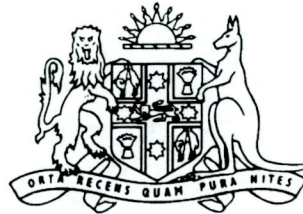


Second print



New South Wales

Courts Legislation Amendment Bill 1996

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This PUBLIC BILL, originated in the LEGISLATIVE COUNCIL and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

Legislative Council

Clerk of the Parliaments



New South Wales

Courts Legislation Amendment Bill 1996

Act No , 1996

An Act to amend various Acts with respect to courts and court procedures;
and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Courts Legislation Amendment Act 1996*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation. 5

3 Amendments

Each Act mentioned in Schedule 1 is amended as set out in that Schedule.

4 Explanatory notes 10

The matter appearing under the heading "Explanatory note" in Schedule 1 does not form part of this Act.

Schedule 1 Amendments

(Section 3)

1.1 Children (Detention Centres) Act 1987 No 57

Section 42

Omit the section. Insert instead:

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42 Attendance of persons subject to control before courts and court officers

- (1) If an appropriate person or body is satisfied that it is necessary that a detainee should attend before it, him or her for the purposes of any legal proceeding, inquest or inquiry then pending and that the absence of the detainee may prejudice the rights of a party, the person or body may make an order directing the superintendent of the detention centre in which the detainee is detained to cause the detainee to be produced at the court or other place at which the proceeding, inquest or inquiry is being held. 10
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- (2) Such an order is sufficient authority for the superintendent to cause the detainee to be produced in accordance with the terms of the order. 20
- (3) A detainee produced in accordance with such an order is taken to be in lawful custody while in the actual custody of the superintendent of a detention centre, an officer or a police officer.
- (4) It is the duty of the superintendent, officer or police officer having actual custody of the detainee to return the detainee to the detention centre from which the detainee was produced as soon as the appropriate person or body permits. 25
- (5) In this section, *appropriate person or body* means: 30
 - (a) a court of record, a judge of such a court or a person constituting such a court, or

- (b) the Victims Compensation Tribunal, or
- (c) a coroner, or
- (d) a Clerk of a Local Court, a Registrar of the Children's Court, a Registrar or assistant Registrar of the District Court, a Registrar or Deputy Registrar of the Supreme Court or the Registrar of the Court of Criminal Appeal, or 5
- (e) a person prescribed by the regulations for the purposes of this definition. 10

Explanatory note

The proposed amendment has the effect of extending the list of persons by whom an order requiring the attendance of a detainee can be made to include certain court officers and other persons to be prescribed by the regulations. The list is co-extensive with the list of persons by whom an analogous order will be able to be made under the *Prisons Act 1952*.

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1.2 Coroners Act 1980 No 27

[1] Section 4A State Coroners and Deputy State Coroners

Omit "The *Public Service Act 1979*" from section 4A (9).
Insert instead "The *Public Sector Management Act 1988*".

Explanatory note

Item [1] updates an obsolete reference.

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[2] Section 15 Inquiries into fires and explosions

Omit section 15 (3) (a). Insert instead:

- (a) in the case of a fire or explosion occurring within a fire district within the meaning of the *Fire Brigades Act 1989*, by New South Wales Fire Brigades, or 25

Explanatory note

Item [2] updates an obsolete reference.

[3] Section 44 Power of coroner to clear court and prohibit publication of matter relating to inquest or inquiry

Insert “(or any specified part of the proceedings)” after “proceedings” in section 44 (2).

Explanatory note

Section 44 (2) enables a coroner to prohibit the publication of any report of proceedings on an inquest in circumstances in which there is a suspicion of suicide. Item [3] allows the prohibition to relate to a specified part of the proceedings only.

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[4] Section 44 (2A)–(2C)

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Insert after section 44 (2):

(2A) An order under subsection (2) may also prohibit the publication of any matter (including the publication of any photograph or other pictorial representation) that identifies any particular person:

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- (a) as being a person whose death or suspected death may have been self inflicted, or
- (b) as being a relative of a person whose death or suspected death may have been self inflicted.

(2B) For the purposes of subsection (2A) (b), the following persons are relatives of a person whose death or suspected death may have been self inflicted:

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- (a) the spouse of that person, a parent of that person, a person who stands in loco parentis to that person, a guardian of that person or a child of that person,
- (b) a person who, at the time of the death or suspected death, was living with that person as her husband or his wife,
- (c) a brother or sister of that person.

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(2C) To the extent to which an order under subsection (2) prohibits the publication of any matter referred to in subsection (2A), the order continues to have effect after the coroner has made his or her findings, or after the jury has brought in its verdict, but only if the order expressly so provides.

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Explanatory note

Item [4] inserts provisions that ensure that the coroner's power to prohibit the reporting of proceedings of suspected suicides extends to the publication of pictorial and other matter that has a tendency to identify a victim or a member of a victim's close family.

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1.3 District Court Act 1973 No 9

[1] Section 18E Secretary to the Rule Committee

Insert “, including the office of registrar” after “Public Service” in section 18E (3).

Explanatory note

Item [1] makes it clear that the Registrar of the District Court is eligible to be appointed as Secretary to the District Court Rule Committee.

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[2] Section 18K

Insert after section 18J:

18K Temporary appointment of registrars and assistant registrars

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(1) The Minister may, by order in writing, appoint a person to act in the office of registrar or assistant registrar during:

(a) an absence from duty of the registrar or assistant registrar, or

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(b) a vacancy of not more than 6 months' duration in the office of the registrar or assistant registrar.

(2) The Minister may delegate to the Director-General of the Attorney General's Department the Minister's power of appointment under this section.

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-
- (3) While acting in the office of registrar or assistant registrar, a person so appointed has and may exercise all the functions of that office.
- (4) Any act, matter or thing done by a person while purporting to exercise a function conferred by this section is not ineffective or unlawful by reason only that either of the circumstances referred to in subsection (1) (a) or (b) did not exist when the act, matter or thing was done. 5
- (5) Any act, matter or thing done by a person while acting in the office of registrar or assistant registrar is taken to have been done by the registrar or assistant registrar, as the case requires. 10
- (6) This section does not apply to an office that is held by a Clerk of a Local Court. 15

Explanatory note

Item [2] confers on the Minister administering the Act a power to appoint an acting registrar or acting assistant registrar on a temporary basis. The provision reflects section 10 of the *Local Courts Act 1982* with respect to the appointment of acting Clerks of a Local Court. 20

[3] Section 127 Right of appeal to Supreme Court

Omit "decision of a Judge" from section 127 (1).
Insert instead "Judge's judgment or order in an action".

[4] Section 148E Liability of legal practitioners for clients' costs in certain cases 25

Omit "solicitor" and "solicitor's" wherever occurring.
Insert instead "legal practitioner" and "legal practitioner's".

Explanatory note

Item [4] updates obsolete references.

1.4 Judges' Pensions Act 1953 No 41

[1] Section 5 Pension for judge who retires on account of ill-health

Insert "or within the period of 3 months after that appointment," after "appointment as a judge," in section 5 (2) (b).

Explanatory note

Section 5 deals with the entitlement to a pension that arises with respect to a judge who retires as a result of permanent disability or infirmity. That section requires a certificate of good health to have been given in relation to the judge within 3 months before his or her appointment. Item [1] allows the certificate to have been given within 3 months after the appointment.

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[2] Section 5 (5)

Insert after section 5 (4):

- (5) This section, as amended by the provisions of Schedule 1.4 [1] to the *Courts Legislation Amendment Act 1996*, applies to a retired judge who was appointed as a judge before the commencement of those provisions in the same way as it applies to one who was appointed after that commencement, and so applies as if subsection (2) (b) were amended by omitting the words "3 months", where secondly occurring, and by inserting instead the words "12 months".

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Explanatory note

Item [2] applies the amendments made by item [1] to judges who are currently holding office.

1.5 Justices Act 1902 No 27

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[1] Section 41A Payment of costs by informant

Insert "(or, if the informant so elects, directly to the defendant)" after "to the defendant" in section 41A (1).

Explanatory note

Item [1] allows an informant whom a court has directed to pay the defendant's costs to pay those costs directly to the defendant rather than, as is presently the case, to the court.

30

[2] Section 41A (2C)

Insert after section 41A (2B):

(2C) For the purposes of subsection (2B), an officer of the Royal Society for the Prevention of Cruelty to Animals, or of any other charitable organisation under the *Prevention of Cruelty to Animals Act 1979*, is taken not to be acting in a private capacity if the officer acts as the informant in any proceedings under that Act. 5

Explanatory note

Section 41 allows a Justice to order an informant to pay the defendant's costs in certain circumstances, such as when the defendant is discharged. Except where the informant is acting in a private capacity, an award of costs may only be made if the Justice is satisfied of certain matters. Item [2] makes it clear that an officer of the RSPCA or of another charitable organisation under the *Prevention of Cruelty to Animals Act 1979* is taken not to be acting in a private capacity when acting as informant in proceedings under that Act. 10
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[3] Section 80AA Absent defendant not to be imprisoned

Insert "or authorise an authorised justice to issue" after "issue" in section 80AA (2).

Explanatory note

Section 80AA (2) empowers a Justice who convicts a defendant in the defendant's absence to issue an arrest warrant so that the defendant can be brought before the Justice for sentencing. Item [3] empowers the Justice to authorise an authorised justice (to be defined as referred to in item [4]) to issue an arrest warrant in his or her stead. 20
25

[4] Section 80AA (3), (4)

Insert after section 80AA (2):

(3) The powers conferred by subsection (2) may be exercised only by a Justice or Justices constituting a Local Court. This subsection does not apply in the case of the issue of a warrant of apprehension by an authorised justice where the issue of the warrant by an authorised justice is authorised under subsection (2). 30

(4) In this section, *authorised justice* has the meaning given to that expression by section 86A. 35

Explanatory note

Item [4] (to the extent to which it inserts proposed subsection (3)) restricts the power to issue, or authorise the issue of, an arrest warrant under section 80AA (2) to a Justice or Justices constituting a Local Court.

Item [4] (to the extent to which it inserts proposed subsection (4)) defines the expression **authorised justice** for the purposes of section 80AA. The definition is linked to a definition in section 86A, which defines **authorised justice** to mean a Magistrate, a Children's Magistrate, a Justice employed in the Local Courts Administration, Attorney General's Department, or a Justice employed in an office prescribed by the regulations.

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[5] Section 81 Payment of costs by defendant, or by prosecutor or complainant

Insert "(or, if the prosecutor or complainant so elects, directly to the defendant)" after "to the defendant" in section 81 (1).

Explanatory note

Item [5] allows an informant or complainant whom a court has directed to pay the defendant's costs to pay those costs directly to the defendant rather than, as is presently the case, to the court.

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[6] Section 81 (6)

Insert after section 81 (5):

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- (6) For the purposes of subsection (5), an officer of the Royal Society for the Prevention of Cruelty to Animals, or of any other charitable organisation under the *Prevention of Cruelty to Animals Act 1979*, is taken not to be acting in a private capacity if the officer acts as the informant or complainant in any proceedings under that Act.

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Explanatory note

Section 81 allows a Justice to order an informant or complainant to pay the defendant's costs in certain circumstances, such as when the defendant is discharged. Except where the informant or complainant is acting in a private capacity, an award of costs may only be made if the Justice is satisfied of certain matters. Item [6] makes it clear that an officer of the RSPCA or of another charitable organisation under the *Prevention of Cruelty to Animals Act 1979* is taken not to be acting in a private capacity when acting as informant or complainant in proceedings under that Act.

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[7] Section 87 Warrant of commitment for non-payment

Insert after section 87 (1A):

- (1B) A single warrant may be issued in respect of more than one conviction or order.

Explanatory note

Section 87 enables a Justice to commit a defendant to prison for failure to pay a fine, penalty or other amount of money in compliance with the requirements of a conviction or order. Item [7] makes it clear that a single warrant may be issued in respect of more than one conviction or order.

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[8] Section 88 Warrant of commitment in other cases

Insert after section 88 (3):

- (4) A single warrant may be issued in respect of more than one conviction or order.

Explanatory note

Section 88 enables a Justice to commit a defendant to prison to serve a sentence of imprisonment or for failure to comply with the requirements of a conviction or order (other than a requirement to pay a fine, penalty or other amount of money). Item [8] makes it clear that a single warrant may be issued in respect of more than one conviction or order.

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[9] Section 100XA Withdrawal of enforcement orders

Insert after section 100XA (3):

- (4) An authorised Justice who withdraws an enforcement order under this section must cause notice of that fact to be given to the Clerk of the Local Court to whom the amount specified in the order was payable.

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- (5) As soon as practicable after receiving such a notice, a Clerk of a Local Court to whom an amount has been paid under the relevant enforcement order must refund that amount to the person by whom it was paid.

Explanatory note

Payment of an amount that remains unpaid under a penalty notice is enforced by means of an enforcement order. Section 100XA allows an enforcement order to be withdrawn. Item [9] provides for the refund of any money that has been paid under an enforcement order that is subsequently withdrawn.

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[10] Section 125 Powers of court appealed to

Insert after section 125 (4):

- (5) For the purposes of subsection (4), an officer of the Royal Society for the Prevention of Cruelty to Animals, or of any other charitable organisation under the *Prevention of Cruelty to Animals Act 1979*, is taken not to be acting in a private capacity if the officer acts as the respondent in any appeal arising from proceedings under that Act. 5

Explanatory note 10

Section 125 allows a Justice to order the prosecution to pay an appellant's costs in certain circumstances, such as when the appeal is successful. Except where the prosecution is acting in a private capacity, an award of costs may only be made if the Justice is satisfied of certain matters. Item [10] makes it clear that an officer of the RSPCA or of any other charitable organisation under the *Prevention of Cruelty to Animals Act 1979* is taken not to be acting in a private capacity when acting as prosecutor in proceedings under that Act. 15

1.6 Local Courts (Civil Claims) Act 1970 No 11

[1] Section 4A

Insert after section 4: 20

4A Notes

Notes in the text of this Act are merely explanatory and do not form part of this Act.

