



New South Wales

Courts and Crimes Legislation Further Amendment Act 2010 No 135

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New South Wales

Courts and Crimes Legislation Further Amendment Act 2010 No 135

Act No 135, 2010

An Act to amend various Acts with respect to courts, crimes, evidence, criminal and civil procedure, victims compensation and other matters. [Assented to 7 December 2010]

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *Courts and Crimes Legislation Further Amendment Act 2010*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) The following provisions commence on the dates indicated:
 - (a) Schedule 4—25 February 2011 or such earlier day as may be appointed by proclamation,
 - (b) Schedules 6.1, 6.2, 6.4, 14 [1] and 18—a day or days to be appointed by proclamation,
 - (c) Schedule 12.2 [2]—14 January 2011,
 - (d) Schedule 14 [2]—the date of assent to this Act, or the date of commencement of Schedule 1 [2] to the *Industrial Relations Further Amendment (Jurisdiction of Industrial Relations Commission) Act 2009*, whichever is the later.

Schedule 1 Amendment of Administrative Decisions Tribunal Act 1997 No 76

[1] Section 55 When can an application for a review be made?

Insert “by the end of” before “the default application period” in section 55 (1) (d).

[2] Section 55 (3)

Omit “Despite subsections (1) (b) and (d) and (2), the”. Insert instead “The”.

[3] Section 55 (5)

Insert after section 55 (4):

- (5) The Tribunal may deal with an application even though the applicant has duly applied for an internal review of the decision to which the application relates, and the review is not finalised, if the Tribunal is satisfied that it is necessary for the Tribunal to deal with the application in order to protect the applicant’s interests.

[4] Section 71 Representation of parties

Insert after section 71 (4A):

- (5) Anything done or omitted to be done by a member of the Guardian Ad Litem Panel who is appointed by the Tribunal under subsection (4) to represent a party to the proceedings who is an incapacitated person does not subject the member personally to any action, liability, claim or demand if the thing was done, or omitted to be done, in good faith for the purpose of representing the incapacitated person.

(5A) However, any such liability attaches instead to the Crown.

[5] Section 71 (7)

Insert in alphabetical order:

Guardian Ad Litem Panel means the panel constituted as the Guardian Ad Litem Panel by the Director-General of the Department of Justice and Attorney General.

[6] Schedule 5 Savings and transitional provisions

Insert at the end of clause 1 (1):

Courts and Crimes Legislation Further Amendment Act 2010

[7] Schedule 5, Part 14

Insert after clause 48:

**Part 14 Provision consequent on enactment of
Courts and Crimes Legislation Further
Amendment Act 2010**

49 Applications to the Tribunal for review

An amendment made to section 55 by the *Courts and Crimes Legislation Further Amendment Act 2010* applies only to applications made to the Tribunal for review of a reviewable decision after the commencement of the amendment.

Schedule 2 Amendment of Adoption Act 2000 No 75

Section 124A

Insert after section 124:

124A Guardian ad litem—Exclusion of personal liability

- (1) Anything done or omitted to be done by a member of the Guardian Ad Litem Panel who is appointed by the Court as a guardian ad litem does not subject the member personally to any action, liability, claim or demand if the thing was done, or omitted to be done, in good faith for the purposes of exercising his or her functions as a guardian ad litem under this Act.
- (2) However, any such liability attaches instead to the Crown.
- (3) In this section:
Guardian Ad Litem Panel means the panel constituted as the Guardian Ad Litem Panel by the Director-General of the Department of Justice and Attorney General.

Schedule 3 Amendment of Children and Young Persons (Care and Protection) Act 1998 No 157

Section 101A

Insert after section 101:

101A Guardian ad litem—Exclusion of personal liability

- (1) Anything done or omitted to be done by a member of the Guardian Ad Litem Panel who is appointed by the Children's Court as a guardian ad litem does not subject the member personally to any action, liability, claim or demand if the thing was done, or omitted to be done, in good faith for the purposes of exercising his or her functions as a guardian ad litem under this Act.
- (2) However, any such liability attaches instead to the Crown.
- (3) In this section:
Guardian Ad Litem Panel means the panel constituted as the Guardian Ad Litem Panel by the Director-General of the Department of Justice and Attorney General.

Schedule 4 Amendment of Children (Criminal Proceedings) legislation

4.1 Children (Criminal Proceedings) Act 1987 No 55

[1] Section 48A Objects of Part

Omit section 48A (a). Insert instead:

- (a) to establish a youth conduct order scheme for dealing with children who have been charged with (or pleaded guilty to or been found guilty of) certain offences,

[2] Section 48B Definitions

Omit the definition of *ASB pilot project*. Insert in alphabetical order:

SCSF Program means the multi-agency intervention strategy known as the Supporting Children, Supporting Families Program, which was originally established by the Government in September 2006 as the Anti-Social Behaviour Pilot Project.

[3] Section 48D

Omit the section. Insert instead:

48D Meaning of “relevant offence”

In this Part, a ***relevant offence*** means any offence the proceedings for which the Children’s Court has jurisdiction to hear and determine other than any of the following offences:

- (a) a prescribed sexual offence (within the meaning of the *Criminal Procedure Act 1986*),
- (b) any other serious children’s indictable offence,
- (c) a traffic offence.

[4] Section 48F Summary of operation of scheme

Omit the second sentence of section 48F (1) (a).

[5] Section 48F (1) (b)

Omit “, including that it would not be appropriate for the child to be dealt with instead under the *Young Offenders Act 1997*”.

[6] Section 48F (1) (c)

Insert “A final youth conduct order may be made even if an interim youth conduct order has not been made.” after “Such an order may have effect for a period not exceeding 12 months.”

[7] Section 48G Children's Court may make suitability assessment orders

Insert after section 48G (1) (a):

- (a1) the Court is satisfied that it is appropriate for the child to be dealt with under the scheme having regard to the following matters:
 - (i) the seriousness of the relevant offence,
 - (ii) the degree of violence (if any) involved in the offence,
 - (iii) any harm caused to any victim,
 - (iv) the number and nature of any previous offences committed by the child, and

[8] Section 48G (2A)

Insert after section 48G (2):

- (2A) Despite subsection (1), the Children's Court is not to make a suitability assessment order in relation to a child for a relevant offence if, having regard to the matters referred to in subsection (1) (a1), the Court considers that the appropriate penalty for the relevant offence would be an order under section 33 (1) (g).

[9] Section 48G (4)

Omit the subsection. Insert instead:

- (4) If the child is a person to whom the *Young Offenders Act 1997* applies, the Children's Court is not to make a suitability assessment order unless it is satisfied that it would not be appropriate for the child to be dealt with instead under that Act.

[10] Section 48L Youth conduct orders

Insert after section 48L (9):

- (10) **Final youth conduct order can be made without interim youth conduct order**

For the avoidance of doubt, the Children's Court may make a final youth conduct order with respect to a child without first making an interim youth conduct order.

[11] Section 48Q Consequences of revocation of youth conduct orders

Insert after section 48Q (4):

- (5) Nothing in this section authorises the imposition of a penalty on a child for a relevant offence to which a revoked youth conduct

order related that is more severe than the penalty that would have been imposed on the child if he or she had not been the subject of the youth conduct order.

[12] Section 48R Consequences of compliance with final youth conduct orders

Omit section 48R (2). Insert instead:

- (2) The Children’s Court may make an order directing that the charge for a relevant offence committed (or alleged to have been committed) by a child be dismissed if:
 - (a) the child did not plead guilty to (or had not yet been found guilty of) the relevant offence before the Children’s Court made a final youth conduct order in relation to the offence, or
 - (b) the child pleaded guilty to the relevant offence before the Children’s Court made a final youth conduct order in relation to the offence.

- (2A) If the Children’s Court refuses to dismiss a charge for a relevant offence under subsection (2), the Court is to state the reasons for its refusal.

[13] Section 48R (3)

Omit “pleaded guilty to (or was found guilty of)”.

Insert instead “was found guilty of”.

[14] Section 48S Evidence of certain matters not admissible

Omit “ASB pilot project” from section 48S (1) (a).

Insert instead “SCSF Program”.

[15] Section 48S (1) (b) and (2) (a)

Omit “the project” wherever occurring. Insert instead “the SCSF Program”.

[16] Section 48T Disclosure of certain information prohibited

Omit “ASB pilot project” wherever occurring.

Insert instead “SCSF Program”.

[17] Section 48U Exchange of information

Omit “scheme administrator” wherever occurring in section 48U (1) (including the note), (3) and (4).

Insert instead “relevant administrator”.

[18] Section 48U (1) and (2) (a)

Insert “or SCSF Program” after “the scheme” wherever occurring.

[19] Section 48U (2) (b) and (3)

Insert “or functions in relation to the SCSF Program” after “(or under regulations made for the purposes of this Part)” wherever occurring.

[20] Section 48U (5)

Omit the definition of *scheme administrator*. Insert in alphabetical order:

relevant administrator means any person (or person belonging to a class of persons) involved in the administration of the scheme or the SCSF Program prescribed by, or approved in accordance with, the regulations.

[21] Section 48Y Part to cease to have effect

Omit “the day that is 26 months after the day on which section 48L commences” from section 48Y (1).

Insert instead “1 September 2013”.

[22] Schedule 2 Savings and transitional provisions

Insert at the end of clause 1 (1):

Courts and Crimes Legislation Further Amendment Act 2010

[23] Schedule 2, Part 17

Insert after Part 16:

Part 17 Courts and Crimes Legislation Further Amendment Act 2010

27 Definitions

In this Part:

amending Act means the *Courts and Crimes Legislation Further Amendment Act 2010*.

commencement day means the day on which Schedule 4.1 to the amending Act commences.

28 Application of amended Part 4A to pre-commencement offences

Part 4A of the Act and Part 2 of the *Children (Criminal Proceedings) Regulation 2005*, as amended by the amending Act, extend to a relevant offence (within the meaning of the amended

Part 4A of the Act) committed, or alleged to have been committed, by a child before the commencement day, but only if:

- (a) the child has not yet been charged with the offence immediately before the commencement day, or
- (b) where the child was charged with the offence before the commencement day—the child has not yet:
 - (i) pleaded guilty to (or been found guilty of) the offence, or
 - (ii) had a penalty imposed by the Children’s Court for the offence.

29 Application of amended sections 48Q and 48R

- (1) Section 48Q (as amended by the amending Act) extends to youth conduct orders made before the commencement day that are revoked on or after that day.
- (2) Section 48R (as amended by the amending Act) extends to:
 - (a) any application made under that section that is pending immediately before the commencement day, and
 - (b) any application made under that section that is made on or after the commencement day in relation to a final youth conduct order made before that day.

30 Application of amended section 48U

Section 48U (as amended by the amending Act) extends to any information obtained before, on or after the commencement day in connection with the administration of the Anti-Social Behaviour Pilot Project (which was the previous name of the SCSF Program).

4.2 Children (Criminal Proceedings) Regulation 2005

[1] Clause 4 Definitions

Insert after paragraph (c) of the definition of *participating Local Area Command* in clause 4 (1):

- (d) the Blacktown Local Area Command,
- (e) the St Marys Local Area Command,
- (f) the Liverpool Local Area Command,
- (g) the Macquarie Fields Local Area Command.

[2] Clause 5 Prescribed eligibility criteria

Omit clause 5 (1) (c). Insert instead:

- (c) there is an appropriate connection with a participating Local Area Command of a kind referred to in subclause (1A),

[3] Clause 5 (1A)

Insert after clause 5 (1):

- (1A) There is an appropriate connection with a participating Local Area Command for the purposes of subclause (1) (c) if either or both of the following conditions are met:
 - (a) the person concerned permanently or temporarily resides in, or is an habitual visitor to, the area of the Command,
 - (b) the relevant offence (or, in the case where more than one relevant offence is sought to be dealt with, at least one of the offences) was committed, or alleged to have been committed, in the area of the Command.

