



New South Wales

# Courts Legislation Amendment Act 1998 No 49

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New South Wales

# **Courts Legislation Amendment Act 1998 No 49**

Act No 49, 1998

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An Act to make miscellaneous amendments to various Acts relating to courts and associated matters. [Assented to 29 June 1998]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Courts Legislation Amendment Act 1998*.

**2 Commencement**

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

**3 Schedules of amendments**

Each Act or regulation that is specified in a Schedule to this Act is amended as set out in the Schedule concerned.

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## **Schedule 1 Amendment of Arbitration (Civil Actions) Act 1983 No 43**

(Section 3)

### **[1] Headings**

Insert “Part 1 Preliminary” before section 1.

Insert “Part 2 Arbitration” before section 5.

Insert “Part 4 Miscellaneous” before section 19.

### **[2] Section 16A**

Insert after section 16:

#### **16A Finality of award**

Except to the extent that section 17 and Part 3 otherwise provide, an award of an arbitrator made under this Act is final and conclusive and not liable to be called in question.

### **[3] Part 3**

Omit section 18. Insert instead:

#### **Part 3 Rehearings**

##### **18 Application for rehearing**

- (1) A person aggrieved by an award of an arbitrator may apply for a rehearing of the action concerned.
- (2) The applicant may (but need not) in the application request that the rehearing be a full or a limited rehearing.

##### **18A Order for rehearing**

- (1) The court by which an action was referred to an arbitrator, or the registrar of that court, must order a rehearing of the action if an application for a rehearing of the action is made before the award becomes enforceable as a judgment or order of the court.

- (2) An order for rehearing cannot be made if the amount claimed in the action, or the value of the property to which the action relates, does not exceed the amount prescribed by the regulations for the purposes of this section.
- (3) An order for rehearing need not be made if it appears to the court or registrar that the applicant failed to attend a hearing before an arbitrator on the action and the applicant fails to satisfy the court or registrar that there was good reason for the failure to attend the hearing.
- (4) The court or registrar may in an order for rehearing direct that the rehearing be a full or a limited rehearing as the court or registrar thinks appropriate. In the absence of such a direction, the rehearing is to be a full rehearing. This, subsection has effect regardless of whether the applicant requested that the rehearing be a full or a limited rehearing or made no such request.
- (5) In making an order for a limited rehearing, the court or registrar is to specify in the order the aspects that are to be the subject of the rehearing. The aspects may be described by reference to specific issues in dispute, specific parties to the dispute, or otherwise.
- (6) The court or registrar may at any time before or during the rehearing make an order amending an order for rehearing.

### **18B Rehearing**

- (1) If an order is made for a full rehearing, the award ceases to have effect and the action is to be heard and determined in the court concerned as if it had never been referred to an arbitrator.
- (2) If an order is made for a limited rehearing:
  - (a) the award is suspended and the aspects ordered to be dealt with at the limited rehearing are to be heard and determined in the court concerned as if they had not been dealt with in the arbitration, and

- (b) the court may reinstate the award with such modifications (if any) as the court thinks appropriate after the rehearing.

### **18C Costs at rehearing**

- (1) The court that hears and determines an action on a full rehearing may, in addition to making an order for the payment of costs under the *Supreme Court Act 1970*, the *District Court Act 1973* or the *Local Courts (Civil Claims) Act 1970*, make a like order for the payment of costs in respect of the hearing before the arbitrator.
- (2) The court that hears and determines any aspects of an action on a limited rehearing may make such an order for the payment of costs under the relevant Act as it thinks fit as if those aspects constituted an action and may, in addition, make a like order for the payment of costs in respect of the hearing before the arbitrator involving those aspects.

