



New South Wales

Courts Legislation Miscellaneous Amendments Act 2002 No 99

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New South Wales

Courts Legislation Miscellaneous Amendments Act 2002 No 99

Act No 99, 2002

An Act to amend various Acts with respect to court practice and procedure, electronic case management and appeals to the Court of Appeal; and for other purposes. [Assented to 29 November 2002]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Courts Legislation Miscellaneous Amendments Act 2002*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.
- (2) Schedule 4.1 commences, or is taken to have commenced, on the date of assent to this Act or the commencement of the *Community Services Legislation Amendment Act 2002*, whichever is the earlier.

3 Amendment of Acts

The Acts set out in Schedules 1–4 are amended as set out in those Schedules.

Schedule 1 Amendments relating to criminal procedure changes

(Section 3)

1.1 Crimes Act 1900 No 40

Section 562A Definitions (as amended by the Justices Legislation Repeal and Amendment Act 2001)

Insert after paragraph (b) of the definition of *authorised justice* in section 562A (1):

, or

- (c) an employee of the Attorney General's Department authorised by the Attorney General as an authorised justice for the purposes of this Part.

1.2 Criminal Procedure Act 1986 No 209

[1] Section 50 Form of court attendance notice (as inserted by the Criminal Procedure Amendment (Justices and Local Courts) Act 2001)

Omit section 50 (3) (b). Insert instead:

- (b) briefly state the particulars of the alleged offence,

[2] Sections 51 and 176 (as inserted by the Criminal Procedure Amendment (Justices and Local Courts) Act 2001)

Omit the sections.

[3] Section 88 Death of person who made statement (as inserted by the Criminal Procedure Amendment (Justices and Local Courts) Act 2001)

Insert after section 88 (2):

- (3) This section does not apply to a deposition that is admissible under section 284.

[4] Section 158 (as inserted by the Criminal Procedure Amendment (Justices and Local Courts) Act 2001)

Omit the section. Insert instead:

158 Transcript of statement in committal proceedings

A transcript of a record of a statement made by an accused person may, unless the court otherwise orders, be given in evidence at the trial of the accused person if it is proved on oath that the record is a true record of the statement made by the accused person and that the transcript is a correct transcript of the record.

[5] Section 175 Form of court attendance notice (as inserted by the Criminal Procedure Amendment (Justices and Local Courts) Act 2001)

Omit section 175 (3) (b). Insert instead:

(b) briefly state the particulars of the alleged offence,

[6] Section 183 Brief of evidence to be served on accused person where not guilty plea (as inserted by the Criminal Procedure Amendment (Justices and Local Courts) Act 2001)

Omit “unless the court otherwise orders in accordance with section 187” from section 183 (1).

Insert instead “subject to section 187”.

[7] Section 187 When brief of evidence need not be served (as inserted by the Criminal Procedure Amendment (Justices and Local Courts) Act 2001)

Insert after section 187 (4):

(5) A prosecutor is not required to serve a brief of evidence in proceedings for an offence of a kind, or proceedings of a kind, prescribed by the regulations.

[8] Section 240 Revocation of warrants (as inserted by the Criminal Procedure Amendment (Justices and Local Courts) Act 2001)

Omit “recalled and cancelled” from section 240 (1).

Insert instead “revoked”.

[9] Section 240 (1) (a) (as inserted by the Criminal Procedure Amendment (Justices and Local Courts) Act 2001)

Omit “cancel”. Insert instead “revoke”.

[10] Section 240 (2) (as inserted by the Criminal Procedure Amendment (Justices and Local Courts) Act 2001)

Omit “recall” wherever occurring. Insert instead “revoke”.

[11] Section 313 Warrants (as inserted by the Criminal Procedure Amendment (Justices and Local Courts) Act 2001)

Insert “or signature” after “seal” in section 313 (1).

[12] Section 313 (1) (as inserted by the Criminal Procedure Amendment (Justices and Local Courts) Act 2001)

Insert “or any other Act” after “this Act” where firstly occurring in section 313 (1).

[13] Section 313 (1) (as inserted by the Criminal Procedure Amendment (Justices and Local Courts) Act 2001)

Insert “or signed” after “sealed”.