[4] Clause 5 (3)

Omit “1 July 2011” wherever occurring. Insert instead “25 February 2012”.

[5] Clause 5 (4)

Omit the subclause.

[6] Clause 28 Disclosure and exchange of information

Omit clause 28 (2) and (3). Insert instead:

- (2) The Director-General and each Chairperson of a Coordination Group are prescribed for the purposes of the definition of *relevant administrator* in section 48U (5) of the Act.
- (3) The Director-General may, by order in writing, approve a person (or a class of persons) involved in the administration of the SCSF Program for the purposes of the definition of *relevant administrator* in section 48U (5) of the Act.
- (4) The Director-General or Chairperson may from time to time amend, revoke or replace any approval given under this clause by the Director-General or Chairperson by further order in writing.

**Schedule 5 Amendment of Children's Court Act 1987
No 53**

Schedule 1 Provisions relating to Children's Magistrates

Omit "3 years" in clause 2. Insert instead "5 years".

Schedule 6 Amendment of Civil Procedure Act 2005 No 28

6.1 Amendment of Civil Procedure Act 2005 No 28 relating to representative actions

[1] Section 4 Application of Parts 3–10

Insert after section 4 (1):

- (1A) Part 10 applies in relation to civil proceedings in the Supreme Court.

[2] Part 10

Insert after section 154:

Part 10 Representative proceedings in Supreme Court

Division 1 Preliminary

155 Definitions (cf s33A FCA)

In this Part:

Court means the Supreme Court.

defendant means a person against whom relief is sought in representative proceedings.

group member means a member of a group of persons on whose behalf representative proceedings have been commenced.

proceedings means proceedings in the Court other than criminal proceedings.

representative party means a person who commences representative proceedings.

representative proceedings—see section 157.

sub-group member means a person included in a sub-group established under section 168.

sub-group representative party means a person appointed to be a sub-group representative party under section 168.

Note. For the purposes of comparison, a number of provisions of this Part contain bracketed notes in headings drawing attention (“cf”) to equivalent or comparable (though not necessarily identical) provisions of Part IVA of the *Federal Court of Australia Act 1976* (“FCA”) of the Commonwealth as in force immediately before the commencement of this Part.

156 Application

This Part applies to proceedings commenced after the commencement of this section, whether the cause of action arose before or arises after that commencement.

Division 2 Commencement of representative proceedings

157 Commencement of representative proceedings (cf s33C FCA)

- (1) Subject to this Part, where:
 - (a) 7 or more persons have claims against the same person, and
 - (b) the claims of all those persons are in respect of, or arise out of, the same, similar or related circumstances, and
 - (c) the claims of all those persons give rise to a substantial common question of law or fact,proceedings may be commenced by one or more of those persons as representing some or all of them.
- (2) Representative proceedings may be commenced:
 - (a) whether or not the relief sought:
 - (i) is, or includes, equitable relief, or
 - (ii) consists of, or includes, damages, or
 - (iii) includes claims for damages that would require individual assessment, or
 - (iv) is the same for each person represented, and
 - (b) whether or not the proceedings:
 - (i) are concerned with separate contracts or transactions between the defendant in the proceedings and individual group members, or
 - (ii) involve separate acts or omissions of the defendant done or omitted to be done in relation to individual group members.

158 Standing (cf s33D FCA)

- (1) For the purposes of section 157 (1) (a), a person has a sufficient interest to commence representative proceedings against another person on behalf of other persons if the person has standing to commence proceedings on the person's own behalf against that other person.

- (2) The person may commence representative proceedings on behalf of other persons against more than one defendant irrespective of whether or not the person and each of those persons have a claim against every defendant in the proceedings.
- (3) If a person has commenced representative proceedings, that person retains standing:
 - (a) to continue the proceedings, and
 - (b) to bring an appeal from a judgment in the proceedings, even though the person ceases to have a claim against any defendant.

159 Is consent required to be a group member? (cf s33E FCA)

- (1) Subject to subsection (2), the consent of a person to be a group member is not required.
- (2) None of the following is a group member in representative proceedings unless the person gives consent in writing to being so:
 - (a) the Commonwealth, a State or a Territory,
 - (b) a Minister of the Commonwealth, a State or a Territory,
 - (c) a body corporate established for a public purpose by a law of the Commonwealth, a State or a Territory, other than an incorporated company or association,
 - (d) an officer of the Commonwealth, a State or a Territory, in his or her capacity as an officer.

160 Persons under legal incapacity (cf s33F FCA)

- (1) It is not necessary for a person under legal incapacity to have a tutor merely in order to be a group member.
- (2) A group member who is a person under legal incapacity may only take a step in representative proceedings, or conduct part of the proceedings, by the member's tutor.

161 Originating process (cf s33H FCA)

- (1) The originating process in representative proceedings, or a document filed in support of the originating process, must, in addition to any other matters required to be included:
 - (a) describe or otherwise identify the group members to whom the proceedings relate, and
 - (b) specify the nature of the claims made on behalf of the group members and the relief claimed, and

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- (c) specify the question of law or facts common to the claims of the group members.
 - (2) In describing or otherwise identifying group members for the purposes of subsection (1), it is not necessary to name, or specify the number of, the group members.

162 Right of group member to opt out (cf s33J FCA)

- (1) The Court must fix a date before which a group member may opt out of representative proceedings in the Court.
- (2) A group member may opt out of the representative proceedings by written notice given under the local rules before the date so fixed.
- (3) The Court may, on application by a group member, the representative party or the defendant in the proceedings, fix another date so as to extend the period during which a group member may opt out of the representative proceedings.
- (4) Except with the leave of the Court, the hearing of representative proceedings must not commence earlier than the date before which a group member may opt out of the proceedings.

163 Causes of action accruing after commencement of representative proceedings (cf s33K FCA)

- (1) The Court may at any stage of representative proceedings, on application by the representative party, give leave to amend the originating process commencing the representative proceedings so as to alter the description of the group.
- (2) The description of the group may be altered so as to include a person:
 - (a) whose cause of action accrued after the commencement of the representative proceedings but before such date as the Court fixes when giving leave, and
 - (b) who would have been included in the group, or, with the consent of the person would have been included in the group, if the cause of action had accrued before the commencement of the proceedings.
- (3) The date fixed under subsection (2) (a) may be the date on which leave is given or another date before or after that date.
- (4) If the Court gives leave under subsection (1), it may also make any other orders it thinks just, including an order relating to the giving of notice to persons who, as a result of the amendment,

will be included in the group and the date before which such persons may opt out of the proceedings.

164 Situation where fewer than 7 group members (cf s33L FCA)

If, at any stage of representative proceedings, it appears likely to the Court that there are fewer than 7 group members, the Court may, on such conditions (if any) as it thinks fit:

- (a) order that the proceedings continue under this Part, or
- (b) order that the proceedings no longer continue under this Part.

165 Distribution costs excessive (cf s33M FCA)

If:

- (a) the relief claimed in representative proceedings is or includes payment of money to group members (otherwise than in respect of costs), and
- (b) on application by the defendant, the Court concludes that it is likely that, if judgment were to be given in favour of the representative party, the cost to the defendant of identifying the group members and distributing to them the amounts ordered to be paid to them would be excessive having regard to the likely total of those amounts,

the Court may, by order:

- (c) direct that the proceedings no longer continue under this Part, or
- (d) stay the proceedings so far as it relates to relief of the kind mentioned in paragraph (a).

166 Court may order discontinuance of proceedings in certain circumstances (cf s33N FCA)

- (1) The Court may, on application by the defendant or of its own motion, order that proceedings no longer continue under this Part if it is satisfied that it is in the interests of justice to do so because:
 - (a) the costs that would be incurred if the proceedings were to continue as representative proceedings are likely to exceed the costs that would be incurred if each group member conducted a separate proceeding, or
 - (b) all the relief sought can be obtained by means of proceedings other than representative proceedings under this Part, or

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- (c) the representative proceedings will not provide an efficient and effective means of dealing with the claims of group members, or
 - (d) a representative party is not able to adequately represent the interests of the group members, or
 - (e) it is otherwise inappropriate that the claims be pursued by means of representative proceedings.
- (2) It is not, for the purposes of subsection (1) (e), inappropriate for claims to be pursued by means of representative proceedings merely because the persons identified as group members in relation to the proceedings:
- (a) do not include all persons on whose behalf those proceedings might have been brought, or
 - (b) are aggregated together for a particular purpose such as a litigation funding arrangement.
- (3) If the Court dismisses an application under this section, the Court may order that no further application under this section be made by the defendant except with the leave of the Court.
- (4) Leave for the purposes of subsection (3) may be granted subject to such conditions as to costs as the Court considers just.

167 Effect of discontinuance order under this Part (cf s33P FCA)

- (1) If the Court makes an order under section 164, 165 or 166 that proceedings no longer continue under this Part:
- (a) the proceedings may be continued as proceedings by the representative party on the party's own behalf against the defendant, and
 - (b) on the application of a person who was a group member for the purposes of the proceedings, the Court may order that the person be joined as an applicant in the proceedings.
- (2) In this section:
- applicant*, in relation to proceedings, includes a claimant or plaintiff (as the case may be) in the proceedings.

168 Determination of questions where not all common (cf s33Q FCA)

- (1) If it appears to the Court that determination of the question or questions common to all group members will not finally determine the claims of all group members, the Court may give directions in relation to the determination of the remaining questions.

- (2) In the case of questions common to the claims of some only of the group members, the directions given by the Court may include directions establishing a sub-group consisting of those group members and appointing a person to be the sub-group representative party on behalf of the sub-group members.

169 Individual questions (cf s33R FCA)

- (1) In giving directions under section 168, the Court may permit an individual group member to appear in the proceedings for the purpose of determining a question that relates only to the claims of that member.
- (2) In such a case, the individual group member, and not the representative party, is liable for costs associated with the determination of the question.

170 Directions relating to commencement of further proceedings (cf s33S FCA)

If a question cannot properly or conveniently be dealt with by the Court under section 168 or 169, the Court may give directions for the commencement and conduct of other proceedings, whether or not group proceedings.

171 Adequacy of representation (cf s33T FCA)

- (1) If, on application by a group member, it appears to the Court that a representative party is not able adequately to represent the interests of the group members, the Court may substitute another group member as representative party and make such other orders as it thinks fit.
- (2) If, on application by a sub-group member, it appears to the Court that a sub-group representative party is not able adequately to represent the interests of the sub-group members, the Court may substitute another person as sub-group representative party and may make such other orders as it thinks fit.

172 Stay of execution in certain circumstances (cf s33U FCA)

If a defendant in representative proceedings commences proceedings in the Court against a group member, the Court may order a stay of execution in respect of any relief awarded to the group member in the representative proceedings until the other proceedings are determined.

173 Approval of Court required for settlement and discontinuance (cf s33V FCA)

- (1) Representative proceedings may not be settled or discontinued without the approval of the Court.
- (2) If the Court gives such approval, it may make such orders as are just with respect to the distribution of any money, including interest, paid under a settlement or paid into the Court.

174 Settlement of individual claim of representative party (cf s33W FCA)

- (1) A representative party may, with the leave of the Court, settle the party's individual claim in whole or in part at any stage of the representative proceedings.
- (2) A representative party who is seeking leave to settle, or who has settled, the party's individual claim may, with the leave of the Court, withdraw as representative party.
- (3) If a person has sought leave to withdraw as representative party under subsection (2), the Court may, on application by a group member, make an order for the substitution of another group member as representative party and may make such other orders as it thinks fit.
- (4) Before granting a person leave to withdraw as a representative party:
 - (a) the Court must be satisfied that notice of the application has been given to group members in accordance with section 175 (1) and in sufficient time for them to apply to have another person substituted as the representative party, and
 - (b) any application for the substitution of another group member as a representative party must have been determined.

