



New South Wales

Courts Legislation Further Amendment Act 1995 No 88

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New South Wales

Courts Legislation Further Amendment Act 1995 No 88

Act No 88, 1995

An Act to amend certain Acts in relation to appeals to the Supreme Court and various other aspects of court procedure; and for other purposes.
[Assented to 19 December 1995]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Courts Legislation Further Amendment Act 1995*.

2 Commencement

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

3 Amendment of Acts

The Acts specified in Schedule 1 are amended as set out in that Schedule.

4 Explanatory notes

Matter appearing under the heading **Explanatory note** in this Act does not form part of this Act.

Schedule 1 Amendment of Acts

(Section 3)

1.1 Coroners Act 1980 No 27

Section 19 Procedure at inquest or inquiry involving indictable offence

Omit section 19 (3).

Explanatory note

Section 19 of the *Coroners Act 1980* imposes certain obligations on a coroner if, at any time during the course of an inquest or inquiry, the coroner is of the opinion that the evidence given establishes a prima facie case against any known person for an indictable offence. If the indictable offence is one in which the question in issue is whether the person caused the death, fire or explosion the subject of the inquest or inquiry, the coroner is required to forward certain evidence to the Director of Public Prosecutions and to inform the Director of the name of the relevant person.

The proposed amendment removes an obligation on the Director of Public Prosecutions to then inform the Attorney General as to whether or not the Director intends to proceed with criminal charges against the person concerned.

1.2 Criminal Appeal Act 1912 No 16

[1] Section 18 Release of appellant on bail and custody when attending court

Insert “(which is referred to in this section as *special treatment*)” after “prisons” in section 18 (1).

[2] Section 18 (2) and (3)

Omit subsection (3). Insert instead:

- (2) The time during which an appellant is at liberty on bail (pending the determination of his or her appeal) does not count as part of any term of imprisonment or penal servitude under the appellant’s sentence.

- (3) The time during which an appellant receives special treatment counts as part of any term of imprisonment or penal servitude under the appellant's sentence. However, if the court is satisfied that the appeal was unarguable or frivolous, the court may order that the time in custody with special treatment does not count.

Explanatory note

The *Criminal Appeal Act 1912* deals with appeals against convictions and sentences in criminal cases. Section 18 (1) of the Act provides that an appellant who is not released on bail pending determination of his or her appeal is to be treated in a special manner, as set out in the regulations. At present, section 18 (3) provides that, if a person in custody pending a determination of an appeal is specially treated, time spent in custody does not count, and an original sentence resumes (or a substituted sentence begins to run) from the date the appeal is determined. There is some discretion for the Court of Criminal Appeal to make an order that the time spent in custody does count.

The proposed amendments reverse the present position, so that time in custody under special treatment will count as part of the sentence unless the Court of Criminal Appeal is satisfied that it should not count. In addition, the rule will not apply to substituted sentences, which generally specify the date on which the substituted sentence is to commence.

[3] Section 22

Omit the section. insert instead:

22 Powers of a judge sitting alone

- (1) The following powers of the court may be exercised by any judge of the court in the same manner as they may be exercised by the court, and subject to the same provisions:
- (a) the power to give leave to appeal,
 - (b) the power to extend the time in which notice of appeal may be given,
 - (c) the power to extend the time in which notice of an application for leave to appeal may be given,

- (d) the power to allow the appellant to be present at any proceedings (in cases where the appellant is not entitled to be present without leave),
 - (e) the power to order the production of any document, exhibit or other thing concerned with proceedings,
 - (f) the power to order any person who would have been a compellable witness at the trial to attend and be examined before the court,
 - (g) the power to order any such person to be examined,
 - (h) the power to admit any deposition taken as evidence,
 - (i) the power to dispose of an appeal for failure to prosecute the appeal diligently,
 - (i) the power to order that time spent by an appellant in custody is not to count towards the sentence imposed when an appeal, or an application for leave to appeal, is abandoned.
- (2) If the judge refuses an application on the part of the appellant to exercise any such power in the appellant's favour, the appellant is entitled to have the application determined by the court.