Explanatory note

Item [1] is consequential on the fact that item [3] includes an explanatory note at the end of proposed section 12 (9). 25

[2] Section 8AA

Insert after section 8:

8AA Temporary appointment of registrars and deputy registrars

- (1) The Minister may, by order in writing, appoint a person to act in the office of registrar or deputy registrar during:
 - (a) an absence from duty of the registrar or deputy registrar, or
 - (b) a vacancy of not more than 6 months' duration in the office of the registrar or deputy registrar. 10
- (2) The Minister may delegate to the Director-General of the Attorney General's Department the Minister's power of appointment under this section.
- (3) While acting in the office of registrar or deputy registrar, a person so appointed has and may exercise all the functions of that office. 15
- (4) Any act, matter or thing done by a person while purporting to exercise a function conferred by this section is not ineffective or unlawful by reason only that either of the circumstances referred to in subsection (1) (a) or (b) did not exist when the act, matter or thing was done. 20
- (5) Any act, matter or thing done by a person while acting in the office of registrar or deputy registrar is taken to have been done by the registrar or deputy registrar, as the case requires. 25
- (6) This section does not apply to an office that is held by a Clerk of a Local Court.

Explanatory note

Item [2] confers on the Minister administering the Act a power to appoint an acting registrar or acting deputy registrar on a temporary basis. The provision reflects section 10 of the *Local Courts Act 1982* with respect to the appointment of acting Clerks of a Local Court. 30

[3] Section 12 Jurisdiction of Court

Insert after section 12 (8):

- (9) In this section, a reference to an action extends to an action referred to in section 68 of the *Fair Trading Act 1987*. 5

Note. The effect of subsection (9) is to confer jurisdiction on a Local Court in respect of actions for damages referred to in section 68 of the *Fair Trading Act 1987*. That jurisdiction is similar to the jurisdiction conferred on a Local Court by section 86 of the *Trade Practices Act 1974* of the Commonwealth in respect of actions for damages referred to in section 82 of that Act. 10

Explanatory note

Item [3] makes it clear that a Local Court has jurisdiction to deal with any action for damages referred to in section 68 of the *Fair Trading Act 1987*.

1.7 Prisons Act 1952 No 9 15

Section 44

Omit the section. Insert instead:

44 Attendance of prisoners before courts and court officers

- (1) If an appropriate person or body is satisfied that it is necessary that a prisoner should attend before it, him or her for the purposes of any legal proceeding, inquest or inquiry then pending and that the absence of the prisoner may prejudice the rights of a party, the person or body may make an order directing the superintendent of the prison in which the prisoner is imprisoned to cause the prisoner to be produced at the court or other place at which the proceeding, inquest or inquiry is being held. 20 25
- (2) Such an order is sufficient authority for the superintendent to cause the prisoner to be produced in accordance with the terms of the order. 30
- (3) A prisoner produced in accordance with such an order is taken to be in lawful custody while in the actual custody of the governor of the prison, an officer or a police officer.

-
- (4) It is the duty of the governor, officer or police officer having actual custody of the prisoner to return the prisoner to the prison from which the prisoner was produced as soon as the appropriate person or body permits. 5
- (5) In this section, *appropriate person or body* means:
- (a) a court of record, a judge of such a court or a person constituting such a court, or
 - (b) the Victims Compensation Tribunal, or
 - (c) a coroner, or 10
 - (d) a Clerk of a Local Court, a Registrar of the Children's Court, a Registrar or assistant Registrar of the District Court, a Registrar or Deputy Registrar of the Supreme Court or the Registrar of the Court of Criminal Appeal, or 15
 - (e) a person prescribed by the regulations for the purposes of this definition.

Explanatory note

The amendment has the effect of extending the list of persons by whom an order requiring the attendance of a prisoner can be made to include the Registrar of the Children's Court. The list is co-extensive with the list of persons by whom an analogous order will be able to be made under the *Children (Detention Centres) Act 1987*. 20

1.8 Supreme Court Act 1970 No 52

[1] Section 17 Criminal proceedings 25

Insert “, 101 (5)” after “72” in section 17 (3).

Explanatory note

Item [1] is consequential on item [10]. It amends section 17 so as to ensure that appeals from decisions of the Criminal Division of the Supreme Court with respect to contempt matters are heard by the Court of Appeal. 30

[2] Section 36 Additional Judges of Appeal

Omit "During any absence from duty of any Judge of Appeal, the Governor" from section 36 (1).

Insert instead "The Governor".

Explanatory note

Additional Judges of Appeal, as opposed to acting Judges of Appeal, can only be appointed if an existing Judge of Appeal is absent from duty. Item [2] removes this restriction. The 6 month maximum period for which additional Judges of Appeal can be appointed remains unchanged.

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[3] Section 45 Appeals

Insert after section 45 (2):

(3) The decision of the Court of Appeal on an appeal heard before 3 or more Judges of Appeal is not affected merely because one or more of the Judges dies before the decision on the appeal is given, so long as a majority of the Judges before whom the hearing of the appeal commenced are in agreement as to the Court's decision.

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(4) If, in dismissing an appeal, the Court of Appeal is of the unanimous opinion that the appeal does not raise any question of general principle, it may, in accordance with the rules, give reasons for its decision in short form.

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Explanatory note

Item [3] (in so far as it inserts a new section 45 (3)) allows the Court of Appeal to determine a matter even if one or more of the Judges before whom the matter was heard dies before a decision is given.

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Item [3] (in so far as it inserts a new section 45 (4)) allows the Court of Appeal to dismiss an appeal by means of a "short form" judgment if it is of the unanimous opinion that the appeal does not raise any question of general principle.

[4] Section 48 Assignment to the Court of Appeal

Omit section 48 (2) (i). Insert instead:

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(i) for the punishment of contempt of the Court, but only if the contempt consists of:

(i) contempt in the face of, or in the hearing of, the Court of Appeal, or

	(ii) disobedience of a judgment or order of the Court of Appeal, or	
	(iii) breach of an undertaking given to the Court of Appeal,	
	including proceedings in which the Court of Appeal is constituted by a master,	5
	Explanatory note	
	Proceedings for the punishment of contempt of the Supreme Court or of any other court are currently assigned to the Court of Appeal, subject to a limited right of the Court in a Division to deal with limited aspects of contempt. Item [4] amends section 48 so as to reverse the current position, assigning to the Court of Appeal proceedings for limited aspects of contempt only. Other proceedings are to be assigned to the Court in its various Divisions.	10
[5]	Section 48 (4)	
	Omit the subsection.	15
	Explanatory note	
	Item [5] is consequential on the amendment made by item [4].	
[6]	Section 53 Assignment of business	
	Insert after section 53 (3E):	
	(3F) Subject to the rules, there are assigned to each Division proceedings for the punishment of contempt of the Court, but only if the contempt consists of:	20
	(a) contempt in the face of, or in the hearing of, the Court in that Division, or	
	(b) disobedience of a judgment or order of the Court in that Division, or	25
	(c) breach of an undertaking given to the Court in that Division,	
	including proceedings in which the Court is constituted by a master.	30
	Explanatory note	
	Item [6] provides for the assignment of proceedings for limited aspects of contempt to each of the Divisions of the Supreme Court. By virtue of section 53 (4) of the Act, all other matters relating to contempt are assigned to the Common Law Division of the Supreme Court.	35

[7] Section 53 (5)

Insert after section 53 (4):

- (5) Without limiting subsection (4), the proceedings assigned to the Common Law Division include proceedings for contempt of the Court or of any other Court (other than proceedings referred to in section 48 (2) (i) or in subsection (3F) of this section). 5

Explanatory note

Item [7] amends section 53 so as to ensure that all proceedings for contempt that are not assigned to the Court of Appeal (see item [4]) or to some other Division of the Supreme Court (see item [6]) are assigned to the Common Law Division. 10

[8] Section 69 Proceedings in lieu of writs

Insert after section 69 (2):

- (3) It is declared that the jurisdiction of the Court to grant any relief or remedy in the nature of a writ of certiorari includes jurisdiction to quash the ultimate determination of a court or tribunal in any proceedings if that determination has been made on the basis of an error of law that appears on the face of the record of the proceedings. 15
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- (4) For the purposes of subsection (3), the face of the record includes the reasons expressed by the court or tribunal for its ultimate determination.
- (5) Subsections (3) and (4) do not affect the operation of any legislative provision to the extent to which the provision is, according to common law principles and disregarding those subsections, effective to prevent the Court from exercising its powers to quash or otherwise review a decision. 25
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Explanatory note

The High Court decision of *Craig v State of South Australia* (1995) 184 CLR 163 is based on a construction of the phrase "error of law on the face of the record" that is narrower than the construction previously given to that phrase by the New South Wales Court of Appeal. The effect of the new construction is to limit the jurisdiction of the Supreme Court to grant any relief or remedy by way of an order in the nature of a writ of certiorari. The writ of certiorari is the means by which a superior court can supervise inferior courts and tribunals in the exercise of their 35

<p>jurisdiction and, in particular, can grant relief where jurisdiction has been wrongly exercised. Item [8] (in so far as it inserts a new section 69 (3) and (4)) restores the Supreme Court's jurisdiction to what it was before <i>Craig v State of South Australia</i> by making it clear that the reasons for the ultimate determination of a court or tribunal (its "reasons for decision") form part of the face of the record of proceedings of the court or tribunal.</p> <p>Item [8] (in so far as it inserts a new section 69 (5)) preserves the operation of other legislative provisions (generally known as "privative provisions") that purport to exclude or confine the Supreme Court's power of review.</p>	<p>5</p>
<p>[9] Section 94 Interest up to judgment</p> <p>Omit section 94 (2) (b). Insert instead:</p> <p style="padding-left: 40px;">(b) authorise the giving of interest on any debt in respect of any period for which interest is payable as of right, whether by virtue of an agreement or otherwise, or</p>	<p>10</p> <p>15</p>
<p>Explanatory note</p> <p>Section 94 (2) (b) currently prohibits the Supreme Court from granting interest on a debt if the agreement out of which the debt arises itself provides for the payment of interest. Item [9] restricts that prohibition to those periods for which interest is payable, whether under such an agreement or otherwise, so as to allow the Supreme Court to grant interest for any period in respect of which interest is not payable.</p>	<p>20</p>
<p>[10] Section 101 Appeal in proceedings before the Court</p> <p>Insert after section 101 (4):</p> <p style="padding-left: 40px;">(5) An appeal lies to the Court of Appeal from any judgment or order of the Court in a Division in any proceedings that relate to contempt (whether civil or criminal) of the Court or of any other court.</p> <p style="padding-left: 40px;">(6) Subsection (5) does not confer on any person a right to appeal from a judgment or order of the Court in a Division in any proceedings that relate to criminal contempt, being a judgment or order by which the person charged with contempt is found not to have committed contempt.</p>	<p>25</p> <p>30</p>

Explanatory note

Item [10] amends section 101 to confer a right of appeal to the Court of Appeal from a judgment or order of the Supreme Court in a Division in proceedings that relate to contempt, otherwise than where the proceedings relate to criminal contempt and the judgment is that the person charged with contempt has not committed contempt.

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[11] Section 101A

Insert after section 101:

101A Question of law concerning criminal contempt may be submitted to Court of Appeal

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(1) At any time after the conclusion of contempt proceedings in which the alleged contemnor is found not to have committed contempt, the Attorney General may submit to the Court of Appeal any question of law arising from or in connection with the proceedings.

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(2) The Attorney General must submit with the question to be determined a statement of the circumstances out of which the question arose, and thereafter must furnish such further statement as the Court of Appeal may require.

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(3) The Court of Appeal has jurisdiction to hear and determine any question submitted to it under this section.

(4) The determination of the Court of Appeal of the question submitted does not in any way affect or invalidate any finding or decision given in the contempt proceedings.

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(5) The alleged contemnor is entitled to be heard on the question submitted and, if it appears that the alleged contemnor does not propose to be represented, the Attorney General is to instruct counsel to argue the question before the Court of Appeal on behalf of the person.

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(6) The reasonable costs of legal representation of the alleged contemnor in proceedings under this section are to be paid by the Crown.

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- (7) Proceedings under this section are to be held in camera, except that a legal practitioner may be present at the proceedings for the purpose of reporting the case for any lawful purpose of the Council of Law Reporting for New South Wales. 5
- (8) A person:
- (a) must not publish any report of any submission made under subsection (1), and
 - (b) must not publish any report of proceedings under this section so as to disclose the name or identity of the alleged contemnor. 10
- (9) Any publication in contravention of subsection (8) is punishable as contempt of the Court.
- (10) In this section:
- alleged contemnor* means the person charged with contempt in contempt proceedings. 15
- contempt* means contempt of the Court or of any other court.
- contempt proceedings* means proceedings before the Court in a Division for the punishment of contempt. 20
- (11) This section applies to criminal contempt only, and does not apply to civil contempt.