Division 3 Notices

175 Notice to be given of certain matters (cf s33X FCA)

- (1) Notice must be given to group members of the following matters in relation to representative proceedings:
 - (a) the commencement of the proceedings and the right of the group members to opt out of the proceedings before a specified date, being the date fixed under section 162 (1),

- (b) an application by the defendant in the proceedings for the dismissal of the proceedings on the ground of want of prosecution,
 - (c) an application by a representative party seeking leave to withdraw under section 174 as representative party.
- (2) The Court may dispense with compliance with any or all of the requirements of subsection (1) if the relief sought in the proceedings does not include any claim for damages.
 - (3) If the Court so orders, notice must be given to group members of the bringing into Court of money in answer to a cause of action on which a claim in the representative proceedings is founded.
 - (4) Unless the Court is satisfied that it is just to do so, an application for approval of a settlement under section 173 must not be determined unless notice has been given to group members.
 - (5) The Court may, at any stage, order that notice of any matter be given to a group member or group members.
 - (6) Notice under this section must be given as soon as practicable after the happening of the event to which it relates.

176 Notices under section 175 (cf s33Y FCA)

- (1) The form and content of a notice under section 175 must be approved by the Court.
- (2) The Court must, by order, specify:
 - (a) who is to give the notice, and
 - (b) the way in which the notice is to be given.
- (3) An order under subsection (2) may also include provision:
 - (a) directing a party to provide information relevant to the giving of the notice, and
 - (b) relating to the costs of giving notice.
- (4) An order under subsection (2) may require that notice be given by means of press advertisement, radio or television broadcast, or by any other means.
- (5) The Court may not order that notice be given personally to each group member unless it is satisfied that it is reasonably practicable, and not unduly expensive, to do so.

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- (6) A notice that concerns a matter for which the Court's leave or approval is required must specify the period within which a group member or other person may apply to the Court, or take some other step, in relation to the matter.
 - (7) A notice that includes or concerns conditions must specify the conditions and the period, if any, for compliance.
 - (8) The failure of a group member to receive or respond to a notice does not affect a step taken, an order made, or a judgment given, in any proceedings.

Division 4 Powers of the Court

177 Judgment—powers of the Court (cf s33Z FCA)

- (1) The Court may, in determining a matter in representative proceedings, do any one or more of the following:
 - (a) determine a question of law,
 - (b) determine a question of fact,
 - (c) make a declaration of liability,
 - (d) grant any equitable relief,
 - (e) make an award of damages for group members, sub-group members or individual group members, being damages consisting of specified amounts or amounts worked out in such manner as the Court specifies,
 - (f) award damages in an aggregate amount without specifying amounts awarded in respect of individual group members.
- (2) In making an order for an award of damages, the Court must make provision for the payment or distribution of the money to the group members entitled.
- (3) Subject to section 173, the Court is not to make an award of damages under subsection (1) (f) unless a reasonably accurate assessment can be made of the total amount to which group members will be entitled under the judgment.
- (4) If the Court has made an award of damages, the Court may give such directions (if any) as it thinks just in relation to:
 - (a) the manner in which a group member is to establish the member's entitlement to share in the damages, and
 - (b) the manner in which any dispute regarding the entitlement of a group member to share in the damages is to be determined.

178 Constitution etc of fund (cf s33ZA FCA)

- (1) Without limiting the operation of section 177 (2), in making provision for the distribution of money to group members, the Court may provide for:
 - (a) the constitution and administration of a fund consisting of the money to be distributed, and
 - (b) either:
 - (i) the payment by the defendant of a fixed sum of money into the fund, or
 - (ii) the payment by the defendant into the fund of such instalments, on such terms, as the Court directs to meet the claims of group members, and
 - (c) entitlements to interest earned on the money in the fund.
- (2) The costs of administering a fund are to be borne by the fund, or by the defendant in the representative proceedings, or by both, as the Court directs.
- (3) If the Court orders the constitution of a fund under subsection (1), the order must:
 - (a) require notice to be given to group members in such manner as is specified in the order, and
 - (b) specify the manner in which a group member is to make a claim for payment out of the fund and establish the group member's entitlement to payment, and
 - (c) specify a day (which is 6 months or more after the day on which the order is made) on or before which the group members are to make a claim for payment out of the fund, and
 - (d) make provision in relation to the day before which the fund is to be distributed to group members who have established an entitlement to be paid out of the fund.
- (4) The Court may allow a group member to make a claim after the day fixed under subsection (3) (c) if:
 - (a) the fund has not already been fully distributed or applied in accordance with an order under subsection (5), and
 - (b) it is just to do so.
- (5) On application by the defendant after the day fixed under subsection (3) (d), the Court may make such orders as it thinks fit for the payment from the fund to the defendant of the money remaining in the fund.

179 Effect of judgment (cf s 33ZB FCA)

A judgment given in representative proceedings:

- (a) must describe or otherwise identify the group members who will be affected by it, and
- (b) binds all such persons other than any person who has opted out of the proceedings under section 162.

Division 5 Appeals

180 Appeals (cf s 33ZC FCA)

- (1) The following appeals from a judgment of the Supreme Court in representative proceedings may (subject to the rules of court) themselves be brought in the Court of Appeal under section 101 of the *Supreme Court Act 1970* as representative proceedings:
 - (a) an appeal by the representative party on behalf of group members and in respect of the judgment to the extent that it relates to questions common to the claims of group members,
 - (b) an appeal by a sub-group representative party on behalf of sub-group members in respect of judgment to the extent that it relates to questions common to the claims of sub-group members.
- (2) The parties to an appeal in respect of the determination of a question that relates only to the claim of an individual group member are that group member and the defendant.
- (3) If the representative party or the sub-group representative party does not bring an appeal within the time provided for instituting appeals, another member of the group or sub-group may, within a further 21 days, bring an appeal as representing the group members or sub-group members, as the case may be.
- (4) If an appeal is brought from the judgment of the Court in representative proceedings, the Court of Appeal may direct that notice of the appeal be given to such person or persons, and in such manner, as it considers appropriate.
- (5) This Part (other than section 162) applies to any such appeal proceedings despite the provisions of any other Act or law.
- (6) The notice instituting an appeal in relation to questions that are common to the claims of group members or sub-group members must describe or otherwise identify the group members or sub-group members, as the case may be, but need not specify the names or number of those members.

Division 6 Miscellaneous

181 Costs (cf s43 (1A) FCA)

Despite section 98, in any representative proceedings, the Court may not award costs against a person on whose behalf the proceedings have been commenced (other than a representative party) except as authorised by sections 168 and 169.

182 Suspension of limitation periods (cf s33ZE FCA)

- (1) On the commencement of any representative proceedings, the running of the limitation period that applies to the claim of a group member to which the proceedings relate is suspended.
- (2) The limitation period does not begin to run again unless either the member opts out of the proceedings under section 162 or the proceedings, and any appeals arising from the proceedings, are determined without finally disposing of the group member's claim.
- (3) However, nothing in this section affects the running of a limitation period in respect of a group member who, immediately before the commencement of the representative proceedings, was barred by the expiration of that period from commencing proceedings in the member's own right in respect of a claim in the representative proceedings.
- (4) This section applies despite anything in the *Limitation Act 1969* or any other law.

183 General power of Court to make orders (cf s33ZF FCA)

In any proceedings (including an appeal) conducted under this Part, the Court may, of its own motion or on application by a party or a group member, make any order that the Court thinks appropriate or necessary to ensure that justice is done in the proceedings.

184 Reimbursement of representative party's costs (cf s33ZJ FCA)

- (1) If the Court has made an award of damages in representative proceedings, the representative party or a sub-group representative party, or a person who has been such a party, may apply to the Court for an order under this section.
- (2) If, on an application under this section, the Court is satisfied that the costs reasonably incurred in relation to the representative proceedings by the person making the application are likely to exceed the costs recoverable by the person from the defendant,

the Court may order that an amount equal to the whole or a part of the excess be paid to that person out of the damages awarded.

- (3) On an application under this section, the Court may also make any other order that it thinks just.

[3] Schedule 6 Savings, transitional and other provisions

Insert at the end of the Schedule (with appropriate Part and clause numbering):

**Part Provisions consequent on enactment of
Schedule 6.1 to Courts and Crimes
Legislation Further Amendment Act 2010**

Effect of enactment of Part 10 on existing proceedings

- (1) Except as provided by this clause or the regulations, nothing in the new Part affects the commencement or continuance of any action or proceedings of a representative character commenced otherwise than under the new Part before the commencement of that Part.
- (2) Subject to subclause (3), the new Part extends to proceedings commenced (but not finally determined) in the relevant court under Division 2 of Part 7 of the uniform rules before the commencement of that Part.
- (3) The relevant court may make such orders dispensing with or modifying the requirements of the new Part in relation to proceedings referred to in subclause (2) as the relevant court thinks appropriate or necessary to ensure that justice is done in the proceedings.
- (4) In this clause:

relevant court, in relation to actions or proceedings referred to in subclause (1), means the court or tribunal in which the action or proceedings commenced.

the new Part means Part 10 (as inserted by the *Courts and Crimes Legislation Further Amendment Act 2010*).

6.2 Amendment of Civil Procedure Act 2005 No 28 relating to dispute resolution

[1] Section 3 Definitions

Insert in section 3 (1) in alphabetical order:

civil dispute has the same meaning as it has in Part 2A.

[2] **Part 2A**

Insert after Part 2:

Part 2A Steps to be taken before the commencement of proceedings

Division 1 Preliminary

18A Interpretation

- (1) In this Part:

alternative dispute resolution means processes (other than a judicial determination) in which an impartial person assists persons in dispute to resolve or narrow the issues in dispute, including (but not limited to) the following:

- (a) mediation (whether or not by a referral under this Act),
- (b) expert determination,
- (c) early neutral evaluation,
- (d) conciliation,
- (e) arbitration (whether or not by a referral under this Act).

civil dispute means a dispute that may result in the commencement of civil proceedings.

costs, in relation to compliance with the pre-litigation requirements, means costs payable in or in relation to complying with the requirements, and includes fees, disbursements, expenses and remuneration.

dispute resolution statement means a statement filed under Division 3.

mediation means a structured negotiation process in which the mediator, as a neutral and independent party, assists the parties to a dispute to achieve their own resolution of the dispute.

pre-litigation protocol—see section 18C.

pre-litigation requirements means the requirements set out in section 18E.

- (2) In the event of an inconsistency between a provision of regulations made under this Part and a provision of any rules of court made under this Part, the provision in the regulations prevails to the extent of the inconsistency.
- (3) Any provision of this Part that enables or provides for rules of court to be made in relation to a matter operates, in relation to a

particular court, to confer power on the rule committee for the court to make local rules in relation to the matter under the Act that constitutes the court.

- (4) Nothing in subsection (3) limits the operation of section 11 (Relationship between uniform rules and local rules).
- (5) If costs of compliance with the pre-litigation requirements are awarded or taken into account in civil proceedings in accordance with a provision of this Part, those costs are to be treated as if they formed part of the costs of the proceedings and the amount of costs payable may be assessed accordingly.