[14] Section 313 (2) (as inserted by the Criminal Procedure Amendment (Justices and Local Courts) Act 2001)

Insert “or any other Act” after “this Act”.

[15] Section 313 (2) (as inserted by the Criminal Procedure Amendment (Justices and Local Courts) Act 2001)

Insert “or electronic” after “photographic”.

1.3 Gaming Machines Act 2001 No 127

Section 196 Prosecution of unincorporated clubs

Omit section 196 (1) and (2). Insert instead:

- (1) Proceedings for an offence under this Act or the regulations of which a registered club that is not a body corporate is alleged to be guilty may be commenced against the club in the name of the club.

- (2) Any such proceedings may, subject to subsection (3), be prosecuted and dealt with in all respects as if the club were a body corporate.

1.4 Liquor Act 1982 No 147

Sections 14 and 15

Insert after section 13:

14 Adjournments

- (1) The court may at any stage of proceedings adjourn the proceedings in an application or matter generally or to a specified time or place.
- (2) If the court is not constituted in accordance with this Act because a member of the court is absent, any member of the court who is present, or if no member of the court is present a registrar, may adjourn the court or the hearing of any application of the matter.
- (3) An adjournment of proceedings may be in such terms as to costs or otherwise as the court thinks fit.
- (4) This section does not apply to proceedings for offences dealt with by the court.

15 Amendment of documents

- (1) On the hearing of an application under this or any other Act, the court may, of its own motion, or on such terms as to costs or adjournment as it thinks fit, on the application of a party to proceedings:
 - (a) permit the lodging or amendment of any notice or of any document or instrument necessary to the proceedings before the court, and
 - (b) disregard any omission, error, defect or insufficiency in respect of the giving, serving, affixing, keeping affixed, advertising or publishing of the document or instrument or any other matter or thing not going to the substance of the matter before the court.
- (2) This section does not apply to proceedings for offences dealt with by the court.

1.5 Local Courts Act 1982 No 164

[1] Section 28 Regulations

Insert at the end of the section:

- (2) In particular, the regulations may make provision for or with respect to fees payable in respect of proceedings in criminal or application proceedings in a Local Court or committal proceedings.

[2] Section 28A Rules (as inserted by the Justices Legislation Repeal and Amendment Act 2001)

Insert “or on a Magistrate in committal proceedings” after “Court” in section 28A (1) (a).

[3] Section 28A (3) and (4)

Insert after section 28A (2):

- (3) A rule may be made under this Act in relation to any matter for which a rule-making power is conferred by or under any other Act or law in relation to a matter referred to in subsection (1).
- (4) Subsection (3) does not prevent a rule being made under the other Act or law, if authorised by that Act or law.

[4] Section 28B

Insert after section 28A:

28B Tabling and disallowance of practice notes

A practice note (including any other document, however described, which regulates the practice or procedure of a Local Court, any Division of a Local Court or of any class of proceedings in a Local Court, but excluding a decision of a Local Court) issued by or on behalf of all or any Local Courts is taken to be a statutory rule for the purposes of Part 6 of the *Interpretation Act 1987*.

[5] Schedule 1 Savings and transitional provisions (as amended by the Justices Legislation Repeal and Amendment Act 2001)

Insert at the end of clause 16:

- (2) Part 2 of and Schedule 1 to the *Justices (General) Regulation 2000* continue to apply, with any necessary modifications, in respect of proceedings before a Local Court or a Magistrate until otherwise provided by the regulations.

1.6 Local Courts (Civil Claims) Act 1970 No 11

Section 84 Rules

Omit section 84 (5).

1.7 Protection of the Environment Operations Act 1997 No 156

Section 268

Omit the section. Insert instead:

268 Issue of noise abatement orders

- (1) The occupier of any premises may apply to a Local Court for an order under this section.
- (2) The application is to be commenced by the issue of an application notice that alleges that the occupier's occupation of premises is affected by offensive noise.
- (3) The respondent to the application may be a person alleged to be making or contributing to the noise or the occupier of premises from which the noise is alleged to be emitted.
- (4) If the Local Court is satisfied (on the balance of probabilities) that the alleged offensive noise exists, or that although abated it is likely to recur on the same premises, the Local Court may make either or both of the following orders:
 - (a) an order directing the respondent to abate the offensive noise within the time specified in the order,
 - (b) an order directing the respondent to prevent a recurrence of the offensive noise.
- (5) Part 6 of the *Local Courts Act 1982* applies to an application under this section.

