



New South Wales

Courts and Other Legislation Further Amendment Act 2013 No 1

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Explanatory notes	2
Schedule 1 Amendment and repeal of legislation	3



New South Wales

Courts and Other Legislation Further Amendment Act 2013 No 1

Act No 1, 2013

An Act to make miscellaneous amendments to certain legislation with respect to courts and juries, civil and criminal procedure, the exchange of information by certain government agencies and the enforcement of fines and to effect minor statute law revision; and to repeal the *Inebriates Act 1912*. [Assented to 28 February 2013]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Courts and Other Legislation Further Amendment Act 2013*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Schedule 1.8 commences on a day to be appointed by proclamation.

3 Explanatory notes

The matter appearing under the heading “Explanatory note” in Schedule 1 does not form part of this Act.

Schedule 1 Amendment and repeal of legislation

1.1 Anti-Discrimination Act 1977 No 48

Section 49ZYA What constitutes discrimination on the ground of age

Omit section 49ZYA (3).

Explanatory note

The proposed amendment to the *Anti-Discrimination Act 1977* will result in the general definitions of **associate** and **relative** in that Act applying in the same way to all circumstances where discrimination against a person on the grounds that a relative or an associate of a person has a particular characteristic is prohibited. This is achieved by omitting the substantially similar, but not identical, definitions relating to discrimination on the ground of age from section 49ZYA and relying instead on the general definitions in section 4 of that Act.

1.2 Births, Deaths and Marriages Registration Act 1995 No 62

[1] Section 25 Record of adoption or discharge of adoption to be noted in birth registration

Omit “a memorandum” wherever occurring.

Insert instead “a record of adoption, or discharge of adoption,”.

[2] Section 25

Omit “the memorandum” wherever occurring. Insert instead “the record”.

[3] Part 8, Division 4, heading

Insert “and certain applications” after “entries”.

[4] Section 46A Access to change of name applications and information by law enforcement agencies

Insert “applications for registration of a change of a person’s name, and to” after “agency to” in section 46A (1).

[5] Section 46A (2)

Insert “applications or” after “to whom the”.

[6] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

any other Act that amends this Act

[7] **Schedule 3, Part 9**

Insert after Part 8:

**Part 9 Provision consequent on enactment of
Courts and Other Legislation Further
Amendment Act 2013**

**26 Application of amendments relating to change of name
applications**

Section 46A (1) and (2), as amended by the *Courts and Other Legislation Further Amendment Act 2013*, extend to information relating to applications made before the amendment of those subsections by that Act.

Explanatory note

Items [1] and [2] of the proposed amendments to the *Births, Deaths and Marriages Registration Act 1995* update references to records of adoption or discharge of adoption (which were formerly called memoranda). This is consistent with the terminology used in the rest of the Act and in the *Adoption Act 2000*.

Item [3] updates a heading as a consequence of the proposed extension (by items [4] and [5] of the proposed amendments) of the power to allow access to information.

Items [4] and [5] empower the Registrar of Births, Deaths and Marriages to allow officers of law enforcement agencies to have access to applications to register the change of a person's name and not just to changes of name that have been finalised and registered (which officers of law enforcement agencies can currently access).

Item [6] provides for the making of savings and transitional regulations consequent on the amendment of the *Births, Deaths and Marriages Registration Act 1995*.

Item [7] provides that the proposed amendments about access to information extend to information relating to applications made before the amendments commenced.

1.3 Children (Community Service Orders) Act 1987 No 56

[1] **Section 3 Definitions**

Omit the definition of *Department* from section 3 (1). Insert instead:

Department means the Department of Attorney General and Justice.

[2] **Section 28B**

Insert after section 28A:

28B Exchange of certain information

- (1) The Director-General may enter into an arrangement (*an information sharing arrangement*) with the Director of the State Debt Recovery Office for the purposes of sharing or exchanging

any information that is held by the Department or the State Debt Recovery Office.