18B Application of Part

- (1) This Part applies in relation to civil disputes and civil proceedings other than excluded disputes or excluded proceedings.
- (2) Each of the following is an *excluded dispute*:
 - (a) any civil dispute where a person is in dispute with another person who is the subject of a vexatious proceedings order under the *Vexatious Proceedings Act 2008*,
 - (b) any civil dispute (other than a civil dispute referred to in paragraph (a) or (c)) that involves claims that may result in the commencement of excluded proceedings if the issues in dispute are not resolved or narrowed,
 - (c) such other civil disputes (or civil disputes belonging to a class of civil disputes) that are declared under subsection (4) (a) or (5) to be excluded disputes.
- (3) Each of the following are *excluded proceedings*:
 - (a) any civil proceedings that result from a civil dispute referred to in subsection (2) (a) or (c),
 - (b) any civil proceedings in the Dust Diseases Tribunal,
 - (c) any civil proceedings in the Industrial Relations Commission, including the Commission in Court Session (the Industrial Court),
 - (d) any civil proceedings in relation to the payment of workers compensation,
 - (e) any civil proceedings in relation to the enforcement of a farm mortgage to which the *Farm Debt Mediation Act 1994* applies,

- (f) any civil proceedings in relation to a claim to which the *Motor Accidents Act 1988* or the *Motor Accidents Compensation Act 1999* applies,
 - (g) any civil proceedings in relation to a claim made under the *Motor Accidents (Lifetime Care and Support) Act 2006*,
 - (h) any civil proceedings in which a civil penalty under a civil penalty provision (however described) of or under an Act (including a Commonwealth Act) is sought,
 - (i) any ex parte civil proceedings,
 - (j) any appeal in civil proceedings,
 - (k) such other civil proceedings (or civil proceedings belonging to a class of civil proceedings) that are declared under subsection (4) (a) or (5) to be excluded proceedings.
- (4) The Governor may make regulations declaring that:
- (a) specified civil disputes or civil proceedings (or classes of civil disputes or civil proceedings) are excluded disputes or excluded proceedings for the purposes of this Part, or
 - (b) specified civil disputes or civil proceedings (or classes of civil disputes or civil proceedings) that have been excluded by rules of court under subsection (5) are not to be treated as excluded disputes or excluded proceedings for the purposes of this Part.
- Note.** See section 18A (2) in relation to the resolution of inconsistencies between regulations made by the Governor and rules of court.
- (5) Rules of court (including the uniform rules) may declare that specified civil disputes or civil proceedings (or classes of civil disputes or civil proceedings) are excluded disputes or excluded proceedings for the purposes of this Part.

18C Pre-litigation protocols

- (1) A *pre-litigation protocol* is a set of provisions setting out steps that will constitute reasonable steps for the purposes of the pre-litigation requirements in their application to a specified class of civil disputes to which this Part applies.
- (2) Without limiting subsection (1), a pre-litigation protocol for a class of civil disputes may provide for any of the following matters:
 - (a) appropriate notification and communication steps,
 - (b) appropriate responses to notifications and communication steps,

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- (c) appropriate correspondence, information and documents for exchange between the persons involved in the dispute,
 - (d) appropriate negotiation and alternative dispute resolution options,
 - (e) appropriate procedures to be followed in relation to the gathering of evidence (including expert evidence).
- (3) The Governor may make regulations setting out a pre-litigation protocol for a specified class of civil disputes to which this Part applies.
 - (4) Rules of court (including the uniform rules) may also set out a pre-litigation protocol for a specified class of civil disputes to which this Part applies.

Division 2 Pre-litigation requirements

18D Compliance with pre-litigation requirements prior to commencement of civil proceedings

Each person involved in a civil dispute to which this Part applies is to comply with the pre-litigation requirements before the commencement of any civil proceedings in a court in relation to that dispute.

18E Pre-litigation requirements

- (1) Each person involved in a civil dispute to which this Part applies is to take reasonable steps having regard to the person's situation, the nature of the dispute (including the value of any claim and complexity of the issues) and any applicable pre-litigation protocol:
 - (a) to resolve the dispute by agreement, or
 - (b) to clarify and narrow the issues in dispute in the event that civil proceedings are commenced.
- (2) For the purposes of this section, reasonable steps include (but are not limited to) the following:
 - (a) notifying the other person of the issues that are, or may be, in dispute, and offering to discuss them, with a view to resolving the dispute,
 - (b) responding appropriately to any such notification by communicating about what issues are, or may be, in dispute, and offering to discuss them, with a view to resolving the dispute,

- (c) exchanging appropriate pre-litigation correspondence, information and documents critical to the resolution of the dispute,
 - (d) considering, and where appropriate proposing, options for resolving the dispute without the need for civil proceedings in a court, including (but not limited to) resolution through genuine and reasonable negotiations and alternative dispute resolution processes,
 - (e) taking part in alternative dispute resolution processes.
- (3) Each person involved in a civil dispute to which this Part applies is not to unreasonably refuse to participate in genuine and reasonable negotiations or alternative dispute resolution processes.
- (4) Nothing in this section requires a person to provide any correspondence, information or document that might tend to incriminate the person.

18F Protection and use of information and documents disclosed under pre-litigation requirements

- (1) A person involved in a civil dispute to which this Part applies who receives any information or documents provided by another person involved in a civil dispute in accordance with the pre-litigation requirements (and not otherwise available to the recipient) is subject to an obligation not to use the information or documents, or permit the information or documents to be used, for a purpose other than in connection with:
- (a) the resolution of the civil dispute between the persons involved in the civil dispute, or
 - (b) any civil proceedings arising out of the civil dispute.
- (2) Despite subsection (1), a person involved in a civil dispute or a party to civil proceedings to which this Part applies may:
- (a) agree in writing to the use of information or documents otherwise protected under subsection (1), or
 - (b) be released from the obligation imposed under subsection (1) by leave of the court.
- (3) A court may treat a failure to comply with the obligation under subsection (1) as a contempt of court if the court is satisfied that there was no lawful or reasonable excuse for the failure.
- (4) If documents exchanged in accordance with the pre-litigation requirements are permitted by this section to be used in civil proceedings arising from the dispute to which the requirements

applied, those documents are to be obtained and admitted into evidence in accordance with the usual rules and procedures applicable in the court in relation to the obtaining and admission of documentary evidence.

- (5) Nothing in this section:
- (a) limits any other undertaking to a court (implied or specific) whether at common law or otherwise, in relation to information or documents disclosed or discovered in civil proceedings, or
 - (b) limits the operation of section 180 in relation to a mediation to which that section applies.

Division 3 Filing of dispute resolution statements by parties to civil proceedings

18G Dispute resolution statement to be filed by plaintiff

- (1) A plaintiff who commences civil proceedings to which this Part applies is to file a dispute resolution statement at the time the originating process for the proceedings is filed.
- (2) A dispute resolution statement filed under subsection (1) is to specify:
 - (a) the steps that have been taken to try to resolve or narrow the issues in dispute between the plaintiff and the defendant in the proceedings, or
 - (b) the reasons why no such steps were taken, which may relate to (but are not limited to) the following:
 - (i) the urgency of the proceedings (including that the limitation period for the commencement of the proceedings is about to expire),
 - (ii) whether, and the extent to which, the safety or security of any person or property would have been compromised by taking such steps.

18H Dispute resolution statement to be filed by defendant

- (1) A defendant in civil proceedings to which this Part applies who has been served with a copy of a dispute resolution statement filed by the plaintiff is to file a dispute resolution statement at the time the defendant files a defence in the proceedings.
- (2) A dispute resolution statement filed under subsection (1) is to:
 - (a) state that the defendant agrees with the dispute resolution statement filed by the plaintiff, or

- (b) if the defendant disagrees in whole or part with the dispute resolution statement filed by the plaintiff—specify the respect in which, and reasons why, the defendant disagrees and specify other reasonable steps that the defendant believes could usefully be undertaken to resolve the dispute.

18I Dispute resolution statement to comply with uniform rules

A dispute resolution statement filed under this Division is to comply with such additional requirements as may be specified in rules of court (including the uniform rules).

Note. See also section 17, which enables the Uniform Rules Committee to approve forms for documents to be used in connection with civil proceedings.

Division 4 Duties of legal practitioners

18J Duty of legal practitioners to provide certain information

- (1) A legal practitioner who is engaged to represent a person involved in a civil dispute to which this Part applies is to:
 - (a) inform the person about the applicability of the pre-litigation requirements to the dispute (including of the need to file a dispute resolution statement in relation to those requirements if civil proceedings are commenced), and
 - (b) advise the person about the alternatives to the commencement of civil proceedings (including alternative dispute resolution processes) that are reasonably available to the person in the circumstances in order to resolve or narrow the issues in dispute.
- (2) In determining whether a costs order should be made against a legal practitioner under section 99, a court may take into account a failure by the legal practitioner to comply with subsection (1).

Division 5 Consequences of non-compliance with this Part

18K Failure to comply does not prevent commencement or affect validity of proceedings

- (1) Non-compliance with the pre-litigation requirements:
 - (a) does not (unless the court otherwise orders or the uniform rules otherwise provide) prevent or preclude a person from commencing civil proceedings in a court, or

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- (b) does not invalidate civil proceedings that have otherwise been duly commenced.
 - (2) A failure to file a dispute resolution statement in civil proceedings to which this Part applies does not invalidate the originating process commencing the proceedings, a response to such a process or the proceedings if they have otherwise been duly filed or commenced.

18L Persons generally to bear own costs of compliance with pre-litigation requirements

Subject to this Division, each person involved in a civil dispute (or each party to civil proceedings) to which this Part applies is to bear that person's or party's own costs of compliance with the pre-litigation requirements, unless rules of court (including the uniform rules) otherwise provide.

18M Court may make orders as to costs of compliance with pre-litigation requirements

- (1) Despite section 18L, a court may:
 - (a) order that a party to civil proceedings to which this Part applies pay all or a specific part of another party's costs of compliance with the pre-litigation requirements if satisfied that it is reasonable to do so, having regard to the overriding purpose of this Act, and
 - (b) make a costs order under section 99 against a legal practitioner and, in determining whether such an order should be made, the court may take into account any conduct by the legal practitioner that causes a party to civil proceedings to which this Part applies not to comply with the pre-litigation requirements.
- (2) A court may make an order under subsection (1) (a) of its own motion or on the application of a party to the civil proceedings.

18N Court may take failure to comply with pre-litigation requirements into account

- (1) If a court is satisfied that a party to civil proceedings to which this Part applies has failed to comply with the pre-litigation requirements, the court may take into account that failure:
 - (a) in determining costs in the proceeding generally, and
 - (b) in making any order about the procedural obligations of parties to proceedings, and
 - (c) in making any other order it considers appropriate.

- (2) In determining whether to take into account a failure to comply with the pre-litigation requirements, the court may have regard to any of the following matters:
 - (a) whether or not the persons in dispute were legally represented,
 - (b) whether or not compliance might have resulted in self-incrimination by a person in dispute,
 - (c) any reasons that have been provided for the failure by the persons in dispute,
 - (d) any other matter that the court considers relevant.
- (3) A court may make an order under subsection (1) of its own motion or on the application of a party to the civil proceedings.

Division 6 Miscellaneous

180 Disclosure and publication of information concerning mediation undertaken for the purposes of this Part

- (1) In this section:

mediation means a meeting arranged for the mediation of a civil dispute to which this Part applies, and includes any steps taken in the course of making arrangements for the meeting or in the course of the follow-up of a meeting.
- (2) The following provisions apply in relation to a mediation:
 - (a) evidence of anything said or of any admission made in the mediation is not admissible in any proceedings before any court or other body,
 - (b) a document prepared for the purposes of, or in the course of, or as a result of, the mediation, or any copy of such a document, is not admissible in evidence in any proceedings before any court or other body.
- (3) Subsection (2) does not apply with respect to any evidence or document if:
 - (a) the persons in attendance at, or identified during, the mediation and, in the case of a document, all persons specified in the document, consent to the admission of the evidence or document, or
 - (b) the evidence is called to prove that an agreement or other arrangement has been reached as a result of a mediation and the substance of the agreement or arrangement.

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- (4) The same privilege with respect to defamation as exists with respect to judicial proceedings and a document produced in judicial proceedings exists with respect to:
- (a) a mediation, or
 - (b) a document or other material sent to or produced to a mediator for the purpose of enabling a mediation to be arranged.
- (5) The privilege conferred by subsection (4) extends only to a publication made:
- (a) at a mediation, or
 - (b) in a document or other material sent to or produced to a mediator for the purpose of enabling a mediation to be arranged.