Schedule 2 Amendments relating to electronic case management for courts

(Section 3)

2.1 Electronic Transactions Act 2000 No 8

Part 2A

Insert after Part 2:

Part 2A Courts administration

14A Definitions

(1) In this Part:

court includes any person or body that exercises judicial, magisterial or coronial functions, and includes any other person or body that is declared by the regulations to be a court for the purposes of this Part.

ECM court means a court in respect of which the use of an ECM system is authorised pursuant to an order in force under section 14C.

ECM system means an electronic case management system established under section 14B.

(2) In this Part, a reference to *filing* a document with an ECM court includes a reference to any other method of lodging a document with, or otherwise sending a document to, the court.

14B Establishment of ECM system

(1) The Attorney General may establish an electronic case management system:

- (a) to enable documents with respect to legal proceedings to be created, filed, issued, stored, retrieved, viewed and served in electronic form, and
- (b) to enable parties to legal proceedings to communicate in electronic form with other parties to the proceedings and with the court before which the proceedings are being taken, and
- (c) to enable information concerning the progress of legal proceedings to be provided in electronic form to parties

to the proceedings and to members of the public generally.

- (2) For the purposes of the *Freedom of Information Act 1989*, the *Privacy and Personal Information Protection Act 1998* and the *State Records Act 1998*, information contained in the ECM system with respect to proceedings in an ECM court (including proceedings that have been finally disposed of) is taken to be information concerning the judicial functions of that court.

14C Authorisation of use of ECM system in relation to courts

The Attorney General may, by order published in the Gazette, authorise the use of an ECM system by such courts, and for such purposes, as are specified in the order.

14D Requirements for writing

Any provision of any law of this jurisdiction that requires a document filed with, or issued by, an ECM court to be in writing is satisfied if the document is filed or issued by means of the ECM system in accordance with rules of court.

14E Requirements for signatures or seals

- (1) Any provision of any law of this jurisdiction that requires a document that is filed with, or issued by, an ECM court to be signed or sealed is satisfied, in the case of a document that is filed or issued by means of the ECM system, if the document:
 - (a) is authenticated by means of a facsimile of the relevant signature or seal, or
 - (b) is authenticated in some other manner in accordance with rules of court.
- (2) If authenticated as referred to in subsection (1) (a) or (b), a document that is filed with, or issued by, an ECM court by means of the ECM system has the same effect as a document that has been duly signed or sealed.

14F Requirements for original or certified documents

Any provision of any law of this jurisdiction that requires an original or certified document to be filed with an ECM court is satisfied by the filing of a copy of the document by means of the ECM system in accordance with rules of court.

14G Requirements as to multiple copies

Any provision of any law of this jurisdiction that requires multiple copies of a document to be filed or served does not apply to:

- (a) a document that is filed with an ECM court by means of the ECM system, or
- (b) a document that, having been filed with an ECM court, is served in electronic form, whether by means of the ECM system or otherwise.

14H Status of documents created by ECM system

A document created by means of the ECM system:

- (a) in the case of a document created by an ECM court, being a document that is authorised or required to be issued by the court, is taken to have been issued by the court, or
- (b) in the case of a document created by a party to proceedings in an ECM court, being a document that is authorised or required to be filed by the party, is taken to have been filed by the party.

14I Use of ECM system for the conduct of certain hearings

- (1) This section applies to any hearing of proceedings that an ECM court is authorised or required to conduct in private, other than a hearing conducted for the purpose of receiving evidence.
- (2) A hearing to which this section applies may be conducted by electronic communication sent by means of the ECM system, but only if the rules of court so provide.

14J Misdirected initiating process

- (1) This section applies to proceedings:
 - (a) that are commenced in a court by a document filed by means of the ECM system, or
 - (b) that are remitted to a court under this section.
- (2) On determining that it does not have jurisdiction to hear the whole or any part of the proceedings, the court:

- (a) may remit the proceedings to such other court as appears to it to have jurisdiction to do so, and
 - (b) may make such other orders as it considers appropriate in the circumstances.
- (3) Proceedings that are remitted to a court under this section are taken to have been commenced in that court on the date on which they were originally commenced.