- (2) The information to which an information sharing arrangement may relate is limited to information that assists in the exercise of:
- (a) the functions of the Director-General under this Act or the regulations, or
 - (b) the functions of the State Debt Recovery Office under the *Fines Act 1996* or the regulations under that Act.
- (3) Under an information sharing arrangement:
- (a) the Director-General is, despite any other Act or law of the State, authorised to request and receive information from the State Debt Recovery Office comprising the name, address and date of birth of a person who is the subject of a children's community service order and is a fine defaulter (within the meaning of the *Fines Act 1996*), and
 - (b) the Director of the State Debt Recovery Office is authorised to disclose that information to the Director-General, and
 - (c) the Director of the State Debt Recovery Office is, despite any other Act or law of the State, authorised to request and receive information from the Department comprising the name, address and date of birth of a person who is the subject of a children's community service order and is a fine defaulter (within the meaning of the *Fines Act 1996*), and
 - (d) the Director-General is authorised to disclose that information to the Director of the State Debt Recovery Office.

[3] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

Courts and Other Legislation Further Amendment Act 2013, to the extent that it amends this Act

[4] Schedule 1, clause 6

Insert at the end of Schedule 1:

6 Provision consequent on enactment of Courts and Other Legislation Further Amendment Act 2013

Section 28B extends to information obtained before the commencement of that section.

Explanatory note

Item [1] of the proposed amendments to the *Children (Community Service Orders) Act 1987* updates a reference to a Department.

Item [2] allows the Juvenile Justice division of the Department of Attorney General and Justice to share information about young people who are the subject of children's community service orders with the State Debt Recovery Office, so as to identify outstanding fines of young people subject to such community service orders and to facilitate participation by those young people in work and development orders as a way of satisfying all or part of those fines. (A similar amendment is proposed to be made to the *Children (Detention Centres) Act 1987*, by Schedule 1.4 to this Act, in relation to children subject to detention orders.)

Item [3] provides for the making of savings and transitional regulations consequent on the amendments made by items [1] and [2].

Item [4] provides that the proposed amendment relating to the sharing of information extends to information obtained before the commencement of that amendment.

1.4 Children (Detention Centres) Act 1987 No 57

[1] Section 3 Definitions

Omit the definitions of *Chief Executive Officer, Justice Health* and *Justice Health* from section 3 (1).

Insert instead, respectively:

Chief Executive, Justice and Forensic Mental Health Network means the person for the time being holding office or acting as the chief executive of the Justice and Forensic Mental Health Network under the *Health Services Act 1997*.

Justice and Forensic Mental Health Network means the statutory health corporation of that name specified in Schedule 2 to the *Health Services Act 1997*.

[2] Section 14 Functions of the Director-General

Omit “*Mental Health Act 1990*” from section 14 (2).

Insert instead “*Mental Health (Forensic Provisions) Act 1990*”.

[3] Sections 27 (2) and (5), 37F, 37G (1), (3) and (5) and 37H

Omit “Chief Executive Officer, Justice Health” wherever occurring.

Insert instead “Chief Executive, Justice and Forensic Mental Health Network”.

[4] Sections 27 (5) and 37H (2)

Omit “Officer” wherever lastly occurring.

[5] Section 37E Functions of Justice and Forensic Mental Health Network

Omit “Justice Health”.

Insert instead “Justice and Forensic Mental Health Network”.

[6] Section 37F Chief Executive, Justice and Forensic Mental Health Network to have access to detention centres, detainees and medical records

Omit “of Justice Health”.

Insert instead “of the Justice and Forensic Mental Health Network”.

[7] Section 37H Delegation of functions of Chief Executive, Justice and Forensic Mental Health Network

Omit “the Chief Executive Officer’s” from section 37H (1).

Insert instead “the Chief Executive’s”.

[8] Section 39B

Insert after section 39A:

39B Exchange of certain information

- (1) The Director-General may enter into an arrangement (*an information sharing arrangement*) with the Director of the State Debt Recovery Office for the purposes of sharing or exchanging any information that is held by the Department or the State Debt Recovery Office.
- (2) The information to which an information sharing arrangement may relate is limited to information that assists in the exercise of:
 - (a) the functions of the Director-General under this Act or the regulations, or
 - (b) the functions of the State Debt Recovery Office under the *Fines Act 1996* or the regulations under that Act.

- (3) Under an information sharing arrangement:
- (a) the Director-General is, despite any other Act or law of the State, authorised to request and receive information from the State Debt Recovery Office comprising the name, address and date of birth of a person who is the subject of a detention order and is a fine defaulter (within the meaning of the *Fines Act 1996*), and
 - (b) the Director of the State Debt Recovery Office is authorised to disclose that information to the Director-General, and
 - (c) the Director of the State Debt Recovery Office is, despite any other Act or law of the State, authorised to request and receive information from the Department comprising the name, address and date of birth of a person who is the subject of a detention order and is a fine defaulter (within the meaning of the *Fines Act 1996*), and
 - (d) the Director-General is authorised to disclose that information to the Director of the State Debt Recovery Office.

