

Passed by both Houses



New South Wales

Courts Legislation Amendment Bill 2005

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Acts	2
Schedule 1 Amendment of Administrative Decisions Tribunal Act 1997 No 76	3
Schedule 2 Amendment of Anti-Discrimination Act 1977 No 48	5
Schedule 3 Amendment of Constitution Act 1902 No 32	6
Schedule 4 Amendment of Criminal Appeal Act 1912 No 16	7
Schedule 5 Amendment of Judges' Pensions Act 1953 No 41	8
Schedule 6 Amendment of Jury Act 1977 No 18	16
Schedule 7 Amendment of Justices of the Peace Act 2002 No 27	18
Schedule 8 Amendment of Land and Environment Court Act 1979 No 204	19
Schedule 9 Amendment of Legal Profession Act 2004 No 112	22
Schedule 10 Amendment of Local Courts Act 1982 No 164	24
Schedule 11 Amendment of Oaths Act 1900 No 20	25

Courts Legislation Amendment Bill 2005

Contents

	Page
Schedule 12 Amendment of Public Defenders Act 1995 No 28	26
Schedule 13 Amendment of Supreme Court Act 1970 No 52	27
Schedule 14 Consequential amendments to other Acts	35

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2005*



New South Wales

Courts Legislation Amendment Bill 2005

Act No , 2005

An Act to amend certain Acts with respect to courts, court procedures, judges' pensions and other matters; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Courts Legislation Amendment Act 2005*.

2 Commencement

- (1) This Act commences on the date of assent, except as provided by subsection (2).
- (2) Schedule 9 commences on the date of commencement of section 338 of the *Legal Profession Act 2004*, or the date of assent to this Act, whichever is the later.

3 Amendment of Acts

The Acts specified in the Schedules are amended as set out in those Schedules.

Schedule 1 Amendment of Administrative Decisions Tribunal Act 1997 No 76

(Section 3)

[1] Schedule 2 Composition and functions of Divisions

Omit clause 1 (3) (a) of Part 3B. Insert instead:

- (a) at least 1 member who is a current, retired or acting judge of any court of this State or of the Commonwealth, another State or a Territory or who is a Deputy President,

[2] Schedule 5 Savings and transitional provisions

Insert at the end of clause 1 (1):

Courts Legislation Amendment Act 2005, to the extent that it amends this Act

[3] Schedule 5, Part 9

Insert after Part 8:

Part 9 Provisions consequent on enactment of Courts Legislation Amendment Act 2005

40 Constitution of Retail Leases Division of Tribunal

- (1) The constitution of the Tribunal before the relevant day, for the purposes of exercising its functions under the *Retail Leases Act 1994* in relation to unconscionable conduct claims, by any of the following members, and the assignment of any such member to the Retail Leases Division of the Tribunal, is validated:
 - (a) a member who would have satisfied the requirements of clause 1 (3) (a) of Part 3B of Schedule 2, if the amendments made by the amending Act had been in force at the time of the assignment,
 - (b) a member who, at the time of the assignment, had substantial experience or qualifications in commercial law.
- (2) Anything done or omitted to be done before the relevant day by the Tribunal as so constituted, that would have been validly done or omitted if the Tribunal had been properly constituted, is also validated.

Courts Legislation Amendment Bill 2005

Schedule 1 Amendment of Administrative Decisions Tribunal Act 1997 No 76

- (3) In this clause:
- amending Act*** means the *Courts Legislation Amendment Act 2005*.
- relevant day*** means the date of commencement of Schedule 1 to the amending Act.

Schedule 2 Amendment of Anti-Discrimination Act 1977 No 48

(Section 3)

[1] Section 88B Making of complaints in more than one jurisdiction

Insert at the end of the section:

- (2) The Tribunal must have regard to any such proceedings, and to the outcome of any such proceedings, in dealing with or determining the complaint.

[2] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

Courts Legislation Amendment Act 2005

Schedule 3 Amendment of Constitution Act 1902 No 32

(Section 3)

Section 52 Definition and application

Insert “, Associate Judge” after “Judge of Appeal, Judge” in paragraph (a) of the definition of *judicial office* in section 52 (1).