14K Uniform time

For the purpose of ascertaining when it has occurred, any transaction effected by means of the ECM system is taken to have occurred in Sydney.

Note. Persons accessing the ECM system from within Broken Hill or Lord Howe Island will therefore be taken to have done so according to New South Wales standard time or New South Wales summer time, as the case requires, and not according to standard time or summer time in Broken Hill or Lord Howe Island.

14L Exclusion of liability for disclosures by means of ECM system

- (1) No action for defamation or breach of confidence lies against the State or any other person by reason only of the publication, by means of the ECM system, of information contained in that system.
- (2) For the purposes of the law relating to defamation and breach of confidence, the granting of access to information contained in the ECM system does not constitute an authorisation or approval of the publication of the information by the person to whom access is granted.

14M Electronic service of documents

Any document that (having been filed in, or issued by, an ECM court by means of the ECM system) is served electronically, whether by means of the ECM system or otherwise:

- (a) if served after 5.00pm on any day, is taken (subject to paragraph (b)) to have been served on the next day, and
- (b) if served on a Saturday, Sunday or public holiday, is taken to have been served on the next day that is not a Saturday, Sunday or public holiday.

14N Powers to make rules of court and regulations

- (1) In the case of an ECM court whose practice and procedure are governed by rules of court, the powers of the person or body by whom such rules are made include a power to make rules, not inconsistent with this Part, with respect to ECM matters.
- (2) In the case of an ECM court whose practice and procedure are governed by regulations, the powers of the person or body by whom such regulations are made include a power to make regulations, not inconsistent with this Part, with respect to the ECM matters.
- (3) The following matters are *ECM matters* for the purposes of this section:
 - (a) the kinds of proceedings in respect of which the ECM system may or must be used in relation to a court,
 - (b) the kinds of documents that may or must be filed in a court by means of the ECM system,
 - (c) the kinds of documents that may or must be issued by a court by means of the ECM system,
 - (d) the practice and procedure to be followed in connection with:
 - (i) documents that are filed in a court, or issued by a court, by means of the ECM system, and
 - (ii) the conduct of hearings by electronic communication sent by means of the ECM system,
 - (e) the persons to whom, the circumstances in which and the conditions on which access may be given to information contained on the ECM system in relation to the court and proceedings before a court,
 - (f) any other matter with respect to the operation, use or control of the ECM system in relation to a court and proceedings before a court.

14O Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the granting or withdrawal of the Attorney General's authorisation of the use of the ECM system in relation to a court by operation of an order under section 14C.

- (2) If the regulations so provide, such a provision has effect despite anything to the contrary in this or any other Act or law with respect to the following matters:
- (a) the practice or procedure of a court,
 - (b) the filing, issue or service of documents in connection with proceedings in a court,
 - (c) the evidentiary status of documents in proceedings before a court.

14P Proceedings originating in non-ECM courts

This Part applies to proceedings that have been remitted to an ECM court by a court that is not an ECM court (including a court of the Commonwealth or a court of some other State or Territory) in the same way as it applies to proceedings that have originated in an ECM court.

14Q Proceedings on application for assessment of bill of costs

For the purposes of this Part, proceedings on an application for the assessment of costs under Division 6 of Part 11 of the *Legal Profession Act 1987* are taken to be proceedings in the Supreme Court.

Note. The ECM system will therefore apply to such proceedings when it applies to proceedings before the Supreme Court, and in its application to such proceedings will be subject to any rules of the Supreme Court that are made under the power conferred by section 14N.

14R Part 2 excluded

Part 2 does not apply to matters relating to the practice or procedure of a court including, in particular, matters relating to the filing, issue or service of documents.