Explanatory note

Item [11] confers on the Attorney General a power to submit to the Court of Appeal any question of law arising out of proceedings of the Supreme Court in a Division, in relation to criminal contempt, in which the alleged contemnor is found not to have committed contempt. The proposed power is analogous to a power that exists under section 5A (2) of the *Criminal Appeal Act 1912* with respect to questions of law arising out of criminal proceedings in which the accused is acquitted. The proposed section contains similar protections to those contained in section 5A (2). That is, the Court of Appeal's decision does not affect the alleged contemnor, the proceedings before the Court of Appeal are held in camera and reports that could identify the alleged contemnor are prohibited. 25 30

[12] Fourth Schedule Savings and transitional provisions

Insert after clause 2:

3 Courts Legislation Amendment Act 1996

- (1) Proceedings commenced in the Court before the commencement of items [4], [5], [6], [7] and [10] of Schedule 1.8 to the *Courts Legislation Amendment Act 1996* are unaffected by the amendments to this Act that are made by those items. 5
- (2) Proceedings commenced in the Court before the commencement of item [8] of Schedule 1.8 to the *Courts Legislation Amendment Act 1996* are unaffected by the amendment to this Act that is made by that item. 10

Explanatory note

Item [12] inserts a transitional provision into the Fourth Schedule to ensure that the amendments made by the proposed Act in relation to the assignment of proceedings for the punishment of contempt of court, and in relation to the Supreme Court's powers to make an order in the nature of a writ of certiorari, do not affect proceedings commenced before those amendments take effect. 15

First print



New South Wales

Courts Legislation Amendment Bill 1996

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend certain Acts relating to courts and court procedures. A detailed explanation of each amendment is set out in the Bill immediately after the amendment.

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 a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to a Schedule of amendments to various Acts.

Clause 4 provides that explanatory notes in the proposed Act do not form part of the proposed Act.

Schedule 1 amends the following Acts:

- *Children (Detention Centres) Act 1987 No 57*
- *Coroners Act 1980 No 27*
- *District Court Act 1973 No 9*
- *Judges' Pensions Act 1953 No 41*
- *Justices Act 1902 No 27*
- *Local Courts (Civil Claims) Act 1970 No 11*
- *Prisons Act 1952 No 9*
- *Supreme Court Act 1970 No 52*

The various amendments to the abovementioned Acts are explained in detail in the explanatory notes set out in Schedule 1 in relation to those amendments.

First print

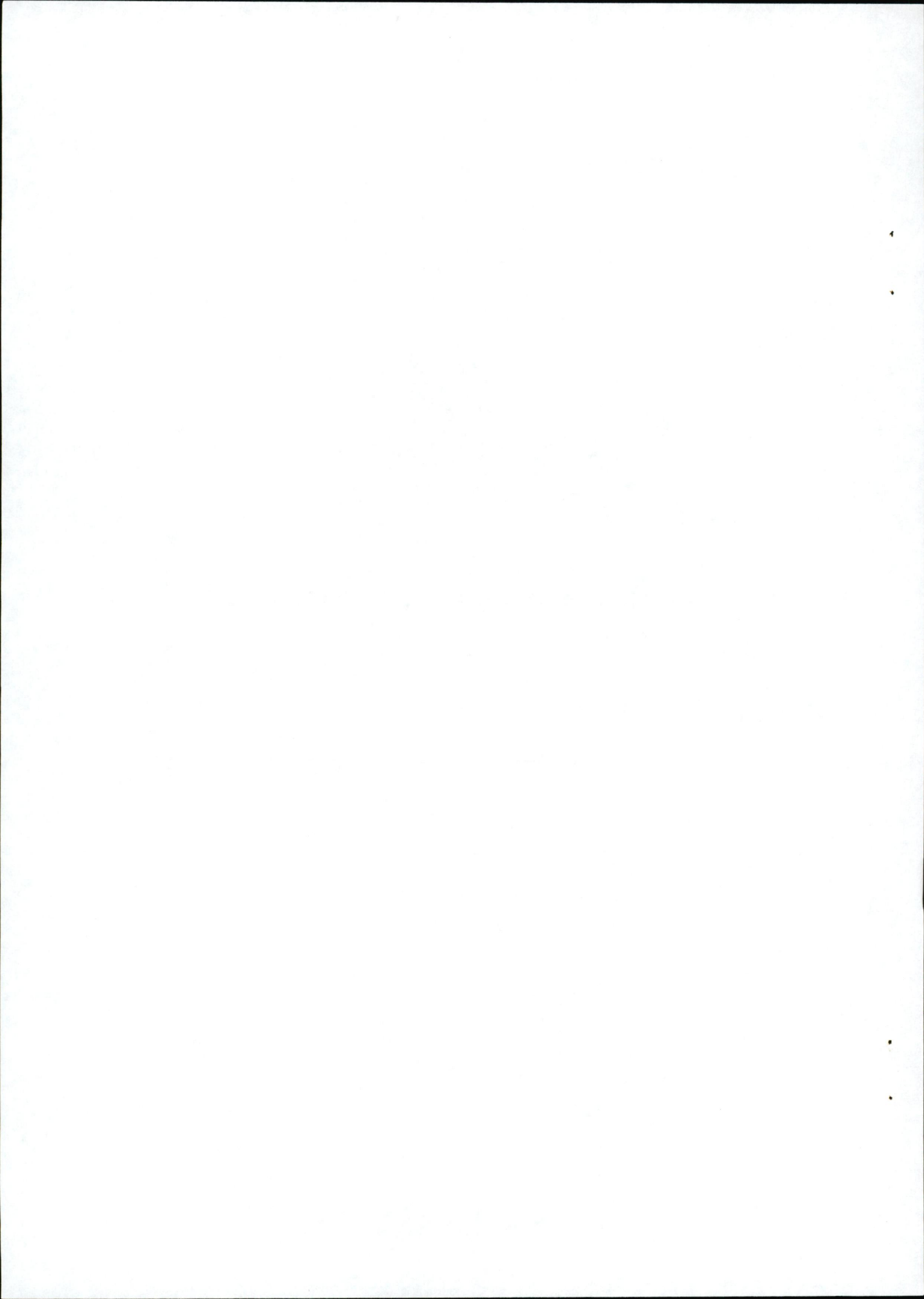


New South Wales

Courts Legislation Amendment Bill 1996

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New South Wales

Courts Legislation Amendment Bill 1996

No. , 1996

A Bill for

An Act to amend various Acts with respect to courts and court procedures;
and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Courts Legislation Amendment Act 1996*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation. 5

3 Amendments

Each Act mentioned in Schedule 1 is amended as set out in that Schedule.

4 Explanatory notes 10

The matter appearing under the heading "Explanatory note" in Schedule 1 does not form part of this Act.

Schedule 1 Amendments

(Section 3)

1.1 Children (Detention Centres) Act 1987 No 57

Section 42

Omit the section. Insert instead: 5

42 Attendance of persons subject to control before courts and court officers

- (1) If an appropriate person or body is satisfied that it is desirable that a detainee should be in attendance before it, him or her for the purposes of any legal proceeding, inquest or inquiry then pending, the person or body may make an order directing the superintendent of the detention centre in which the detainee is detained to cause the detainee to be produced at the court or other place at which the proceeding, inquest or inquiry is being held. 10
15
- (2) Such an order is sufficient authority for the superintendent to cause the detainee to be produced in accordance with the terms of the order.
- (3) A detainee produced in accordance with such an order is taken to be in lawful custody while in the actual custody of the superintendent of a detention centre, an officer or a police officer. 20
- (4) It is the duty of the superintendent, officer or police officer having actual custody of the detainee to return the detainee to the detention centre from which the detainee was produced as soon as the appropriate person or body permits. 25
- (5) In this section, *appropriate person or body* means:
 - (a) a court of record, a judge of such a court or a person constituting such a court, or 30

Courts Legislation Amendment Bill 1996

Schedule 1 Amendments

- (b) the Victims Compensation Tribunal, or
- (c) a coroner, or
- (d) a Clerk of a Local Court, a Registrar of the Children's Court, a Registrar or assistant Registrar of the District Court, a Registrar or Deputy Registrar of the Supreme Court or the Registrar of the Court of Criminal Appeal, or 5
- (e) a person prescribed by the regulations for the purposes of this definition.

Explanatory note 10
The proposed amendment has the effect of extending the list of persons by whom an order requiring the attendance of a detainee can be made to include certain court officers and other persons to be prescribed by the regulations. The list is co-extensive with the list of persons by whom an analogous order will be able to be made under the *Prisons Act 1952*. 15

1.2 Coroners Act 1980 No 27

[1] Section 4A State Coroners and Deputy State Coroners

Omit "The *Public Service Act 1979*" from section 4A (9).
Insert instead "The *Public Sector Management Act 1988*".

Explanatory note 20
Item [1] updates an obsolete reference.

[2] Section 15 Inquiries into fires and explosions

Omit section 15 (3) (a). Insert instead:

- (a) in the case of a fire or explosion occurring within a fire district within the meaning of the *Fire Brigades Act 1989*, by New South Wales Fire Brigades, or 25

Explanatory note
Item [2] updates an obsolete reference.

[3] Section 44 Power of coroner to clear court and prohibit publication of matter relating to inquest or inquiry

Insert “(or any specified part of the proceedings)” after “proceedings” in section 44 (2).

Explanatory note

Section 44 (2) enables a coroner to prohibit the publication of any report of proceedings on an inquest in circumstances in which there is a suspicion of suicide. Item [3] allows the prohibition to relate to a specified part of the proceedings only.

5

[4] Section 44 (2A)–(2C)

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Insert after section 44 (2):

(2A) An order under subsection (2) may also prohibit the publication of any matter (including the publication of any photograph or other pictorial representation) that identifies any particular person:

15

- (a) as being a person whose death or suspected death may have been self inflicted, or
- (b) as being a relative of a person whose death or suspected death may have been self inflicted.

(2B) For the purposes of subsection (2A) (b), the following persons are relatives of a person whose death or suspected death may have been self inflicted:

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- (a) the spouse of that person, a parent of that person, a person who stands in loco parentis to that person, a guardian of that person or a child of that person,
- (b) a person who, at the time of the death or suspected death, was living with that person as her husband or his wife,
- (c) a brother or sister of that person.

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(2C) To the extent to which an order under subsection (2) prohibits the publication of any matter referred to in subsection (2A), the order continues to have effect after the coroner has made his or her findings, or after the jury has brought in its verdict, but only if the order expressly so provides.

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Explanatory note

Item [4] inserts provisions that ensure that the coroner's power to prohibit the reporting of proceedings of suspected suicides extends to the publication of pictorial and other matter that has a tendency to identify a victim or a member of a victim's close family.

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1.3 District Court Act 1973 No 9

[1] Section 18E Secretary to the Rule Committee

Insert “, including the office of registrar” after “Public Service” in section 18E (3).

Explanatory note

Item [1] makes it clear that the Registrar of the District Court is eligible to be appointed as Secretary to the District Court Rule Committee.

10

[2] Section 18K

Insert after section 18J:

18K Temporary appointment of registrars and assistant registrars

15

(1) The Minister may, by order in writing, appoint a person to act in the office of registrar or assistant registrar during:

(a) an absence from duty of the registrar or assistant registrar, or

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(b) a vacancy of not more than 6 months' duration in the office of the registrar or assistant registrar.

(2) The Minister may delegate to the Director-General of the Attorney General's Department the Minister's power of appointment under this section.

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(3) While acting in the office of registrar or assistant registrar, a person so appointed has and may exercise all the functions of that office.

-
- (4) Any act, matter or thing done by a person while purporting to exercise a function conferred by this section is not ineffective or unlawful by reason only that either of the circumstances referred to in subsection (1) (a) or (b) did not exist when the act, matter or thing was done. 5
- (5) Any act, matter or thing done by a person while acting in the office of registrar or assistant registrar is taken to have been done by the registrar or assistant registrar, as the case requires. 10
- (6) This section does not apply to an office that is held by a Clerk of a Local Court.

Explanatory note

Item [2] confers on the Minister administering the Act a power to appoint an acting registrar or acting assistant registrar on a temporary basis. The provision reflects section 10 of the *Local Courts Act 1982* with respect to the appointment of acting Clerks of a Local Court. 15

[3] Section 148E Liability of legal practitioners for clients' costs in certain cases

Omit "solicitor" and "solicitor's" wherever occurring. 20
Insert instead "legal practitioner" and "legal practitioner's".

Explanatory note

Item [3] updates obsolete references.

1.4 Judges' Pensions Act 1953 No 41

[1] Section 5 Pension for judge who retires on account of ill-health 25

Insert "or within the period of 3 months after that appointment," after "appointment as a judge," in section 5 (2) (b).

Explanatory note

Section 5 deals with the entitlement to a pension that arises with respect to a judge who retires as a result of permanent disability or infirmity. That section requires a certificate of good health to have been given in relation to the judge within 3 months before his or her appointment. Item [1] allows the certificate to have been given within 3 months after the appointment. 30

[2] Section 5 (5)

Insert after section 5 (4):

- (5) This section, as amended by the provisions of Schedule 1.4 [1] to the *Courts Legislation Amendment Act 1996*, applies to a retired judge who was appointed as a judge before the commencement of those provisions in the same way as it applies to one who was appointed after that commencement, and so applies as if subsection (2) (b) were amended by omitting the words "3 months", where secondly occurring, and by inserting instead the words "12 months".

Explanatory note

Item [2] applies the amendments made by item [1] to judges who are currently holding office.

1.5 Justices Act 1902 No 27 15

[1] Section 41A Payment of costs by informant

Insert "(or, if the informant so elects, directly to the defendant)" after "to the defendant" in section 41A (1).

Explanatory note

Item [1] allows an informant whom a court has directed to pay the defendant's costs to pay those costs directly to the defendant rather than, as is presently the case, to the court. 20

[2] Section 41A (2C)

Insert after section 41A (2B):

- (2C) For the purposes of subsection (2B), an officer of the Royal Society for the Prevention of Cruelty to Animals is taken not to be acting in a private capacity if the officer acts as the informant in any proceedings under the *Prevention of Cruelty to Animals Act 1979*. 25

Explanatory note

Section 41 allows a Justice to order an informant to pay the defendant's costs in certain circumstances, such as when the defendant is discharged. Except where the informant is acting in a private capacity, an award of costs may only be made if the Justice is satisfied of certain matters. Item [2] makes it clear that an officer of the RSPCA is taken not to be acting in a private capacity when the officer acts as informant in proceedings under the *Prevention of Cruelty to Animals Act 1979*.