### **18D Discontinuance of rehearing**

- (1) If a rehearing is discontinued, the order for rehearing ceases to have effect and the award is taken to be a judgment or order of the court concerned.
- (2) A rehearing is discontinued for the purposes of this section if:
  - (a) the applicant for the order for rehearing files a notice for the discontinuance of the rehearing of the action and no person (other than the applicant or a person who consented to the discontinuance) applies for such an order within the prescribed period after the filing of the notice. or
  - (b) the applicant fails to attend the rehearing or related proceedings before a registrar and no person present at the rehearing or related proceedings requests that the rehearing proceed, or

- (c) the court orders (in accordance with the rules) that the award be reinstated, for the reason that the court is satisfied that the applicant does not intend to proceed with the rehearing or for such other reason as appears sufficient to the court.
- (3) If a rehearing is discontinued under subsection (2) (b), the order for rehearing may, subject to and in accordance with the rules, be reinstated by the court concerned on application made in accordance with the rules within 7 days after the discontinuance.

#### **18E Subpoena at rehearing against arbitrator**

A subpoena for the giving of evidence or production of documents at the rehearing of an action is not to be issued against the arbitrator to whom the action was referred if the evidence or documents relate to the arbitration.

#### **[4] Section 21**

Insert after section 20:

##### **21 Savings and transitional provisions**

Schedule 1 has effect.

#### **[5] Schedule 1**

Insert at the end of the Act:

#### **Schedule 1 Savings and transitional provisions**

(Section 21)

#### **Part 1 General**

##### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following:

*Courts Legislation Amendment Act 1998, Schedule 1*



- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Courts Legislation Amendment Act 1998**

### **2 Application of amendments to existing actions**

- (1) The amendments made to this Act by the *Courts Legislation Amendment Act 1998* extend to actions referred to arbitration before the commencement of those amendments. This subclause has effect subject to the following provisions of this clause.
- (2) Those amendments do not apply to an action in respect of which an order for rehearing was made under section 18 before the commencement of those amendments.
- (3) Those amendments do not apply to an action in respect of which an application for rehearing was pending under section 18 immediately before the commencement of those amendments, unless the applicant requests that the application be treated as having been made after that commencement.

**Schedule 2 Consequential amendment of  
Arbitration (Civil Actions) Regulation  
1994**

(Section 3)

- [1] Clause 5 Monetary limit below which an action referred to arbitration is not to be reheard: sec 18A**

Omit “section 18”. Insert instead “section 18A”.

- [2] Clause 5A Prescribed period for application for order for rehearing after discontinuance of rehearing: sec 18D (2) (a)**

Omit “section 18 (5) (a)”. Insert instead “section 18D (2) (a)”.

**Schedule 3 Amendment of Compensation court  
Act 1984 No 89**

(Section 3)

**Section 11 Acting Judges**

Insert after section 11 (5):

- (5A) The person so appointed may, despite the expiration of the period of the person’s appointment, complete or otherwise continue to deal with any matters relating to proceedings that have been heard, or partly heard, by the person before the expiration of that period.

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## **Schedule 4 Amendment of Coroners Act 1980 No 27**

(Section 3)

### **[1] Section 34 Depositions to be taken**

Insert “, or who decides not to commence or terminates an inquest or inquiry under section 19,” after “inquiry” in section 34 (6).

### **[2] Section 34 (8)**

Omit the subsection.

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

Insert after section 44 (4):

- (5) A coroner holding an inquest or inquiry may, if of the opinion that it would be in the public interest to do so, order:
  - (a) all or any persons to go and remain outside the room or building in which the inquest or inquiry is being held, or
  - (b) that any evidence given at the inquest or inquiry being held by the coroner not be published.
- (6) For the purposes of subsection (5), in forming an opinion as to the public interest, a coroner may, without limitation, have regard to the administration of justice, national security or personal security.

### **[4] Section 45 Offences**

Omit “section 44 (1) or (2)” wherever occurring.  
Insert instead “section 44 (1), (2) or (5)”.

## **Schedule 5 Amendment of Costs in Criminal Cases Act 1967 No 13**

(Section 3)

### **[1] Section 1A**

Insert after section 1:

#### **1A Definition**

In this Act:

*Director-General* means the Director-General of the Attorney General's Department.