Schedule 4 Amendment of Criminal Appeal Act 1912 No 16

(Section 3)

[1] **Section 4**

Omit the section. Insert instead:

4 Registrar and officers of court

- (1) A registrar and such other officers as may be required for carrying out this Act may be employed under Chapter 2 of the *Public Sector Employment and Management Act 2002*.
- (2) The Prothonotary of the Supreme Court is to be the first registrar of the Court of Criminal Appeal.
- (3) A registrar of the Supreme Court may, subject to the rules, exercise the powers of a registrar of the Court of Criminal Appeal and, when exercising those powers, is taken to be a registrar of the Court of Criminal Appeal.
- (4) An officer of the Supreme Court may, subject to the rules, exercise the powers of an officer of the Court of Criminal Appeal and, when exercising those powers, is taken to be an officer of the Court of Criminal Appeal.

[2] **Schedule 1 Savings and transitional provisions**

Insert at the end of the Schedule:

10 Courts Legislation Amendment Act 2005

- (1) Section 4 (3) and (4), as inserted by the amending Act, is taken to apply, and to have always applied, to any registrar or officer of the Supreme Court appointed to that office before the relevant day.
- (2) Any appointment of a person before the relevant day as a registrar or officer of the Court of Criminal Appeal by the appropriate Department Head (within the meaning of the *Public Sector Employment and Management Act 2002*), that could have been validly made if it had been made by the Governor, is validated.
- (3) In this clause:
amending Act means the *Courts Legislation Amendment Act 2005*.
relevant day means the date of commencement of Schedule 4 to the amending Act.

Schedule 5 Amendment of Judges' Pensions Act 1953 No 41

(Section 3)

[1] Long title

Omit "widows and widowers". Insert instead "surviving spouses".

[2] Section 2 Definitions

Insert in alphabetical order in section 2 (1):

de facto partner of a person means a person who is in a de facto relationship within the meaning of the *Property (Relationships) Act 1984* with the other person.

spouse of a person includes a de facto partner.

surviving spouse of a judge, retired judge, former judge or former acting judge who has died (the *deceased person*) means a person who was the spouse of the deceased person at the time of the death of the deceased person.

[3] Section 6 Pension for surviving spouse of judge or retired judge

Omit "widow or widower" wherever occurring in section 6 (1).

Insert instead "surviving spouse".

[4] Section 6 (1) (a) and (b)

Omit "widow's or widower's" wherever occurring. Insert instead "spouse's".

[5] Section 6 (1A)

Omit the subsection. Insert instead:

(1A) If a retired judge dies on or after 29 November 2002 leaving a surviving spouse who became the spouse of the retired judge after the judge retired, and the surviving spouse is an eligible spouse, the surviving spouse is entitled, during the period commencing on the day after the retired judge's death and ending on the spouse's death:

- (a) if the retired judge and surviving spouse had been married or living in the relationship for 3 years or more immediately before the death—to a pension at an annual rate that, at any time during that period, is a percentage, calculated as provided by subsection (4), of the notional judicial salary of the retired judge at that time, or

-
- (b) if the retired judge and surviving spouse had been married or living in the relationship for less than 3 years immediately before the death—to a pension as referred to in paragraph (a), but reduced on a pro rata basis according to the proportion that the period of the marriage or relationship bears to 3 years.

[6] Section 6 (1B)

Omit the definition of *eligible widow or widower*. Insert instead:

eligible spouse of a retired judge means a person who has or had in his or her marriage or relationship with the retired judge a child, being:

- (a) a child of the spouse and the retired judge who was, in the opinion of the Minister, wholly or substantially dependent on the retired judge at any time during the marriage or relationship, or
- (b) a child of the retired judge who was conceived before and born alive after the death of the retired judge.

[7] Section 6 (2), (4) and (5)

Omit “the widow or widower of” wherever occurring.

[8] Section 7A Pension in respect of children on death of judge or retired judge

Omit “widow or widower” wherever occurring in section 7A (1).

Insert instead “surviving spouse”.

[9] Section 7A (1)

Insert “or subsequent relationship” after “remarriage”.

