

SUPREME COURT (AMENDMENT) ACT 1994 No. 14

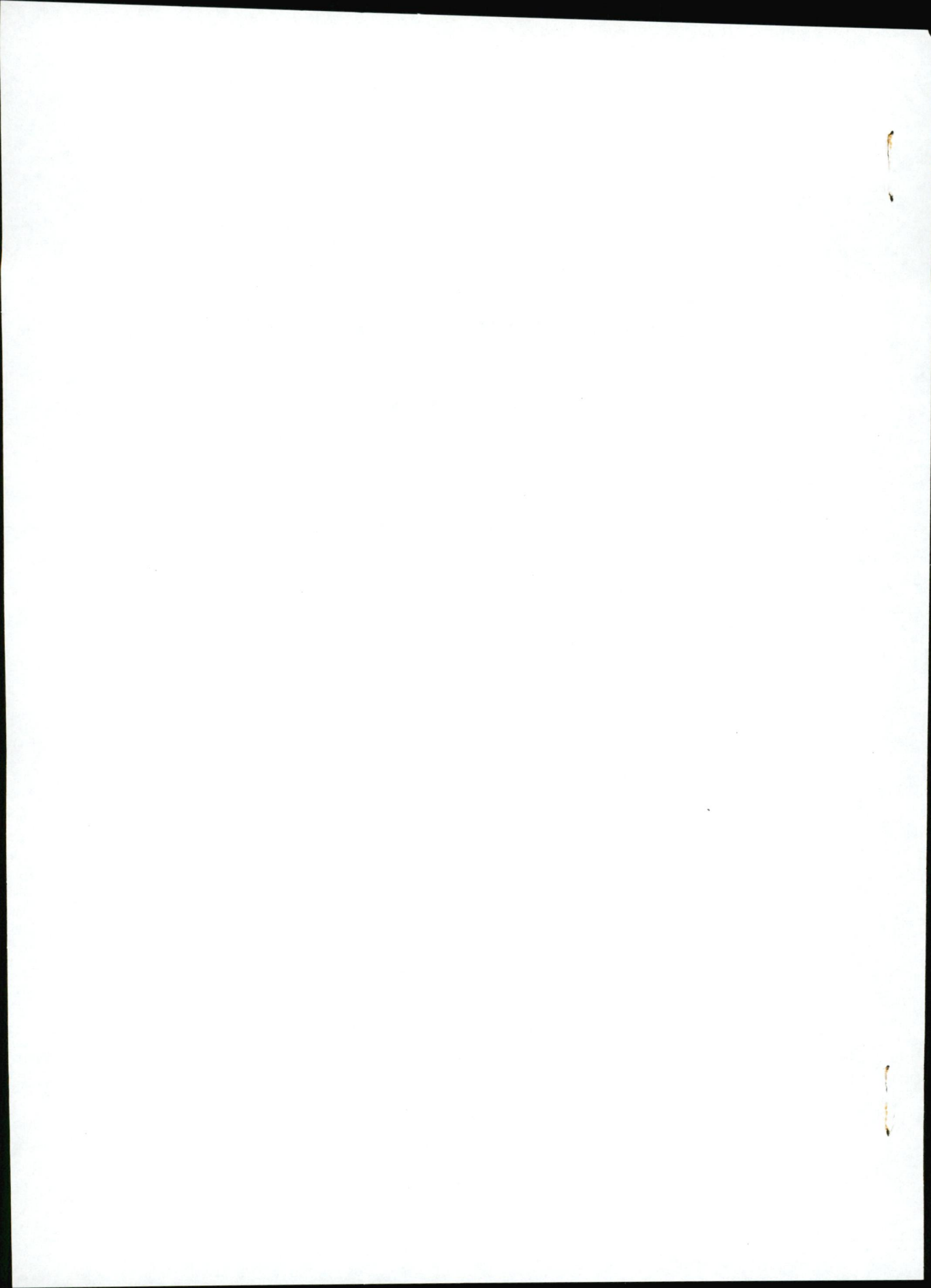
NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Supreme Court Act 1970 No. 52
4. Amendment of Suitors' Fund Act 1951 No. 3

SCHEDULE 1—AMENDMENTS



SUPREME COURT (AMENDMENT) ACT 1994 No. 14

NEW SOUTH WALES



Act No. 14, 1994

An Act to amend the Supreme Court Act 1970 to make further provision with respect to the composition of the Court of Appeal and the delivery of judgments of that Court; to amend the Suitors' Fund Act 1951; and for other purposes. [Assented to 10 May 1994]

See also Criminal Appeal (Amendment) Act 1994.