### **[2] Section 4**

Omit the section. Insert instead:

#### **4 Payment of costs**

- (1) A person to whom a certificate has been granted under this Act may apply to the Director-General for payment from the Consolidated Fund of costs incurred in the proceedings to which the certificate relates. The application is to be accompanied by a copy of the certificate.
- (2) The Director-General may, if of the opinion that, in the circumstances of the case, the making of a payment to the applicant is justified, determine the amount of costs that should be paid to the applicant, not exceeding the maximum amount referred to in subsection (3).
- (3) The maximum amount is the amount that, in the opinion of the Director-General, would reasonably have been incurred for costs by the applicant in the proceedings, reduced by any amounts that, in the opinion of the Director-General, the applicant:
  - (a) has received or is entitled to receive, or
  - (b) would, if the applicant had exhausted all relevant rights of action and other legal remedies available to the applicant, be entitled to receive,independently of this Act, because of the applicant's having incurred those costs.

- (4) The Director-General may refuse an application under this section if of the opinion that, in the circumstances of the case, the making of a payment to the applicant is not justified or (without limitation) if costs are otherwise recoverable.
- (5) The Director-General may defer consideration of an application under this section for as long as the Director-General considers it necessary to do so to enable the Director-General to ascertain any amount referred to in subsection (3).
- (6) The amount specified in the determination is payable from the Consolidated Fund to the applicant or to another person on the applicant's behalf. Any payments from the Consolidated Fund under this section may be made without further appropriation than this Act.

**[3] Section 5 Director-General subrogated to rights of applicant**

Omit "Under Secretary" wherever occurring.  
Insert instead "Director-General".

**[4] Section 5 (2)**

Omit "Consolidated Revenue Fund".  
Insert instead "Consolidated Fund".

**[5] Sections 6A, 6B**

Insert after section 6:

**6A Delegation**

The Director-General may delegate any of his or her powers, authorities, duties or functions under this Act (other than this power of delegation) to an officer of the Attorney General's Department.

**6B Savings and transitional provisions relating to Courts Legislation Amendment Act 1998**

- (1) In this section:

*amending Act* means the *Courts Legislation Amendment Act 1998*.

*existing certificate* means a certificate granted under this Act before the relevant commencement.

*relevant commencement* means the commencement of the provision of the amending Act that substitutes section 4.

- (2) This Act as in force before the relevant commencement continues to apply to and in respect of an existing certificate where an application had been made under this Act in connection with the certificate before that commencement.
- (3) This Act as in force after the relevant commencement applies to and in respect of an existing certificate where an application had not been made under this Act in connection with the certificate before that commencement.
- (4) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of Schedule 5 to the amending Act.
- (5) Any such provision may, if the regulations so provide, take effect from the date of assent to the amending Act.
- (6) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

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## **Schedule 6 Amendment of Criminal Appeal Act 1912 No 16**

(Section 3)

### **[1] Section 5D Appeal by Crown against sentence**

Insert after section 5D (1):

- (1A) The Environment Protection Authority may appeal to the Court of Criminal Appeal against any sentence pronounced by the Supreme Court or the Land and Environment Court in any proceedings for an environmental offence (otherwise than on an appeal), if those proceedings have been instituted or carried on by, or on behalf of, the Environment Protection Authority. The Court of Criminal Appeal may impose such sentence as to it may seem proper.

### **[2] Section 5D (2A)**

Insert after section 5D (2):

- (2A) In this section, a reference to an environmental offence is a reference to an offence against the environment protection legislation as defined in the *Protection of the Environment Administration Act 1991*.

### **[3] Section 21A**

Insert after section 21:

#### **21A Exercise of court's powers**

- (1) The decision of the court is to be in accordance with the opinion of the majority of the judges of the court present.
- (2) If the judges present are equally divided in opinion, the decision of the court is to be in accordance with the opinion of the Chief Justice or other judge presiding.