[10] Section 7A (2)

Omit the subsection. Insert instead:

- (2) If a surviving spouse of a retired judge referred to in subsection (1) became the spouse of the retired judge:
 - (a) after retirement of the judge, and
 - (b) after the retired judge attained the age of 60 years, and
 - (c) less than 5 years before the judge died,

pension is not payable under subsection (1) in respect of a child of the marriage or relationship or of any other child of the surviving spouse of the retired judge.

[11] Section 7B Pension in respect of children on death of surviving spouse of judge or retired judge

Omit section 7B (1). Insert instead:

- (1) If the surviving spouse of a judge or retired judge died before, or dies on or after, the appointed day, a pension is payable, on and from the appointed day or the day following the death of the surviving spouse, whichever is the later day, in accordance with section 7D, in respect of each eligible child of the surviving spouse or of the judge or retired judge (other than a child of any remarriage or subsequent relationship of the surviving spouse) at the annual rate of:
 - (a) \$520, or
 - (b) an amount calculated in accordance with subsection (2), whichever is the higher rate.

[12] Section 7B (2)

Omit "widow or widower" wherever occurring.

Insert instead "surviving spouse".

[13] Section 7B (3)

Omit the subsection. Insert instead:

- (3) Despite subsection (1), if a surviving spouse of a retired judge became the spouse of the retired judge:
 - (a) after retirement of the judge, and
 - (b) after the retired judge attained the age of 60 years, and
 - (c) less than 5 years before the judge died,pension is not payable under subsection (1) in respect of a child of the marriage or relationship or of any other child of the surviving spouse of the retired judge.

[14] Section 7C Pension in respect of certain children where judge or retired judge dies without leaving a surviving spouse

Omit "widow or widower" from section 7C (1).

Insert instead "surviving spouse".

[15] Section 7C (1)

Omit "wife or husband". Insert instead "husband, wife or de facto partner".

[16] Section 7C (2)

Omit "widow or widower" wherever occurring.

Insert instead "surviving spouse".

[17] Section 7C (3)

Omit the subsection. Insert instead:

- (3) This section does not apply in relation to:
 - (a) a child of a remarriage or subsequent relationship of a former husband, wife or de facto partner of a judge or retired judge, or
 - (b) a child of a spouse of a retired judge who became a spouse of the retired judge:
 - (i) after the retirement of the judge, and
 - (ii) after the retired judge attained the age of 60 years, and
 - (iii) less than 5 years before the retired judge died.

[18] Section 7D

Omit the section. Insert instead:

7D Payment of pension in respect of children

- (1) Only one pension is payable in respect of a child at any one time under section 7A, 7B or 7C. If, but for this subsection, a pension would be payable in respect of a child under 2 or more of those sections, the pension payable in respect of the child is payable in accordance with a determination made by the Minister, and not otherwise.
- (2) A pension payable in respect of a child under section 7B or 7C is to be paid to the guardian of the child for the support and education of the child.

[19] Section 7E Variation of manner of payment of pension in respect of child

Omit section 7E (3). Insert instead:

- (3) The powers conferred on the Minister by subsection (1) are not exercisable in the case of a pension payable to a surviving spouse of a judge or retired judge unless the child in respect of whom the pension is payable is not living with the spouse.

[20] Section 9 Dual pensions

Omit "widow or widower" from section 9 (2).

Insert instead "surviving spouse".

[21] Sections 10A and 12A

Omit "widow or widower" wherever occurring in the definitions of *reversionary pension* in sections 10A (4) and 12A (3).

Insert instead "surviving spouse".

[22] Section 14 When lump sum benefit is payable

Omit "widow or widower" wherever occurring in section 14 (4) (b)–(d).

Insert instead "surviving spouse".