[3] Section 56 Overriding purpose

Omit “civil proceedings” and “the proceedings” from section 56 (1).

Insert instead “a civil dispute or civil proceedings” and “the dispute or proceedings”, respectively.

[4] Section 56 (3A)

Insert after section 56 (3):

- (3A) A party to a civil dispute or civil proceedings is under a duty to take reasonable steps to resolve or narrow the issues in dispute in accordance with the provisions of Part 2A (if any) that are applicable to the dispute or proceedings in a way that is consistent with the overriding purpose.

[5] Section 56 (4)

Omit the subsection. Insert instead:

- (4) Each of the following persons must not, by their conduct, cause a party to a civil dispute or civil proceedings to be put in breach of a duty identified in subsection (3) or (3A):
- (a) any solicitor or barrister representing the party in the dispute or proceedings,
 - (b) any person with a relevant interest in the proceedings commenced by the party.

[6] Section 56 (5)

Insert “, (3A)” after “(3)”.

[7] Section 56 (6) and (7)

Insert after section 56 (5):

- (6) For the purposes of this section, a person has a *relevant interest* in civil proceedings if the person:
- (a) provides financial assistance or other assistance to any party to the proceedings, and
 - (b) exercises any direct or indirect control, or any influence, over the conduct of the proceedings or the conduct of a party in respect of the proceedings.

Note. Examples of persons who may have a relevant interest are insurers and persons who fund litigation.

- (7) In this section:
party to a civil dispute means a person who is involved in the dispute.

[8] Schedule 3 Rule-making powers

Insert after clause 34:

- 35 The pre-litigation requirements under Part 2A (including the practice and procedure relating to the pre-litigation requirements).
- 36 Pre-litigation requirements other than those under Part 2A (including specific protocols for civil proceedings or classes of civil proceedings).

[9] Schedule 6

Insert at the end of the Schedule (with appropriate Part and clause numbering):

**Part Provisions consequent on enactment of
Schedule 6.2 to Courts and Crimes
Legislation Further Amendment Act 2010**

Application of Part 2A

- (1) Part 2A (as inserted by the *Courts and Crimes Legislation Further Amendment Act 2010*) extends to civil proceedings commenced on or after the commencement of that Part in relation to civil disputes arising before that commencement, but only if the proceedings are commenced after the expiry of the transitional period.

(2) In this clause:

transitional period means the period:

- (a) commencing on the day on which Part 2A commences, and
- (b) ending at the end of the day that is 6 months after the day on which Part 2A commences.

6.3 Miscellaneous amendments to Civil Procedure Act 2005

[1] Schedule 3 Rule-making powers

Insert after clause 25:

25A The means for answering questions as to the principles of the law of a country other than Australia, and their application.

[2] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Courts and Crimes Legislation Further Amendment Act 2010

6.4 Amendment of Uniform Civil Procedure Rules 2005

Rules 7.4 and 7.5 of the *Uniform Civil Procedure Rules 2005* are repealed.

**Schedule 7 Amendment of Community Services
(Complaints, Reviews and Monitoring)
Act 1993 No 2**

[1] Section 33 Right of appearance

Insert after section 33 (3):

- (3A) Anything done or omitted to be done by a member of the Guardian Ad Litem Panel who is appointed by the Tribunal as a guardian ad litem does not subject the member personally to any action, liability, claim or demand if the thing was done, or omitted to be done, in good faith for the purposes of exercising his or her functions as a guardian ad litem under this Act.
- (3B) However, any such liability attaches instead to the Crown.

[2] Section 33 (7)

Insert in alphabetical order:

Guardian Ad Litem Panel means the panel constituted as the Guardian Ad Litem Panel by the Director-General of the Department of Justice and Attorney General.

Schedule 8 Amendment of Consumer, Trader and Tenancy Tribunal Act 2001 No 82

[1] Section 36 Representation of parties

Insert after section 36 (7):

- (7A) Anything done or omitted to be done by a member of the Guardian Ad Litem Panel who is appointed under subsection (6) does not subject the member personally to any action, liability, claim or demand if the thing was done, or omitted to be done, in good faith for the purposes of exercising his or her functions under this Act.
- (7B) However, any such liability attaches instead to the Crown.

[2] Section 36 (10)

Insert after section 36 (9):

- (10) In this section:
Guardian Ad Litem Panel means the panel constituted as the Guardian Ad Litem Panel by the Director-General of the Department of Justice and Attorney General.

Schedule 9 Amendment of Crimes Act 1900 No 40

Section 44

Omit the section. Insert instead:

44 Failure of persons to provide necessities of life

- (1) A person:
 - (a) who is under a legal duty to provide another person with the necessities of life, and
 - (b) who, without reasonable excuse, intentionally or recklessly fails to provide that person with the necessities of life,

is guilty of an offence if the failure causes a danger of death or causes serious injury, or the likelihood of serious injury, to that person.

Maximum penalty: Imprisonment for 5 years.

- (2) A person cannot be found guilty of both an offence against section 43A and an offence against this section in respect of the same act or omission.

**Schedule 10 Amendment of Crimes (Criminal
Organisations Control) Act 2009 No 6**

**[1] Section 39 Report to Ombudsman on exercise of powers and monitoring
by Ombudsman**

Omit “2 years” from section 39 (1). Insert instead “4 years”.

[2] Section 39 (5)

Omit “2-year period”. Insert instead “4-year period”.

Schedule 11 Amendment of Criminal Appeal Act 1912 No 16

[1] Section 5F Appeal against interlocutory judgment or order

Insert after section 5F (3):

- (3AA) A person who is not a party to proceedings to which this section applies may appeal to the Court of Criminal Appeal against a decision in those proceedings to grant leave under Division 2 of Part 5 of Chapter 6 of the *Criminal Procedure Act 1986* or a determination in those proceedings that a document or evidence does not contain a protected confidence within the meaning of that Division, if the person is:
- (a) a person who, because of the leave, is required to produce a document or adduce evidence that contains a protected confidence, or
 - (b) a protected confider in relation to a protected confidence that may be produced or adduced because of the leave, or
 - (c) a person who claims the document or evidence does, despite the determination, contain a protected confidence in relation to which the person is a protected confider.
- (3AB) An appeal under subsection (3AA) may be made whether or not an appeal has been made by a party to the proceedings, but only if:
- (a) the Court of Criminal Appeal gives leave to appeal, or
 - (b) the judge or magistrate of the court of trial certifies that the decision is a proper one for determination on appeal.

[2] Schedule 1 Savings and transitional provisions

Insert after clause 14:

15 Courts and Crimes Legislation Further Amendment Act 2010

Section 5F (3AA) and (3AB), as inserted by the *Courts and Crimes Legislation Further Amendment Act 2010*, extends to proceedings commenced but not completed before the commencement of those subsections.

Schedule 12 Amendment of Criminal Procedure Act 1986 No 209

12.1 Amendments relating to evidence in sexual offence matters

[1] Section 294D Protections of Division extend to tendency witnesses

Omit section 294D (2). Insert instead:

- (2) A *sexual offence witness* is any witness in the proceedings (other than the complainant) against whom any of the following is alleged to have been committed by the accused person:
- (a) a prescribed sexual offence, or
 - (b) acts that would constitute a prescribed sexual offence were those acts to occur in this State at the time of the commencement of the proceedings.

- (2A) A provision of this Division that applies to the giving of evidence about a prescribed sexual offence extends to the giving of evidence by a sexual offence witness about an offence or act referred to in subsection (2) (a) or (b).

[2] Section 294D (6)

Omit “a prescribed sexual offence”.

Insert instead “an offence or act referred to in subsection (2) (a) or (b)”.

[3] Section 295 Interpretation

Omit paragraph (a) from the definition of *criminal proceedings* in section 295 (1).

Insert instead:

- (a) proceedings relating to the trial or sentencing of a person for an offence (whether or not a sexual assault offence) including pre-trial and interlocutory proceedings but not preliminary criminal proceedings, or

[4] Section 295 (1), definition of “sexual assault offence”

Insert after paragraph (a):

- (a1) acts that would constitute a prescribed sexual offence if those acts:
- (i) had occurred in this State, or
 - (ii) had occurred at some later date, or

- (iii) had both occurred in this State and occurred at some later date, or

[5] Sections 297–299D

Omit sections 297–299. Insert instead:

297 Protected confidences—preliminary criminal proceedings

- (1) A person cannot seek to compel (whether by subpoena or any other procedure) any other person to produce a document recording a protected confidence in, or in connection with, any preliminary criminal proceedings.
- (2) A document recording a protected confidence cannot be produced in, or in connection with, any preliminary criminal proceedings.
- (3) Evidence cannot be adduced in any preliminary criminal proceedings if it would disclose a protected confidence or the contents of a document recording a protected confidence.

298 Protected confidences—criminal proceedings

- (1) Except with the leave of the court, a person cannot seek to compel (whether by subpoena or any other procedure) any other person to produce a document recording a protected confidence in, or in connection with, any criminal proceedings.
- (2) Except with the leave of the court, a document recording a protected confidence cannot be produced in, or in connection with, any criminal proceedings.
- (3) Except with the leave of the court, evidence cannot be adduced in any criminal proceedings if it would disclose a protected confidence or the contents of a document recording a protected confidence.

299 Court to inform of rights under Division

If it appears to a court that a witness, party or protected confider may have grounds for making an application under this Division or objecting to the production of a document or the adducing of evidence, the court must satisfy itself (or if there is a jury, in the absence of the jury) that the person is aware of the relevant provisions of this Division and has been given a reasonable opportunity to seek legal advice.

299A Protected confider has standing

A protected confider who is not a party may appear in criminal proceedings or preliminary criminal proceedings if a document is sought to be produced or evidence is sought to be adduced that may disclose a protected confidence made by, to or about the protected confider.

299B Determining if there is a protected confidence

- (1) If a question arises under this Division relating to a document or evidence, a court may consider the document or evidence.
- (2) If there is a jury, the document or evidence is to be considered in the absence of the jury.
- (3) A court must not make available or disclose to a party (other than a protected confider) any document or evidence to which this section applies (or the contents of any such document) unless:
 - (a) the court determines that the document does not record a protected confidence or that the evidence would not disclose a protected confidence, or
 - (b) a party has been given leave under this Division in relation to the document or evidence and making available or disclosing the document or evidence is consistent with that leave.
- (4) A court may make any orders it thinks fit to facilitate its consideration of a document or evidence under this section.

299C Notice of application for leave

- (1) An applicant for leave under this Division must, as soon as is reasonably practicable, give notice in writing of the application to each other party and each relevant protected confider (or the protected confider's nominee) that:
 - (a) specifies the document that is sought to be produced or the evidence that is sought to be adduced, and
 - (b) in the case of a notice to a protected confider who is not a party to the proceedings—advises the protected confider that the protected confider may appear in the proceedings concerned, and
 - (c) in the case of an application for leave to compel (whether by subpoena or any other procedure) a person to produce a document—specifies the day on which the document is to be produced, and

- (d) in the case of an application for leave to adduce evidence—specifies the day (if known) when the proceedings are to be heard, and
 - (e) includes any other matter that may be prescribed by the regulations.
- (2) A requirement to give notice to a protected confider who is not a party to proceedings is satisfied for the purposes of this section if the notice is given to:
 - (a) the prosecutor in the criminal proceedings, or
 - (b) if the regulations prescribe a different person or body, that person or body.
- (3) A prosecutor (or person or body) who is given a copy of a notice under subsection (2) must ensure that a copy of the notice is given to the protected confider within a reasonable time after its receipt.
- (4) A court cannot grant an application for leave under this Division until at least 14 days (or such shorter period as may be fixed by the court) after the relevant notices have been given under subsection (1) or (2).
- (5) A court may waive the requirement to give notice if:
 - (a) notice has already been given in respect of an application under this Division, being an application that relates to the same protected confidence and the same criminal proceedings, or
 - (b) the principal protected confider has consented in writing to the notice being waived, or
 - (c) the court is satisfied that there are exceptional circumstances that require the notice to be waived.
- (6) The regulations may make provision for or with respect to the giving of notices under this section.