2.2 Coroners Act 1980 No 27

Section 58 Regulations

Insert after section 58 (1):

- (1A) Without limiting subsection (1), the regulations may make provision for or with respect to the use of an electronic case management system whose use, in respect of inquests and inquiries, is authorised by an order in force under section 14C

of the *Electronic Transactions Act 2000*, including provisions for or with respect to:

- (a) the kinds of inquests and inquiries in respect of which that system may or must be used, and
- (b) the kinds of documents that may or must be filed in connection with inquests and inquiries by means of that system, and
- (c) the kinds of documents that may or must be issued in connection with inquests and inquiries by means of that system, and
- (d) the practice and procedure to be followed in connection with documents that are filed or issued by means of that system, and
- (e) the persons to whom, the circumstances in which and the conditions on which access may be given to information contained on that system in connection with inquests and inquiries.

Schedule 3 Amendments relating to appeals to the Court of Appeal

(Section 3)

3.1 Administrative Decisions Tribunal Act 1997 No 76

Section 119 Right of appeal to Supreme Court

Insert after section 119 (1):

- (1A) Despite subsection (1), an appeal does not lie to the Supreme Court against any of the following decisions of the Appeal Panel except by leave of the Supreme Court:
- (a) an interlocutory decision,
 - (b) a decision made with the consent of the parties,
 - (c) a decision as to costs.

3.2 Compensation Court Act 1984 No 89

Section 32 Appeal to Court of Appeal from Judge on question of law

Insert at the end of section 32 (4):

- (d) an appeal from a decision or award made with the consent of the parties.

3.3 District Court Act 1973 No 9

Section 127 Right of appeal to Supreme Court

Insert at the end of section 127 (2):

- (e) an appeal from an order made with the consent of the parties.

3.4 Dust Diseases Tribunal Act 1989 No 63

Section 32 Right of appeal to Supreme Court

Insert at the end of section 32 (4):

- (d) an appeal from a decision made with the consent of the parties.

3.5 Land and Environment Court Act 1979 No 204

[1] Section 57 Class 1, 2 and 3 proceedings—appeals

Omit section 57 (3) and (4). Insert instead:

- (3) Despite subsection (1), an appeal does not lie to the Supreme Court against an order or decision of the Court that has been made by a Commissioner or Commissioners, other than a decision of the kind referred to in subsection (4) (a) or (b).
- (4) Despite subsection (1), an appeal does not lie to the Supreme Court against any of the following orders or decisions of the Court except by leave of the Supreme Court:
 - (a) a decision on a question of law determined by a judge pursuant to a reference under section 36 (5),
 - (b) a decision of a Commissioner or Commissioners made after a judge's determination referred to in paragraph (a), where the judge's determination is itself the subject of an appeal to the Supreme Court,
 - (c) an order or decision made on an appeal under section 56A,
 - (d) an interlocutory order or decision,
 - (e) an order made with the consent of the parties,
 - (f) an order or decision as to costs.

[2] Section 58 Class 4 proceedings—appeals

Omit section 58 (3). Insert instead:

- (3) Despite subsection (1), an appeal does not lie to the Supreme Court against any of the following orders or decisions of the Court except by leave of the Supreme Court:
 - (a) an interlocutory order or decision,
 - (b) an order made with the consent of the parties,
 - (c) an order or decision as to costs.

3.6 Local Courts (Civil Claims) Act 1970 No 11

Section 69 Appeal

Insert after section 69 (2A):

- (2B) Despite subsection (2), but subject to subsection (2A), an appeal does not lie to the Supreme Court against any of the following judgments or orders of a court except by leave of the Supreme Court:
- (a) an interlocutory judgment or order,
 - (b) a judgment or order made with the consent of the parties,
 - (c) an order as to costs.

3.7 Workplace Injury Management and Workers Compensation Act 1998 No 86

Section 353 Appeal against decision of Commission constituted by Presidential member

Insert at the end of section 353 (4):

- (d) an appeal from a decision made with the consent of the parties.

Schedule 4 Miscellaneous amendments

(Section 3)

4.1 Community Services Legislation Amendment Act 2002 No 42

Schedule 2 Amendment of Coroners Act 1980

Omit Schedule 2 [9].

4.2 Costs in Criminal Cases Act 1967 No 13

Section 2 Certificate may be granted

Insert “or a direction is given by the Director of Public Prosecutions that no further proceedings be taken,” after “concerned,” in section 2 (1) (a).

4.3 Interpretation Act 1987 No 15

[1] Section 80 Compliance with forms

Omit “If an Act or statutory rule prescribes a form” from section 80 (1).