[23] Section 16B

Insert after section 16A:

16B Competing claims by surviving spouses for pensions and benefits

- (1) This section applies to the following pensions or lump sum benefits payable under this Act:
 - (a) a pension payable to the surviving spouse of a deceased judge or retired judge under section 6,
 - (b) a lump sum benefit payable to the surviving spouse of a deceased former judge or former acting judge under section 14.
- (2) If a pension or lump sum benefit to which this section applies would be payable to more than 1 person because a judge, retired judge, former judge or former acting judge (the *deceased person*) has died leaving more than 1 surviving spouse:
 - (a) the pension or lump sum benefit is payable in accordance with a determination made by the Minister, and not otherwise, and
 - (b) the total amount of pension or lump sum benefit payable to those persons at any time is not to exceed the amount that would be payable if there were only 1 spouse.
- (3) For the purposes of subsection (2) (a), the Minister may determine in relation to a pension or lump sum benefit to which this section applies:
 - (a) that the pension or lump sum benefit is not payable to such of the persons concerned as the Minister specifies, or

-
- (b) that the amount of the pension or lump sum benefit is to be apportioned between the persons concerned in such manner as the Minister specifies.
 - (4) The payment of any pension or lump sum benefit to which this section applies is to be withheld, if the Minister so directs:
 - (a) until 30 days after the death of the person as a consequence of which the pension or lump sum benefit is payable, or
 - (b) if an application has been made for the pension or lump sum benefit by more than 1 person purporting to be the spouse of a deceased person, until the Minister is satisfied as to the 1 person to whom the pension or lump sum benefit is payable or until a determination is made in relation to the matter by the Minister.
 - (5) If, after 30 days from the death of a person, a pension or lump sum benefit to which this section applies is paid in respect of any period to the spouse of the deceased person, a pension or lump sum benefit to which this section applies is not payable to any other spouse of the deceased person in respect of that period, unless the Minister has made a determination to apportion the pension or lump sum benefit under subsection (3) (b).
 - (6) If, after 30 days from the death of a person, part of a pension is commuted by a surviving spouse under section 12, so much of the pension as is equal to the amount of the pension so commuted is not payable to any other spouse of the deceased person.
 - (7) For the purposes of subsections (5) and (6), an amount paid in good faith to a person purporting to be the spouse of a deceased person is taken to have been paid to such a spouse.
 - (8) If, after 30 days from the death of a person, any amount is paid under this Act to the person's personal representatives or to such other persons as the Minister may determine, any pension or lump sum benefit to which this section applies payable to the spouse of the deceased person is to be reduced by the amount so paid.

[24] Section 17 Application of Act to and in respect of associate Judges

Omit section 17 (1) (b). Insert instead:

- (b) a person appointed before, on or after the appointed day to the office of master under section 111 of the *Supreme Court Act 1970*, as in force before the abolition of that office by the *Courts Legislation Amendment Act 2005*, and

- (c) a person appointed, on or after the abolition of the office of master of the Supreme Court by the *Courts Legislation Amendment Act 2005*, to the office of associate Judge under section 111 of the *Supreme Court Act 1970*.

[25] Section 17 (2) (d)

Omit the paragraph. Insert instead:

- (d) a reference in section 8 to prior judicial service includes a reference to the following:
- (i) service in the offices of Master in Equity and Acting Master in Equity constituted under the *Equity Act 1901* before its repeal,
 - (ii) service in the office of master or acting master of the Supreme Court under section 111 of the *Supreme Court Act 1970* before the abolition of the offices of master and acting master of the Supreme Court by the *Courts Legislation Amendment Act 2005*,
 - (iii) service in the office of acting associate Judge of the Supreme Court under section 111 (2) of the *Supreme Court Act 1970*.

[26] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

Courts Legislation Amendment Act 2005

[27] Schedule 1, clause 4

Insert after clause 3:

4 Application of de facto partner eligibility provisions

- (1) The de facto partner amendments have effect as if they had commenced on the de facto partner eligibility date.
- (2) Those amendments apply in the case of a judge, retired judge, former judge or former acting judge who dies on or after the de facto partner eligibility date but do not apply in respect of a judge, retired judge, former judge or former acting judge who died before the de facto partner eligibility date.
- (3) Accordingly, a reference in this Act to a *spouse* of a judge, retired judge, former judge or former acting judge does not include a de facto partner of the judge, retired judge, former judge or former acting judge if the judge, retired judge, former judge or former acting judge died before the de facto partner eligibility date.

(4) In this clause:

de facto partner amendments means:

- (a) the amendments made to this Act by Schedule 5 to the *Courts Legislation Amendment Act 2005* (except Schedule 5 [24] and [25]), and
- (b) the amendment made to the *Director of Public Prosecutions Act 1986* by Schedule 14.1 to the *Courts Legislation Amendment Act 2005*.

de facto partner eligibility date means 1 May 2005.