5

[3] Section 80AA Absent defendant not to be imprisoned

Insert "or authorise an authorised justice to issue" after "issue" in section 80AA (2).

10

Explanatory note

Section 80AA (2) empowers a Justice who convicts a defendant in the defendant's absence to issue an arrest warrant so that the defendant can be brought before the Justice for sentencing. Item [3] empowers the Justice to authorise an authorised justice (to be defined as referred to in item [4]) to issue an arrest warrant in his or her stead.

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[4] Section 80AA (3), (4)

Insert after section 80AA (2):

(3) The powers conferred by subsection (2) may be exercised only by a Justice or Justices constituting a Local Court. This subsection does not apply in the case of the issue of a warrant of apprehension by an authorised justice where the issue of the warrant by an authorised justice is authorised under subsection (2).

20

(4) In this section, *authorised justice* has the meaning given to that expression by section 86A.

25

Explanatory note

Item [4] (to the extent to which it inserts proposed subsection (3)) restricts the power to issue, or authorise the issue of, an arrest warrant under section 80AA (2) to a Justice or Justices constituting a Local Court.

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Item [4] (to the extent to which it inserts proposed subsection (4)) defines the expression *authorised justice* for the purposes of section 80AA. The definition is linked to a definition in section 86A, which defines *authorised justice* to mean a Magistrate, a Children's Magistrate, a Justice employed in the Local Courts Administration, Attorney General's Department, or a Justice employed in an office prescribed by the regulations.

35

[5] Section 81 Payment of costs by defendant, or by prosecutor or complainant

Insert "(or, if the prosecutor or complainant so elects, directly to the defendant)" after "to the defendant" in section 81 (1).

Explanatory note

Item [5] allows an informant or complainant whom a court has directed to pay the defendant's costs to pay those costs directly to the defendant rather than, as is presently the case, to the court.

5

[6] Section 81 (6)

Insert after section 81 (5):

- (6) For the purposes of subsection (5), an officer of the Royal Society for the Prevention of Cruelty to Animals is taken not to be acting in a private capacity if the officer acts as the informant or complainant in any proceedings under the *Prevention of Cruelty to Animals Act 1979*.

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Explanatory note

Section 81 allows a Justice to order an informant or complainant to pay the defendant's costs in certain circumstances, such as when the defendant is discharged. Except where the informant or complainant is acting in a private capacity, an award of costs may only be made if the Justice is satisfied of certain matters. Item [6] makes it clear that an officer of the RSPCA is taken not to be acting in a private capacity when the officer acts as informant or complainant in proceedings under the *Prevention of Cruelty to Animals Act 1979*.

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[7] Section 87 Warrant of commitment for non-payment

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Insert after section 87 (1A):

- (1B) A single warrant may be issued in respect of more than one conviction or order.

Explanatory note

Section 87 enables a Justice to commit a defendant to prison for failure to pay a fine, penalty or other amount of money in compliance with the requirements of a conviction or order. Item [7] makes it clear that a single warrant may be issued in respect of more than one conviction or order.

30

[8] Section 88 Warrant of commitment in other cases

Insert after section 88 (3):

- (4) A single warrant may be issued in respect of more than one conviction or order.

Explanatory note

Section 88 enables a Justice to commit a defendant to prison to serve a sentence of imprisonment or for failure to comply with the requirements of a conviction or order (other than a requirement to pay a fine, penalty or other amount of money). Item [8] makes it clear that a single warrant may be issued in respect of more than one conviction or order.

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[9] Section 100XA Withdrawal of enforcement orders

Insert after section 100XA (3):

- (4) An authorised Justice who withdraws an enforcement order under this section must cause notice of that fact to be given to the Clerk of the Local Court to whom the amount specified in the order was payable.
- (5) As soon as practicable after receiving such a notice, a Clerk of a Local Court to whom an amount has been paid under the relevant enforcement order must refund that amount to the person by whom it was paid.

15

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Explanatory note

Payment of an amount that remains unpaid under a penalty notice is enforced by means of an enforcement order. Section 100XA allows an enforcement order to be withdrawn. Item [9] provides for the refund of any money that has been paid under an enforcement order that is subsequently withdrawn.

25

[10] Section 125 Powers of court appealed to

Insert after section 125 (4):

- (5) For the purposes of subsection (4), an officer of the Royal Society for the Prevention of Cruelty to Animals is taken not to be acting in a private capacity if the officer acts as the respondent in any appeal arising from proceedings under the *Prevention of Cruelty to Animals Act 1979*.

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Explanatory note

Section 125 allows a Justice to order the prosecution to pay an appellant's costs in certain circumstances, such as when the appeal is successful. Except where the prosecution is acting in a private capacity, an award of costs may only be made if the Justice is satisfied of certain matters. Item [10] makes it clear that an officer of the RSPCA is taken not to be acting in a private capacity when the officer acts as prosecutor in proceedings under the *Prevention of Cruelty to Animals Act 1979*.

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1.6 Local Courts (Civil Claims) Act 1970 No 11

[1] Section 4A

10

Insert after section 4:

4A Notes

Notes in the text of this Act are merely explanatory and do not form part of this Act.

Explanatory note

Item [1] is consequential on the fact that item [3] includes an explanatory note at the end of proposed section 12 (9).

15

[2] Section 8AA

Insert after section 8:

8AA Temporary appointment of registrars and deputy registrars

20

(1) The Minister may, by order in writing, appoint a person to act in the office of registrar or deputy registrar during:

(a) an absence from duty of the registrar or deputy registrar, or

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(b) a vacancy of not more than 6 months' duration in the office of the registrar or deputy registrar.

(2) The Minister may delegate to the Director-General of the Attorney General's Department the Minister's power of appointment under this section.

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-
- (3) While acting in the office of registrar or deputy registrar, a person so appointed has and may exercise all the functions of that office.
- (4) Any act, matter or thing done by a person while purporting to exercise a function conferred by this section is not ineffective or unlawful by reason only that either of the circumstances referred to in subsection (1) (a) or (b) did not exist when the act, matter or thing was done. 5
- (5) Any act, matter or thing done by a person while acting in the office of registrar or deputy registrar is taken to have been done by the registrar or deputy registrar, as the case requires. 10
- (6) This section does not apply to an office that is held by a Clerk of a Local Court. 15

Explanatory note

Item [2] confers on the Minister administering the Act a power to appoint an acting registrar or acting deputy registrar on a temporary basis. The provision reflects section 10 of the *Local Courts Act 1982* with respect to the appointment of acting Clerks of a Local Court. 20

[3] Section 12 Jurisdiction of Court

Insert after section 12 (8):

- (9) In this section, a reference to an action extends to an action referred to in section 68 of the *Fair Trading Act 1987*. 25

Note. The effect of subsection (9) is to confer jurisdiction on a Local Court in respect of actions for damages referred to in section 68 of the *Fair Trading Act 1987*. That jurisdiction is similar to the jurisdiction conferred on a Local Court by section 86 of the *Trade Practices Act 1974* of the Commonwealth in respect of actions for damages referred to in section 82 of that Act. 30

Explanatory note

Item [3] makes it clear that a Local Court has jurisdiction to deal with any action for damages referred to in section 68 of the *Fair Trading Act 1987*.

1.7 Prisons Act 1952 No 9

Section 44

Omit the section. Insert instead:

44 Attendance of prisoners before courts and court officers

- (1) If an appropriate person or body is satisfied that it is desirable that a prisoner should be in attendance before it, him or her for the purposes of any legal proceeding, inquest or inquiry then pending, the person or body may make an order directing the superintendent of the prison in which the prisoner is imprisoned to cause the prisoner to be produced at the court or other place at which the proceeding, inquest or inquiry is being held. 5
10
- (2) Such an order is sufficient authority for the superintendent to cause the prisoner to be produced in accordance with the terms of the order. 15
- (3) A prisoner produced in accordance with such an order is taken to be in lawful custody while in the actual custody of the governor of the prison, an officer or a police officer.
- (4) It is the duty of the governor, officer or police officer having actual custody of the prisoner to return the prisoner to the prison from which the prisoner was produced as soon as the appropriate person or body permits. 20
- (5) In this section, *appropriate person or body* means: 25
- (a) a court of record, a judge of such a court or a person constituting such a court, or
 - (b) the Victims Compensation Tribunal, or
 - (c) a coroner, or

-
- (d) a Clerk of a Local Court, a Registrar of the Children's Court, a Registrar or assistant Registrar of the District Court, a Registrar or Deputy Registrar of the Supreme Court or the Registrar of the Court of Criminal Appeal, or 5
- (e) a person prescribed by the regulations for the purposes of this definition.

Explanatory note

The amendment has the effect of extending the list of persons by whom an order requiring the attendance of a prisoner can be made to include the Registrar of the Children's Court. The list is co-extensive with the list of persons by whom an analogous order will be able to be made under the *Children (Detention Centres) Act 1987*. 10

1.8 Supreme Court Act 1970 No 52

[1] Section 17 Criminal proceedings 15

Insert “, 101 (5)” after “72” in section 17 (3).

Explanatory note

Item [1] is consequential on item [10]. It amends section 17 so as to ensure that appeals from decisions of the Criminal Division of the Supreme Court with respect to contempt matters are heard by the Court of Appeal. 20

[2] Section 36 Additional Judges of Appeal

Omit “During any absence from duty of any Judge of Appeal, the Governor” from section 36 (1).

Insert instead “The Governor”.

Explanatory note

Additional Judges of Appeal, as opposed to acting Judges of Appeal, can only be appointed if an existing Judge of Appeal is absent from duty. Item [2] removes this restriction. The 6 month maximum period for which additional Judges of Appeal can be appointed remains unchanged. 25

[3] Section 45 Appeals

Insert after section 45 (2):

- (3) The decision of the Court of Appeal on an appeal heard before 3 or more Judges of Appeal is not affected merely because one or more of the Judges dies before the decision on the appeal is given, so long as a majority of the Judges before whom the hearing of the appeal commenced are in agreement as to the Court's decision. 5
- (4) If, in dismissing an appeal, the Court of Appeal is of the unanimous opinion that the appeal does not raise any question of general principle, it may, in accordance with the rules, give reasons for its decision in short form. 10

Explanatory note

Item [3] (in so far as it inserts a new section 45 (3)) allows the Court of Appeal to determine a matter even if one or more of the Judges before whom the matter was heard dies before a decision is given. 15

Item [3] (in so far as it inserts a new section 45 (4)) allows the Court of Appeal to dismiss an appeal by means of a "short form" judgment if it is of the unanimous opinion that the appeal does not raise any question of general principle.

[4] Section 48 Assignment to the Court of Appeal 20

Omit section 48 (2) (i). Insert instead:

- (i) for the punishment of contempt of the Court, but only if the contempt consists of:
 - (i) contempt in the face of, or in the hearing of, the Court of Appeal, or 25
 - (ii) disobedience of a judgment or order of the Court of Appeal, or
 - (iii) breach of an undertaking given to the Court of Appeal,
- including proceedings in which the Court of Appeal is constituted by a master, 30

Explanatory note

Proceedings for the punishment of contempt of the Supreme Court or of any other court are currently assigned to the Court of Appeal, subject to a limited right of the Court in a Division to deal with limited aspects of contempt. Item [4] amends section 48 so as to reverse the current position, assigning to the Court of Appeal proceedings for limited aspects of contempt only. Other proceedings are to be assigned to the Court in its various Divisions. 35

[5] Section 48 (4)

Omit the subsection.

Explanatory note

Item [5] is consequential on the amendment made by item [4].

[6] Section 53 Assignment of business

5

Insert after section 53 (3E):

(3F) Subject to the rules, there are assigned to each Division proceedings for the punishment of contempt of the Court, but only if the contempt consists of:

(a) contempt in the face of, or in the hearing of, the Court in that Division, or

10

(b) disobedience of a judgment or order of the Court in that Division, or

(c) breach of an undertaking given to the Court in that Division,

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including proceedings in which the Court is constituted by a master.

Explanatory note

Item [6] provides for the assignment of proceedings for limited aspects of contempt to each of the Divisions of the Supreme Court. By virtue of section 53 (4) of the Act, all other matters relating to contempt are assigned to the Common Law Division of the Supreme Court.

20

[7] Section 53 (5)

Insert after section 53 (4):

(5) Without limiting subsection (4), the proceedings assigned to the Common Law Division include proceedings for contempt of the Court or of any other Court (other than proceedings referred to in section 48 (2) (i) or in subsection (3F) of this section).

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Explanatory note

Item [7] amends section 53 so as to ensure that all proceedings for contempt that are not assigned to the Court of Appeal (see item [4]) or to some other Division of the Supreme Court (see item [6]) are assigned to the Common Law Division.