- (3) The decision of the court on any appeal heard before 3 or more judges 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 is of the unanimous decision 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.
- (5) This section does not affect any provision of this or any other Act that authorises or requires a power of the court to be exercised in any other manner.
- (6) In this section:  
*appeal* includes any matter before the court.



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## **Schedule 7    Amendment of Criminal Procedure Act 1986 No 209**

(Section 3)

### **Section 16B**

Insert after section 16A:

#### **16B Institution of contempt proceedings**

- (1) Proceedings for contempt of court may be instituted in the Supreme Court in the name of the “State of New South Wales” by:
  - (a) the Attorney General, or
  - (b) the Solicitor General or Crown Advocate acting under a delegation from the Attorney General.
- (2) Nothing in subsection (1) prevents contempt of court being dealt with in any other manner, and in particular nothing in that subsection prevents proceedings for contempt of court from being instituted in any other manner.

## **Schedule 8 Amendment of Crown Advocate Act 1979 No 59**

(Section 3)

### **[1] Section 9 Duties and functions of Crown Advocate**

Insert “and” at the end of section 9 (a), (b), (c) and (e).

### **[2] Section 9 (f)**

Insert after section 9 (e):

- (f) to carry out other duties and functions conferred or imposed on the Crown Advocate by or under this or any other Act.

### **[3] Sections 10 and 11**

Insert after section 9:

#### **10 Delegation of functions by Attorney General**

- (1) The Attorney General may, by instrument in writing, delegate to the Crown Advocate the exercise or discharge of such of the powers (other than this power of delegation), authorities, duties and functions that may be exercised or discharged by the Attorney General and as may be specified in the instrument of delegation, and may in like manner revoke wholly or in part any such delegation.
- (2) A delegation made under this section may be made subject to such conditions or such limitations as to the exercise or discharge of any of the specified powers, authorities, duties or functions delegated or as to time or circumstances as may be specified in the instrument of delegation.

- (3) Notwithstanding any delegation made under this section, the Attorney General may continue to exercise or discharge all or any of the powers, authorities, duties or functions delegated.

#### **11 Exercise of delegated functions**

- (1) Any power, authority, duty or function, the exercise or discharge of which has been delegated under section 10, may, while the delegation remains unrevoked, be exercised or discharged in accordance with the terms of the delegation by the Crown Advocate.
- (2) Any act or thing done or suffered by the Crown Advocate, when acting in the exercise of a delegation made under section 10 and within the terms of the delegation, has the like force and effect as if the act or thing had been done or suffered by the Attorney General.
- (3) Where any power, authority, duty or function is exercised or discharged under a delegation made under section 10, and its exercise or discharge depends on the opinion, belief or state of mind of the Attorney General, that power, authority, duty or function may be exercised or discharged by the Crown Advocate on the opinion, belief or state of mind of the Crown Advocate.
- (4) No person is to be concerned to see or inquire into whether any act, matter or thing done or performed by the Crown Advocate when purporting to act under a delegation made under section 10 is or is not authorised by that delegation.

**Schedule 9 Amendment of Crown Proceedings Act 1988 No 70**

(Section 3)

**Section 5 Crown may be sued**

Insert “against the Crown” after “whatever” in section 5 (1).

**Schedule 10 Amendment of District Court Act 1973 No 9**

(Section 3)

**[1] Section 127 Right of appeal to Supreme Court**

Insert at the end of section 127 (2):

- (d) an appeal from a judgment or order on an application for summary judgment under the rules.

**[2] Schedule 3 Savings and transitional provisions consequent on amendments to this Act**

Insert after clause 5:

**Part 3 Provision consequent on enactment of Courts Legislation Amendment Act 1998**

**6 Appeals from applications for summary judgment**

The amendment made to section 127 by the *Courts Legislation Amendment Act 1998* does not apply to applications for summary judgment made before the commencement of the amendment.

