of the *District Court Act 1973* and the *Judges' Pensions Act 1953*, only the period during which the Chief Magistrate

- serves as Chief Magistrate while also holding office as a Judge is to be taken to be service in the office of a Judge,
- (g) to make it clear that the Information Commissioner may disclose government information to the Privacy Commissioner in the course of consulting with the Privacy Commissioner as required by the *Government Information (Public Access) Act 2009*,
  - (h) to clarify the information that the sheriff can request from Roads and Maritime Services for the purposes of determining whether a person should be excluded from jury service,
  - (i) to allow an acting Commissioner of the Land and Environment Court to complete or otherwise deal with any matter that the acting Commissioner had heard or partly heard before the expiry of his or her term of appointment as an acting Commissioner,
  - (j) to require a person (other than an Australian legal practitioner) to provide certain information to a client before the Land and Environment Court may grant leave for the person to appear as an agent for the client in proceedings before that Court,
  - (k) to make it clear that the Land and Environment Court has jurisdiction in respect of disputes arising from a determination made by the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services in relation to an objection to the granting of a mining lease,
  - (l) to allow regulations declaring one public sector agency to be part of another public sector agency made for the purposes of the *Privacy and Personal Information Protection Act 1998* to be limited to specified functions of the relevant agency,
  - (m) to remove the requirement that an application for probate or administration is to be published in the newspaper and enable publication to be made by other means,
  - (n) to allow for the making of rules under the *Civil Procedure Act 2005* regulating practice and procedure with respect to probate and administration,
  - (o) to make consequential amendments and provisions of a savings and transitional nature consequent on the enactment of the proposed Act.

## 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 to the proposed Act, except as follows:

- (a) Schedule 9 [1] and [2] commence on the date of assent to the proposed Act or on the day on which Schedule 1 [20] to the *Jury Amendment Act 2010* commences, whichever is the later,

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- (b) Schedules 5 and 10 [2] and [3] commence on a day or days to be appointed by proclamation.

### **Schedule 1      Amendment of Bail Act 1978 No 161**

**Schedule 1 [1]** replaces section 53I of the *Bail Act 1978*. Proposed section 53I provides for the notification of forfeiture orders to the State Debt Recovery Office by the registrar of a court. Such a notification may be made electronically. The proposed section also provides that the State Debt Recovery Office may require the registrar who made the notification to provide certain documents related to the forfeiture order. **Schedule 1 [2]** makes a consequential amendment.

**Schedule 1 [3]** inserts a transitional provision in relation to forfeiture orders made, but in respect of which the State Debt Recovery Office has not been notified, before the commencement of Schedule 1 [1].

### **Schedule 2      Amendment of Children (Protection and Parental Responsibility) Act 1997 No 78**

**Schedule 2** gives effect to the aim set out in paragraph (b) of the Overview above.

### **Schedule 3      Amendment of Civil Procedure Act 2005 No 28**

**Schedule 3 [1]** amends the *Civil Procedure Act 2005* to allow the senior judicial officer of a court to direct that functions of the court under that Act or any other Act or law (including the uniform rules) may be exercised by a registrar or other officer of the court. Presently, such directions are limited to the functions of the court under the *Civil Procedure Act 2005* and the uniform rules.

**Schedule 3 [2]** enables savings and transitional regulations to be made as a consequence of any amendment to the *Civil Procedure Act 2005*.

**Schedule 3 [3]** inserts a transitional provision that validates the exercise of functions of the court under the direction of a senior judicial officer, where the exercise of those functions would have been validly carried out if section 13 (as amended by Schedule 3 [1]) had been in force at the time the direction was given.

### **Schedule 4      Amendment of Court Security Act 2005 No 1**

**Schedule 4** gives effect to the aim set out in paragraph (d) of the Overview above.

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**Schedule 5      Amendment of Criminal Procedure Act  
1986 No 209**

Schedule 5 gives effect to the aim set out in paragraph (e) of the Overview above.

**Schedule 6      Amendment of District Court Act 1973  
No 9**

Schedule 6 gives effect to the aim set out in paragraph (f) of the Overview above.

**Schedule 7      Amendment of Government Information  
(Information Commissioner) Act 2009  
No 53**

Schedule 7 amends the *Government Information (Information Commissioner) Act 2009*, as a consequence of the amendment made by Schedule 8, to maintain consistency between that Act and the *Government Information (Public Access) Act 2009*.

**Schedule 8      Amendment of Government Information  
(Public Access) Act 2009 No 52**

Schedule 8 gives effect to the aim set out in paragraph (g) of the Overview above.

**Schedule 9      Amendment of Jury Act 1977 No 18**

Schedule 9 [1] and [2] give effect to the aim set out in paragraph (h) of the Overview above.

Schedule 9 [3] inserts a transitional provision to allow the sheriff, Commissioner of Police and Roads and Maritime Services to disclose information for the purposes of testing information systems in advance of the commencement of the other amendments to the *Jury Act 1977*.

**Schedule 10     Amendment of Land and Environment  
Court Act 1979 No 204**

Schedule 10 [1] gives effect to the aim set out in paragraph (i) of the Overview above.

Schedule 10 [3] amends the *Land and Environment Court Act 1979* to impose conditions on the granting of leave for a person to appear before the Land and Environment Court by an agent (as opposed to being represented by an Australian legal practitioner). The Court must consider whether the agent has provided the

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person with the information required by the Land and Environment Court Rules and whether the granting of leave is in the best interests of the person.

**Schedule 10 [2]** extends the requirements for the granting of leave for a person to appear by an agent to all classes of the Court's jurisdiction.

**Schedule 10 [4]** enables savings and transitional regulations to be made as a consequence of any amendment to the *Land and Environment Court Act 1979*.

**Schedule 10 [5]** inserts savings and transitional provisions consequent on the amendment of the *Land and Environment Court Act 1979* by the proposed Act.

### **Schedule 11    Amendment of Local Court Act 2007 No 93**

**Schedule 11** amends the *Local Court Act 2007* as a consequence of the amendment of the *District Court Act 1973* by Schedule 6.

### **Schedule 12    Amendment of Mining Act 1992 No 29**

**Schedule 12** gives effect to the aim set out in paragraph (k) of the Overview above.

### **Schedule 13    Amendment of Privacy and Personal Information Protection Act 1998 No 133**

**Schedule 13** gives effect to the aim set out in paragraph (l) of the Overview above.

### **Schedule 14    Amendment of Probate and Administration Act 1898 No 13**

**Schedule 14 [2]** removes the requirement that an application for probate or administration is to be published in such newspapers as may be prescribed by the Rules of Court, and instead requires that such an application must be published as may be prescribed by the Rules of Court. The amendment also makes provision for notice of an application to be given after the application in cases where the application is made by way of cross-claim. **Schedule 14 [3]** makes similar amendments with respect to an application for the affixing of the seal of the Court to probate or letters of administration granted in another jurisdiction.

**Schedule 14 [4]** allows for the making of Rules of Court under the *Civil Procedure Act 2005* regulating practice and procedure with respect to probate and administration (in addition to the making of such rules under the *Supreme Court Act 1970*). **Schedule 14 [1]** makes a consequential amendment.