299D Determining whether to grant leave

- (1) The court cannot grant an application for leave under this Division unless the court is satisfied that:
 - (a) the document or evidence will, either by itself or having regard to other documents or evidence produced or adduced or to be produced or adduced by the party seeking to produce or adduce the document or evidence, have substantial probative value, and

-
- (b) other documents or evidence concerning the matters to which the protected confidence relates are not available, and
 - (c) the public interest in preserving the confidentiality of protected confidences and protecting the principal protected confider from harm is substantially outweighed by the public interest in admitting into evidence information or the contents of a document of substantial probative value.
- (2) Without limiting the matters that the court may take into account for the purposes of determining the public interest in preserving the confidentiality of protected confidences and protecting the principal protected confider from harm, the court must take into account the following:
- (a) the need to encourage victims of sexual offences to seek counselling,
 - (b) that the effectiveness of counselling is likely to be dependent on the maintenance of the confidentiality of the counselling relationship,
 - (c) the public interest in ensuring that victims of sexual offences receive effective counselling,
 - (d) that the disclosure of the protected confidence is likely to damage or undermine the relationship between the counsellor and the counselled person,
 - (e) whether disclosure of the protected confidence is sought on the basis of a discriminatory belief or bias,
 - (f) that the adducing of the evidence is likely to infringe a reasonable expectation of privacy.
- (3) For the purposes of determining an application for leave under this Division, the court may permit a confidential statement to be made to it by or on behalf of the principal protected confider by affidavit specifying the harm the confider is likely to suffer if the application for leave is granted.
- (4) A court must not disclose or make available to a party (other than the principal protected confider) any confidential statement made to the court under this section by or on behalf of the principal protected confider.
- (5) The court must state its reasons for granting or refusing to grant an application for leave under this Division.

- (6) If there is a jury, the court is to hear and determine any application for leave under this Division in the absence of the jury.

[6] Sections 303 and 304

Omit the sections.

[7] Section 305 Inadmissibility of evidence

Omit “must not”. Insert instead “cannot”.

[8] Section 305A

Insert after section 305:

305A Subpoenas in sexual assault matters

The regulations may make provision for or with respect to the issue and service of subpoenas in, or in connection with, any criminal proceedings or preliminary criminal proceedings involving a prescribed sexual offence, including the following:

- (a) the manner and time in which a subpoena must be served,
- (b) the form of a subpoena,
- (c) any documents or information that must be included with a subpoena.

[9] Schedule 2

Insert at the end of the Schedule (with appropriate Part and clause numbering):

**Part Provisions consequent on enactment of
Schedule 12.1 to Courts and Crimes
Legislation Further Amendment Act 2010**

Evidence in sexual offence proceedings

- (1) The amendments made to this Act by Schedule 12.1 [1]–[3] to the amending Act extend to proceedings commenced but not completed before the commencement of those amendments.
- (2) However, subclause (1) does not affect the admissibility of any evidence given in proceedings before the commencement of those amendments or otherwise affect the validity of anything done, or omitted to be done, before that commencement.
- (3) The amendments made to this Act by Schedule 12.1 [4]–[7] to the amending Act do not extend to proceedings in a court if the

proceedings have commenced in that court before the commencement of those amendments.

- (4) In this clause:
amending Act means the *Courts and Crimes Legislation Further Amendment Act 2010*.

12.2 Miscellaneous amendments

[1] Section 56 Committal proceedings to be heard in open court

Insert after section 56 (2):

- (3) For the purpose only of facilitating the use of an electronic case management system established under the *Electronic Transactions Act 2000* in committal proceedings, the hearing of a matter may be conducted in the absence of the public, with the consent of the parties to the proceedings concerned, if the matter:
- (a) arises after the first appearance of the accused person in committal proceedings, and
 - (b) is of a procedural nature, and
 - (c) does not require the resolution of a disputed issue, and
 - (d) does not involve a person giving oral evidence.

[2] Sections 132 and 132A

Omit section 132. Insert instead:

132 Orders for trial by Judge alone

- (1) An accused person or the prosecutor in criminal proceedings in the Supreme Court or District Court may apply to the court for an order that the accused person be tried by a Judge alone (a *trial by judge order*).
- (2) The court must make a trial by judge order if both the accused person and the prosecutor agree to the accused person being tried by a Judge alone.
- (3) If the accused person does not agree to being tried by a Judge alone, the court must not make a trial by judge order.
- (4) If the prosecutor does not agree to the accused person being tried by a Judge alone, the court may make a trial by judge order if it considers it is in the interests of justice to do so.
- (5) Without limiting subsection (4), the court may refuse to make an order if it considers that the trial will involve a factual issue that requires the application of objective community standards,

including (but not limited to) an issue of reasonableness, negligence, indecency, obscenity or dangerousness.

- (6) The court must not make a trial by judge order unless it is satisfied that the accused person has sought and received advice in relation to the effect of such an order from an Australian legal practitioner.
- (7) The court may make a trial by judge order despite any other provision of this section or section 132A if the court is of the opinion that:
 - (a) there is a substantial risk that acts that may constitute an offence under Division 3 of Part 7 of the *Crimes Act 1900* are likely to be committed in respect of any jury or juror, and
 - (b) the risk of those acts occurring may not reasonably be mitigated by other means.

132A Applications for trial by judge alone in criminal proceedings

- (1) An application for an order under section 132 that an accused person be tried by a Judge alone must be made not less than 28 days before the date fixed for the trial in the Supreme Court or District Court, except with the leave of the court.
- (2) An application must not be made in a joint trial unless:
 - (a) all other accused person apply to be tried by a Judge alone, and
 - (b) each application is made in respect of all offences with which the accused persons in the trial are charged that are being proceeded with in the trial.
- (3) An accused person or a prosecutor who applies for an order under section 132 may, at any time before the date fixed for the accused person's trial, subsequently apply for a trial by a jury.
- (4) Rules of court may be made with respect to applications under section 132 or this section.

[3] Schedule 1 Indictable offences triable summarily

Omit "\$15,000" from clause 6 (b) of Table 1 to the Schedule.

Insert instead "\$60,000".

[4] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Courts and Crimes Legislation Further Amendment Act 2010

[5] Schedule 2

Insert at the end of the Schedule (with appropriate Part and clause numbering):

**Part Provisions consequent on enactment of
Schedule 12.2 to Courts and Crimes
Legislation Further Amendment Act 2010**

Conduct of committal proceedings in the absence of the public

The amendment made to section 56 by the *Courts and Crimes Legislation Further Amendment Act 2010* applies only to committal proceedings instituted on or after the commencement of the amendment.

Changes to trial by judge alone provisions

Section 132, as in force before its substitution by the *Courts and Crimes Legislation Further Amendment Act 2010*, continues to apply to criminal proceedings that were commenced in the Supreme Court or District Court before that substitution.

New penalties to apply prospectively

An amendment made to Schedule 1 by the *Courts and Crimes Legislation Further Amendment Act 2010* applies only in respect of an offence that is committed, or alleged to have been committed, on or after the commencement of the amendment.

Schedule 13 Amendment of Graffiti Control legislation

13.1 Graffiti Control Act 2008 No 100

Section 9A Definitions

Insert in alphabetical order:

fine has the same meaning as in the *Fines Act 1996*.

13.2 Graffiti Control Regulation 2009

Clause 12 Community clean up orders

Omit the clause.

Schedule 14 Amendment of Industrial Relations Act 1996 No 17

[1] Section 162C

Insert after section 162B:

162C Exercise of certain functions under federal Act by Commissioner

- (1) A Commissioner who is an Australian lawyer may exercise any function of the Commission in Court Session in respect of small claims proceedings.
- (2) If the Commissioner gives a direction, makes an order or does any other thing in relation to small claims proceedings, the Commission in Court Session may, on application by a party to the proceedings:
 - (a) review the direction, order or action, and
 - (b) by order confirm, vary or discharge the direction or order or take such other action as it thinks fit.
- (3) In this section:
small claims proceedings means proceedings dealt with as small claims proceedings under section 548 of the *Fair Work Act 2009* of the Commonwealth.

[2] Section 364 Definitions (as amended by Industrial Relations Further Amendment (Jurisdiction of Industrial Relations Commission) Act 2009)

Insert “the Commission constituted by” before “a Commissioner who is an Australian lawyer” in paragraph (a1) in the definition of *industrial court* in section 364 (1).

Schedule 15 Amendment of Local Court Act 2007 No 93

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

public sector service has the same meaning as it has in the *Public Sector Employment and Management Act 2002*.

[2] Sections 29 and 29A

Omit section 29. Insert instead:

29 Jurisdictional limit of Court

- (1) For the purposes of this Part, the *jurisdictional limit* of the Court is:
 - (a) \$100,000, when sitting in its General Division, and
 - (b) \$10,000, when sitting in its Small Claims Division.
- (2) However, the jurisdictional limit of the Court, when sitting in its General Division, in relation to a claim for damages arising from personal injury or death is \$60,000.

29A Money claim—meaning

In this Part, *money claim* means a claim for recovery of any debt, demand or damages (whether liquidated or unliquidated).

[3] Schedule 1 Provisions relating to Magistrates

Omit “(within the meaning of section 3 of the *Public Sector Employment and Management Act 2002*)” from clause 8 (1).

[4] Schedule 1, clause 9

Insert after clause 9 (2):

- (3) A determination by the Minister under this clause is referred to in this Schedule as a *conditions of service determination*.

[5] Schedule 1, clause 9A

Insert after clause 9:

9A Cashing out of pre-2002 extended leave entitlements

- (1) A conditions of service determination may make provision for an alternative extended leave scheme for Magistrates with pre-2002 extended leave entitlements.

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- (2) An *alternative extended leave scheme* is a scheme under which a Magistrate accrues extended leave on a different basis to his or her pre-2002 extended leave entitlement.
- (3) A conditions of service determination may permit a Magistrate to elect:
- (a) to be paid, as a gratuity, the monetary value of the Magistrate's pre-2002 extended leave entitlement, and
 - (b) to accrue extended leave, on and from the date of election, in accordance with the alternative extended leave scheme.
- (4) An alternative extended leave scheme may provide that the Magistrate accrues extended leave as if the Magistrate had first been appointed as a Magistrate on or after the election takes effect (that is, disregarding service as a Magistrate or in the public sector service before the election takes effect).
- (5) In this section, a *pre-2002 extended leave entitlement* is any right to extended leave or to accrue extended leave that a Magistrate appointed before 20 September 2002 has by virtue of section 25 (1) of the *Local Courts Act 1982*, as in force immediately before its repeal.

Note. Section 30 (1) (c) of the *Interpretation Act 1987* provides that the repeal of an Act does not affect any right, privilege, obligation or liability acquired, accrued or incurred under the Act.

[6] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Courts and Crimes Legislation Further Amendment Act 2010

[7] Schedule 4, Part 6

Insert after Part 5:

**Part 6 Provisions consequent on enactment of
Courts and Crimes Legislation Further
Amendment Act 2010**

15 Changes to the jurisdictional limit of the Court

The amendment made to section 29 by the *Courts and Crimes Legislation Further Amendment Act 2010* does not apply to proceedings instituted in the Court before the commencement of the amendment.