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[8] Section 69 Proceedings in lieu of writs

Insert after section 69 (2):

- (3) It is declared that the jurisdiction of the Court to grant any relief or remedy in the nature of a writ of certiorari includes jurisdiction to quash the ultimate determination of a court or tribunal in any proceedings if that determination has been made on the basis of an error of law that appears on the face of the record of the proceedings. 5
- (4) For the purposes of subsection (3), the face of the record includes the reasons expressed by the court or tribunal for its ultimate determination. 10
- (5) Subsections (3) and (4) do not affect the operation of any legislative provision to the extent to which the provision is, according to common law principles and disregarding those subsections, effective to prevent the Court from exercising its powers to quash or otherwise review a decision. 15

Explanatory note

The High Court decision of *Craig v State of South Australia* (1995) 184 CLR 163 is based on a construction of the phrase "error of law on the face of the record" that is narrower than the construction previously given to that phrase by the New South Wales Court of Appeal. The effect of the new construction is to limit the jurisdiction of the Supreme Court to grant any relief or remedy by way of an order in the nature of a writ of certiorari. The writ of certiorari is the means by which a superior court can supervise inferior courts and tribunals in the exercise of their jurisdiction and, in particular, can grant relief where jurisdiction has been wrongly exercised. Item [8] (in so far as it inserts a new section 69 (3) and (4)) restores the Supreme Court's jurisdiction to what it was before *Craig v State of South Australia* by making it clear that the reasons for the ultimate determination of a court or tribunal (its "reasons for decision") form part of the face of the record of proceedings of the court or tribunal. 20
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Item [8] (in so far as it inserts a new section 69 (5)) preserves the operation of other legislative provisions (generally known as "privative provisions") that purport to exclude or confine the Supreme Court's power of review. 35

[9] Section 94 Interest up to judgment

Omit section 94 (2) (b). Insert instead:

- (b) authorise the giving of interest on any debt in respect of any period for which interest is payable as of right, whether by virtue of an agreement or otherwise, or 5

Explanatory note

Section 94 (2) (b) currently prohibits the Supreme Court from granting interest on a debt if the agreement out of which the debt arises itself provides for the payment of interest. Item [9] restricts that prohibition to those periods for which interest is payable, whether under such an agreement or otherwise, so as to allow the Supreme Court to grant interest for any period in respect of which interest is not payable. 10

[10] Section 101 Appeal in proceedings before the Court

Insert after section 101 (4): 15

- (5) An appeal lies to the Court of Appeal from any judgment or order of the Court in a Division in any proceedings that relate to contempt (whether civil or criminal) of the Court or of any other court.
- (6) Subsection (5) does not confer on any person a right to appeal from a judgment or order of the Court in a Division in any proceedings that relate to criminal contempt, being a judgment or order by which the person charged with contempt is found not to have committed contempt. 20
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Explanatory note

Item [10] amends section 101 to confer a right of appeal to the Court of Appeal from a judgment or order of the Supreme Court in a Division in proceedings that relate to contempt, otherwise than where the proceedings relate to criminal contempt and the judgment is that the person charged with contempt has not committed contempt. 30

[11] Section 101A

Insert after section 101:

101A Question of law concerning criminal contempt may be submitted to Court of Appeal

- (1) At any time after the conclusion of contempt proceedings in which the alleged contemnor is found not to have committed contempt, the Attorney General may submit to the Court of Appeal any question of law arising from or in connection with the proceedings. 5
- (2) The Attorney General must submit with the question to be determined a statement of the circumstances out of which the question arose, and thereafter must furnish such further statement as the Court of Appeal may require. 10
- (3) The Court of Appeal has jurisdiction to hear and determine any question submitted to it under this section. 15
- (4) The determination of the Court of Appeal of the question submitted does not in any way affect or invalidate any finding or decision given in the contempt proceedings.
- (5) The alleged contemnor is entitled to be heard on the question submitted and, if it appears that the alleged contemnor does not propose to be represented, the Attorney General is to instruct counsel to argue the question before the Court of Appeal on behalf of the person. 20
25
- (6) The reasonable costs of legal representation of the alleged contemnor in proceedings under this section are to be paid by the Crown.
- (7) Proceedings under this section are to be held in camera, except that a legal practitioner may be present at the proceedings for the purpose of reporting the case for any lawful purpose of the Council of Law Reporting for New South Wales. 30

-
- (8) A person:
- (a) must not publish any report of any submission made under subsection (1), and
 - (b) must not publish any report of proceedings under this section so as to disclose the name or identity of the alleged contemnor. 5
- (9) Any publication in contravention of subsection (8) is punishable as contempt of the Court.
- (10) In this section:
- alleged contemnor* means the person charged with contempt in contempt proceedings. 10
- contempt* means contempt of the Court or of any other court.
- contempt proceedings* means proceedings before the Court in a Division for the punishment of contempt. 15
- (11) This section applies to criminal contempt only, and does not apply to civil contempt.

Explanatory note

Item [11] confers on the Attorney General a power to submit to the Court of Appeal any question of law arising out of proceedings of the Supreme Court in a Division, in relation to criminal contempt, in which the alleged contemnor is found not to have committed contempt. The proposed power is analogous to a power that exists under section 5A (2) of the *Criminal Appeal Act 1912* with respect to questions of law arising out of criminal proceedings in which the accused is acquitted. The proposed section contains similar protections to those contained in section 5A (2). That is, the Court of Appeal's decision does not affect the alleged contemnor, the proceedings before the Court of Appeal are held in camera and reports that could identify the alleged contemnor are prohibited. 20 25

[12] Fourth Schedule Savings and transitional provisions

Insert after clause 2:

3 Courts Legislation Amendment Act 1996

- (1) Proceedings commenced in the Court before the commencement of items [4], [5], [6], [7] and [10] of Schedule 1.8 to the *Courts Legislation Amendment Act 1996* are unaffected by the amendments to this Act that are made by those items. 5
- (2) Proceedings commenced in the Court before the commencement of item [8] of Schedule 1.8 to the *Courts Legislation Amendment Act 1996* are unaffected by the amendment to this Act that is made by that item. 10

Explanatory note

Item [12] inserts a transitional provision into the Fourth Schedule to ensure that the amendments made by the proposed Act in relation to the assignment of proceedings for the punishment of contempt of court, and in relation to the Supreme Court's powers to make an order in the nature of a writ of certiorari, do not affect proceedings commenced before those amendments take effect. 15

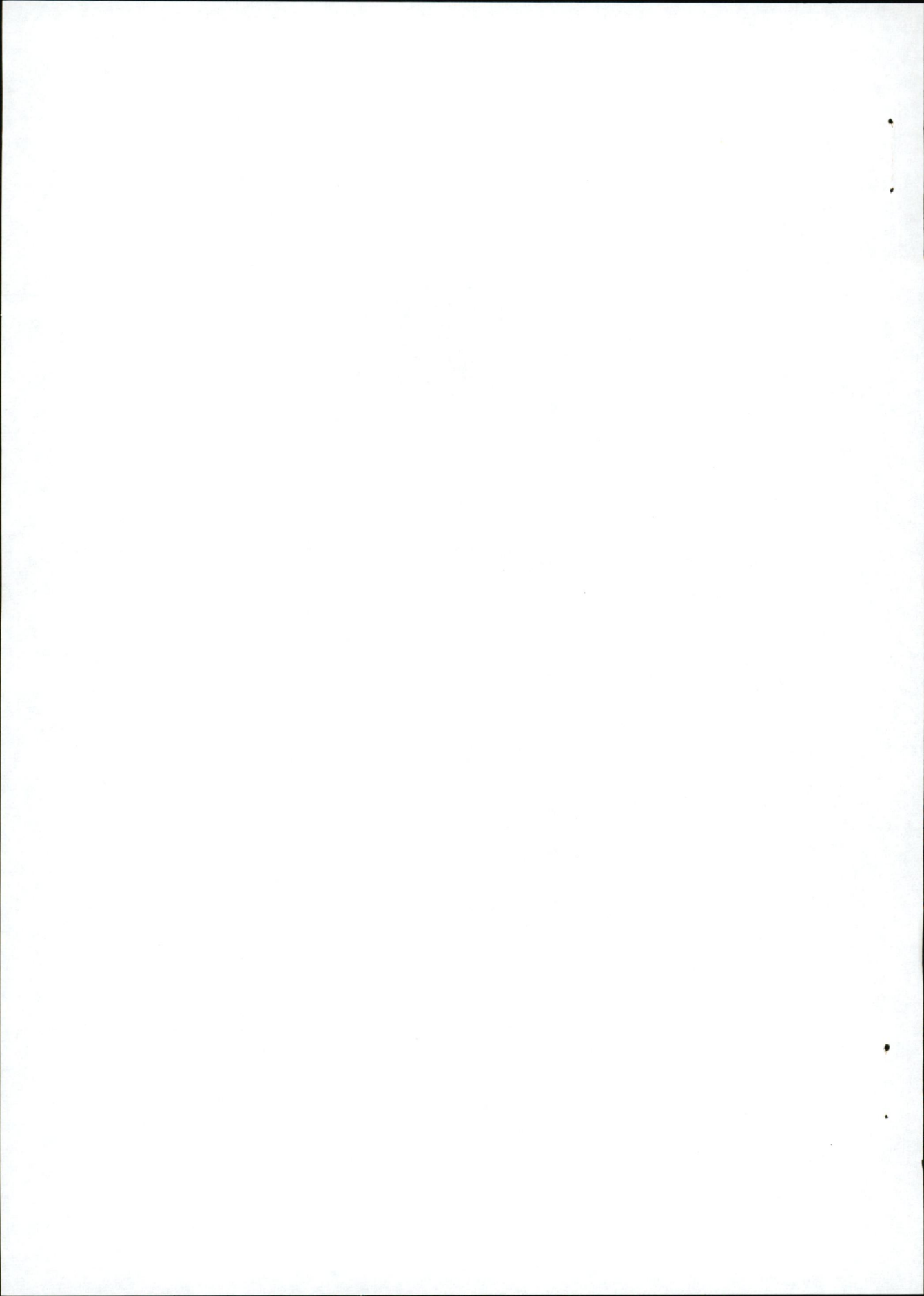


New South Wales

Courts Legislation Amendment Act 1996 No 111

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New South Wales

Courts Legislation Amendment Act 1996 No 111

Act No 111, 1996

An Act to amend various Acts with respect to courts and court procedures;
and for other purposes. [Assented to 2 December 1996]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Courts Legislation Amendment Act 1996*.

2 Commencement

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

3 Amendments

Each Act mentioned in Schedule 1 is amended as set out in that Schedule.

4 Explanatory notes

The matter appearing under the heading "Explanatory note" in Schedule 1 does not form part of this Act.

Schedule 1 Amendments

(Section 3)

1.1 Children (Detention Centres) Act 1987 No 57

Section 42

Omit the section. Insert instead:

42 Attendance of persons subject to control before courts and court officers

- (1) If an appropriate person or body is satisfied that it is necessary that a detainee should attend before it, him or her for the purposes of any legal proceeding, inquest or inquiry then pending and that the absence of the detainee may prejudice the rights of a party, the person or body may make an order directing the superintendent of the detention centre in which the detainee is detained to cause the detainee to be produced at the court or other place at which the proceeding, inquest or inquiry is being held.
- (2) Such an order is sufficient authority for the superintendent to cause the detainee to be produced in accordance with the terms of the order.
- (3) A detainee produced in accordance with such an order is taken to be in lawful custody while in the actual custody of the superintendent of a detention centre, an officer or a police officer.
- (4) It is the duty of the superintendent, officer or police officer having actual custody of the detainee to return the detainee to the detention centre from which the detainee was produced as soon as the appropriate person or body permits.
- (5) In this section, *appropriate person or body* means:
 - (a) a court of record, a judge of such a court or a person constituting such a court, or

- (b) the Victims Compensation Tribunal, or
- (c) a coroner, or
- (d) a Clerk of a Local Court, a Registrar of the Children's Court, a Registrar or assistant Registrar of the District Court, a Registrar or Deputy Registrar of the Supreme Court or the Registrar of the Court of Criminal Appeal, or
- (e) a person prescribed by the regulations for the purposes of this definition.

Explanatory note

The proposed amendment has the effect of extending the list of persons by whom an order requiring the attendance of a detainee can be made to include certain court officers and other persons to be prescribed by the regulations. The list is co-extensive with the list of persons by whom an analogous order will be able to be made under the *Prisons Act 1952*.

1.2 Coroners Act 1980 No 27

[1] Section 4A State Coroners and Deputy State Coroners

Omit "The *Public Service Act 1979*" from section 4A (9).
Insert instead "The *Public Sector Management Act 1988*".

Explanatory note

Item [1] updates an obsolete reference.

[2] Section 15 Inquiries into fires and explosions

Omit section 15 (3) (a). Insert instead:

- (a) in the case of a fire or explosion occurring within a fire district within the meaning of the *Fire Brigades Act 1989*, by New South Wales Fire Brigades, or

Explanatory note

Item [2] updates an obsolete reference.

[3] Section 44 Power of coroner to clear court and prohibit publication of matter relating to inquest or inquiry

Insert “(or any specified part of the proceedings)” after “proceedings” in section 44 (2).

Explanatory note

Section 44 (2) enables a coroner to prohibit the publication of any report of proceedings on an inquest in circumstances in which there is a suspicion of suicide. Item [3] allows the prohibition to relate to a specified part of the proceedings only.

[4] Section 44 (2A)–(2C)

Insert after section 44 (2):

(2A) An order under subsection (2) may also prohibit the publication of any matter (including the publication of any photograph or other pictorial representation) that identifies any particular person:

- (a) as being a person whose death or suspected death may have been self inflicted, or
- (b) as being a relative of a person whose death or suspected death may have been self inflicted.

(2B) For the purposes of subsection (2A) (b), the following persons are relatives of a person whose death or suspected death may have been self inflicted:

- (a) the spouse of that person, a parent of that person, a person who stands in loco parentis to that person, a guardian of that person or a child of that person,
- (b) a person who, at the time of the death or suspected death, was living with that person as her husband or his wife,
- (c) a brother or sister of that person.

(2C) To the extent to which an order under subsection (2) prohibits the publication of any matter referred to in subsection (2A), the order continues to have effect after the coroner has made his or her findings, or after the jury has brought in its verdict, but only if the order expressly so provides.

Explanatory note

Item [4] inserts provisions that ensure that the coroner's power to prohibit the reporting of proceedings of suspected suicides extends to the publication of pictorial and other matter that has a tendency to identify a victim or a member of a victim's close family.

1.3 District Court Act 1973 No 9

[1] Section 18E Secretary to the Rule Committee

Insert “, including the office of registrar” after “Public Service” in section 18E (3).

Explanatory note

Item [1] makes it clear that the Registrar of the District Court is eligible to be appointed as Secretary to the District Court Rule Committee.