[9] Schedule 1 Savings and transitional provisions

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

any other Act that amends this Act

[10] Schedule 1, Part 5

Insert after Part 4:

**Part 5 Provision consequent on enactment of
Courts and Other Legislation Further
Amendment Act 2013**

10 Application of amendment concerning exchange of information

Section 39B extends to information obtained before the commencement of that section.

Explanatory note

Items [1] and [3]–[7] of the proposed amendments to the *Children (Detention Centres) Act 1987* update references to a statutory health corporation and its chief executive.

Item [2] updates a reference to the Act under which the term *forensic patient* is defined.

Item [8] allows the Juvenile Justice division of the Department of Attorney General and Justice to share information about young people subject to detention orders with the State Debt Recovery Office, so as to identify outstanding fines of young people subject

to detention and to facilitate participation by those young people in work and development orders as a way of satisfying all or part of those fines. (A similar amendment is proposed to be made to the *Children (Community Service Orders) Act 1987*, by Schedule 1.3 to this Act, in relation to children subject to community service orders.)

Item [9] provides for the making of savings and transitional regulations consequent on the amendment of the *Children (Detention Centres) Act 1987*.

Item [10] provides that the proposed amendment relating to the sharing of information extends to information obtained before the commencement of that amendment.

1.5 Children’s Court Act 1987 No 53

Section 16 Functions of the President

Omit “in accordance with the rules” from section 16 (1) (g).

Explanatory note

The proposed amendment to the *Children’s Court Act 1987* omits a reference to rules about the manner in which the President of the Court can exercise the function of overseeing the training of Children’s Magistrates and prospective Children’s Magistrates. There are currently no such rules.

1.6 Civil Procedure Act 2005 No 28

[1] Section 3 Definitions

Omit the definition of *civil dispute* from section 3 (1).

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

Omit the Part.

[3] Section 56 Overriding purpose

Omit “a civil dispute or” wherever occurring in section 56 (1) and (4).

[4] Section 56 (1)

Omit “dispute or” where secondly occurring.

[5] Section 56 (3A) and (7)

Omit the subsections.

[6] Section 56 (4)

Omit “or (3A)”.

[7] Section 56 (4) (a)

Omit “dispute or”.

[8] Section 56 (5)

Omit “, (3A)”.

[9] Schedule 3 Rule-making powers

Omit items 35 and 36.

[10] Schedule 6 Savings, transitional and other provisions

Omit Part 6.

Explanatory note

Item [2] of the proposed amendments to the *Civil Procedure Act 2005* repeals Part 2A of that Act (which requires steps to be taken to resolve a dispute by agreement, or to clarify or narrow issues in dispute, before commencing court action, and is not yet in operation).

Item [1] omits a definition of a term (*civil dispute*) that is only used in the Part proposed to be repealed and other provisions being amended by the proposed Schedule.

Items [3]–[8] omit references to civil disputes the subject of the Part proposed to be repealed and to provisions about civil disputes.

Item [9] omits rule-making powers that relate to civil disputes.

Item [10] omits transitional provisions regarding the application of the Part of the *Civil Procedure Act 2005* that is proposed to be repealed.

1.7 Civil Procedure Regulation 2012

Clause 16 Excluded proceedings under Part 2A of Act

Omit the clause.

Explanatory note

The proposed amendment repeals a clause of the *Civil Procedure Regulation 2012* that relates to Part 2A of the *Civil Procedure Act 2005* (which is proposed to be repealed by Schedule 1.6).

1.8 Court Security Act 2005 No 1

[1] Section 9A

Insert after section 9:

9A Prohibition on unauthorised transmission of court proceedings from courtroom

- (1) A person must not use any device to transmit sounds or images (or both) from a room or other place where a court is sitting, or to transmit information that forms part of the proceedings of a court from a room or other place where that court is sitting, in any of the following ways:
 - (a) by transmitting the sounds, images or information to any person or place outside that room or other place,

- (b) by posting entries containing the sounds, images or information on social media sites or any other website,
- (c) by otherwise broadcasting or publishing the sounds, images or information by means of the Internet,
- (d) by otherwise making the sounds, images or information accessible to any person outside that room or other place, whether that transmission, posting, broadcasting, publishing or other conduct occurs simultaneously with the proceedings or at a later time (or both).