16 Validation of 2005 Extended Leave Determination

- (1) A provision of the 2005 Extended Leave Determination that could have been made as a condition of service determination if this Act, as amended by the *Courts and Crimes Legislation Further Amendment Act 2010*, had been in force at the time that it was made, is taken to have been, and to have always been, validly made under section 22 of the *Local Courts Act 1982*.
- (2) The 2005 Extended Leave Determination is taken to include, and to have always included, a provision to the effect that, on and from the date an election by a Magistrate to be paid an extended leave gratuity takes effect, any service by the Magistrate as a Magistrate or in the public sector service before that date is to be disregarded in determining the Magistrate's entitlement to extended leave for service after that date.
- (3) Anything done in connection with the 2005 Extended Leave Determination that would have been validly done if the amendments made to this Act by the *Courts and Crimes Legislation Further Amendment Act 2010* had been in force when it was done is taken to have been, and to have always been, validly done.
- (4) A Magistrate or former Magistrate who was paid an extended leave gratuity before the commencement of this clause may elect to have his or her pre-2002 extended leave entitlement reinstated in accordance with arrangements approved by the Minister.
- (5) As a precondition to reinstatement, the Magistrate or former Magistrate must repay the gratuity amount to the Minister.
- (6) The amount to be repaid is to be determined by the Minister on the basis of a reasonable estimate of the present day value of the extended leave gratuity paid to the Magistrate or former Magistrate.
- (7) On reinstatement, the Magistrate or former Magistrate is taken to have accrued, and to always have accrued, extended leave as if the Magistrate had never elected to be paid the extended leave gratuity.
- (8) Expressions used in this clause have the same meaning as they have in clause 9A of Schedule 1.
- (9) In this clause:
extended leave gratuity means a gratuity paid to a Magistrate on election under clause 2A of the *Magistrates' Leave and Related Conditions Determination* as inserted by the 2005 Extended Leave Determination.

2005 Extended Leave Determination means the *Magistrates' Leave and Related Conditions Amendment (Extended Leave) Determination 2005* published in Gazette No 65 of 3.6.2005 at page 1923.

Schedule 16 Amendment of Mining Act 1992 No 29

[1] Section 62 Dwelling-houses, gardens and significant improvements

Omit “(a) or (b)” from section 62 (6A).

[2] Section 62 (6A), note

Omit the note.

[3] Schedule 1 Public consultation with respect to the granting of assessment leases and mining leases

Omit clause 23A (3)–(6). Insert instead:

- (3) In the case of a claim relating to an application for a mining lease, the Director-General must cause notice of the claim to be given to the applicant for the lease.
- (4) An applicant for a mining lease may give notice to the Director-General of an application to the Land and Environment Court for a determination in relation to the claim.
- (5) Anything identified in a claim as being a significant improvement is taken to be a significant improvement for the purposes of section 62 unless the Land and Environment Court finds that it is not a significant improvement in an application made under section 62 (6A).

[4] Schedule 1, clause 23B

Omit the clause.

[5] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Courts and Crimes Legislation Further Amendment Act 2010

[6] Schedule 6

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

Part Provisions consequent on enactment of Courts and Crimes Legislation Further Amendment Act 2010

Application of amendments

Section 62 and clauses 23A and 23B of Schedule 1 (as in force immediately before the commencement of Schedule 16 to the

Courts and Crimes Legislation Further Amendment Act 2010)
continue to apply in relation to a claim made under clause 23A of
Schedule 1 before that commencement.

Schedule 17 Amendment of Supreme Court Act 1970 No 52

Section 125

Insert after section 124:

125 Arrangements for exchange of information between Court and foreign courts

- (1) Rules may be made under this Act, or under the *Civil Procedure Act 2005*, for or with respect to:
 - (a) the referral by the Court of a question as to the principles of foreign law, or their application, to a foreign court for information, advice or assistance (with or without the consent of parties to proceedings), and
 - (b) the provision by the Court, to a foreign court, of information, advice or assistance on a question as to the principles of Australian law, or their application.
- (2) In this section:
foreign court means a court of a country other than Australia.
foreign law means the law of a country other than Australia.

Schedule 18 Amendment of Victims Support and Rehabilitation Act 1996 No 115

[1] Section 3 Objects of Act

Omit “punishable by imprisonment” from section 3 (c).

[2] Section 5 Act of violence

Omit section 5 (3). Insert instead:

(3) Except as provided by subsections (3A) and (3B), a *series of related acts* is two or more acts that are related because:

- (a) they were committed against the same person, and
- (b) in the opinion of the Tribunal or compensation assessor:
 - (i) they were committed at approximately the same time, or
 - (ii) they were committed over a period of time by the same person or group of persons, or
 - (iii) they were, for any other reason, related to each other.

(3A) An act is not related to another act if, in the opinion of the Tribunal or compensation assessor, having regard to the particular circumstances of those acts, they ought not to be treated as related acts.

(3B) An act is not related to any earlier act in respect of which an award of statutory compensation has been made if it occurs after the award was made.

[3] Section 14 Compensation payable to primary victims other than for expenses reimbursed under section 14A

Omit section 14 (3). Insert instead:

(3) Statutory compensation under this section is not payable for financial loss to the extent that Victims Assistance has been awarded for that loss.

[4] Section 14A Victims Assistance Scheme

Omit “statutory compensation for prescribed expenses” from section 14A (1).

Insert instead “Victims Assistance”.

[5] Section 14A (2)

Omit the subsection. Insert instead:

- (2) *Victims Assistance* is a form of statutory compensation for actual expenses incurred by a primary victim of an act of violence as a direct result of the act of violence.

Note. Victims Assistance is payable to a primary victim who, due to the threshold applying under section 20, is precluded from being awarded statutory compensation referred to in section 14. Victims Assistance is also payable to a primary victim who is not precluded from being awarded statutory compensation referred to in that section. However, see section 14 (3).

[6] Section 14A (3)

Omit “No statutory compensation is”.

Insert instead “Victims Assistance is not”.

[7] Section 14A (3)

Omit “statutory compensation for prescribed expenses”.

Insert instead “compensation for the actual expenses concerned”.

[8] Section 14A (4)

Omit the subsection. Insert instead:

- (4) The regulations may make provision for or with respect to any of the following:
- (a) the maximum amount that a person may be awarded under this section in respect of a particular kind of actual expense,
 - (b) the particular kinds of actual expenses for which a person may or may not be compensated under this section.

[9] Section 14A (5)

Omit “may be awarded to a primary victim as statutory compensation for prescribed expenses”.

Insert instead “a primary victim may be awarded under this section”.

[10] Section 14A (6) and (7)

Omit “Statutory compensation for prescribed expenses” wherever occurring.

Insert instead “Victims Assistance”.

[11] Section 14A (8)

Omit “statutory compensation for prescribed expenses”.

Insert instead “Victims Assistance”.

[12] Section 14A (8)

Omit “application for compensation”.

Insert instead “application for Victims Assistance”.

[13] Section 15 Compensation payable to secondary victims

Insert at the end of the section:

- (2) Any secondary victim who dies ceases to be eligible for statutory compensation. Any pending application made by or on behalf of a secondary victim does not survive the death of the secondary victim.

[14] Section 16 Compensation payable to family victims

Insert after section 16 (3):

- (4) Any family victim who dies ceases to be eligible for statutory compensation. Any pending application made by or on behalf of a family victim does not survive the death of the family victim.

[15] Sections 18 (6), 19A (3), 20 (3), 29 (1AA), 35 (8), 35A (1) and 42 (1A)

Omit “statutory compensation for prescribed expenses” wherever occurring.

Insert instead “Victims Assistance”.

[16] Section 21 Special payments for approved counselling services

Omit section 21 (3) and (3A). Insert instead:

- (3) The Director may authorise payments for approved counselling services for a victim (other than a family victim or relevant family member):
 - (a) for a period of up to 10 hours of counselling (including counselling for the purposes of an application for continued counselling), and
 - (b) for such further periods of counselling as the Director may consider appropriate.
- (3A) Subject to the rules, the Director may consider a person to be a victim (other than a family victim or relevant family member) referred to in subsection (3), for the purposes of authorising payments for an initial period of 2 hours of counselling for the

person, if satisfied that counselling may assist in establishing whether or not the person is a victim.

- (3B) The Director must not authorise payments for more than a total of 22 hours of counselling services for a person under subsection (3) unless satisfied that there are exceptional reasons for doing so.

[17] Section 21 (4)

Omit “Payments for approved counselling services for a victim who is a family victim or relevant family member may be made:”.

Insert instead “The Director may authorise payments for approved counselling services for a victim who is a family victim or relevant family member:”.

[18] Section 21 (6)

Omit the subsection.

[19] Section 21 (7)

Omit “an initial period”.

Insert instead “up to 2 hours of the period”.

[20] Section 21 (7)

Omit “the approval”. Insert instead “the Director’s authorisation”.

[21] Section 21 (8)

Omit the subsection. Insert instead:

- (8) A decision of the Director under this section that is made by a delegate of the Director may be reviewed by the Director or another delegate of the Director. Any other decision of the Director under this section may be reviewed by a member of the Tribunal.

[22] Sections 22 (3) and 53 (1) (b)

Omit “disposed of” wherever occurring. Insert instead “determined”.

[23] Section 23 Eligibility to receive compensation in respect of same act of violence

Omit “(except as provided by subsection (1A))” from section 23 (1).

[24] Section 23 (1A) and (1B)

Omit section 23 (1A) (including the note). Insert instead:

- (1A) If a person's application for statutory compensation in respect of an act of violence has been finally determined by the dismissal of the application, the person is not eligible to receive an award of statutory compensation by means of a further application that is made:
- (a) in respect of the same act of violence, and
 - (b) in the same capacity of primary victim, secondary victim or family victim.
- (1B) This section does not prevent a person from receiving:
- (a) an award of statutory compensation to which section 14 applies in addition to an award of Victims Assistance in respect of the same act of violence, or
 - (b) in a case where the person's application for Victims Assistance has been dismissed—an award of statutory compensation to which section 14 applies in respect of the same act of violence, or
 - (c) in a case where the person's application for statutory compensation to which section 14 applies has been dismissed—an award of Victims Assistance in respect of the same act of violence.

Note. However, section 14 (3) prevents a person from being granted compensation for financial loss to the extent that Victims Assistance has been awarded for that loss. Further, under section 14A (6), Victims Assistance is not payable to a person who has already been awarded statutory compensation to which section 14 applies in respect of the same act of violence.

[25] Section 23A

Insert after section 23:

23A Claim may not be made for acts of violence occurring before successful claim lodged

- (1) A person is not entitled to claim statutory compensation in respect of an act of violence (the *uncompensated act of violence*) if:
- (a) the Tribunal or a compensation assessor has at any time awarded statutory compensation to the person in respect of another act of violence, and

- (b) the uncompensated act of violence occurred before the person lodged the application for statutory compensation in respect of the other act of violence.
- (2) However, subsection (1) does not prevent the person from claiming statutory compensation in respect of the uncompensated act of violence if the Tribunal or compensation assessor is satisfied that:
 - (a) but for section 22 (2), the person would have claimed statutory compensation before lodging the application in respect of the other act of violence, or
 - (b) the case involves exceptional circumstances that justify an exception being made to subsection (1).
- (3) Subsection (1) does not prevent a person claiming statutory compensation in the person's capacity as a family victim or under section 33A in respect of funeral expenses.
- (4) A reference in this section to a person who has lodged an application for statutory compensation includes a reference to a person on whose behalf such an application has been lodged.

[26] Section 26 Time for lodging applications

Omit section 26 (2A). Insert instead:

- (2A) The Director must not give leave for the acceptance of an application that is lodged out of time if:
 - (a) the application is for Victims Assistance, or
 - (b) except as provided by subsection (2B), the applicant is a family victim of the relevant act of violence.
- (2B) The Director may give leave for the acceptance of an application that is lodged out of time by or on behalf of a family victim if the Director is satisfied that, on the date on which the application was lodged:
 - (a) the family victim was under 20 years of age, or
 - (b) no more than 2 years had elapsed since it was established (whether or not by a court) that the primary victim through whom the family victim's claim has been made died as a direct result of the relevant act of violence.
- (2C) However, the Director must not give leave under subsection (2B) if a total amount of \$50,000 by way of statutory compensation has been awarded in respect of the relevant act of violence to one or more of the following:
 - (a) the primary victim,

(b) any person whose claim was made through that primary victim as a family or secondary victim,

(c) any person whose claim was made under section 33A in respect of the funeral expenses of that primary victim.