[2] Section 18K

Insert after section 18J:

18K Temporary appointment of registrars and assistant registrars

- (1) The Minister may, by order in writing, appoint a person to act in the office of registrar or assistant registrar during:
 - (a) an absence from duty of the registrar or assistant registrar, or
 - (b) a vacancy of not more than 6 months' duration in the office of the registrar or assistant registrar.
- (2) The Minister may delegate to the Director-General of the Attorney General's Department the Minister's power of appointment under this section.

- (3) While acting in the office of registrar or assistant registrar, a person so appointed has and may exercise all the functions of that office.
- (4) Any act, matter or thing done by a person while purporting to exercise a function conferred by this section is not ineffective or unlawful by reason only that either of the circumstances referred to in subsection (1) (a) or (b) did not exist when the act, matter or thing was done.
- (5) Any act, matter or thing done by a person while acting in the office of registrar or assistant registrar is taken to have been done by the registrar or assistant registrar, as the case requires.
- (6) This section does not apply to an office that is held by a Clerk of a Local Court.

Explanatory note

Item [2] confers on the Minister administering the Act a power to appoint an acting registrar or acting assistant registrar on a temporary basis. The provision reflects section 10 of the *Local Courts Act 1982* with respect to the appointment of acting Clerks of a Local Court.

[3] Section 127 Right of appeal to Supreme Court

Omit "decision of a Judge" from section 127 (1).
Insert instead "Judge's judgment or order in an action".

[4] Section 148E Liability of legal practitioners for clients' costs in certain cases

Omit "solicitor" and "solicitor's" wherever occurring.
Insert instead "legal practitioner" and "legal practitioner's".

Explanatory note

Item [4] updates obsolete references.

1.4 Judges' Pensions Act 1953 No 41

[1] Section 5 Pension for judge who retires on account of ill-health

Insert "or within the period of 3 months after that appointment," after "appointment as a judge," in section 5 (2) (b).

Explanatory note

Section 5 deals with the entitlement to a pension that arises with respect to a judge who retires as a result of permanent disability or infirmity. That section requires a certificate of good health to have been given in relation to the judge within 3 months before his or her appointment. Item [1] allows the certificate to have been given within 3 months after the appointment.

[2] Section 5 (5)

Insert after section 5 (4):

- (5) This section, as amended by the provisions of Schedule 1.4 [1] to the *Courts Legislation Amendment Act 1996*, applies to a retired judge who was appointed as a judge before the commencement of those provisions in the same way as it applies to one who was appointed after that commencement, and so applies as if subsection (2) (b) were amended by omitting the words "3 months", where secondly occurring, and by inserting instead the words "12 months".

Explanatory note

Item [2] applies the amendments made by item [1] to judges who are currently holding office.

1.5 Justices Act 1902 No 27

[1] Section 41A Payment of costs by informant

Insert "(or, if the informant so elects, directly to the defendant)" after "to the defendant" in section 41A (1).

Explanatory note

Item [1] allows an informant whom a court has directed to pay the defendant's costs to pay those costs directly to the defendant rather than, as is presently the case, to the court.

[2] Section 41A (2C)

Insert after section 41A (2B):

- (2C) For the purposes of subsection (2B), an officer of the Royal Society for the Prevention of Cruelty to Animals, or of any other charitable organisation under the *Prevention of Cruelty to Animals Act 1979*, is taken not to be acting in a private capacity if the officer acts as the informant in any proceedings under that Act.

Explanatory note

Section 41 allows a Justice to order an informant to pay the defendant's costs in certain circumstances, such as when the defendant is discharged. Except where the informant is acting in a private capacity, an award of costs may only be made if the Justice is satisfied of certain matters. Item [2] makes it clear that an officer of the RSPCA or of another charitable organisation under the *Prevention of Cruelty to Animals Act 1979* is taken not to be acting in a private capacity when acting as informant in proceedings under that Act.

[3] Section 80AA Absent defendant not to be imprisoned

Insert "or authorise an authorised justice to issue" after "issue" in section 80AA (2).

Explanatory note

Section 80AA (2) empowers a Justice who convicts a defendant in the defendant's absence to issue an arrest warrant so that the defendant can be brought before the Justice for sentencing. Item [3] empowers the Justice to authorise an authorised justice (to be defined as referred to in item [4]) to issue an arrest warrant in his or her stead.

[4] Section 80AA (3), (4)

Insert after section 80AA (2):

- (3) The powers conferred by subsection (2) may be exercised only by a Justice or Justices constituting a Local Court. This subsection does not apply in the case of the issue of a warrant of apprehension by an authorised justice where the issue of the warrant by an authorised justice is authorised under subsection (2).
- (4) In this section, *authorised justice* has the meaning given to that expression by section 86A.

Explanatory note

Item [4] (to the extent to which it inserts proposed subsection (3)) restricts the power to issue, or authorise the issue of, an arrest warrant under section 80AA (2) to a Justice or Justices constituting a Local Court.

Item [4] (to the extent to which it inserts proposed subsection (4)) defines the expression *authorised justice* for the purposes of section 80AA. The definition is linked to a definition in section 86A, which defines *authorised justice* to mean a Magistrate, a Children's Magistrate, a Justice employed in the Local Courts Administration, Attorney General's Department, or a Justice employed in an office prescribed by the regulations.

[5] Section 81 Payment of costs by defendant, or by prosecutor or complainant

Insert "(or, if the prosecutor or complainant so elects, directly to the defendant)" after "to the defendant" in section 81 (1).

Explanatory note

Item [5] allows an informant or complainant whom a court has directed to pay the defendant's costs to pay those costs directly to the defendant rather than, as is presently the case, to the court.

[6] Section 81 (6)

Insert after section 81 (5):

- (6) For the purposes of subsection (5), an officer of the Royal Society for the Prevention of Cruelty to Animals, or of any other charitable organisation under the *Prevention of Cruelty to Animals Act 1979*, is taken not to be acting in a private capacity if the officer acts as the informant or complainant in any proceedings under that Act.

Explanatory note

Section 81 allows a Justice to order an informant or complainant to pay the defendant's costs in certain circumstances, such as when the defendant is discharged. Except where the informant or complainant is acting in a private capacity, an award of costs may only be made if the Justice is satisfied of certain matters. Item [6] makes it clear that an officer of the RSPCA or of another charitable organisation under the *Prevention of Cruelty to Animals Act 1979* is taken not to be acting in a private capacity when acting as informant or complainant in proceedings under that Act.

[7] Section 87 Warrant of commitment for non-payment

Insert after section 87 (1A):

- (1B) A single warrant may be issued in respect of more than one conviction or order.

Explanatory note

Section 87 enables a Justice to commit a defendant to prison for failure to pay a fine, penalty or other amount of money in compliance with the requirements of a conviction or order. Item [7] makes it clear that a single warrant may be issued in respect of more than one conviction or order.

[8] Section 88 Warrant of commitment in other cases

Insert after section 88 (3):

- (4) A single warrant may be issued in respect of more than one conviction or order.

Explanatory note

Section 88 enables a Justice to commit a defendant to prison to serve a sentence of imprisonment or for failure to comply with the requirements of a conviction or order (other than a requirement to pay a fine, penalty or other amount of money). Item [8] makes it clear that a single warrant may be issued in respect of more than one conviction or order.

[9] Section 100XA Withdrawal of enforcement orders

Insert after section 100XA (3):

- (4) An authorised Justice who withdraws an enforcement order under this section must cause notice of that fact to be given to the Clerk of the Local Court to whom the amount specified in the order was payable.
- (5) As soon as practicable after receiving such a notice, a Clerk of a Local Court to whom an amount has been paid under the relevant enforcement order must refund that amount to the person by whom it was paid.

Explanatory note

Payment of an amount that remains unpaid under a penalty notice is enforced by means of an enforcement order. Section 100XA allows an enforcement order to be withdrawn. Item [9] provides for the refund of any money that has been paid under an enforcement order that is subsequently withdrawn.

[10] Section 125 Powers of court appealed to

Insert after section 125 (4):

- (5) For the purposes of subsection (4), an officer of the Royal Society for the Prevention of Cruelty to Animals, or of any other charitable organisation under the *Prevention of Cruelty to Animals Act 1979*, is taken not to be acting in a private capacity if the officer acts as the respondent in any appeal arising from proceedings under that Act.

Explanatory note

Section 125 allows a Justice to order the prosecution to pay an appellant's costs in certain circumstances, such as when the appeal is successful. Except where the prosecution is acting in a private capacity, an award of costs may only be made if the Justice is satisfied of certain matters. Item [10] makes it clear that an officer of the RSPCA or of any other charitable organisation under the *Prevention of Cruelty to Animals Act 1979* is taken not to be acting in a private capacity when acting as prosecutor in proceedings under that Act.

1.6 Local Courts (Civil Claims) Act 1970 No 11

[1] Section 4A

Insert after section 4:

4A Notes

Notes in the text of this Act are merely explanatory and do not form part of this Act.

Explanatory note

Item [1] is consequential on the fact that item [3] includes an explanatory note at the end of proposed section 12 (9).

[2] Section 8AA

Insert after section 8:

8AA Temporary appointment of registrars and deputy registrars

- (1) The Minister may, by order in writing, appoint a person to act in the office of registrar or deputy registrar during:
 - (a) an absence from duty of the registrar or deputy registrar, or
 - (b) a vacancy of not more than 6 months' duration in the office of the registrar or deputy registrar.
- (2) The Minister may delegate to the Director-General of the Attorney General's Department the Minister's power of appointment under this section.
- (3) While acting in the office of registrar or deputy registrar, a person so appointed has and may exercise all the functions of that office.
- (4) Any act, matter or thing done by a person while purporting to exercise a function conferred by this section is not ineffective or unlawful by reason only that either of the circumstances referred to in subsection (1) (a) or (b) did not exist when the act, matter or thing was done.
- (5) Any act, matter or thing done by a person while acting in the office of registrar or deputy registrar is taken to have been done by the registrar or deputy registrar, as the case requires.
- (6) This section does not apply to an office that is held by a Clerk of a Local Court.

Explanatory note

Item [2] confers on the Minister administering the Act a power to appoint an acting registrar or acting deputy registrar on a temporary basis. The provision reflects section 10 of the *Local Courts Act 1982* with respect to the appointment of acting Clerks of a Local Court.

[3] Section 12 Jurisdiction of Court

Insert after section 12 (8):

- (9) In this section, a reference to an action extends to an action referred to in section 68 of the *Fair Trading Act 1987*.

Note. The effect of subsection (9) is to confer jurisdiction on a Local Court in respect of actions for damages referred to in section 68 of the *Fair Trading Act 1987*. That jurisdiction is similar to the jurisdiction conferred on a Local Court by section 86 of the *Trade Practices Act 1974* of the Commonwealth in respect of actions for damages referred to in section 82 of that Act.

Explanatory note

Item [3] makes it clear that a Local Court has jurisdiction to deal with any action for damages referred to in section 68 of the *Fair Trading Act 1987*.

1.7 Prisons Act 1952 No 9

Section 44

Omit the section. Insert instead:

44 Attendance of prisoners before courts and court officers

- (1) If an appropriate person or body is satisfied that it is necessary that a prisoner should attend before it, him or her for the purposes of any legal proceeding, inquest or inquiry then pending and that the absence of the prisoner may prejudice the rights of a party, the person or body may make an order directing the superintendent of the prison in which the prisoner is imprisoned to cause the prisoner to be produced at the court or other place at which the proceeding, inquest or inquiry is being held.
- (2) Such an order is sufficient authority for the superintendent to cause the prisoner to be produced in accordance with the terms of the order.
- (3) A prisoner produced in accordance with such an order is taken to be in lawful custody while in the actual custody of the governor of the prison, an officer or a police officer.

- (4) It is the duty of the governor, officer or police officer having actual custody of the prisoner to return the prisoner to the prison from which the prisoner was produced as soon as the appropriate person or body permits.
- (5) In this section, *appropriate person or body* means:
- (a) a court of record, a judge of such a court or a person constituting such a court, or
 - (b) the Victims Compensation Tribunal, or
 - (c) a coroner, or
 - (d) a Clerk of a Local Court, a Registrar of the Children's Court, a Registrar or assistant Registrar of the District Court, a Registrar or Deputy Registrar of the Supreme Court or the Registrar of the Court of Criminal Appeal, or
 - (e) a person prescribed by the regulations for the purposes of this definition.

Explanatory note

The amendment has the effect of extending the list of persons by whom an order requiring the attendance of a prisoner can be made to include the Registrar of the Children's Court. The list is co-extensive with the list of persons by whom an analogous order will be able to be made under the *Children (Detention Centres) Act 1987*.

1.8 Supreme Court Act 1970 No 52

[1] Section 17 Criminal proceedings

Insert “, 101 (5)” after “72” in section 17 (3).

Explanatory note

Item [1] is consequential on item [10]. It amends section 17 so as to ensure that appeals from decisions of the Criminal Division of the Supreme Court with respect to contempt matters are heard by the Court of Appeal.

[2] Section 36 Additional Judges of Appeal

Omit "During any absence from duty of any Judge of Appeal, the Governor" from section 36 (1).

Insert instead "The Governor".

Explanatory note

Additional Judges of Appeal, as opposed to acting Judges of Appeal, can only be appointed if an existing Judge of Appeal is absent from duty. Item [2] removes this restriction. The 6 month maximum period for which additional Judges of Appeal can be appointed remains unchanged.

[3] Section 45 Appeals

Insert after section 45 (2):

- (3) The decision of the Court of Appeal on an appeal heard before 3 or more Judges of Appeal is not affected merely because one or more of the Judges dies before the decision on the appeal is given, so long as a majority of the Judges before whom the hearing of the appeal commenced are in agreement as to the Court's decision.
- (4) If, in dismissing an appeal, the Court of Appeal is of the unanimous opinion that the appeal does not raise any question of general principle, it may, in accordance with the rules, give reasons for its decision in short form.