Maximum penalty: 200 penalty units or imprisonment for 12 months (or both).

- (2) Subsection (1) does not apply to any of the following:
 - (a) a device being used for a purpose other than a purpose referred to in subsection (1),
 - (b) the transmission of sounds, images or information by an audio link, audio visual link, closed-circuit link or other technology that enables communication between the room or other place where the court is sitting and another place and that has been expressly permitted by a judicial officer,
 - (c) any other transmission of sounds, images or information that has been expressly approved by a judicial officer,
 - (d) the transmission of sounds, images or information for the purpose of transcribing court proceedings for the court at a place outside the room or other place where the court is sitting,
 - (e) the use by a prosecutor of a tablet computer or other similar device to transmit sounds, images or information only to another prosecutor who either is not a witness in the relevant court proceedings or, if he or she is such a witness, who has already given evidence in those proceedings,
 - (f) the transmission of sounds, images or information in any circumstances that may be prescribed by the regulations.

[2] Section 12 Power to confiscate restricted items and other things

Insert “or other device” after “recording device” wherever occurring in section 12 (1) (a) (iii) and (iv).

[3] Section 12 (1) (a) (iii) and (iv)

Insert “or 9A” after “section 9” wherever occurring.

Explanatory note

Item [1] of the proposed amendments to the *Court Security Act 2005* prohibits the unauthorised use of any device (including a phone) to transmit sounds, images or information forming part of proceedings of a court from a room or other place where a court is sitting to another place. For instance, this would prohibit the use of a mobile phone to simultaneously transmit court proceedings to a witness who is not permitted to be in the court room because he or she is yet to give evidence. The prohibition is subject to exemptions, including for audio links, audio visual links or closed-circuit television approved by a judicial officer, the official transcription of court proceedings and the use of tablet computers by prosecutors in certain circumstances.

Items [2] and [3] provide for the confiscation of any device used in contravention of that prohibition and of any film, tape or other recording medium used in such a device.

1.9 Crimes (Appeal and Review) Act 2001 No 120

[1] Section 59 Determination of appeals

Omit “section 56 (1) (b), (c) or (d)” from section 59 (2).

Insert instead “section 56 (1) (b), (c), (d) or (e)”.

[2] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

any other Act that amends this Act

[3] Schedule 1, Part 9

Insert after Part 8:

**Part 9 Provision consequent on enactment of
Courts and Other Legislation Further
Amendment Act 2013**

17 Application of amendment concerning appeals

The amendment made to section 59 by the *Courts and Other Legislation Further Amendment Act 2013* extends to an appeal that was commenced but not finally determined before the commencement of the amendment.

Explanatory note

Item [1] of the proposed amendments to the *Crimes (Appeal and Review) Act 2001* specifies the manner in which the Supreme Court may determine an appeal by a prosecutor against an order for costs made by the Local Court against the prosecutor in any summary proceedings. As a result of the proposed amendment, the Supreme Court may determine such an appeal by setting aside the costs order and making such other order as the Court thinks fit or by dismissing the appeal.

Item [2] provides for the making of savings and transitional regulations consequent on the amendment of the *Crimes (Appeal and Review) Act 2001*.

Item [3] provides that the proposed amendment relating to appeals extends to an appeal that was commenced but not finally determined before the commencement of that amendment.

1.10 Drug and Alcohol Treatment Act 2007 No 7

[1] Section 4

Omit the section. Insert instead:

4 Application of Act

- (1) This Act does not apply to minors.
- (2) Nothing in this Act affects the operation of the following Acts:
 - (a) the *Mental Health Act 2007*,
 - (b) the *Mental Health (Forensic Provisions) Act 1990*,
 - (c) the *Public Health Act 2010*,
 - (d) the *Guardianship Act 1987*,
 - (e) the *Law Enforcement (Powers and Responsibilities) Act 2002*.

[2] Section 55A Transitional provision for declaration of areas

Omit the section.