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## **Schedule 11 Amendment of Dust Diseases Tribunal Act 1989 No 63**

(Section 3)

### **[1] Section 32**

Omit section 32. Insert instead:

#### **32 Appeal to Supreme Court**

- (1) A party who is dissatisfied with a decision of the Tribunal in point of law or on a question as to the admission or rejection of evidence may appeal to the Supreme Court.
- (2) The Supreme Court may, on the hearing of any appeal under this section, remit the matter to the Tribunal for determination by the Tribunal in accordance with any decision of the Supreme Court and may make such other order in relation to the appeal as the Supreme Court sees fit.
- (3) A decision of the Supreme Court on an appeal under this section is binding on the Tribunal and on all parties to the proceedings in respect of which the appeal was made.
- (4) The following appeals under this section may be made 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, other than an appeal that involves (directly or indirectly) a claim for, or a question relating to, an amount of \$20,000 or more.

**[2] Schedule 3 Savings, transitional and other provisions**

Insert after clause 3:

**4 Appeals to Supreme Court**

Section 32 as in force before the commencement of Schedule 11 to the *Courts Legislation Amendment Act 1998* does not apply to decisions of the Tribunal made before that commencement.

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## **Schedule 12 Amendment of Fines Regulation 1997**

(Section 3)

### **Clause 27 Saving of definition of “authorised justice” for the purposes of section 80AA of the Justices Act 1902**

Omit the clause.

## **Schedule 13 Amendment of Industrial Relations Act 1996 No 17**

(Section 3)

### **[1] Schedule 2 Provisions relating to members of Commission**

#### **Clause 2 Acting Deputy Presidents and acting Commissioners**

Insert after clause 2 (3):

- (4) The person so appointed may, despite the expiration of the period of the person’s appointment, complete or otherwise continue to deal with any matters relating to proceedings that have been heard, or partly heard, by the person before the expiration of that period.

### **[2] Schedule 2, clause 3 Acting judicial members**

Insert after clause 3 (5):

- (6) The person so appointed may, despite the expiration of the period of the person’s appointment, complete or otherwise continue to deal with any matters relating to proceedings that have been heard, or partly heard, by the person before the expiration of that period.

## **Schedule 14 Amendment of Judgment Creditors' Remedies Act 1901 No 8**

(Section 3)

### **[1] Section 17A**

Insert after section 17:

#### **17A Entry onto land for purposes of sale by auction**

- (1) The District Court or a Local Court may, in relation to land to be sold by public auction under a writ, make orders:
  - (a) authorising entry onto the land by the sheriff, bailiff or other officer having execution of the writ (including entry by force if necessary) for the purpose of showing the land to prospective purchasers, and
  - (b) authorising entry onto the land by prospective purchasers in the presence of the sheriff, bailiff or other officer.
- (2) For those purposes, such an order may also authorise the sheriff, bailiff or other officer to do either or both of the following:
  - (a) to secure entry onto the land (including by breaking or replacing locks, bars and other devices restricting entry, if necessary).
  - (b) to take such steps as are necessary to prevent persons from entering the land.
- (3) This section does not affect any other power of any court (including the Supreme Court) to make orders in relation to such matters.
- (4) A reference in this section to land includes any premises on land.



**[2] Section 18**

Omit the section. Insert instead:

**18 Protection of officers**

Any writ of execution issued out of the Supreme Court the District Court or a Local Court, or any associated order, warrant or endorsement, is sufficient justification for any bailiff or sheriff's officer acting in reliance on it.

## **Schedule 15 Amendment of Jury Act 1977 No 18**

(Section 3)

### **Section 69 Unlawful dismissal of or prejudice to employees summoned for jury service**

Insert after section 69 (6):

- (7) An employer shall not threaten a person employed by the employer with:
- (a) dismissal, or
  - (b) injury in his or her employment, or
  - (c) alteration of his or her position to his or her prejudice,

by reason of the fact that the person is summoned to serve as a juror.

