



New South Wales

Courts Legislation Amendment Act 2003 No 71

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New South Wales

Courts Legislation Amendment Act 2003 No 71

Act No 71, 2003

An Act to amend certain Acts with respect to courts and court procedures and proceedings; to amend the *Oaths Act 1900* with respect to persons who may witness affidavits and statutory declarations; and for other purposes. [Assented to 20 November 2003]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Courts Legislation Amendment Act 2003*.

2 Commencement

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

3 Amendment of Acts

The Acts specified in Schedules 1–8 are amended as set out in those Schedules.

Schedule 1 Amendment of Crimes (Local Courts Appeal and Review) Act 2001 No 120

(Section 3)

[1] Section 3 Definitions

Insert after section 3 (3):

- (4) Notes included in the text of this Act do not form part of this Act.

[2] Section 68 Court may confirm or vary conviction or sentence with effect from earlier day

Insert after section 68 (1):

- (1A) An appeal court may, for the purposes of making an order under subsection (1) in relation to a sentence that consists of, or includes, a disqualification from holding a driver licence (within the meaning of the *Road Transport (Driver Licensing) Act 1998*), take into account:
- (a) any period during which the defendant's driver licence was suspended under section 34 of the *Road Transport (General) Act 1999*, and
- (b) any other periods after committing the offence to which the sentence relates during which the defendant held, or did not hold, a driver licence that would have permitted the defendant to drive a motor vehicle.

Note. Section 34 of the *Road Transport (General) Act 1999* enables a police officer to suspend, by written notice, a person's driver licence within 48 hours after the person is charged with certain offences involving alcohol or drug use under the *Road Transport (Safety and Traffic Management) Act 1999*. The suspension has effect until the charge is heard and determined by a court. Also, section 63 of this Act provides for the stay of the execution of a sentence pending determination of appeal under this Act.

[3] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Courts Legislation Amendment Act 2003, but only in relation to the amendments made to this Act

[4] Schedule 1, Part 3

Insert after Part 2:

**Part 3 Provisions consequent on enactment of
Courts Legislation Amendment Act 2003**

8 Application of amendment to section 68

The amendment made to section 68 by Schedule 1 [2] to the *Courts Legislation Amendment Act 2003* extends to appeals that were commenced before the commencement of the amendment but not finally determined before that commencement.

Schedule 2 Amendment of Criminal Procedure Act 1986 No 209

(Section 3)

[1] Section 284 Depositions by persons dangerously ill

Omit “a Judge” from section 284 (1).

Insert instead “an authorised person”.

[2] Section 284 (1)

Omit “the court”. Insert instead “a court”.

[3] Section 284 (1) and (2)

Omit “the Judge” wherever occurring.

Insert instead “the authorised person”.

[4] Section 284 (6)

Insert after section 284 (5):

(6) In this section:

authorised person means any of the following:

- (a) a Judge,
- (b) a justice of the peace who is a registrar of a Local Court or the Drug Court,
- (c) a justice of the peace who is an employee of the Attorney General’s Department authorised in writing by the Attorney General to be an authorised person for the purposes of this section.

Schedule 3 Amendment of District Court Act 1973 No 9
(Section 3)

[1] Section 4 Definitions: general

Insert in alphabetical order in section 4 (1):

sitting place means:

- (a) any proclaimed place, and
- (b) in relation to the Court's civil jurisdiction—any place (other than a proclaimed place) that is the subject of a direction in force under section 32 (1), and
- (c) in relation to the Court's criminal jurisdiction—any place (other than a proclaimed place) that is the subject of a direction in force under section 173 (1).

