New South Wales

Judicial Officers Amendment Act 2009 No 117

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Act No 117, 2009

An Act to amend the *Judicial Officers Act 1986* in relation to judicial officers exchange arrangements and incompatibility of office. [Assented to 14 December 2009]

The Legislature of New South Wales enacts:

1   Name of Act

This Act is the *Judicial Officers Amendment Act 2009*.

2   Commencement

This Act commences on the date of assent to this Act.

Schedule 1   Amendment of Judicial Officers Act 1986 No 100

[1]   Section 3 Definitions

Insert "(except in Part 7A)" after "means" in the definition of *judicial officer* in section 3 (1).

[2]   Section 43A Judicial office not affected by appointment to act in another judicial office

Omit the section.

[3]   Part 7A

Insert after Part 7:

Part 7A Appointment of judicial officers to other positions

Division 1   Judicial officers exchange

43B   Definitions

In this Division:

corresponding court, in relation to a NSW court, means a court of another jurisdiction listed in Column 2 of Schedule 4A opposite the NSW court listed in Column 1 of Schedule 4A.

court includes tribunal.

judicial exchange arrangement means an arrangement under section 43C.

judicial officer means a judge, magistrate or other person who, whether alone or together with others, constitutes a court, but does not include a lay member of a court.

NSW court means a court of this jurisdiction listed in Column 1 of Schedule 4A.

participating jurisdiction means the Commonwealth, another State, a Territory or another country if under the law of that jurisdiction a judicial exchange arrangement may be entered into with the Attorney General of this jurisdiction.

this jurisdiction means New South Wales.

43C   Establishment of judicial exchange arrangements

(1) The Attorney General of this jurisdiction may enter into an arrangement with the Attorney General of a participating jurisdiction for the temporary transfer of judicial officers between NSW courts and corresponding courts.

(2) An arrangement under this section cannot provide for the transfer of judicial officers to a federal court of the Commonwealth.

(3) Without limiting subsection (1), an arrangement under this section:

(a) may require transfers to a court to be subject to the prior approval of either or both of the following:

(i) the Attorney General of this jurisdiction,

(ii) the Attorney General of the participating jurisdiction, and

(b) may establish the manner and form in which a transfer to a court is to be made or terminated, and

(c) may determine the rank, title, status and precedence of a transferred judicial officer.

43D   Transfer of judicial officer of another jurisdiction to NSW court

(1) This section applies if a judicial exchange arrangement provides for the transfer to a NSW court of a judicial officer of a corresponding court.

(2) The senior judicial officer of the NSW court may, in accordance with the judicial exchange arrangement and with the concurrence of the senior judicial officer of the corresponding court, appoint a judicial officer of the corresponding court to act as a judicial officer of the NSW court.

(3) The judicial officer of the corresponding court is qualified for appointment despite any law of this jurisdiction to the contrary.

(4) The maximum term for which an appointment under this section may be made on any one occasion is 6 months.

(5) However, an appointment under this section may not extend beyond the retirement age for judicial officers of the NSW court.

(6) A judicial officer of a corresponding court may be appointed under this section to more than one NSW court.

(7)   An appointment under this section may at any time be terminated, in accordance with the judicial exchange arrangement, by the senior judicial officer of either the NSW court or the corresponding court.

(8)   A judicial officer whose appointment under this section has ceased may complete or otherwise continue to deal with any matters relating to proceedings in the NSW court that have been heard, or partly heard, by the judicial officer before the appointment under this section ceased.

43E   Service in NSW court of judicial officer of another jurisdiction

(1)   This section applies to a judicial officer of a corresponding court who is appointed to act as a judicial officer of a NSW court in accordance with a judicial exchange arrangement.

(2)   While acting as a judicial officer of the NSW court, the judicial officer of the corresponding court has all the powers, authorities, privileges and immunities of, and is taken to be for all purposes, a judicial officer of the NSW court.