Explanatory note

Item [3] (in so far as it inserts a new section 45 (3)) allows the Court of Appeal to determine a matter even if one or more of the Judges before whom the matter was heard dies before a decision is given.

Item [3] (in so far as it inserts a new section 45 (4)) allows the Court of Appeal to dismiss an appeal by means of a "short form" judgment if it is of the unanimous opinion that the appeal does not raise any question of general principle.

[4] Section 48 Assignment to the Court of Appeal

Omit section 48 (2) (i). Insert instead:

- (i) for the punishment of contempt of the Court, but only if the contempt consists of:
 - (i) contempt in the face of, or in the hearing of, the Court of Appeal, or

- (ii) disobedience of a judgment or order of the Court of Appeal, or
 - (iii) breach of an undertaking given to the Court of Appeal,
- including proceedings in which the Court of Appeal is constituted by a master,

Explanatory note

Proceedings for the punishment of contempt of the Supreme Court or of any other court are currently assigned to the Court of Appeal, subject to a limited right of the Court in a Division to deal with limited aspects of contempt. Item [4] amends section 48 so as to reverse the current position, assigning to the Court of Appeal proceedings for limited aspects of contempt only. Other proceedings are to be assigned to the Court in its various Divisions.

[5] Section 48 (4)

Omit the subsection.

Explanatory note

Item [5] is consequential on the amendment made by item [4].

[6] Section 53 Assignment of business

Insert after section 53 (3E):

- (3F) Subject to the rules, there are assigned to each Division proceedings for the punishment of contempt of the Court, but only if the contempt consists of:
 - (a) contempt in the face of, or in the hearing of, the Court in that Division, or
 - (b) disobedience of a judgment or order of the Court in that Division, or
 - (c) breach of an undertaking given to the Court in that Division,

including proceedings in which the Court is constituted by a master.

Explanatory note

Item [6] provides for the assignment of proceedings for limited aspects of contempt to each of the Divisions of the Supreme Court. By virtue of section 53 (4) of the Act, all other matters relating to contempt are assigned to the Common Law Division of the Supreme Court.

[7] Section 53 (5)

Insert after section 53 (4):

- (5) Without limiting subsection (4), the proceedings assigned to the Common Law Division include proceedings for contempt of the Court or of any other Court (other than proceedings referred to in section 48 (2) (i) or in subsection (3F) of this section).

Explanatory note

Item [7] amends section 53 so as to ensure that all proceedings for contempt that are not assigned to the Court of Appeal (see item [4]) or to some other Division of the Supreme Court (see item [6]) are assigned to the Common Law Division.

[8] Section 69 Proceedings in lieu of writs

Insert after section 69 (2):

- (3) It is declared that the jurisdiction of the Court to grant any relief or remedy in the nature of a writ of certiorari includes jurisdiction to quash the ultimate determination of a court or tribunal in any proceedings if that determination has been made on the basis of an error of law that appears on the face of the record of the proceedings.
- (4) For the purposes of subsection (3), the face of the record includes the reasons expressed by the court or tribunal for its ultimate determination.
- (5) Subsections (3) and (4) do not affect the operation of any legislative provision to the extent to which the provision is, according to common law principles and disregarding those subsections, effective to prevent the Court from exercising its powers to quash or otherwise review a decision.

Explanatory note

The High Court decision of *Craig v State of South Australia* (1995) 184 CLR 163 is based on a construction of the phrase "error of law on the face of the record" that is narrower than the construction previously given to that phrase by the New South Wales Court of Appeal. The effect of the new construction is to limit the jurisdiction of the Supreme Court to grant any relief or remedy by way of an order in the nature of a writ of certiorari. The writ of certiorari is the means by which a superior court can supervise inferior courts and tribunals in the exercise of their

jurisdiction and, in particular, can grant relief where jurisdiction has been wrongly exercised. Item [8] (in so far as it inserts a new section 69 (3) and (4)) restores the Supreme Court's jurisdiction to what it was before *Craig v State of South Australia* by making it clear that the reasons for the ultimate determination of a court or tribunal (its "reasons for decision") form part of the face of the record of proceedings of the court or tribunal.

Item [8] (in so far as it inserts a new section 69 (5)) preserves the operation of other legislative provisions (generally known as "privative provisions") that purport to exclude or confine the Supreme Court's power of review.

[9] Section 94 Interest up to judgment

Omit section 94 (2) (b). Insert instead:

- (b) authorise the giving of interest on any debt in respect of any period for which interest is payable as of right, whether by virtue of an agreement or otherwise, or

Explanatory note

Section 94 (2) (b) currently prohibits the Supreme Court from granting interest on a debt if the agreement out of which the debt arises itself provides for the payment of interest. Item [9] restricts that prohibition to those periods for which interest is payable, whether under such an agreement or otherwise, so as to allow the Supreme Court to grant interest for any period in respect of which interest is not payable.

[10] Section 101 Appeal in proceedings before the Court

Insert after section 101 (4):

- (5) An appeal lies to the Court of Appeal from any judgment or order of the Court in a Division in any proceedings that relate to contempt (whether civil or criminal) of the Court or of any other court.
- (6) Subsection (5) does not confer on any person a right to appeal from a judgment or order of the Court in a Division in any proceedings that relate to criminal contempt, being a judgment or order by which the person charged with contempt is found not to have committed contempt.

Explanatory note

Item [10] amends section 101 to confer a right of appeal to the Court of Appeal from a judgment or order of the Supreme Court in a Division in proceedings that relate to contempt, otherwise than where the proceedings relate to criminal contempt and the judgment is that the person charged with contempt has not committed contempt.

[11] Section 101A

Insert after section 101:

101A Question of law concerning criminal contempt may be submitted to Court of Appeal

- (1) At any time after the conclusion of contempt proceedings in which the alleged contemnor is found not to have committed contempt, the Attorney General may submit to the Court of Appeal any question of law arising from or in connection with the proceedings.
- (2) The Attorney General must submit with the question to be determined a statement of the circumstances out of which the question arose, and thereafter must furnish such further statement as the Court of Appeal may require.
- (3) The Court of Appeal has jurisdiction to hear and determine any question submitted to it under this section.
- (4) The determination of the Court of Appeal of the question submitted does not in any way affect or invalidate any finding or decision given in the contempt proceedings.
- (5) The alleged contemnor is entitled to be heard on the question submitted and, if it appears that the alleged contemnor does not propose to be represented, the Attorney General is to instruct counsel to argue the question before the Court of Appeal on behalf of the person.
- (6) The reasonable costs of legal representation of the alleged contemnor in proceedings under this section are to be paid by the Crown.

- (7) Proceedings under this section are to be held in camera, except that a legal practitioner may be present at the proceedings for the purpose of reporting the case for any lawful purpose of the Council of Law Reporting for New South Wales.
- (8) A person:
- (a) must not publish any report of any submission made under subsection (1), and
 - (b) must not publish any report of proceedings under this section so as to disclose the name or identity of the alleged contemnor.
- (9) Any publication in contravention of subsection (8) is punishable as contempt of the Court.
- (10) In this section:
- alleged contemnor* means the person charged with contempt in contempt proceedings.
- contempt* means contempt of the Court or of any other court.
- contempt proceedings* means proceedings before the Court in a Division for the punishment of contempt.
- (11) This section applies to criminal contempt only, and does not apply to civil contempt.

Explanatory note

Item [11] confers on the Attorney General a power to submit to the Court of Appeal any question of law arising out of proceedings of the Supreme Court in a Division, in relation to criminal contempt, in which the alleged contemnor is found not to have committed contempt. The proposed power is analogous to a power that exists under section 5A (2) of the *Criminal Appeal Act 1912* with respect to questions of law arising out of criminal proceedings in which the accused is acquitted. The proposed section contains similar protections to those contained in section 5A (2). That is, the Court of Appeal's decision does not affect the alleged contemnor, the proceedings before the Court of Appeal are held in camera and reports that could identify the alleged contemnor are prohibited.

[12] Fourth Schedule Savings and transitional provisions

Insert after clause 2:

3 Courts Legislation Amendment Act 1996

- (1) Proceedings commenced in the Court before the commencement of items [4], [5], [6], [7] and [10] of Schedule 1.8 to the *Courts Legislation Amendment Act 1996* are unaffected by the amendments to this Act that are made by those items.
- (2) Proceedings commenced in the Court before the commencement of item [8] of Schedule 1.8 to the *Courts Legislation Amendment Act 1996* are unaffected by the amendment to this Act that is made by that item.

Explanatory note

Item [12] inserts a transitional provision into the Fourth Schedule to ensure that the amendments made by the proposed Act in relation to the assignment of proceedings for the punishment of contempt of court, and in relation to the Supreme Court's powers to make an order in the nature of a writ of certiorari, do not affect proceedings commenced before those amendments take effect.

[Minister's second reading speech made in—
Legislative Council on 17 October 1996
Legislative Assembly on 21 November 1996]



New South Wales

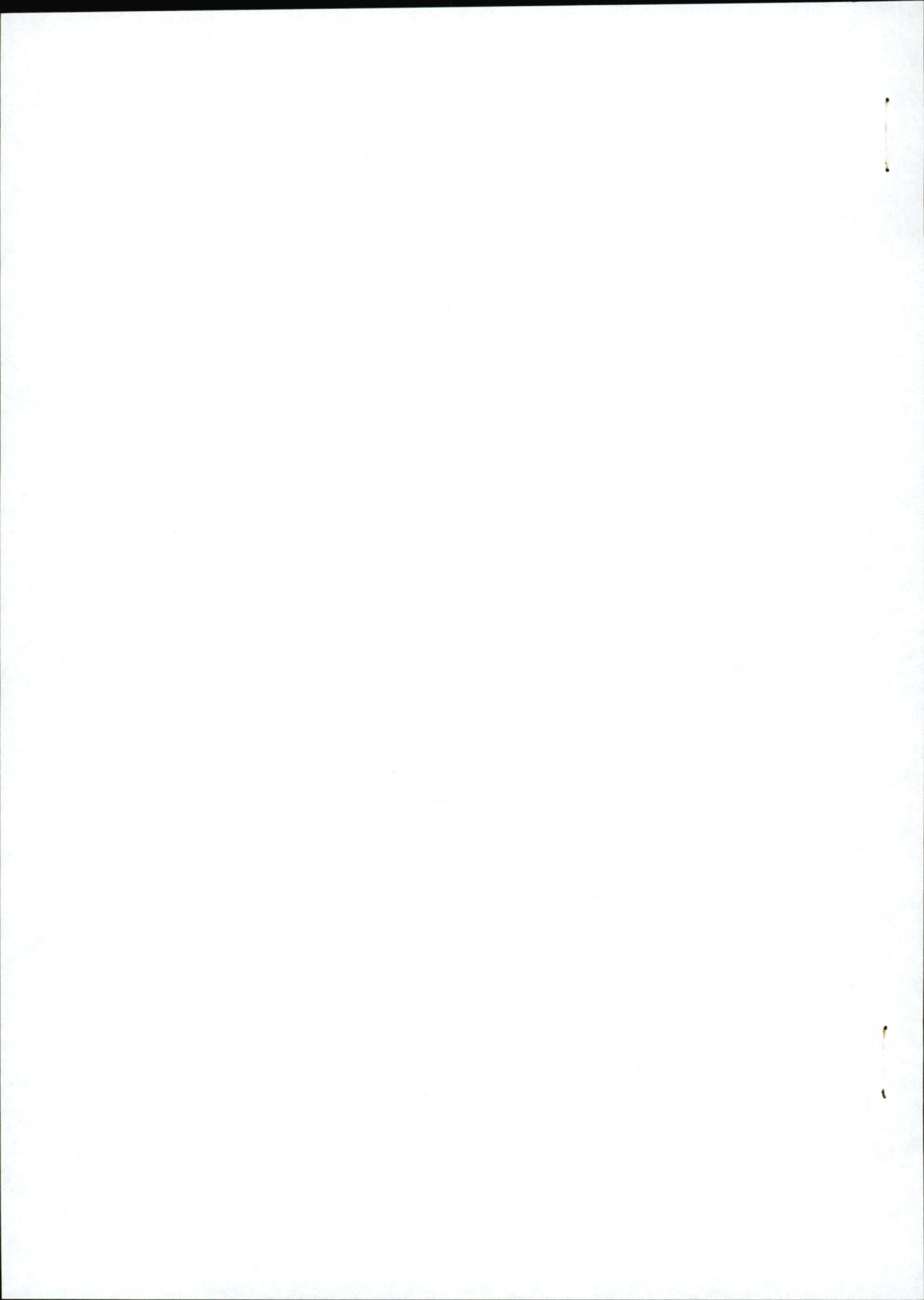
Courts Legislation Amendment Act 1997 No 47

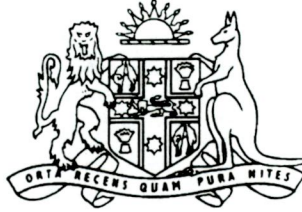
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New South Wales

Courts Legislation Amendment Act 1997 No 47

Act No 47, 1997

An Act to make miscellaneous amendments to the *Compensation Court Act 1984*, the *Coroners Act 1980*, the *District Court Act 1973*, the *Land and Environment Court Act 1979* and the *Supreme Court Act 1970*. [Assented to 2 July 1997]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Courts Legislation Amendment Act 1997*.

2 Commencement

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

3 Amendment of Compensation Court Act 1984 No 89

The *Compensation Court Act 1984* is amended as set out in Schedule 1.

4 Amendment of Coroners Act 1980 No 27

The *Coroners Act 1980* is amended as set out in Schedule 2.

5 Amendment of District Court Act 1973 No 9

The *District Court Act 1973* is amended as set out in Schedule 3.

6 Amendment of Land and Environment Court Act 1979 No 204

The *Land and Environment Court Act 1979* is amended as set out in Schedule 4.