Insert instead “If a form is prescribed by, or approved under, an Act or statutory rule”.

[2] Section 80 (2)

Insert “, or approved under,” after “prescribed by”.

[3] Section 80 (3)

Insert “, or approved under,” after “in any form in”.

[4] Section 80 (4)

Insert after section 80 (3):

- (4) If an Act or statutory rule requires anything to be in a form prescribed by rules of court (whether generally or in relation to a particular court or tribunal), any such rules of court may instead provide for the thing to be in a form approved under or in accordance with those rules.

4.4 Legal Profession Act 1987 No 109

[1] Section 3 Definitions

Insert “, and includes any person to whom that person has delegated the functions of that officer” after “Department” in the definition of *Manager, Costs Assessment* in section 3 (1).

[2] Section 200 Applications by instructing practitioners for assessment of costs in bills

Insert “, or within such further time as the Manager, Costs Assessment may allow,” after “given” in section 200 (3).

[3] Section 200 (4)

Insert after section 200 (3):

- (4) Further time is to be allowed as referred to in subsection (3) only if the Manager, Costs Assessment is satisfied that the bill of costs was received more than 7 days after it was given and that it would be impracticable for an application to be made under this section unless further time were allowed.

[4] Section 203 How is an application to be made?

Omit “in the form prescribed by the regulations” from section 203 (1).

Insert instead “in accordance with the regulations”.

[5] Section 204 Persons to be notified of application

Omit “cause a copy of an application for assessment to be given”.

Insert instead “take such steps as are reasonably practicable to provide a copy of an application for assessment”.

[6] Section 207 Costs assessor may require documents or further particulars

Insert after section 207 (2):

- (2A) If the notice referred to in subsection (1) or (2) so directs, and if it is practicable for the person to whom the notice is given to comply with such a direction, the document or particulars required by the notice must be provided in electronic form in addition to, or instead of, in paper form (as the notice may specify).

[7] Section 208JB Correction of error in determination

Insert “, on the filing of the replacement certificate in the office or registry of a court having jurisdiction to order the payment of the amount of the new determination,” after “and” in section 208JB (2).

[8] Section 208KA Application for review of determination

Insert “or within such further time as the Manager, Costs Assessment may allow” after “the costs assessor” in section 208KA (1).

[9] Section 208KA (1A)

Insert after section 208KA (1):

- (1A) Further time is to be allowed as referred to in subsection (1) only if the Manager, Costs Assessment is satisfied that the determination of the costs assessor was received more than 7 days after the relevant certificate under section 208J was issued and that it would be impracticable for an application to be made under this section unless further time were allowed.

[10] Section 208KA (2) (a)

Omit the paragraph. Insert instead:

- (a) be made in accordance with the regulations, and

[11] Section 208KHA Correction of error in determination

Insert “, on the filing of the replacement certificate in the office or registry of a court having jurisdiction to order the payment of the amount of the new determination,” after “and” in section 208KHA (2).

[12] Schedule 8 Savings, transitional and other provisions

Insert at the end of clause 1A (1):

Courts Legislation Miscellaneous Amendments Act 2002

[13] Schedule 8

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

**Part Provisions consequent on enactment of
Courts Legislation Miscellaneous
Amendments Act 2002**

Definitions

In this Part, *the 2002 amending Act* means the *Courts Legislation Miscellaneous Amendments Act 2002*.

Applications under sections 203 and 208KA

- (1) An application made in accordance with section 203 before the amendment of that section by the 2002 amending Act is taken to have been made in accordance with that section, as amended by that Act.
- (2) An application made in accordance with section 208KA before the amendment of that section by the 2002 amending Act is taken to have been made in accordance with that section, as amended by that Act.

Notification of applications under section 204

Section 204, as amended by the 2002 amending Act, extends to any application for assessment made before the commencement of that amendment.

Correction of errors under sections 208JB and 208KHA

The amendments to sections 208JB and 208KHA made by the 2002 amending Act do not affect any judgment that has been varied under either of those sections before the commencement of those amendments.

[Second reading speech made in—

Legislative Assembly on 23 October 2002

Legislative Council on 21 November 2002]

BY AUTHORITY