[3] Schedule 4

Insert after Schedule 3:

Schedule 4 Savings, transitional and other provisions

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

2 Transitional provision relating to adults subject to orders under Inebriates Act 1912

- (1) This Act does not apply to a person who is a relevant adult detainee for the duration of an order made under the *Inebriates Act 1912* that was in force in relation to the person immediately before 4 September 2012.
- (2) The *Inebriates Act 1912* continues to apply to such a person for the duration of the order, despite the repeal of that Act by the *Courts and Other Legislation Further Amendment Act 2013*.
- (3) In this clause:
relevant adult detainee means a person:
 - (a) who was being detained in an institution, pursuant to an order made under the *Inebriates Act 1912*, immediately before 4 September 2012 (the date on which the *Drug and Alcohol Treatment Act 2007* was extended to apply to the whole State), and
 - (b) who was an adult at the time that order was made, and
 - (c) who was still being detained in an institution under such an order, pursuant to section 55A of the *Drug and Alcohol Treatment Act 2007*, immediately before the repeal of that section by the *Courts and Other Legislation Further Amendment Act 2013*.

3 Transitional provision relating to minors subject to orders under Inebriates Act 1912

- (1) The *Inebriates Act 1912* continues to apply to a relevant minor detainee for the duration of the relevant order under that Act, despite the repeal of that Act by the *Courts and Other Legislation Further Amendment Act 2013*.
- (2) In this clause:
relevant minor detainee means a person:
 - (a) who was being detained in an institution, pursuant to an order made under the *Inebriates Act 1912*, immediately

before the commencement of the *Courts and Other Legislation Further Amendment Act 2013*, and

- (b) who was a minor at the time that order was made.

Explanatory note

Item [1] of the proposed amendments to the *Drug and Alcohol Treatment Act 2007* restates the fact that the Act does not apply to persons under 18 years of age, makes it clear that the Act applies to the whole of the State (because the regulations currently prescribe the whole of the State as the area to which the Act applies and as a consequence of the fact that the *Inebriates Act 1912* is proposed to be repealed by Schedule 1.13) and updates a reference to a repealed Act.

Item [2] omits a redundant transitional provision as a consequence of the fact that the *Drug and Alcohol Treatment Act 2007* now applies to the whole of the State.

Item [3] provides for the making of savings and transitional regulations consequent on the amendment of the *Drug and Alcohol Treatment Act 2007*. It also inserts transitional provisions relating to the repeal of the *Inebriates Act 1912* (namely that a person (whether an adult or a minor) who is being detained in an institution under an order made under the *Inebriates Act 1912* immediately before the repeal of that Act is to be dealt with as if the *Inebriates Act 1912* had not been repealed).

1.11 Drug and Alcohol Treatment Regulation 2012

Clause 4 Area where Act applies

Omit the clause.

Explanatory note

The proposed amendment to the *Drug and Alcohol Treatment Regulation 2012* removes a clause that provides that the *Drug and Alcohol Treatment Act 2007* applies to the whole of the State (which is redundant now that the *Inebriates Act 1912* is proposed to be repealed by Schedule 1.13 and the *Drug and Alcohol Treatment Act 2007* is being amended by Schedule 1.10 to make it clear that it applies to the whole of the State).

1.12 Fines Act 1996 No 99

[1] Section 99A Definitions

Omit the definition of *approved organisation*. Insert instead:

approved organisation means a person or body approved for the time being by:

- (a) the Director-General of the Department of Attorney General and Justice, or
- (b) a member of staff of the Department of Attorney General and Justice to whom the Director-General of that Department has delegated the power to approve a person or body under this definition.

[2] Section 101A Hardship Review Board

Omit “Attorney General’s Department” from section 101A (1) (c).

Insert instead “Department of Attorney General and Justice”.

Explanatory note

Item [1] of the proposed amendments to the *Fines Act 1996* allows for approved organisations (that is, organisations with which a person subject to a work and development order must undertake unpaid work in order to satisfy all or part of a fine) to be approved either by the Director-General of the Department of Attorney General and Justice (as at present) or by a delegate of the Director-General who is a member of staff of that Department.

Item [2] updates a reference to a Department.

1.13 Inebriates Act 1912 No 24

The Act is repealed.

Explanatory note

The proposed item repeals the *Inebriates Act 1912*. The *Drug and Alcohol Treatment Act 2007* now applies to the whole of the State and, accordingly, the *Inebriates Act 1912* has no remaining operation in relation to adults. (This is because, since 4 September 2012, the regulations made under section 4 (1) of the *Drug and Alcohol Treatment Act 2007* have prescribed the whole of the State to be the area to which that Act applies. Therefore, the *Inebriates Act 1912* is now redundant, in relation to adults.) As a result of the repeal there will be no legislation that requires the involuntary treatment of minors for substance abuse problems, as detention is considered inappropriate for minors. Such minors will be dealt with under non-legislative programs and, where appropriate, under the *Mental Health Act 2007*.