Penalty: 20 penalty units.

- (8) In proceedings for an offence under subsection (7), if all the facts constituting the offence other than the reason for the defendant's action are proved, the onus of proving that the threat was not actuated by the reason alleged in the charge lies on the defendant.
- (9) A person can be prosecuted for and convicted of offences under both subsections (1) and (7) in relation to the same circumstances.
- (10) In this section:
- employer* includes a person acting on behalf of the employer.

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## **Schedule 16 Amendment of Justices Act 1902 No 27**

(Section 3)

### **[1] Section 3 Definitions**

Insert in alphabetical order in section 3 (1):

*authorised justice* means:

- (a) a Magistrate or a Children’s Magistrate, or
- (b) a Justice employed in the Attorney General’s Department, or
- (c) a Justice employed in a prescribed office.

### **[2] Section 3 (1)**

Insert in alphabetical order:

*Rule Committee* means the Local Court Rule Committee established under the *Local Courts Act 1982*.

### **[3] Section 15 General rules of court**

Omit the section.

### **[4] Section 62 Form of summons (as amended by Justices Amendment (Procedure) Act 1997 No 107)**

Insert “, or be accompanied by, information about” after “set out” in section 62 (e).

### **[5] Section 80AA Absent defendant not to be imprisoned**

Omit section 80AA (4).

**[6] Section 100AC Form of attendance notice (as amended by Justices Amendment (Procedure) Act 1997 No 107)**

Insert “, or be accompanied by, information about” after “set out” in section 100AC (e1).

**[7] Section 154A**

Insert after section 154:

**154A Rules**

- (1) Subject to the *Local Courts (Civil Claims) Act 1970*, the Rule Committee may make rules, not inconsistent with this or any other Act, for or with respect to:
  - (a) any matter that is required or permitted to be prescribed by rules, or that is necessary or convenient to be prescribed by rules, in relation to the practice or procedure to be followed to give effect to this or any other Act or law conferring jurisdiction or functions on a Local Court, and
  - (b) any matter incidental to, or relating to, any such practice or procedure.
- (2) A rule does not take effect until it has been approved in writing by the Attorney General.
- (3) The general rules in force under section 15 immediately before the commencement of this section are taken to be rules made by the Rule Committee.

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## **Schedule 17 Amendment of Justices (General) Regulation 1993**

(Section 3)

### **[1] Clause 14 Prescribed offices (sec 80AA)**

Omit the clause.

### **[2] Clause 21A**

Insert before clause 22:

#### **21A Definition of "authorised justice" (sec 3)**

For the purposes of paragraph (c) of the definition of *authorised justice* in section 3 (1) of the Act, the following offices are prescribed offices:

- (a) the offices of the Liquor Administration Board,
- (b) the offices of the Licensing Court of New South Wales.
- (c) the offices of the Industrial Registrar.

## **Schedule 18 Amendment of Land and Environment Court Act 1979 No 204**

(Section 3)

### **[1] Section 11 Acting Judges**

Insert after section 11 (3):

- (3A) The person so appointed may, despite the expiration of the period of the person's appointment, complete or otherwise continue to deal with any matters relating to proceedings that have been heard, or partly heard, by the person before the expiration of that period.

### **[2] Section 52 Judge may order payment of costs**

Insert after section 52 (2):

- (3) Regulations made for the purposes of this section may, without limitation, adopt all or any specified provisions of Division 6 of Part 11 of the *Legal Profession Act 1987*, with or without specified modifications.
- (4) Any such regulation may:
- (a) confer or impose, or have the effect of conferring or imposing, jurisdiction or functions on any court or judicial officer, or
  - (b) confer or impose, or have the effect of conferring or imposing, functions on any officer or costs assessor.