[2] Section 32

Omit the section. Insert instead:

32 Directions as to sittings of Court in its civil jurisdiction

- (1) The Chief Judge may, by order in writing, direct that the Court is, during a specified calendar year, to sit in its civil jurisdiction at such proclaimed places or other places within the State and at such times as may be specified in the order.
- (2) If a place specified in a direction under subsection (1) is not a proclaimed place, the specified place is, for the purposes of this Act or any other law and while the direction remains in force, taken to form part of the nearest proclaimed place to the specified place.
- (3) Subsection (2) ceases to have effect if and when the specified place becomes a proclaimed place.
- (4) If the Chief Judge considers that it is not expedient or practicable for the Court to sit at a particular place during a specified period:
 - (a) the Chief Judge may, by order in writing, direct that during that period all civil proceedings (other than proceedings before a registrar or some other officer of the Court) for which the proper place is that place are to be continued by the Court sitting at some other place specified in the order, and

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- (b) while a direction under this subsection remains in force, the proceedings to which it relates are, if continued, to be dealt with accordingly.
 - (5) A direction under this section may be given in respect of a particular calendar year before the commencement of that year or, in respect of the remaining portion of that year, after the commencement of that year.
 - (6) If a direction having effect during a particular calendar year is given under subsection (1) in relation to a particular place, a previous direction under subsection (4) having effect, during that year, in respect of proceedings the proper place in relation to which is that place, ceases to have effect.

[3] Section 33 General provisions as to sittings

Omit “proclaimed places” and “proclaimed place” from section 33 (2) wherever occurring.

Insert instead “sitting places” and “sitting place” respectively.

[4] Section 173

Omit the section. Insert instead:

173 Directions as to sittings of Court in its criminal jurisdiction

- (1) The Chief Judge is, by order in writing, to direct that the Court is, during a specified calendar year, to sit in its criminal jurisdiction at such proclaimed places or other places within the State and at such times as may be specified in the order.
- (2) If a place specified in a direction under subsection (1) is not a proclaimed place, the specified place is, for the purposes of this Act or any other law and while the direction remains in force, taken to form part of the nearest proclaimed place to the specified place.
- (3) Subsection (2) ceases to have effect if and when the specified place becomes a proclaimed place.
- (4) A direction under subsection (1) may be given in respect of a particular calendar year before the commencement of that year or, in respect of the remaining portion of that year, after the commencement of that year.

[5] Section 174 General provisions as to sittings

Omit “proclaimed places” and “proclaimed place” from section 174 (1) wherever occurring.

Insert instead “sitting places” and “sitting place” respectively.

[6] Section 175 Hearing of appeals

Omit “proclaimed place” from section 175 (1).

Insert instead “sitting place”.

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

Insert at the end of clause 1 (1):

Courts Legislation Amendment Act 2003, but only in relation to the amendments made to this Act

[8] Schedule 3, Part 7

Insert after Part 6:

Part 7 Provisions consequent on enactment of Courts Legislation Amendment Act 2003

10 Application of amendments to existing sittings directions

- (1) Any direction given under section 32 before the commencement of Schedule 3 [2] to the *Courts Legislation Amendment Act 2003* and in force immediately before that commencement continues to have effect under the corresponding provisions of section 32 as inserted by that Schedule until it is revoked or varied by order of the Chief Judge.
- (2) Any direction given under section 173 before the commencement of Schedule 3 [4] to the *Courts Legislation Amendment Act 2003* and in force immediately before that commencement continues to have effect under the corresponding provisions of section 173 as inserted by that Schedule until it is revoked or varied by order of the Chief Judge.

Schedule 4 Amendment of Industrial Relations Act 1996 No 17

(Section 3)

[1] Section 153 Jurisdiction of Commission in Court Session

Omit “contempt or” from section 153 (2).

[2] Section 153 (3) and (4)

Insert after section 153 (2):

- (3) Subject to subsection (4), the functions of the Commission relating to proceedings for contempt of the Commission may be exercised only by a Full Bench of the Commission in Court Session.
- (4) The functions of the Commission relating to the commencement of proceedings for contempt of the Commission may also be exercised by a judicial member.

[3] Section 164 Powers of Commission as to the production of evidence, perjury and contempt

Insert after section 164 (2):

- (3) Without limiting subsection (2), a judicial member may exercise the functions of the Supreme Court in relation to the commencement of proceedings for contempt of the Commission.

Note. Section 153 (4) provides that the functions of the Commission relating to the commencement of proceedings for contempt of the Commission may also be exercised by a judicial member.