Supreme Court (Amendment) Act 1994 No. 14

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Supreme Court (Amendment) Act 1994.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Supreme Court Act 1970 No. 52

3. The Supreme Court Act 1970 is amended as set out in Schedule 1.

Amendment of Suitors' Fund Act 1951 No. 3

4. The Suitors' Fund Act 1951 is amended by inserting after section 6A (1) (a) the following paragraph:

- (a1) any civil or criminal proceedings are rendered abortive for the purposes of this paragraph by section 46A (Appeal against damages may be heard by 2 Judges) of the Supreme Court Act 1970 or section 6AA (Appeal against sentence may be heard by 2 judges) of the Criminal Appeal Act 1912, because the judges who heard the proceedings were divided in opinion as to the decision determining the proceedings;

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 43 (**Sittings**):

(a) Omit section 43 (1), insert instead:

(1) Any 3 or more Judges of Appeal constitute the Court of Appeal.

(b) Omit section 43 (5) and (6), insert instead:

(5) More than one sitting of the Court of Appeal may be held at the same time.

SCHEDULE 1—AMENDMENTS—*continued*

(2) Section 45A:

After section 45, insert:

Judgment of Court of Appeal may be delivered by single Judge of Appeal

45A. (1) When judgment in a proceeding in the Court of Appeal is delivered it is not necessary for any of the Judges of Appeal before whom it was heard to be present in court to state their opinions.

(2) The opinion of any of the Judges of Appeal may be reduced to writing and made public by any Judge of Appeal when judgment in the proceeding is delivered.

(3) The judgment of the Court of Appeal has the same effect as if each Judge of Appeal whose opinion is so made public had been present in court and declared his or her opinion in person.

(4) For the purpose of delivering judgment the Court of Appeal may be constituted by one or more Judges of Appeal.

(3) Section 46A:

After section 46, insert:

Appeal against damages may be heard by 2 Judges

46A. (1) This section applies to an appeal to the Court of Appeal solely on the issue of the amount of damages awarded in respect of the death of or bodily injury to a person.

(2) The Chief Justice may direct that such an appeal be heard and determined by such 2 Judges of Appeal as the President of the Court of Appeal directs.

(3) Such a direction may only be given if the Chief Justice is of the opinion that the appeal is not likely to require the resolution of a disputed issue of general principle.

(4) For the purpose of an appeal the subject of a direction under this section, the Court of Appeal is constituted by the 2 Judges directed by the President of the Court of Appeal.

Supreme Court (Amendment) Act 1994 No. 14

SCHEDULE 1—AMENDMENTS—*continued*

(5) The decision of the Court of Appeal when constituted by 2 Judges is to be in accordance with the opinion of those Judges.

(6) If the Judges are divided in opinion:

(a) as to the decision determining the proceedings, the appeal is to be reheard and determined by the Court of Appeal constituted by such 3 Judges of Appeal as the President of the Court of Appeal directs (including, if practicable, the 2 Judges who first heard the appeal); or

(b) as to any other decision, the decision of the Court is to be in accordance with the opinion of the senior Judge present.

(7) Proceedings heard by the Court of Appeal constituted by 2 Judges under this section are rendered abortive for the purposes of section 6A (1) (a1) of the Suitors' Fund Act 1951 if they are required to be reheard because the judges were divided in opinion as to the decision determining the proceedings. The rehearing of the proceedings is considered to be a new trial for the purposes of that Act.

(4) Section 129:

Before section 130, insert:

Savings and transitional provisions

129. The Fourth Schedule has effect.

(5) Fourth Schedule:

After the Third Schedule, insert:

**FOURTH SCHEDULE—SAVINGS AND
TRANSITIONAL PROVISIONS**

(Sec. 129)

Supreme Court (Amendment) Act 1994

1. (1) The amendment made to this Act by Schedule 1 (2) to the Supreme Court (Amendment) Act 1994 applies to proceedings for judgment in the Court of Appeal whether the proceedings were commenced before, on or after the commencement of the amendment.

Supreme Court (Amendment) Act 1994 No. 14

SCHEDULE 1—AMENDMENTS—*continued*

(2) The amendment made to this Act by Schedule 1 (3) to the Supreme Court (Amendment) Act 1994 applies to any proceeding whether commenced before, on or after the commencement of the amendment, but not to proceedings commenced to be heard by the Court of Appeal before the commencement of the amendment.

*[Minister's second reading speech made in—
Legislative Assembly on 17 March 1994
Legislative Council on 20 April 1994]*

FIRST PRINT

SUPREME COURT (AMENDMENT) BILL 1994

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The Criminal Appeal (Amendment) Bill 1994 is cognate with this Bill.