(3)   Despite subsection (2), the laws of this jurisdiction concerning:

(a)   the remuneration, allowances and other conditions of service of judicial officers, and

(b)   the pension or other superannuation entitlements of judicial officers and related provisions, and

(c)   the removal or suspension of judicial officers from office,

do not apply to the judicial officer of the corresponding court while acting as a judicial officer of the NSW court.

43F   Service of NSW judicial officer in corresponding court

(1)   This section applies to a judicial officer of a NSW court who is appointed to act as a judicial officer of a corresponding court in accordance with a judicial exchange arrangement.

(2)   For the purposes of the laws of this jurisdiction concerning:

(a)   the remuneration, allowances and other conditions of service of judicial officers, and

(b)   the pension or other superannuation entitlements of judicial officers and related provisions, and

(c)   the removal or suspension of judicial officers from office,

the judicial officer's service as a judicial officer of the corresponding court is taken to be service as a judicial officer of the NSW court.

43G   Other arrangements not affected

This Division does not limit or affect any other arrangements under which:

(a)   a judicial officer of another jurisdiction may be appointed or act as a judicial officer of this jurisdiction, or

(b)   a judicial officer of this jurisdiction may be appointed or act as a judicial officer of another jurisdiction.

43H   Amendment of Schedule 4A

The regulations may amend or replace Schedule 4A.

Division 2   General

43I   Judicial office not affected by appointment to another judicial office

(1)   In this section:

court includes a tribunal (however described) that exercises functions of a judicial nature or functions of a similar nature (such as conciliation functions, arbitration functions, disciplinary functions or administrative review functions).

judicial office extends to the office of any member of a court, but only if the holder of the office is required to be a judicial officer or have legal qualifications.

(2)   The doctrine of incompatibility of office:

(a)   does not operate to prevent the holder of a judicial office (the *original office*) from being appointed to another judicial office (the *additional office*), and

(b)   does not operate to effect or require the surrender or vacation of the original office as a result of the appointment to the additional office.

(3)   This section applies:

(a)   even if the original office or the additional office is held on an acting or temporary basis, and

(b)   even if the original office or the additional office is a judicial office of another jurisdiction (including, but not limited to, judicial offices to which appointments are made in accordance with arrangements under Division 1), and

(c)   even if an appeal lies from a decision of the court of one of the judicial offices to the court of the other judicial office, and

(d)   even if the courts of the judicial offices are not of the same status.

[4]   Schedule 4A

Insert after Schedule 4:

Schedule 4A   NSW and corresponding courts

Column 1	Column 2
NSW court	**Corresponding court**
Supreme Court; Industrial Court; Land and Environment Court	Federal Court of Australia Supreme Court of any State (other than Queensland) or of a Territory
District Court; Drug Court	County Court of Victoria District Court of South Australia Youth Court of South Australia (constituted by a Judge) Environment, Resources and Development Court of South Australia Industrial Relations Court of South Australia District Court of Western Australia
Local Court; Children's Court; Coroner's Court	Magistrates Courts of Victoria, Tasmania, South Australia, Western Australia and the ACT Coroners Court of South Australia Youth Court of South Australia (constituted by a Magistrate) Warden's Courts of South Australia and the Northern Territory Court of Summary Jurisdiction of the Northern Territory Local Court of the Northern Territory Alcohol Court of the Northern Territory Youth Justice Court of the Northern Territory Work Health Court of the Northern Territory Children's Court of Western Australia
Administrative Decisions Tribunal	Victorian Civil and Administrative Tribunal State Administrative Tribunal of Western Australia

[5]   Schedule 6 Savings and transitional provisions

Insert at the end of clause 1 (1):

Judicial Officers Amendment Act 2009

[6]   Schedule 6

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

Part   Provision consequent on enactment of Judicial Officers Amendment Act 2009

Application of substituted incompatibility of office provision

Section 43I, as inserted by the *Judicial Officers Amendment Act 2009*, extends to an appointment made before the commencement of that section, and applies to such an appointment as if that section had been in force when the appointment was made.

[Agreement in principle speech made in Legislative Assembly on 23 October 2009

Second reading speech made in Legislative Council on 2 December 2009]

BY AUTHORITY