[4] Section 164A

Insert after section 164:

164A Powers of Commission as to the disclosure of matters before the Commission

- (1) A *non-disclosure order* is any of the following orders:
 - (a) an order prohibiting or restricting:
 - (i) the disclosure of the name, address, picture or any other material that identifies, or may lead to the identification of, any person (whether or not a

- party to proceedings before the Commission or a witness summoned by, or appearing before, the Commission), or
- (ii) the doing of any other thing that identifies, or may lead to the identification of, any such person,
- (b) an order prohibiting or restricting the publication or broadcast of any report of proceedings before the Commission,
 - (c) an order prohibiting or restricting the publication of evidence given before the Commission, whether in public or in private, or of matters contained in documents lodged with the Commission or received in evidence by the Commission,
 - (d) an order prohibiting or restricting the disclosure to some or all of the parties to the proceedings of evidence given before the Commission, or of the contents of a document lodged with the Commission or received in evidence by the Commission, in relation to the proceedings.
- (2) The Commission in Court Session may make any non-disclosure order if it is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other reason.
 - (3) The Commission (other than in Court Session) may make any non-disclosure order only if:
 - (a) in relation to proceedings under the *Child Protection (Prohibited Employment) Act 1998*—it is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other reason, or
 - (b) in relation to any other proceedings—it is satisfied that it is necessary to do so in the interests of justice.
 - (4) The Commission may from time to time vary or revoke an order it has made under this section.
 - (5) Nothing in this section operates to limit any power of the Commission in Court Session apart from this section to make a non-disclosure order or any other order prohibiting or restricting the disclosure or publication of matters before the Commission.

[5] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

Courts Legislation Amendment Act 2003, but only in relation to the amendments made to this Act

[6] Schedule 4, Part 9

Insert at the end of the Part (with appropriate clause number):

Provisions consequent on enactment of Courts Legislation Amendment Act 2003

- (1) Sections 153 and 164, as amended by Schedule 4 to the *Courts Legislation Amendment Act 2003*:
 - (a) extend to any contempt committed before the commencement of Schedule 4 [2] to that Act, and
 - (b) do not extend to proceedings for any such contempt that are pending in the Commission immediately before that commencement.
- (2) Section 164A, as inserted by Schedule 4 [4] to the *Courts Legislation Amendment Act 2003*, extends to proceedings before the Commission that were commenced, but not finally determined, before the commencement of that section.

Schedule 5 Amendment of Jury Act 1977 No 18

(Section 3)

[1] Section 54 Jury permitted to separate in criminal trials

Insert at the end of the section:

- (2) An order under subsection (1) (b) may be made even if the jury in the proceedings is not present when the order is made.

[2] Section 68 Disclosure etc of identity or address of juror

Omit “In the case of a corporation, 50 penalty units; in any other case, 20 penalty units” from section 68 (1).

Insert instead “In the case of a corporation, \$250,000; in any other case, 2 years imprisonment or 50 penalty units (or both)”.

[3] Section 71 Proceedings for offences

Insert after section 71 (1):

- (1A) Proceedings for an offence under section 68 by a corporation may be dealt with:
 - (a) summarily before a Local Court, or
 - (b) summarily before the Supreme Court in its summary jurisdiction.
- (1B) If proceedings for an offence under section 68 by a corporation are brought in a Local Court, the maximum monetary penalty that the Local Court may impose for the offence is \$10,000, despite any higher maximum monetary penalty provided in respect of the offence by that section.

Schedule 6 Amendment of Local Courts (Civil Claims) Act 1970 No 11

(Section 3)

[1] Section 12 Limits of jurisdiction

Omit “\$40,000” from section 12 (1) and (2) wherever occurring.

Insert instead “\$60,000”.

[2] Section 59A Auctioning of seized property

Omit section 59A (1) (a). Insert instead:

- (a) the appointment of a licensee within the meaning of the *Property, Stock and Business Agents Act 2002* who is accredited to act as an auctioneer under section 21 of that Act to sell any property under a writ of execution, and

[3] Schedule 2 Savings and transitional provisions

Insert after Part 9:

Part 10 Provision consequent on enactment of Courts Legislation Amendment Act 2003

1 Increase in jurisdiction of General Division

The amendments made to section 12 of this Act by the *Courts Legislation Amendment Act 2003* do not apply in respect of proceedings commenced before the commencement of those amendments.

Schedule 7 Amendment of Oaths Act 1900 No 20

(Section 3)

[1] Section 21 Declarations in cases not specifically provided for

Omit “solicitor authorised by subsection (1) of section 27” from section 21 (1).