Explanatory note

Section 22 of the *Criminal Appeal Act 1912* lists the powers of the Court of Criminal Appeal that can be exercised by a judge of the court sitting alone. If an application made by an appellant under section 22 is refused, there is an automatic right of appeal to the court constituted by 3 judges. The proposed amendment adds to the list of powers exercisable by a single judge (by the inclusion of paragraphs (e)–(i) in section 22 (1)).

[4] Schedule 1 Savings and transitional provisions

Insert after clause 1:

2 Courts Legislation Further Amendment Act 1995

The amendments made to section 18 by the *Courts Legislation Further Amendment Act 1995* apply to any appellant whose appeal is determined, or abandoned, on or after the commencement of the amendments.

1.3 District Court Act 1973 No 9

[1] Section 4 Definitions: general

Insert after section 4 (10):

- (11) A reference in this or any other Act, or in any instrument, to the registrar of the District Court for a proclaimed place is, if there are 2 registrars for that place, a reference to either registrar.

[2] Section 18G Registrars

Omit section 18G (4). Insert instead:

- (4) The Minister may, by order published in the Gazette, direct that there can be 2 registrars for a particular proclaimed place, each having the functions specified in that order.

Explanatory note

At present, section 18G (4) of the *District Court Act 1973* provides that if 2 registrars of the District Court are appointed for any proclaimed place, one is to be the registrar of the court in its civil jurisdiction and the other is to be the registrar of the court in its criminal jurisdiction. The proposed amendment removes this distinction between jurisdictions. If 2 registrars are appointed for a particular place each will be the registrar for the entire jurisdiction of the court, each having the functions specified in the Ministerial order permitting the appointment of 2 registrars.

[3] Section 18H Functions of registrars

Insert at the end of the section:

- (2) The registrar for a proclaimed place may exercise any or all of those functions in respect of that proclaimed place only.
- (3) The registrar for Sydney may exercise any or all of those functions in respect of any place in the State.

[4] Section 18J Functions of assistant registrars

Insert “, and may exercise any or all of those functions in respect of that proclaimed place only” after “criminal procedure rules” in section 18J (1).

[5] Section 18J (1A)

Insert after section 18J (1):

- (1A) An assistant registrar for Sydney may exercise any or all of the functions of any registrar for Sydney in respect of any place in the State.

Explanatory note

At present, section 18H of the *District Court Act 1973* provides that a registrar for a proclaimed place can exercise certain prescribed functions. Section 18J provides that an assistant registrar for a proclaimed place has such functions of the registrar for that proclaimed place as may be specified in the civil procedure rules or the criminal procedure rules.

The proposed amendments clarify that a registrar or assistant registrar for a proclaimed place may exercise functions only in respect of that proclaimed place. However, the amendments do not apply this limitation to the exercise of functions of any registrar or assistant registrar appointed for Sydney. Such a registrar or assistant registrar may exercise his or her functions in respect of any place.

[6] Section 64 Subpoenas

Insert after section 64 (1):

- (1A) A subpoena for production of a document or thing may authorise compliance with the subpoena by the production of the document or thing to a specified person at a specified place. However, the person who is required by the subpoena to produce a document or thing can still elect to produce the document or thing at the specified hearing of the action or of proceedings ancillary to the action.

[7] Section 64 (2)

Insert “at a hearing” after “subpoena for production”.

[8] Section 64 (4)

Insert after section 64 (3):

- (4) This section does not affect the operation of Division 1 of Part 4.6 of the *Evidence Act 1995* (Requests to produce documents or call witnesses).

Explanatory note

The proposed amendments to section 64 of the *District Court Act 1973* will allow the District Court to issue a subpoena requiring a person to produce documents and other things to a specified person at a specified place, which need not be a court. Presently, documents may only be required to be produced at a hearing.

