

Passed by both Houses



New South Wales

Courts and Other Legislation Amendment Bill 2012

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2012*



New South Wales

Courts and Other Legislation Amendment Bill 2012

Act No , 2012

An Act to make miscellaneous amendments to certain legislation with respect to courts and certain other legislation administered by the Attorney General.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Courts and Other Legislation Amendment Act 2012*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as otherwise provided by this section.
- (2) Schedule 9 [1] and [2] commence on the date of assent to this Act or the commencement of Schedule 1 [20] to the *Jury Amendment Act 2010*, whichever is the later.
- (3) 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

[1] Section 53I

Omit the section. Insert instead:

53I Notice of forfeiture order for enforcement

- (1) If any bail money to which a forfeiture order relates remains unpaid after the order takes effect, the registrar of the court by which the order was made is to notify the State Debt Recovery Office of that fact and of the amount of bail money that remains unpaid as at the date of the notice.
- (2) A registrar who makes a notification under this section must, on the request of the State Debt Recovery Office, provide the State Debt Recovery Office with one or more of the following:
 - (a) a copy of the forfeiture order,
 - (b) a copy of the bail undertaking and the relevant bail agreement,
 - (c) a copy of all documents evidencing any relevant bail security,
 - (d) a copy of a certificate, prepared by the registrar who made the notification, indicating the amount of bail money that remained unpaid as at the date notification was given.
- (3) A copy of the certificate referred to in subsection (2) (d) is admissible in any legal proceedings and is evidence of the matters stated in the certificate.

[2] Section 53J Payment of forfeited bail money

Omit “a copy of the order is referred to the State Debt Recovery Office” wherever occurring in section 53J (1) (a) and (b).

Insert instead “the State Debt Recovery Office is notified of the order”.

[3] Schedule 1 Savings and transitional provisions

Insert after Part 21:

Part 22 Courts and Other Legislation Amendment Act 2012

41 Notice of forfeiture order for enforcement

Section 53I, as substituted by the *Courts and Other Legislation Amendment Act 2012*, extends to a forfeiture order made before the substitution of that section:

- (a) in respect of which an amount of bail money remains unpaid, and
- (b) that was not referred to the State Debt Recovery Office before that substitution.

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

Section 3 Definitions

Omit “the daily care and control of a child” from the definition of *carer*.

Insert instead “residential care and control of a child”.

Schedule 3 Amendment of Civil Procedure Act 2005 No 28

[1] Section 13 Officers of the court may be authorised to exercise court's functions

Omit "or the uniform rules" from section 13 (1) (a).

Insert instead "or any other Act or law in respect of which the court has jurisdiction (including any rules of court)".

[2] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

any other Act that amends this Act

[3] Schedule 6, Part 7

Insert after Part 6:

Part 7 Provision consequent on enactment of the Courts and Other Legislation Amendment Act 2012

20 Validation of exercise of court's functions

The exercise of a function of a court under this Act, or any other Act or law, by a registrar or other officer of the court pursuant to a direction given by instrument in writing by the senior judicial officer of the court is taken to be, and is taken to always have been, valid as it would have been had section 13 (as amended by the *Courts and Other Legislation Amendment Act 2012*) been in force at the time the direction was given.

Schedule 4 Amendment of Court Security Act 2005 No 1

Section 11 Power to require property and other things to be surrendered for safekeeping

Insert after section 11 (1) (c):

- (d) any other thing in the person's possession or control that the security officer believes on reasonable grounds to be a thing that is, or is of a class, prescribed by the regulations for the purposes of this section.

Schedule 5 Amendment of Criminal Procedure Act 1986 No 209

Section 4A Fees

Insert after section 4A (2):

- (2A) Despite subsection (2), such fees are payable by any NSW Government agency or statutory body representing the Crown prescribed by the regulations for the purposes of this subsection.

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

Section 13 Appointment and qualifications of Judges

Insert “(during any period for which he or she also holds office as a Judge)”
after “office of the Chief Magistrate” in section 13 (3) (a).

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

Section 35 Restriction on disclosure of information by Commissioner

Insert at the end of the section:

- (2) Despite section 91 of the GIPA Act, the Commissioner may disclose information to the Privacy Commissioner in the course of consulting with the Privacy Commissioner under section 94 of the GIPA Act before making a recommendation against a decision of an agency that there is an overriding public interest against disclosure of the information.

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

Section 94 Recommendation as to public interest against disclosure

Insert after section 94 (2):

- (3) Despite section 91, the Information Commissioner may disclose information to the Privacy Commissioner in the course of consulting with the Privacy Commissioner under this section.

Schedule 9 Amendment of Jury Act 1977 No 18

[1] Section 75A Information to be supplied to sheriff

Omit section 75A (2B) and (2C) (as inserted by Schedule 1 [20] to the *Jury Amendment Act 2010*).