1.14 Jury Amendment Act 2010 No 55

[1] Schedule 1 Amendment of Jury Act 1977 No 18

Insert at the end of clause 4 (2) (g) of Schedule 1 to the *Jury Act 1977* (as proposed to be substituted by Schedule 1 [22]):

, or

- (h) subject to an interim control order, or a control order, within the meaning of the *Crimes (Criminal Organisations Control) Act 2012*.

[2] Schedule 1 [22]

Omit proposed clause 5 (1) (c) and (g)–(l) from Schedule 1 to the *Jury Act 1977*.

[3] Schedule 1 [22]

Insert after proposed clause 5 of Schedule 1 to the *Jury Act 1977*:

5A Persons who are Australian lawyers

A person who is an Australian lawyer, whether or not an Australian legal practitioner, is excluded from jury service.

[4] Schedule 1 [22]

Omit “an Australian lawyer or” from proposed clause 6 (1) of Schedule 1 to the *Jury Act 1977*.

Insert instead “a”.

[5] Schedule 1 [22]

Omit proposed clause 7 (1) (a)–(g) of Schedule 1 to the *Jury Act 1977*.

Insert instead:

- (a) the Department of Attorney General and Justice,
- (b) the State Parole Authority,
- (c) the Serious Offenders Review Council,
- (d) the Serious Young Offenders Review Panel,
- (e) the Probation and Parole Service,
- (f) the Justice and Forensic Mental Health Network,
- (g) the Mental Health Review Tribunal.

[6] Schedule 1 [23]

Insert at the end of proposed Schedule 2 to the *Jury Act 1977*:

- 9** A person who resides with, and has the full-time care of, a person who is sick, infirm or disabled.

Explanatory note

Item [1] of the proposed amendments to the *Jury Amendment Act 2010* provides that a person subject to an interim control order, or a control order, within the meaning of the *Crimes (Criminal Organisations Control) Act 2012* is excluded from jury service. Persons subject to certain other orders (such as non-association or place restriction orders and apprehended violence orders) are already excluded from jury service.

Item [2] omits references to office holders who are required to be Australian lawyers from a proposed clause that provides that they are excluded from jury service. The proposed amendment is made as a consequence of item [3], which proposes to continue the current exclusion of all Australian lawyers from jury service. As a result of that amendment, the specific references to office holders who are lawyers will be redundant.

Item [3] amends an uncommenced provision, to continue the current exclusion of Australian lawyers from jury service (which the amending Act proposed to remove).

Item [4] omits a reference to Australian lawyers from an uncommenced clause that provides a limited exclusion from jury service for certain government lawyers. The proposed amendment is made as a consequence of the continuation of the current exclusion of Australian lawyers from jury service, which makes the reference to them redundant.

Item [5] updates references to Departments and a statutory corporation.

Item [6] restores the current right of people who live with and have the full-time care of a person who is sick, infirm or disabled to claim an exemption from serving on a jury.

1.15 Land and Environment Court Act 1979 No 204

[1] Section 11 Acting Judges

Insert after section 11 (3A):

- (3B) While a person completes or otherwise continues under subsection (3A) to deal with any matters relating to proceedings that have been heard or partly heard by the person before the expiration of the period of the person's appointment, the person has all the entitlements and functions of a Judge and, for the purpose of those proceedings, is taken to continue to be a Judge.

[2] Section 12 Commissioners

Insert after section 12 (2B):

- (2C) A person appointed as a Commissioner may, despite the expiration of the term of the person's appointment, complete or otherwise continue to deal with any matters relating to proceedings that have been heard or partly heard, or a conciliation conference that has been presided over or partly presided over, by the person before the expiration of that term.
- (2D) While a person completes or otherwise continues under subsection (2C) to deal with any matters relating to proceedings that have been heard or partly heard by the person, or conciliation conferences that have been presided over or partly presided over, before the expiration of the term of the person's appointment, the person has all the entitlements and functions of a Commissioner and, for the purpose of those proceedings or conferences, is taken to continue to be a Commissioner.