The object of this Bill is to amend the Supreme Court Act 1970:

- (a) to allow any Judge or Judges of the Court of Appeal to deliver the judgment of the Court of Appeal so that the Judges who heard the appeal need not be present at the sitting of the Court when judgment is delivered; and
- (b) to allow the Chief Justice to direct that an appeal to the Court of Appeal on the amount of damages awarded in a personal injury case be heard by only 2 Judges, instead of 3 Judges (as is presently the case), if in the opinion of the Chief Justice the case is not likely to require the resolution of a disputed issue of general principle; and
- (c) to provide that in a case to which (b) applies, if the 2 Judges do not come to the same decision on the appeal, the appeal is to be reheard and determined by a court consisting of 3 Judges (including, if practicable, the 2 Judges who first heard the appeal); and
- (d) to make minor and consequential amendments and enact transitional provisions.

The Bill also amends the Suitors' Fund Act 1951 to enable a party to proceedings that are required to be reheard as referred to in (c) above (or under the parallel provisions of the Criminal Appeal (Amendment) Bill 1994) to be paid the party's costs on the aborted proceedings out of the Suitors' Fund established under that Act.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Supreme Court (Amendment) 1994

Clause 3 is a formal provision giving effect to the Schedule of amendments to the Supreme Court Act 1970.

Clause 4 contains the amendment to the Suitors' Fund Act 1951 described above.

Schedule 1 contains the amendments to the Supreme Court Act 1970 described above.

FIRST PRINT

SUPREME COURT (AMENDMENT) BILL 1994

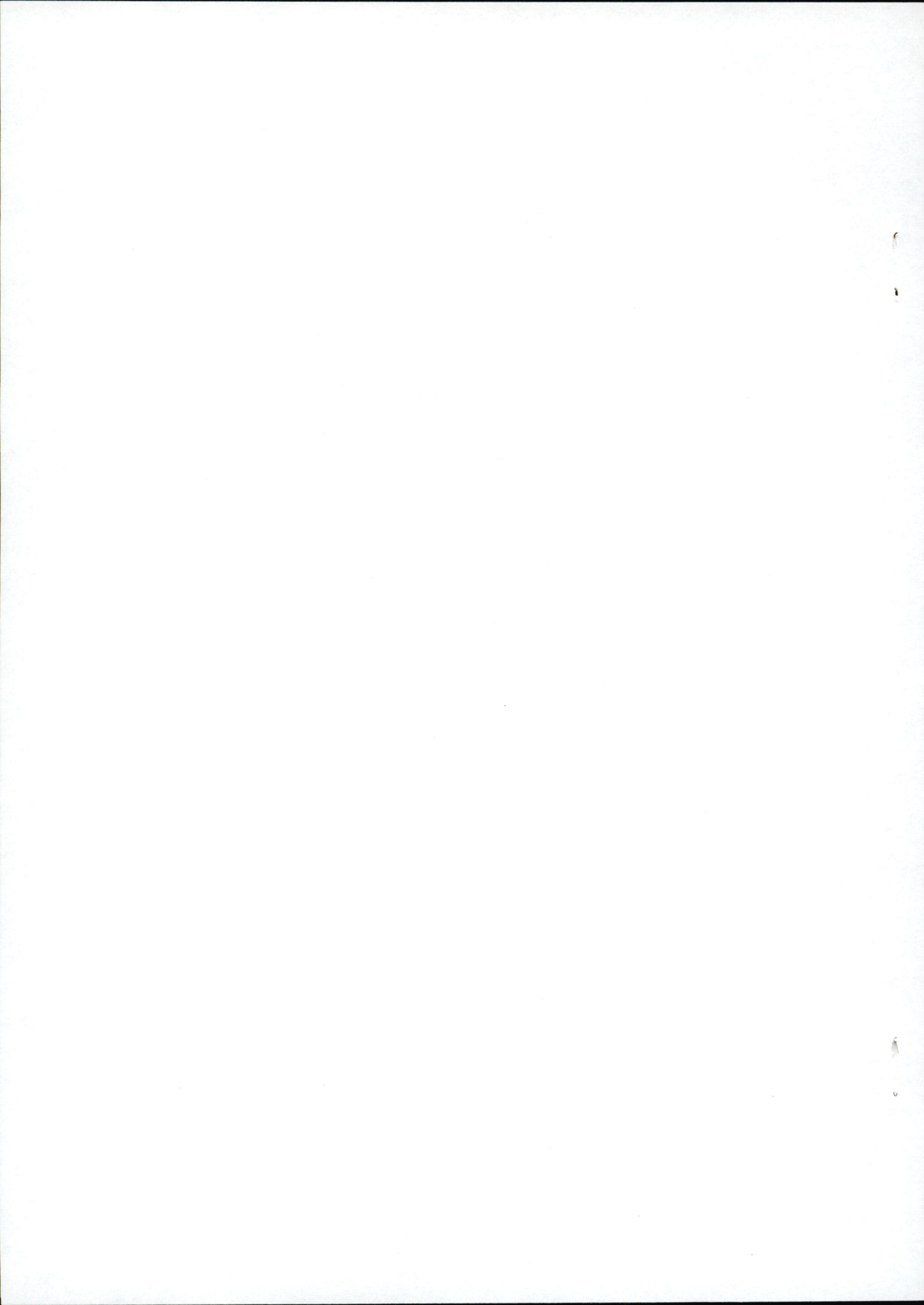
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SCHEDULE 1—AMENDMENTS



SUPREME COURT (AMENDMENT) BILL 1994

NEW SOUTH WALES



No. , 1994

A BILL FOR

An Act to amend the Supreme Court Act 1970 to make further provision with respect to the composition of the Court of Appeal and the delivery of judgments of that Court; to amend the Suitors' Fund Act 1951; and for other purposes.