[9] Section 85 Interest on judgment debt

Insert after section 85 (3):

- (4) If an order is made for the payment of costs, the Court may order that interest is to be paid on the amount so ordered, at the prescribed rate, from the date or dates when the amount in respect of costs was duly paid.

Explanatory note

At present, interest is generally payable on a judgment debt arising under the *District Court Act 1973*. That interest is calculated from the date when the judgment debt came into being, or from a later specified date. The proposed amendment deals with the calculation of interest on that part of the judgment debt which is an order as to the payment of costs. The proposed amendment will allow the District Court to order a party to pay interest on the other party's costs from the date on which the successful party paid the amount in respect of costs.

[10] Sections 127 and 128

Omit the sections. Insert instead:

127 Right of appeal to Supreme Court

- (1) A party who is dissatisfied with a decision of a Judge may appeal to the Supreme Court.

- (2) The following appeals lie only by leave of the Supreme court:
 - (a) an appeal from an interlocutory judgment or order,
 - (b) an appeal from a judgment or order as to costs only,
 - (c) an appeal from a final judgment or order, in respect of any property or any civil right, for an amount less than \$10,000.
- (3) In any other case, an appeal lies as of right.

128 Stay of proceedings on appeal to Supreme Court

- (1) This section applies if, after judgment in an action, the Court orders that proceedings be stayed during the period within which an appeal may be brought.
- (2) If during that period:
 - (a) an appeal is brought in respect of proceedings that have been stayed, and
 - (b) security is given to the satisfaction of the registrar for the amount of the judgment debt (if any) payable by the appellant, including an amount assessed by the registrar in respect of any costs forming part of the judgment debt,the stay of proceedings is to continue until the appeal is disposed of or until the Court or the Supreme Court otherwise orders.
- (3) An appeal does not operate to stay proceedings in any other way.
- (4) This section does not affect the operation of section 156 (1).

[11] Section 129 Agreement not to appeal

Omit “under section 128 (1), (2A) or (5A)”.
Insert instead “to the Supreme Court”.

[12] Sections 130 and 131

Omit the sections.

[1 3] Section 183A

Insert after section 183:

**183A Provision consequent on enactment of Courts
Legislation Further Amendment Act 1995**

The substitution of sections 127 and 128 by the *Courts Legislation Further Amendment Act 1995* does not operate to require leave to appeal against a decision of the Court if, when the decision was made, an appeal lay as of right.

Explanatory note

The proposed amendments simplify the provisions of the *District Court Act 1973* relating to appeals against decisions of the District Court. The appeals will be to the Supreme Court. Section 48 of the *Supreme Court Act 1970* assigns such an appeal to the Court of Appeal. As a result of the amendments, most appeals will lie as of right while some will require the leave of the Supreme Court. In addition a person will no longer be able to make an application to the Supreme Court for a new trial.

1.4 Dust Diseases Tribunal Act 1989 No 63

[1] Section 32

Omit the section. Insert instead:

32 Right of appeal to Supreme Court

- (1) A party who is dissatisfied with a decision of the Tribunal may appeal to the Supreme Court.
- (2) The following appeals lie only by leave of the Supreme court:
 - (a) an appeal from an interlocutory decision,
 - (b) an appeal from a decision as to costs only,
 - (c) an appeal from a final decision awarding an amount less than \$10,000.
- (3) In any other case, an appeal lies as of right.

[2] Schedule 3 Savings, transitional and other provisions

Insert after clause 2:

3 Appeals

The substitution of section 32 by the *Courts Legislation Further Amendment Act 1995* does not operate to require leave to appeal against a decision of the Tribunal if, when the decision was made, an appeal lay as of right.

Explanatory note

At present, an appeal lies to the Supreme Court against a decision of the Dust Diseases Tribunal. Section 48 of the *Supreme Court Act 1970* assigns such an appeal to the Court of Appeal. The proposed amendments simplify the provisions of the *Dust Diseases Tribunal Act 1989* relating to appeals. As a result of the amendments, most appeals will lie as of right while some will require the leave of the Supreme Court.