[3] Section 13 Acting Commissioners

Insert after section 13 (6):

- (7) While a person completes or otherwise continues under subsection (6) to deal with any matters relating to proceedings or a conciliation conference, the person has all the entitlements and functions of a Commissioner (in the case of a person who acted

on a full-time basis) or a part-time Commissioner (in the case of a person who acted on a part-time basis) and, for the purpose of those proceedings or that conference, is taken to continue to be a full-time Commissioner or part-time Commissioner (as the case may be).

[4] Schedule 3 Savings, transitional and other provisions

Insert after clause 12:

13 Provisions consequent on enactment of Courts and Other Legislation Further Amendment Act 2013

- (1) Section 11 (3B) extends to a person who, immediately before the insertion of that subsection by the amending Act, was an acting Judge.
- (2) Section 12 (2C) and (2D) extend to a person who, immediately before the insertion of those subsections by the amending Act, was a Commissioner.
- (3) Section 13 (7) extends to a person who, immediately before the insertion of that subsection by the amending Act, was an Acting Commissioner (whether full-time or part-time).
- (4) In this clause:

amending Act means the *Courts and Other Legislation Further Amendment Act 2013*.

Explanatory note

Item [1] of the proposed amendments to the *Land and Environment Court Act 1979* brings a provision about acting Judges of the Land and Environment Court into line with provisions about acting Judges and officers of other courts. The new subsection provides that while a person whose appointment as an acting Judge has expired completes or otherwise continues to deal with matters relating to proceedings that have been heard, or partly heard, before the expiration of the person's appointment, the person has all the entitlements and functions of a Judge and, for the purposes of those proceedings, is taken to continue to be a Judge. Similar provisions are found in section 13 (9) of the *District Court Act 1973*, clause 4 (2) of Schedule 1 to the *Local Court Act 2007*, clause 10 (2) of Schedule 1 to the *Coroners Act 2009* and clause 8A (3) of Schedule 3 to the *Administrative Decisions Tribunal Act 1997*.

Item [2] provides that a person appointed as a Commissioner of the Land and Environment Court whose term of appointment has expired can complete or otherwise continue to deal with any matters relating to proceedings that have been heard, or partly heard, by the Commissioner before the expiration of his or her term, or a conciliation conference that has been presided over or partly presided over by the Commissioner before the expiration of that term. It also provides that while a person deals with such matters the person has all the entitlements and functions of a Commissioner and, for the purposes of those proceedings or conferences, is taken to continue to be a Commissioner.

Item [3] brings a provision about acting Commissioners of the Land and Environment Court into line with provisions about acting judges and officers of other courts whose term of appointment has expired. The new provision provides that while a person

whose term of appointment as an acting Commissioner has expired completes or otherwise continues to deal with matters relating to proceedings that have been heard, or partly heard, or a conciliation conference that has been presided over or partly presided over by the Commissioner, before the expiration of that term, the person has all the entitlements and functions of a Commissioner and, for the purposes of those proceedings or conference, is taken to continue to be a Commissioner.

Item [4] extends the proposed amendments about acting Judges, Commissioners and acting Commissioners to persons who held office immediately before the commencement of the amendments.

1.16 NSW Trustee and Guardian Act 2009 No 49

Section 13 Refusal of appointment as trustee or manager

Insert “for the benefit of creditors” after “arrangement” in section 13 (2) (a).

Explanatory note

The proposed amendment to the *NSW Trustee and Guardian Act 2009* clarifies that a provision that prohibits the NSW Trustee and Guardian from accepting a trust under a deed of arrangement only applies to accepting trusts under deeds of arrangement for the benefit of creditors.

1.17 Probate and Administration Act 1898 No 13

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

Rule Committee means:

- (a) the committee established under section 123 of the *Supreme Court Act 1970*, or
- (b) the Uniform Rules Committee established under section 8 of the *Civil Procedure Act 2005*.

[2] Sections 44 (2) and 77 (b)

Omit “Public Trustee” wherever occurring. Insert instead “NSW Trustee”.

[3] Section 63 To whom administration may be granted

Omit “pray” from section 63 (ii). Insert instead “apply”.

[4] Section 75A Delegation

Omit “prescribed by the rules” from section 75A (5).

Insert instead “approved by a Rule Committee”.

[5] Section 83 Executor may sign acknowledgment in lieu of conveyance

Omit “prescribed by the rules” from section 83 (1).