See also Criminal Appeal (Amendment) Bill 1994.

*Supreme Court (Amendment) 1994***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Supreme Court (Amendment) Act 1994.

5 Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Supreme Court Act 1970 No. 52

3. The Supreme Court Act 1970 is amended as set out in Schedule 1.

10 Amendment of Suitors' Fund Act 1951 No. 3

4. The Suitors' Fund Act 1951 is amended by inserting after section 6A (1) (a) the following paragraph:

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SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 43 (Sittings):

- 25 (a) Omit section 43 (1), insert instead:
 (1) Any 3 or more Judges of Appeal constitute the Court of Appeal.
- (b) Omit section 43 (5) and (6), insert instead:
 (5) More than one sitting of the Court of Appeal may be held at the same time.

Supreme Court (Amendment) 1994

SCHEDULE 1—AMENDMENTS—*continued*

(2) Section 45A:

After section 45, insert:

Judgment of Court of Appeal may be delivered by single Judge of Appeal

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45A. (1) When judgment in a proceeding in the Court of Appeal is delivered it is not necessary for any of the Judges of Appeal before whom it was heard to be present in court to state their opinions.

(2) The opinion of any of the Judges of Appeal may be reduced to writing and made public by any Judge of Appeal when judgment in the proceeding is delivered.

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(3) The judgment of the Court of Appeal has the same effect as if each Judge of Appeal whose opinion is so made public had been present in court and declared his or her opinion in person.

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(4) For the purpose of delivering judgment the Court of Appeal may be constituted by one or more Judges of Appeal.

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After section 46, insert:

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Appeal against damages may be heard by 2 Judges

46A. (1) This section applies to an appeal to the Court of Appeal solely on the issue of the amount of damages awarded in respect of the death of or bodily injury to a person.

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(2) The Chief Justice may direct that such an appeal be heard and determined by such 2 Judges of Appeal as the President of the Court of Appeal directs.

(3) Such a direction may only be given if the Chief Justice is of the opinion that the appeal is not likely to require the resolution of a disputed issue of general principle.

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(4) For the purpose of an appeal the subject of a direction under this section, the Court of Appeal is constituted by the 2 Judges directed by the President of the Court of Appeal.

Supreme Court (Amendment) 1994

SCHEDULE 1—AMENDMENTS—*continued*

(5) The decision of the Court of Appeal when constituted by 2 Judges is to be in accordance with the opinion of those Judges.

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(6) If the Judges are divided in opinion:

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- (a) as to the decision determining the proceedings, the appeal is to be reheard and determined by the Court of Appeal constituted by such 3 Judges of Appeal as the President of the Court of Appeal directs (including, if practicable, the 2 Judges who first heard the appeal); or
- (b) as to any other decision, the decision of the Court is to be in accordance with the opinion of the senior Judge present.

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(7) Proceedings heard by the Court of Appeal constituted by 2 Judges under this section are rendered abortive for the purposes of section 6A (1) (a1) of the Suitors' Fund Act 1951 if they are required to be reheard because the judges were divided in opinion as to the decision determining the proceedings. The rehearing of the proceedings is considered to be a new trial for the purposes of that Act.

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(4) Section 129:

Before section 130, insert:

Savings and transitional provisions

129. The Fourth Schedule has effect.

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(5) Fourth Schedule:

After the Third Schedule, insert:

**FOURTH SCHEDULE—SAVINGS AND
TRANSITIONAL PROVISIONS**

(Sec. 129)

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Supreme Court (Amendment) Act 1994

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1. (1) The amendment made to this Act by Schedule 1 (2) to the Supreme Court (Amendment) Act 1994 applies to proceedings for judgment in the Court of Appeal whether the proceedings were commenced before, on or after the commencement of the amendment.

Supreme Court (Amendment) 1994

SCHEDULE 1—AMENDMENTS—*continued*

(2) The amendment made to this Act by Schedule 1 (3) to the Supreme Court (Amendment) Act 1994 applies to any proceeding whether commenced before, on or after the commencement of the amendment, but not to proceedings commenced to be heard by the Court of Appeal before the commencement of the amendment.