Insert instead “legal practitioner authorised by section 27 (1)”.

[2] Section 27 Authority to take and receive affidavits

Omit “solicitor” from section 27 (1), (3) and (4) wherever occurring.

Insert instead “legal practitioner”.

[3] Section 27 (5)

Omit the subsection. Insert instead:

(5) In this section:

legal practitioner who has in force a certificate under Part 3 of the *Legal Profession Act 1987* includes an interstate legal practitioner (within the meaning of section 48N of that Act) who has established an office in this State (within the meaning of section 48S of that Act) and who practises in this State as a barrister or a solicitor and barrister.

Schedule 8 Amendment of Supreme Court Act 1970 No 52

(Section 3)

[1] Part 7B, heading

Omit “**and neutral evaluation**”.

[2] Section 110H Purpose of Part

Omit “or neutral evaluation” from section 110H (1) and (2) (a) wherever occurring.

[3] Section 110I Meaning of “mediation”

Omit section 110I (2).

[4] Section 110J Other definitions

Omit the definitions of *evaluator* and *neutral evaluation session*.

[5] Section 110K Referral by Court

Omit “or neutral evaluation” and “or evaluator” wherever occurring.

[6] Section 110K (2)

Omit “who (in either case) may, but need not, be a person whose name is on a list compiled under this Part”.

Insert “who may, but need not, be a person nominated and appointed in accordance with the provisions of a practice note issued under section 110O”.

[7] Section 110L Duty of parties to participate

Omit “or neutral evaluation”.

[8] Section 110M Costs of mediation

Omit “or neutral evaluation” and “or evaluator”.

[9] Section 110O

Omit the section. Insert instead:

110O Nomination and appointment of mediators

- (1) The Chief Justice may issue a practice note on behalf of the Court with respect to the nomination and appointment of suitable persons to be mediators for the purposes of this Part.
- (2) Without limiting subsection (1), any such practice note may include any of the following kinds of provisions:
 - (a) provisions that give effect to any protocol or other arrangement concerning the nomination or appointment of mediators that has been agreed to by the Court,
 - (b) provisions relating to the persons or bodies that may nominate persons for appointment as mediators by the Court,
 - (c) provisions relating to other matters of procedure to be followed in obtaining and making such nominations or appointments.

[10] Section 110P Privilege

Omit “or *neutral evaluation session*” from section 110P (1).

[11] Section 110P (2)–(6)

Omit “or neutral evaluation session” and “or evaluator” wherever occurring.

[12] Section 110Q Secrecy

Omit “or neutral evaluation session” and “or evaluator” wherever occurring.

[13] Section 110R Exoneration from liability for nominated mediators

Omit “or evaluator” wherever occurring.

[14] Section 110R (a)

Omit “or neutral evaluation session”.

[15] Section 110R (b)

Omit the paragraph. Insert instead:

- (b) when the subject-matter of the mediation was referred for mediation, the mediator was nominated and appointed in accordance with the provisions of a practice note issued under section 110O.

[16] Section 124 Rule-making power

Omit “or neutral evaluation” from section 124 (1) (i).

[17] Fourth Schedule Savings and transitional provisions

Insert at the end of clause 1 (2):

Courts Legislation Amendment Act 2003, but only in relation to the amendments made to this Act

[18] Fourth Schedule, Part 14

Insert after Part 13:

**Part 14 Provision consequent on enactment of
Courts Legislation Amendment Act 2003**

21 Application of amendments

- (1) Except as provided by subclause (2), an amendment made to this Act by Schedule 8 to the *Courts Legislation Amendment Act 2003* extends to matters arising in proceedings commenced before the commencement of that amendment.

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Schedule 8 Amendment of Supreme Court Act 1970 No 52

- (2) The provisions of Part 7B, as in force immediately before the commencement of Schedule 8 to the *Courts Legislation Amendment Act 2003*, continue to apply to a matter that was referred for mediation or neutral evaluation under that Part before that commencement where that mediation or evaluation had not been completed before that commencement.

[Second reading speech made in—
Legislative Assembly on 31 October 2003
Legislative Council on 12 November 2003]

BY AUTHORITY