1.5 Land and Environment Court Act 1979 NO 204

[1] Section 58 Class 4 proceedings—appeals

Insert “, or an order or decision as to costs only,” after “interlocutory order or decision” in section 58 (3).

[2] Section 58 (4)

Insert after section 58 (3):

- (4) The amendment made to this section by the *Courts Legislation Further Amendment Act 1995* does not operate to require leave to appeal against an order or decision of the Court if, when the order or decision was made, an appeal lay as of right.

Explanatory note

At present, a party may appeal to the Supreme Court against an order or decision in proceedings in Class 4 of the jurisdiction of the Land and Environment Court (which is concerned with environmental planning and protection and with development contract civil enforcement). At present, an appeal against an order or decision as to costs only lies as of right. The proposed amendment will have the effect that such an appeal will lie only with the leave of the Supreme Court.

1.6 Legal Profession Act 1987 No 109

[1] Section 171F Appeal against order of Tribunal

Omit section 171F (4).

Explanatory note

At present, an appeal lies to the Supreme Court against any determination of a complaint by the Legal Services Tribunal. Presently, section 171F (4) of the *Legal Profession Act 1987* provides that an appeal is by way of a new hearing and further evidence may be given. The proposed amendment removes that provision from the Act. Section 75A of the *Supreme Court Act 1970* will then apply in relation to the appeal. Under that section, the Supreme Court may receive further evidence only on special grounds. Any appeal will be heard by way of rehearing.

[2] Section 208V

Insert after section 208U:

208V Application of Division

This Division does not apply to an amount of interest ordered on a judgment debt (being an order for the payment of costs) under section 85 (4) of the *District Court Act 1973* or section 95 (4) of the *Supreme Court Act 1970*.

Explanatory note

The proposed amendment is consequential on the amendments made by this Act to the *District Court Act 1973* and the *Supreme Court Act 1970*, dealing with the payment of interest on a judgment debt.

1.7 Local Courts Act 1982 No 164

Section 10 Clerks of the Local Courts

Insert after section 10 (4):

- (4A) The Minister may delegate in writing to the Director-General of the Attorney General's Department the Minister's power of appointment under subsection (4).

Explanatory note

Section 10 (4) of the *Local Courts Act 1982* empowers the Minister to appoint a person to act temporarily in the office of Clerk of a Local Court. The proposed amendment will empower the Director-General of the Attorney General's Department to also appoint such persons, but only if the Minister has delegated the power.

1.8 Supreme Court Act 1970 No 52

[1] Section 43 Sittings

Omit section 43 (5).

[2] Section 43A

Insert after section 43:

43A Multiple sittings

More than one sitting of the Court of Appeal (constituted by 2 or more Judges of Appeal) may be held at the same time.

Explanatory note

The proposed amendments clarify that the principle that more than one sitting of the Court of Appeal may be held at the same time applies to a sitting of the Court constituted by 2 Judges of Appeal as it does to a sitting of the Court constituted by 3 Judges of Appeal.

[3] Section 46B

Insert after section 46A:

46B Certain other matters may be heard by 2 Judges

- (1) This section applies to the following applications:
 - (a) applications for leave to appeal,
 - (b) applications involving a question of practice and procedure in an appeal or other matter in the Court of Appeal (being applications that are not capable of being dealt with by a single Judge of Appeal).
- (2) The Chief Justice may direct that such an application be heard and determined by such 2 Judges of Appeal as the President of the Court of Appeal directs.

- (3) For the purpose of hearing and determining an application the subject of a direction under this section, the Court of Appeal is constituted by the 2 Judges directed by the President of the Court of Appeal.
- (4) The decision of the Court of Appeal when constituted by 2 Judges of Appeal is to be in accordance with the opinion of those Judges.
- (5) If the judges are divided in opinion, the application is to be reheard and determined by the Court of Appeal constituted by 3 Judges of Appeal.

Explanatory note

The proposed amendment will allow 2 Judges of Appeal to deal with applications for leave to appeal, and applications involving questions of practice and procedure in appeals and other matters in the Court which cannot be dealt with by a bench constituted by a single judge.