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## **Schedule 19 Amendment of Legal Profession Act 1987 No 109**

(Section 3)

### **Section 202 Application for assessment of party/party costs**

Insert after section 202 (3):

- (4) Subsection (3) does not affect regulations made for the purposes of section 52 of the *Land and Environment Court Act 1979* in connection with criminal proceedings in the Land and Environment Court.

## **Schedule 20 Amendment of Liquor Act 1982 No 147**

(Section 3)

### **Section 145C**

Insert after section 145B:

#### **145C Application of Justices Act 1902**

- (1) The regulations may declare that specified provisions of the *Justices Act 1902* apply to and in respect of the court (whether or not they would apply apart from this subsection).
- (2) Those provisions apply accordingly, and so apply with such adaptations as are necessary or with such modifications as are specified in the regulations.
- (3) This section does not affect the operation of section 145B or 147.

## **Schedule 21 Amendment of Local Courts Act 1982 No 164**

(Section 3)

### **Part 5**

Insert after Part 4:

### **Part 5 Rule Committees**

#### **29 Definitions**

In this Part:

*barrister* means a legal practitioner who holds a current practising certificate as a barrister.

*Director-General* means the Director-General of the Attorney General's Department.

*Rule Committee* means a Rule Committee established by this Part.

*solicitor* means a legal practitioner who holds a current practising certificate as a solicitor.

#### **30 Local Court Rule Committee**

- (1) There is to be a Local Court Rule Committee.
- (2) The Local Court Rule Committee is to consist of the following members:
  - (a) the Chief Magistrate,
  - (b) at least 1 and not more than 6 Magistrates (in addition to the Chief Magistrate),
  - (c) a barrister,
  - (d) a solicitor,
  - (e) a Clerk of a Local Court,
  - (f) a person nominated by the Director of Public Prosecutions,
  - (g) a person nominated by the Legal Aid Commission.
  - (h) a person appointed by the Director-General,
  - (i) a person appointed by the Minister.



- (3) A member referred to in subsection (2) (b)–(g):
  - (a) is to be appointed by the Chief Magistrate, and
  - (b) is to hold office for the period specified in the member's instrument of appointment and is eligible (if otherwise qualified) for re-appointment.
- (4) The member appointed by the Director-General is to hold office as such until the Director-General otherwise directs.
- (5) The member appointed by the Minister is to hold office as such until the Minister otherwise directs.
- (6) A member ceases to hold office:
  - (a) in the case of a member referred to in subsection (2) (a)–(e), when the member ceases to hold the qualification by virtue of which the member was appointed or holds office, or
  - (b) in the case of a member appointed by the Chief Magistrate, if the member resigns as a member by instrument in writing addressed to the Chief Magistrate, or
  - (c) in the case of the member appointed by the Director-General, if the member resigns as a member by instrument in writing addressed to the Director-General, or
  - (d) in the case of the member appointed by the Minister, if the member resigns as a member by instrument in writing addressed to the Minister.
- (7) If the office of an appointed member becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.

### **31 Local Court (Civil Claims) Rule Committee**

- (1) There is to be a Local Court (Civil Claims) Rule Committee.

- (2) The Local Court (Civil Claims) Rule Committee is to be composed of the following members:
- (a) the Chief Magistrate,
  - (b) at least 1 and not more than 6 Magistrates (in addition to the Chief Magistrate),
  - (c) a barrister,
  - (d) a solicitor,
  - (e) a person appointed to represent consumer groups,
  - (f) a person appointed by the Director-General,
  - (g) a person appointed by the Minister.
- (3) A member referred to in subsection (2) (b)–(e):
- (a) is to be appointed by the Chief Magistrate, and
  - (b) is to hold office for the period specified in the member's instrument of appointment and is eligible (if otherwise qualified) for re-appointment.
- (4) The member appointed by the Director-General is to hold office as such until the Director-General otherwise directs.
- (5) The member appointed by the Minister is to hold office as such until the Minister otherwise directs.
- (6) A member ceases to hold office:
- (a) in the case of a member referred to in subsection (2) (a)–(d), when the member ceases to hold the qualification by virtue of which the member was appointed or holds office, or
  - (b) in the case of a member appointed by the Chief Magistrate, if the member resigns as a member by instrument in writing addressed to the Chief Magistrate, or
  - (c) in the case of the member appointed by the Director-General, if the member resigns as a member by instrument in writing addressed to the Director-General. or

- (d) in the case of the member appointed by the Minister, if the member resigns as a member by instrument in writing addressed to the Minister.
- (7) If the office of an appointed member becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.