Schedule 6 Amendment of Jury Act 1977 No 18

(Section 3)

[1] Section 15 Appeal against being included on jury roll or being summoned from supplementary jury roll

Omit “master” from section 15 (2). Insert instead “associate Judge”.

[2] Section 45 Time for making challenge to juror

Omit “the book to” from section 45 (1).

[3] Section 72A Juror’s oath or affirmation

Insert at the end of the section:

- (2) The oath or affirmation may be administered, taken or made in the manner provided for by the *Oaths Act 1900* or in the prescribed manner.
- (3) For the purposes of this section, the *prescribed manner* of administering, taking or making the oath or affirmation is:
 - (a) the person taking or making the oath or affirmation repeats the words of the oath or affirmation, or
 - (b) the officer administering the oath or affirmation repeats the words of the oath or affirmation and the person taking or making the oath or affirmation indicates his or her assent to the oath or affirmation by uttering the words “So help me God” (in the case of an oath) or “I do” (in the case of an affirmation).
- (4) The words of the oath or affirmation are the following words, or words to the following effect:
 - (a) “I swear by Almighty God that I will give a true verdict according to the evidence” (in the case of an oath),
 - (b) “I solemnly and sincerely declare and affirm that I will give a true verdict according to the evidence” (in the case of an affirmation).
- (5) If an oath is administered, taken or made in the prescribed manner, it is not necessary that a religious text be used by the person who is taking the oath.

Note. Under section 11A of the *Oaths Act 1900*, a copy of the Bible, New Testament or Old Testament is used in administering an oath.

-
- (6) If an oath is taken by a person before serving as a juror, the fact that the person taking it did not have a religious belief or did not have a religious belief of a particular kind does not for any purpose affect the legality or validity of the oath.
 - (7) An oath or affirmation taken or made by a person before serving as a juror is not illegal or invalid by reason of a failure to administer, take or make the oath or affirmation in accordance with this section.

[4] Schedule 8 Transitional and savings provisions

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

Courts Legislation Amendment Act 2005 (but only to the extent that it amends this Act)

Schedule 7 Amendment of Justices of the Peace Act 2002 No 27

(Section 3)

[1] Section 7 Oaths of office to be taken

Insert at the end of the section:

- (2) A person who is re-appointed as a justice of the peace is not required to take another oath of office if the person held office as a justice of the peace immediately before that re-appointment.

[2] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

Courts Legislation Amendment Act 2005

[3] Schedule 1, clause 3

Insert after clause 2:

3 Amendments made by Courts Legislation Amendment Act 2005

The amendment made to section 7 by the *Courts Legislation Amendment Act 2005* applies to any re-appointment made on or after the commencement of that amendment, regardless of when the person being re-appointed was first appointed as a justice of the peace.

Schedule 8 Amendment of Land and Environment Court Act 1979 No 204

(Section 3)

[1] Section 61A Purpose of Part

Omit section 61A (1). Insert instead:

- (1) The purpose of this Part is to enable the Court to refer matters for mediation or neutral evaluation.

[2] Sections 61D and 61E

Omit the sections. Insert instead:

61D Referral by Court

- (1) If it considers the circumstances appropriate, the Court may, by order, refer any matter arising in proceedings before it (other than criminal proceedings) for mediation or neutral evaluation, and may do so either with or without the consent of the parties to the proceedings.
- (2) The mediation or neutral evaluation is to be undertaken by a mediator or evaluator agreed to by the parties or, if the parties cannot agree, by a mediator or evaluator appointed by the Court.

61E Duty of parties to participate

It is the duty of each party to proceedings the subject of a referral to mediation or neutral evaluation to participate, in good faith, in the mediation or neutral evaluation.