[4] Section 95 Interest on debt under judgment or order

Insert after section 95 (3):

- (4) If an order is made for the payment of costs, the Court may order that interest is to be paid on the amount so ordered, at the prescribed rate, from the date or dates when the amount in respect of costs was duly paid.

Explanatory note

At present, interest is generally payable on a judgment debt arising under the *Supreme Court Act 1970*. That interest is calculated from the date when the judgment debt came into being, or from a later specified date. The proposed amendment deals with the calculation of interest on that part of the judgment debt which is an order as to the payment of costs. The proposed amendment will allow the Supreme Court to order a party to pay interest on the other party's costs from the date on which the successful party paid the amount in respect of costs.

[5] Section 101 Appeal in proceedings in the Court

Omit section 101 (2) (h). Insert instead:

- (h) a judgment or order of the Court in a Division on appeal from, or in proceedings relating to or arising from, proceedings in a court or tribunal that is not a specified tribunal (within the meaning of section 48),

[6] Section 101 (2) (i) and (k)

Omit the paragraphs.

Explanatory note

Section 48 of the *Supreme Court Act 1970* specifies those tribunals from which an appeal lies to the Court of Appeal as of right. Parties may appeal against a judgment or order of a court or tribunal that is not a specified tribunal to a Division of the Supreme Court. Parties may then, by leave of the Court of Appeal, appeal to the Court of Appeal. The proposed amendments consolidate several existing provisions relating to leave to appeal. The new paragraph will apply to all appeals to the Court of Appeal from decisions of the Supreme Court arising in turn from appeals or reviews of decisions of a court or tribunal (other than those from a specified court or tribunal). The new paragraph will apply to require leave to appeal in relation to proceedings in the Local Court, the Licensing Court, the Residential Tenancies Tribunal, the Commercial Tribunal and the Mental Health Tribunal, among other courts and tribunals.

[7] Section 101 (2)

Insert after section 101 (2) (l):

- (m) a judgment or order of the Court on an application under section 74K, 74MA or 74O of the *Real Property Act 1900*,
- (n) a judgment or order of the Court in a Division for the winding up of a corporation,
- (o) a judgment or order of the Court in a Division restraining or refusing to restrain the presentation or advertisement of an application for the winding up of a corporation,
- (p) a judgment or order of the court on an application under section 459G of the *Corporations Law*.

Explanatory note

The proposed amendment introduces a requirement to obtain the leave of the Court of Appeal in order to appeal against certain judgments or orders of the Supreme Court involving caveats under the *Real Property Act 1900*, the winding up of a corporation or an application to set aside a statutory demand made under the *Corporations Law*.

[8] Fourth Schedule Savings and transitional provisions

Insert after clause 1:

2 Courts Legislation Further Amendment Act 1995

The amendments made to section 101 (2) by the *Courts Legislation Further Amendment Act 1995* do not operate to require leave to appeal against a judgment or order of the Court if, when the judgment or order was made, an appeal lay as of right.

1.9 Veterinary Surgeons Act 1986 No 55

Section 34 Appeal against order of Disciplinary Tribunal

Omit section 34 (3).

Explanatory note

The proposed amendment limits the right to adduce further evidence in an appeal to the Supreme Court from the Veterinary Surgeon's Disciplinary Tribunal. At present, an appeal lies to the Supreme Court against any order of the Veterinary Surgeon's Disciplinary Tribunal. Presently, section 34 (3) of the *Veterinary Surgeons Act 1986* provides that an appeal is by way of a new hearing and further evidence may be given. The proposed amendment removes that provision from the Act. Section 75A of the *Supreme Court Act 1970* will then apply in relation to the appeal. Under that section, the Supreme Court may receive further evidence only on special grounds. Any appeal will be heard by way of rehearing.

[Minister's second reading speech made in—
Legislative Assembly on 22 November 1995
Legislative Council on 7 December 1995]