7 Amendment of Supreme Court Act 1970 No 52

The *Supreme Court Act 1970* is amended as set out in Schedule 5.

**Schedule 1 Amendment of Compensation Court
Act 1984**

(Section 3)

[1] Section 39 Costs of operation of the Court

Omit "May in each year".

Insert instead "December in each year (or, if some other month is prescribed by the regulations, that other month)".

[2] Section 39

Omit "for the next following year".

Insert instead "for the year commencing on the next following 1 July".

Schedule 2 Amendment of Coroners Act 1980

(Section 4)

Section 6 Age qualification for coroners and assistant coroners

Insert at the end of section 6:

- (2) However, a person of or above the age of 70 years may be appointed as a coroner if the Minister recommends to the Governor that the appointment of that person as a coroner is appropriate. In that case:
 - (a) the appointment is to be made for such term (not exceeding 3 years) as is specified in the instrument of appointment of that coroner, and
 - (b) section 6A does not apply to that coroner.
- (3) A coroner appointed under subsection (2) is eligible for reappointment under that subsection from time to time.

Schedule 3 Amendment of District Court Act 1973

(Section 5)

[1] Section 126 Order of the Court for new trial

Insert at the end of section 126 (1) (b):

, or

- (c) the action is tried without a jury and a party to the action:
 - (i) in the presence of the other party and on the day on which judgment in the action is given, or
 - (ii) in the absence of the other party but after such notice as the Court thinks reasonable has been given to the other party and, in any case, within 21 days after judgment in the action is given,

makes application for the order.

[2] Section 127 Right of appeal to Supreme Court

Omit section 127 (2) (c). Insert instead:

- (c) an appeal from a final judgment or order, being a judgment or order for the payment of a sum of money, where the appeal seeks a variation of that sum and the amount by which that sum is sought to be varied is less than \$100,000 or, if some other amount is prescribed by the regulations, that other amount.

[3] Section 183B

Insert after section 183A:

**183B Provisions consequent on enactment of Courts
Legislation Amendment Act 1997**

- (1) Section 126, as amended by the *Courts Legislation Amendment Act 1997*, applies to judgments given before the commencement of Schedule 3 [1] to that Act in the same way as it applies to judgments given after that commencement.
- (2) Section 127, as amended by the *Courts Legislation Amendment Act 1997*, applies to judgments and orders given or made before the commencement of Schedule 3 [2] to that Act in the same way as it applies to judgments and orders given or made after that commencement.

Schedule 4 Amendment of Land and Environment Court Act 1979

(Section 6)

[1] Section 52 Judge may order payment of costs

Omit "such costs as to the Judge seem just and reasonable".
Insert instead "costs of such amount as are specified in the conviction or order or, if the conviction or order so directs, as may be determined under subsection (2)".

[2] Section 52 (2)

Omit the subsection. Insert instead:

- (2) The costs payable by a prosecutor or defendant in accordance with a direction under this section are to be determined:
- (a) by agreement between the prosecutor and defendant, or
 - (b) if no such agreement can be reached, in accordance with the regulations.

[3] Section 79

Insert after section 78:

79 Savings, transitional and other provisions

Schedule 3 has effect.

[4] Schedule 3

Insert after Schedule 2:

Schedule 3 Savings, transitional and other provisions

(Section 79)

1 Provisions consequent on enactment of Courts Legislation Amendment Act 1997

Section 52, as amended by the *Courts Legislation Amendment Act 1997*, does not apply to or in respect of any conviction or order arising out of proceedings determined before the commencement of Schedule 4 to that Act.

Schedule 5 Amendment of Supreme Court Act 1970

(Section 7)

[1] Section 46A Certain appeals may be heard by 2 Judges of Appeal

Insert “and to an appeal from an award of compensation made by the Compensation Court” after “person” in section 46A (1).

[2] Section 101 Appeal in proceedings before the Court

Insert at the end of section 101 (2):

- (q) a judgment or order in proceedings of the Court with respect to the taxation or assessment of costs, or
- (r) a final judgment or order in proceedings of the Court, being a judgment or order for the payment of a sum of money, where the appeal seeks a variation of that sum and the amount by which that sum is sought to be varied is less than \$100,000 or, if some other amount is prescribed by the regulations, that other amount.

[3] Fourth Schedule Savings and transitional provisions

Insert after clause 3:

4 Courts Legislation Amendment Act 1997

- (1) Section 46A, as amended by the *Courts Legislation Amendment Act 1997*, applies to awards of compensation made by the Compensation Court before the commencement of Schedule 5 [1] to that Act in the same way as it applies to awards of compensation made after that commencement.

- (2) Section 101, as amended by the *Courts Legislation Amendment Act 1997*, applies to judgments and orders given or made before the commencement of Schedule 5 [2] to that Act in the same way as it applies to judgments and orders given or made after that commencement.

[Minister's second reading speech made in—
Legislative Council on 16 June 1997
Legislative Assembly on 27 June 1997 p.m.]

BY AUTHORITY



New South Wales

Courts Legislation Amendment Bill 1997

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 *Compensation Court Act 1984* so as to require the annual estimates that are forwarded to WorkCover to be prepared in December, or such other month as may be prescribed by the regulations under that Act, instead of in May, and
 - (b) to amend the *Coroners Act 1980* so as to allow a person who is of or above the age of 70 years to be appointed as a coroner for a specified term if the Minister so recommends, and
 - (c) to amend the *District Court Act 1973* so as:
 - (i) to allow the District Court to order an action to be retried not only, as is presently the case, where the action has originally been tried with a jury but also where it has been tried without a jury, and
-

Explanatory note

- (ii) to require leave to be granted by the Supreme Court for an appeal against a final judgment or order of the District Court for the payment of money where the appeal seeks a variation of the sum ordered to be paid and the amount by which the sum is sought to be varied is less than \$100,000 or such other amount as is prescribed by the regulations under that Act, and
- (d) to amend the *Land and Environment Court Act 1979* so as to allow the costs payable by a prosecutor or defendant in respect of a conviction or order arising out of Class 5 proceedings determined by the Land and Environment Court to be determined otherwise than by the Judge by whom the proceedings are determined, and
- (e) to amend the *Supreme Court Act 1970* so as:
 - (i) to enable the Court of Appeal to be constituted by two Judges of Appeal for appeals against awards of compensation by the Compensation Court, and
 - (ii) to require leave to be given by the Court of Appeal for an appeal against a judgment or order of the Supreme Court with respect to the taxation or assessment of costs, and
 - (iii) to require leave to be given by the Court of Appeal for an appeal against a final judgment or order of the Supreme Court for the payment of money where the appeal seeks a variation of the sum ordered to be paid and the amount by which the sum is sought to be varied is less than \$100,000 or such other amount as is prescribed by the regulations under that Act.

Outline of provisions

Clause 1 specifies the name (also called 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.

Clause 3 is a formal provision giving effect to the Schedule of amendments to the *Compensation Court Act 1984*.

Clause 4 is a formal provision giving effect to the Schedule of amendments to the *Coroners Act 1980*.

Clause 5 is a formal provision giving effect to the Schedule of amendments to the *District Court Act 1973*.

Clause 6 is a formal provision giving effect to the Schedule of amendments to the *Land and Environment Court Act 1979*.

Courts Legislation Amendment Bill 1997

Explanatory note

Clause 7 is a formal provision giving effect to the Schedule of amendments to the *Supreme Court Act 1970*.

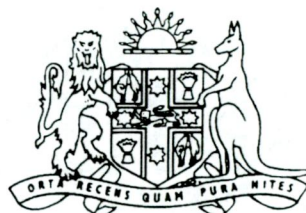
Schedule 1 amends the *Compensation Court Act 1984* so as to give effect to the objects referred to in paragraph (a) above.

Schedule 2 amends the *Coroners Act 1980* so as to give effect to the objects referred to in paragraph (b) above.

Schedule 3 amends the *District Court Act 1973* so as to give effect to the objects referred to in paragraph (c) above.

Schedule 4 amends the *Land and Environment Court Act 1979* so as to give effect to the objects referred to in paragraph (d) above.

Schedule 5 amends the *Supreme Court Act 1970* so as to give effect to the objects referred to in paragraph (e) above.



New South Wales

Courts Legislation Amendment Bill 1997

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New South Wales

Courts Legislation Amendment Bill 1997

No. , 1997

A Bill for

An Act to make miscellaneous amendments to the *Compensation Court Act 1984*, the *Coroners Act 1980*, the *District Court Act 1973*, the *Land and Environment Court Act 1979* and the *Supreme Court Act 1970*.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Courts Legislation Amendment Act 1997*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation. 5

3 Amendment of Compensation Court Act 1984 No 89

The *Compensation Court Act 1984* is amended as set out in Schedule 1.

4 Amendment of Coroners Act 1980 No 27 10

The *Coroners Act 1980* is amended as set out in Schedule 2.

5 Amendment of District Court Act 1973 No 9

The *District Court Act 1973* is amended as set out in Schedule 3.

6 Amendment of Land and Environment Court Act 1979 No 204

The *Land and Environment Court Act 1979* is amended as set out in Schedule 4. 15

7 Amendment of Supreme Court Act 1970 No 52

The *Supreme Court Act 1970* is amended as set out in Schedule 5.

**Schedule 1 Amendment of Compensation Court
Act 1984**

(Section 3)

[1] Section 39 Costs of operation of the Court

Omit "May in each year".

5

Insert instead "December in each year (or, if some other month is prescribed by the regulations, that other month)".

[2] Section 39

Omit "for the next following year".

Insert instead "for the year commencing on the next following 1
July".

10

Schedule 2 Amendment of Coroners Act 1980

(Section 4)

Section 6 Age qualification for coroners and assistant coroners

Insert at the end of section 6:

- (2) However, a person of or above the age of 70 years may be appointed as a coroner if the Minister recommends to the Governor that the appointment of that person as a coroner is appropriate. In that case:
 - (a) the appointment is to be made for such term (not exceeding 3 years) as is specified in the instrument of appointment of that coroner, and
 - (b) section 6A does not apply to that coroner.
- (3) A coroner appointed under subsection (2) is eligible for reappointment under that subsection from time to time.

Schedule 3 Amendment of District Court Act 1973

(Section 5)

[1] Section 126 Order of the Court for new trial

Insert at the end of section 126 (1) (b):

, or

5

(c) the action is tried without a jury and a party to the action:

(i) in the presence of the other party and on the day on which judgment in the action is given, or

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(ii) in the absence of the other party but after such notice as the Court thinks reasonable has been given to the other party and, in any case, within 21 days after judgment in the action is given,

15

makes application for the order.

[2] Section 127 Right of appeal to Supreme Court

Omit section 127 (2) (c). Insert instead:

(c) an appeal from a final judgment or order, being a judgment or order for the payment of a sum of money, where the appeal seeks a variation of that sum and the amount by which that sum is sought to be varied is less than \$100,000 or, if some other amount is prescribed by the regulations, that other amount.

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[3] Section 183B

Insert after section 183A:

**183B Provisions consequent on enactment of Courts
Legislation Amendment Act 1997**

- (1) Section 126, as amended by the *Courts Legislation Amendment Act 1997*, applies to judgments given before the commencement of Schedule 3 [1] to that Act in the same way as it applies to judgments given after that commencement. 5
- (2) Section 127, as amended by the *Courts Legislation Amendment Act 1997*, applies to judgments and orders given or made before the commencement of Schedule 3 [2] to that Act in the same way as it applies to judgments and orders given or made after that commencement. 10

Schedule 4 Amendment of Land and Environment Court Act 1979

(Section 6)

[1] Section 52 Judge may order payment of costs

Omit "such costs as to the Judge seem just and reasonable". 5

Insert instead "costs of such amount as are specified in the conviction or order or, if the conviction or order so directs, as may be determined under subsection (2)".

[2] Section 52 (2)

Omit the subsection. Insert instead: 10

(2) The costs payable by a prosecutor or defendant in accordance with a direction under this section are to be determined:

(a) by agreement between the prosecutor and defendant, or 15

(b) if no such agreement can be reached, in accordance with the regulations.

[3] Section 79

Insert after section 78:

79 Savings, transitional and other provisions 20

Schedule 3 has effect.

Courts Legislation Amendment Bill 1997

Schedule 4 Amendment of Land and Environment Court Act 1979

[4] Schedule 3

Insert after Schedule 2:

Schedule 3 Savings, transitional and other provisions

(Section 79) 5

1 Provisions consequent on enactment of Courts Legislation Amendment Act 1997

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Schedule 5 Amendment of Supreme Court Act 1970

(Section 7)

[1] Section 46A Certain appeals may be heard by 2 Judges of Appeal 5

Insert "and to an appeal from an award of compensation made by the Compensation Court" after "person" in section 46A (1).

[2] Section 101 Appeal in proceedings before the Court

Insert at the end of section 101 (2):

(q) a judgment or order in proceedings of the Court with respect to the taxation or assessment of costs, or 10

(r) a final judgment or order in proceedings of the Court, being a judgment or order for the payment of a sum of money, where the appeal seeks a variation of that sum and the amount by which that sum is sought to be varied is less than \$100,000 or, if some other amount is prescribed by the regulations, that other amount. 15

[3] Fourth Schedule Savings and transitional provisions 20

Insert after clause 3:

4 Courts Legislation Amendment Act 1997

(1) Section 46A, as amended by the *Courts Legislation Amendment Act 1997*, applies to awards of compensation made by the Compensation Court before the commencement of Schedule 5 [1] to that Act in the same way as it applies to awards of compensation made after that commencement. 25

Courts Legislation Amendment Bill 1997

Schedule 5 Amendment of Supreme Court Act 1970

- (2) Section 101, as amended by the *Courts Legislation Amendment Act 1997*, applies to judgments and orders given or made before the commencement of Schedule 5 [2] to that Act in the same way as it applies to judgments and orders given or made after that commencement.

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