### **32 Deputies**

- (1) The Chief Magistrate may, from time to time, appoint to a Rule Committee:
  - (a) a barrister to be the deputy of the barrister member of the Committee, and
  - (b) a solicitor to be the deputy of the solicitor member of the Committee.
- (2) The Chief Magistrate may revoke any such appointment.
- (3) In the absence of the barrister member or the solicitor member of a Rule Committee, the member's deputy:
  - (a) may, if available, act in the place of the member, and
  - (b) while so acting, has the functions of the member and is taken to be the member.

### **33 Chairperson**

- (1) The Chief Magistrate is to be the chairperson of each Rule Committee.
- (2) The Chief Magistrate is to appoint in writing one of the other members of a Rule Committee who is a Magistrate as deputy chairperson.

### **34 Meetings**

- (1) A Rule Committee is (subject to this section) to regulate its own procedure.

- (2) The chairperson of a Rule Committee or, in the absence of the chairperson, the deputy chairperson of the Committee is to preside at a meeting of the Committee.
- (3) In the absence from a meeting of a Rule Committee of both the chairperson and the deputy chairperson, another member of the Committee who is a Magistrate is to be chosen by the members present to preside at the meeting.
- (4) The quorum for a meeting of a Rule Committee is a majority of the number of the members for the time being. Any duly convened meeting of a Rule Committee at which a quorum is present is competent to transact any business of the Rule Committee and has and may exercise all the functions of the Rule Committee.
- (5) A decision supported by a majority of the votes cast at a meeting of a Rule Committee at which a quorum is present is the decision of the Rule Committee.
- (6) The person presiding at a meeting of a Rule Committee has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- (7) The Chief Magistrate is to call meetings of a Rule Committee as the Chief Magistrate thinks necessary (subject to any decision of the Committee under subsection (1)).
- (8) A Rule Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Committee for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Committee.

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## **Schedule 22 Amendment of Local Courts (Civil Claims) Act 1970 No 11**

(Section 3)

### **[1] Section 4 Definitions**

Omit the definition of *Rule Committee* from section 4 (1).

Insert instead:

*Rule Committee* means the Local Court (Civil Claims) Rule Committee established under the *Local Courts Act 1982*.

### **[2] Part 2, Division 3A Rule Committee**

Omit the Division (sections 10A—10F).

### **[3] Schedule 2 Savings and transitional provisions**

Insert after Part 4:

#### **Part 5 Provision consequent on enactment of Courts Legislation Amendment Act 1998**

##### **1 Rules and regulations**

The repeal of section 10F does not affect the status of rules and regulations made under this Act and in force at the commencement of this Part.

## **Schedule 23 Amendment of Supreme Court Act 1970 No 52**

(Section 3)

### **Section 46A Certain appeals may be heard by 2 Judges of Appeal**

Insert at the end of section 46A (1) (b):

, or

- (c) from the Dust Diseases Tribunal, where the appeal relates solely to the amount of compensation awarded by that Tribunal, or
- (d) from a court or tribunal (other than the Supreme Court), where:
  - (i) the leave of the Court of Appeal is required in respect of the appeal, and
  - (ii) the appeal is not against a final judgment, order, award or decision of the court or tribunal.

[Minister's second reading speech made in—  
Legislative Council on 21 May 1998  
Legislative Assembly on 4 June 1998]