Insert instead:

- (2B) For the purposes of determining whether a person proposed to be summoned for jury service should be excluded from jury service, the sheriff may obtain the following information from Roads and Maritime Services:
 - (a) the person's driver licence number,
 - (b) the person's residential address,
 - (c) if the person is disqualified from holding a driver licence and the disqualification period is 12 months or more—the date on which the person's disqualification ends.
- (2C) The sheriff and Roads and Maritime Services may enter into an arrangement in relation to the manner and form in which information requested under this section is to be provided.
- (2D) The Commissioner of Police or Roads and Maritime Services is required and permitted to comply with a request made by the sheriff under this section.

[2] Section 75A (4)

Insert after section 75A (3):

- (4) The sheriff may disclose information obtained under this section to the Commissioner of Police in connection with a request by the sheriff for information from the Commissioner of Police for the purposes of determining whether a person proposed to be summoned for jury service should be excluded from jury service.

[3] Schedule 8 Transitional and savings provisions

Insert at the end of the Schedule with appropriate Part and clause numbering:

**Part Transitional provision consequent on
enactment of Courts and Other Legislation
Amendment Act 2012**

Testing of information systems

The sheriff, Commissioner of Police and Roads and Maritime Services may, before the commencement of Schedule 1 [20] to the *Jury Amendment Act 2010*, disclose information if the sheriff, Commissioner of Police or Roads and Maritime Services is satisfied that:

- (a) the disclosure is made in relation to the testing of an information system being developed for the purposes of the implementation of the amendments made to this Act by Schedule 1 [20] to the *Jury Amendment Act 2010* and Schedule 9 [1] and [2] to the *Courts and Other Legislation Amendment Act 2012*, and
- (b) the disclosure would be authorised if:
 - (i) it was made for the purposes of determining whether a person proposed to be summoned for jury service should be excluded from jury service, and
 - (ii) the provisions referred to in paragraph (a) had commenced.

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

[1] Section 13 Acting Commissioners

Insert after section 13 (5):

- (6) A person so appointed may, despite the expiration of the term of the person's appointment, complete or otherwise continue to deal with any matter relating to proceedings that have been heard or partly heard, or a conciliation conference that has been presided over or partly presided over, by the person before the expiration of that term.

[2] Section 63 Right of appearance

Omit "in proceedings in Class 8 of the Court's jurisdiction" from section 63 (2).

[3] Section 63 (3) and (4)

Insert after section 63 (2):

- (3) In determining whether to grant leave for a person to appear by an agent the Court is to consider:
 - (a) whether the agent has provided the person with the information required by the rules, and
 - (b) whether granting leave is in the best interests of the person.
- (4) Leave granted under this section may:
 - (a) be granted subject to conditions, and
 - (b) be revoked at any time for any reason.

[4] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1A (1):

any other Act that amends this Act

[5] Schedule 3

Insert after clause 11:

12 Provisions consequent on enactment of Courts and Other Legislation Amendment Act 2012

- (1) Section 13 (6), as inserted by the amending Act, extends to a person who, immediately before that insertion, was an acting Commissioner.

- (2) Section 63, as in force immediately before the amendment of that section by the amending Act, continues to apply in respect of proceedings commenced before that amendment.
- (3) In this clause:
amending Act means the *Courts and Other Legislation Amendment Act 2012*.

Schedule 11 Amendment of Local Court Act 2007 No 93

Schedule 1 Provisions relating to Magistrates

Insert “(during any period for which he or she also holds office as a Judge)”
before “counts” in the note to clause 10A.

Schedule 12 Amendment of Mining Act 1992 No 29

Section 293 Jurisdiction of Land and Environment Court

Insert at the end of section 293 (1) (q) (iii):

or

- (iv) the determination of the Director-General in relation to an objection to the granting of a mining lease,

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

Section 4B Regulations may declare whether agency is part of or separate from a public sector agency

Insert “in respect of specified functions” after “another specified public sector agency” in section 4B (1) (a).

Schedule 14 Amendment of Probate and Administration Act 1898 No 13

[1] Section 3 Definitions

Insert “or the *Civil Procedure Act 2005*” after “*Supreme Court Act 1970*” in the definition of **Rules** in section 3 (1).

[2] Section 42 Application for probate or administration

Omit section 42 (2). Insert instead:

- (2) Notice of an application is to be published in the manner prescribed by the rules:
 - (a) in the case of an application made by way of a cross-claim—within the period prescribed by the rules in relation to such an application, or
 - (b) in any other case—not less than 14 days before the making of the application.

[3] Section 109

Omit the section. Insert instead:

109 Notice of application

The seal of the Court must not be affixed to any such probate or letters of administration unless notice of the application for the resealing of the probate or letters of administration has been published in the manner prescribed by the rules:

- (a) in the case of an application made by way of a cross-claim—within the period prescribed by the rules in relation to such an application, and
- (b) in any other case—not less than 14 days before the making of the application,

and no caveat has been lodged in respect of the application.

[4] Section 152A Rules of Court

Insert “or the *Civil Procedure Act 2005*” after “*Supreme Court Act 1970*” wherever occurring in section 152A (1) and (2).