Note. \$50,000 is the maximum amount that the primary victim of an act of violence and any other victims claiming through that victim are together eligible to receive. (See section 19 (3). See also sections 16 (1) and 33A (5).)

[27] Sections 26A and 26B

Insert after section 26:

26A Withdrawal of application

- (1) An applicant for statutory compensation may, by written notice to the Director, withdraw his or her application at any time before the application is determined.
- (2) The withdrawal of an application for statutory compensation under this section does not prevent the applicant from making another application for statutory compensation.

26B Lapsing of application if no contact

- (1) If an applicant for statutory compensation has not made any contact with the Director for 6 months, the Director may give notice to the applicant stating that if the applicant does not contact the Director by the date and in the manner specified in the notice (being a date that is not less than 6 months after the Director gives the notice), the application will lapse.
- (2) If the applicant does not contact the Director by the date and in the manner specified in the notice, the application lapses.
- (3) The lapsing of an application under this section does not prevent the applicant from making another application for statutory compensation.

[28] Section 29 Determination of applications

Omit section 29 (1B).

[29] Section 29 (5) (a)

Omit “compensation for prescribed expenses”.

Insert instead “Victims Assistance”.

[30] Section 35 Costs of applications for compensation and proceedings before Tribunal

Omit section 35 (1). Insert instead:

- (1) The Tribunal or a compensation assessor may award an applicant for statutory compensation his or her costs in respect of the application (whether or not proceedings are taken before the Tribunal on appeal or otherwise) in accordance with such scale of costs as may be prescribed by the rules.

[31] Section 35 (3) and (3A)

Omit section 35 (3). Insert instead:

- (3) The Tribunal or a compensation assessor may award an applicant costs in excess of the maximum amount provided for in the scale of costs referred to in subsection (1) if of the opinion that the special circumstances of the case justify such an award being made.
- (3A) The Tribunal or compensation assessor may decline to make an award of costs or may award costs of a lesser amount than the maximum amount provided for in the scale of costs referred to in subsection (1).

[32] Section 35 (4)

Omit “amount payable in accordance with the scale of costs referred to in subsection (1)”.

Insert instead “amount awarded under this section”.

[33] Section 35 (8), note

Insert after section 35 (8):

Note. As a consequence of this subsection, the Tribunal or a compensation assessor does not have any discretion to award costs relating to an application for Victims Assistance except where the application has been determined in accordance with section 29 (1AA).

[34] Section 36 Appeal to Tribunal by applicant

Omit section 36 (1A) (including the note). Insert instead:

- (1A) The applicant may not appeal to the Tribunal:
 - (a) for the correction of a miscalculation in the amount awarded as Victims Assistance, or

-
- (b) against a determination of a compensation assessor under section 35 in relation to costs.

Note. An applicant may apply to the Director under section 35A for the correction of a miscalculation in the amount awarded as Victims Assistance.

[35] Section 37 Reference of application to Tribunal by assessor or by Chairperson of Tribunal

Omit section 37 (1). Insert instead:

- (1) If the compensation assessor dealing with an application for statutory compensation considers that the application should be determined by the Tribunal, the Director may refer the application to the Tribunal for determination.

[36] Section 38 Determination by Tribunal of appeals and references

Omit section 38 (1) and (2). Insert instead:

- (1) Except as provided by subsection (2), the Tribunal is to proceed to determine a matter the subject of an appeal or reference to it under this Division without a hearing.
- (2) The Tribunal is to conduct a hearing into the matter if the Tribunal is satisfied that it cannot properly determine the matter without a hearing. Any such hearing is to be conducted in accordance with Schedule 2.

[37] Section 38 (5) (b)

Omit “determined again”. Insert instead “determined or re-determined”.

[38] Section 42 Compensation Fund Corporation to pay compensation

Omit section 42 (1). Insert instead:

- (1) An application for payment of the whole or any part of the following is to be made to the Director:
- (a) an award of statutory compensation (other than Victims Assistance),
- (b) an award of costs under section 35 (including any such award made in respect of an application for Victims Assistance that has been determined as an application for Victims Assistance because of the operation of section 29 (1AA)).
- (1AA) The Director is to forward any such application to the Compensation Fund Corporation.

[39] Section 69 Payments from Compensation Fund

Omit “the Victims of Crime Bureau”. Insert instead “Victims Services”.

[40] Section 78 Application of Part

Omit section 78 (1). Insert instead:

- (1) This Part applies to all offences (other than any offences of a class prescribed by the regulations) that are dealt with by:
 - (a) the Supreme Court, or
 - (b) the District Court, or
 - (c) the Drug Court, or
 - (d) the Local Court, or
 - (e) the Land and Environment Court, or
 - (f) the Industrial Relations Commission in Court Session, or
 - (g) the Children’s Court, or
 - (h) any other court prescribed by the regulations.

[41] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Courts and Crimes Legislation Further Amendment Act 2010

[42] Schedule 3, Part 8

Insert after Part 7 of Schedule 3:

**Part 8 Provisions consequent on enactment of
Courts and Crimes Legislation Further
Amendment Act 2010**

31 Definition

In this Part:

amending Act means the *Courts and Crimes Legislation Further Amendment Act 2010*.

32 Acts of violence

The amendments made to section 5 by the amending Act extend to an act of violence that occurred before the commencement of those amendments in respect of which an application for statutory compensation:

- (a) is lodged on or after that commencement, or

- (b) was lodged, but not determined by the Tribunal or a compensation assessor at any time, before that commencement.

33 Victims Assistance Scheme

- (1) In this clause, *statutory compensation for prescribed expenses* has the same meaning as it had before the commencement of the amendments to section 14A by the amending Act.
- (2) Any application for statutory compensation for prescribed expenses that was lodged, but not finally determined, before the commencement of the amendments to section 14A by the amending Act is to be dealt with under this Act as if it were an application for Victims Assistance.
- (3) Any application determined under subclause (2) is taken to have been determined as an application for Victims Assistance.
- (4) Any application for statutory compensation for prescribed expenses that was finally determined before the commencement of the amendments made to section 14A by the amending Act is taken to have been finally determined as an application for Victims Assistance.

34 Deceased secondary or family victims

Sections 15 and 16, as amended by the amending Act, extend to:

- (a) any secondary victim or family victim who died before the commencement of those amendments, and
- (b) any application that was pending immediately before the commencement of those amendments and was lodged by or on behalf of a secondary victim or family victim who died before, or who dies on or after, the commencement of those amendments.

35 Approved counselling services

Section 21, as amended by the amending Act, extends to any application for payment for approved counselling services that was made to the Director before the commencement of those amendments, but does not affect any decision made under that section before that commencement.

36 Application of amendments to section 23

Section 23, as amended by the amending Act:

- (a) extends to any person whose application for statutory compensation was finally determined by the dismissal of

the application before the commencement of those amendments, and

- (b) affects any further application made by or on behalf of the person after that dismissal, whether the further application was made before or after the commencement of those amendments.

37 Application of section 23A

Section 23A, as inserted by the amending Act:

- (a) extends to any person who, before the commencement of that section, was awarded statutory compensation, and
- (b) affects any claim for statutory compensation that was made before that commencement, but was not determined by the Tribunal or a compensation assessor at any time before that commencement.

38 Family victims—time for lodging applications

Section 26, as amended by the amending Act, extends to any application for statutory compensation that was lodged out of time by or on behalf of a family victim, but was not the subject of any determination by the Director under that section, before the commencement of those amendments.

39 Withdrawal of applications

Section 26A, as inserted by the amending Act, extends to any application for statutory compensation that was lodged, but not finally determined, before the commencement of that section.

40 Lapsing of application if no contact

Section 26B, as inserted by the amending Act, extends to any application for statutory compensation that was lodged, but not finally determined, before the commencement of that section.

41 Costs for applications for compensation and proceedings before the Tribunal

Section 35, as amended by the amending Act, extends to any application for statutory compensation that was lodged before the commencement of those amendments, but does not extend to any application that was determined by the Tribunal or a compensation assessor at any time before that commencement.

42 Appeals relating to costs

Section 36 (1A) (b), as inserted by the amending Act, extends to an applicant whose application for statutory compensation was lodged before the commencement of that paragraph, but does not extend to any applicant whose application was determined by the Tribunal or a compensation assessor at any time before that commencement.

43 Determination by Tribunal of appeals and references

Section 38, as amended by the amending Act, extends to any matter the subject of an appeal or reference to the Tribunal under Division 6 of Part 2, before the commencement of those amendments, but does not extend to any matter that the Tribunal has proceeded to determine, but has not disposed of, before that commencement.

44 Compensation levies

Section 78 (1), as inserted by the amending Act, extends to any offence committed by a person before the commencement of the subsection, whether or not the proceedings concerned were commenced before that commencement, but does not extend to an offence for which the person was convicted before that commencement.

[43] Dictionary

Omit the definition of *statutory compensation for prescribed expenses*.

[44] Dictionary

Insert in alphabetical order:

Victims Assistance—see section 14A.

Schedule 19 Amendment of Victims Rights Act 1996 No 114

[1] Section 4 Definitions

Omit the definition of *Victims Bureau*. Insert instead:

Victims Services—see section 9.

[2] Section 6 Charter of rights for victims of crime

Omit “should” wherever occurring in items 6.1–6.16. Insert instead “will”.

[3] Section 6, item 6.17

Omit “should be”. Insert instead “is”.

[4] Section 6, item 6.18

Insert after item 6.17:

6.18 Information about complaint procedure where Charter is breached

A victim may make a complaint about a breach of the Charter and will, on request, be provided with information on the procedure for making such a complaint.

[5] Section 7 Implementation of Charter

Omit section 7 (3). Insert instead:

(3) In this section, the *administration of the affairs of the State* includes the following:

- (a) the administration of justice,
- (b) the provision of police services,
- (c) the administration of any department of the Government,
- (d) the provision of services to victims of crime by any person or non-government agency funded by the State to provide those services.

[6] Section 8 Legal rights not affected

Omit “the Victims Bureau” from section 8 (2).

Insert instead “Victims Services”.

[7] Part 3, heading

Omit “Victims of Crime Bureau”. Insert instead “Victims Services”.

[8] Section 9

Omit the section. Insert instead:

9 Victims Services

Victims Services is that part of the Department of Justice and Attorney General comprising the group of staff who are principally involved in the administration of this Act and the *Victims Support and Rehabilitation Act 1996*.

[9] Section 10 Functions of Victims Services

Omit “The Victims Bureau” from section 10 (1).

Insert instead “Victims Services”.

[10] Section 10 (1) (c)

Insert “, including by publishing codes, guidelines and other practical guidance on the implementation of the Charter” after “Rights”.

[11] Section 11 Report to Parliament

Omit section 11 (1). Insert instead:

- (1) Victims Services may, at any time, make a special report to the Minister for presentation to Parliament on any matter arising in connection with the exercise of its functions, including in connection with the implementation of the Charter of Victims Rights.

[12] Section 11 (2)

Omit “the Victims Bureau”. Insert instead “Victims Services”.

[13] Section 13 Membership and procedure of Victims Advisory Board

Omit “10 members” from section 13 (1). Insert instead “12 members”.

[14] Section 13 (1) (a)

Omit “4 members”. Insert instead “6 members”.

[Second reading speech made in Legislative Council on 24 November 2010

Agreement in principle speech made in Legislative Assembly on 30 November 2010]

BY AUTHORITY