Insert instead “approved by a Rule Committee”.

Explanatory note

Item [1] of the proposed amendments to the *Probate and Administration Act 1898* inserts a definition of a term (**Rule Committee**) used in other proposed amendments about the approval of forms.

Item [2] updates references to an office (the Public Trustee is now called the NSW Trustee and Guardian, and is referred to in the *Probate and Administration Act 1898* as the NSW Trustee).

Item [3] modernises terminology (a reference to a person who can “pray” for administration is updated to refer to a person who can “apply” for administration).

Item [4] provides for a person who objects to the appointment of a delegate of an executor or administrator to do so in the form approved by a Rule Committee rather than the form prescribed by the rules (as at present).

Item [5] provides for an acknowledgement signed by an executor that a devisee is entitled to real estate to be in a form approved by a Rule Committee rather than the form prescribed by the rules (as at present).

1.18 Supreme Court Act 1970 No 52

[1] Section 36 Additional Judges of Appeal

Insert after section 36 (5):

- (6) While a Judge attends a sitting to give a judgment or otherwise complete any proceedings under subsection (5) that have been heard while the Judge was acting as an additional Judge of Appeal, the Judge has all the entitlements and functions of a Judge of Appeal and, for the purpose of that judgment or those proceedings, is taken to continue to be a Judge of Appeal.

[2] Section 37 Acting Judges

Insert after section 37 (3A):

- (3AA) While a person completes or otherwise continues under subsection (3A) to deal with any matters relating to proceedings that have been heard or partly heard by the person before the expiration of the period of the person’s appointment, the person has all the entitlements and functions of a Judge and, for the purpose of those proceedings, is taken to continue to be a Judge and (if the person was so appointed to act as such) a Judge of Appeal.

[3] Third Schedule Criminal proceedings

Omit paragraph (e).

[4] Fourth Schedule Savings and transitional provisions

Insert at the end of clause 1 (2):

any other Act that amends this Act

[5] Fourth Schedule, Part 17

Insert after Part 16:

**Part 17 Provisions consequent on enactment of
Courts and Other Legislation Further
Amendment Act 2013**

26 Application of amendments

- (1) Section 36 (6) extends to a person who, immediately before the insertion of that subsection by the amending Act, was an additional Judge of Appeal.
- (2) Section 37 (3AA) extends to a person who, immediately before the insertion of that subsection by the amending Act, was an acting Judge.
- (3) The repeal of paragraph (e) of the Third Schedule by the amending Act does not affect any proceedings relating to an order under the *Inebriates Act 1912* that was taken to continue in force by virtue of section 55A of the *Drug and Alcohol Treatment Act 2007*, as in force immediately before the repeal of that section by the amending Act.
- (4) In this clause:
amending Act means the *Courts and Other Legislation Further Amendment Act 2013*.

Explanatory note

Item [1] of the proposed amendments to the *Supreme Court Act 1970* brings a provision about additional Judges of Appeal into line with provisions about acting Judges and officers of other courts. The new subsection provides that while a person whose term of appointment as an additional Judge of Appeal has expired completes or otherwise continues to deal with matters relating to proceedings that have been heard, or partly heard, before the expiry of the term, the person has all the entitlements and functions of a Judge of Appeal and, for the purposes of those proceedings, is taken to continue to be a Judge of Appeal. Similar provisions are found in section 13 (9) of the *District Court Act 1973*, clause 4 (2) of Schedule 1 to the *Local Court Act 2007*, clause 10 (2) of Schedule 1 to the *Coroners Act 2009* and clause 8A (3) of Schedule 3 to the *Administrative Decisions Tribunal Act 1997*.

Item [2] makes the same amendment in relation to acting Judges.

Item [3] omits a reference to the *Inebriates Act 1912*, which is proposed to be repealed by Schedule 1.13.

Item [4] provides for the making of savings and transitional regulations consequent on the amendment of the *Supreme Court Act 1970*.

Item [5] inserts transitional provisions that extend the proposed amendments relating to additional Judges of Appeal and acting Judges to persons who held office immediately before the commencement of the amendments and provide that the proposed amendment relating to proceedings under the *Inebriates Act 1912* does not affect current proceedings under that Act.

[Second reading speech made in—

Legislative Assembly on 21 November 2012

Legislative Council on 20 February 2013]