[3] Section 69AA

Insert after section 69:

69AA Costs—liability of solicitor

- (1) The Court may, at any stage of any proceedings, make one or more of the following orders in respect of a solicitor whose serious neglect, serious incompetence or serious misconduct delays, or contributes to delaying, those proceedings:
 - (a) disallow the whole or any part of the costs between the solicitor and his or her client,
 - (b) direct the solicitor to repay to his or her client the whole or any part of the costs which the client has been ordered to pay to any other party,

- (c) direct the solicitor to indemnify any party other than his or her client against the whole or any part of the costs payable by the party indemnified.
- (2) The Court may refer the matter to a costs assessor under the *Legal Profession Act 1987* for inquiry and report before making such an order.
- (3) The Court may order that notice of such an order against a solicitor is to be given to the solicitor's client in a specified manner.
- (4) A solicitor is not entitled to demand, recover or accept from his or her client any part of the amount for which the solicitor is directed by the Court to indemnify a party pursuant to such an order.
- (5) Nothing in this section limits the generality of section 69 or any other provision of this Act.
- (6) A Commissioner or Commissioners may not make an order under this section except with the concurrence of a Judge.
- (7) This section does not apply to proceedings in Class 5, 6 or 7 of the Court's jurisdiction.

[4] Section 69B

Insert after section 69A:

69B Enforcement of directions of Court

- (1) If any person does not comply with a judgment or order of the Court directing the person to execute any conveyance, contract or other document, or to endorse any negotiable instrument, the Court may order, on such terms as it considers appropriate, that the conveyance, contract or other document be executed or the negotiable instrument be endorsed by a person nominated by the Court.
- (2) A conveyance, contract, document or instrument so executed or endorsed is taken for all purposes to have been executed or endorsed by the person originally directed to execute or endorse it.

[5] Schedule 3 Savings, transitional and other provisions

Insert after clause 5:

6 Provisions consequent on enactment of Courts Legislation Amendment Act 2005

- (1) The amendments made to this Act by the *Courts Legislation Amendment Act 2005* extend to proceedings before the Court that were instituted or that the Court started to hear before the commencement of the amendments.
- (2) The power conferred on the Court in respect of a judgment or order by section 69B, as inserted by the *Courts Legislation Amendment Act 2005*, extends to a judgment or order of the Court made or given before the commencement of that section.

Schedule 9 Amendment of Legal Profession Act 2004 No 112

(Section 3)

[1] **Section 338 Maximum costs fixed for claims up to \$100,000**

Omit “this section” from section 338 (7). Insert instead “this Division”.

[2] **Section 338A**

Insert after section 338:

338A Maximum costs increased by additional amount for certain claims heard by the District Court

- (1) This section applies to a claim for personal injury damages in respect of which the amount recovered does not exceed \$100,000 that is made by proceedings heard by the District Court.
- (2) If the District Court referred the proceedings to arbitration and, following the arbitration, made an order for a full or limited rehearing of the proceedings concerned on the application of a party, the maximum costs fixed by this Division for legal services provided in connection with the claim to the other party are increased by the additional amount.
- (3) If the decision of the District Court in respect of a claim is the subject of an appeal, the maximum costs fixed by this Division for legal services provided in connection with the claim to the party who is the respondent to the appeal are increased by the additional amount or, if subsection (2) also applies to legal services provided to the respondent, by 2 times the additional amount.
- (4) For the purposes of this section, the *additional amount* is:
 - (a) in the case of legal services provided to the plaintiff—15% of the amount recovered, or \$7,500, whichever is the greater, and
 - (b) in the case of legal services provided to the defendant—15% of the amount sought to be recovered by the plaintiff, or \$7,500, whichever is the greater.
- (5) The regulations may prescribe a percentage to replace the percentage of 15% in subsection (4) and may prescribe an amount to replace the amount of \$7,500 in subsection (4). When such a replacement percentage or amount is prescribed, it applies for the purposes of subsection (4) in place of the percentage or amount that it replaces.

-
- (6) The regulations may contain provisions of a savings or transitional nature consequent on the making of regulations under this section.

[3] Schedule 9 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Courts Legislation Amendment Act 2005

Courts Legislation Amendment Bill 2005

Schedule 10 Amendment of Local Courts Act 1982 No 164

**Schedule 10 Amendment of Local Courts Act 1982
No 164**

(Section 3)

Section 19A Court dress

Omit the section.

Schedule 11 Amendment of Oaths Act 1900 No 20

(Section 3)

Section 3 Form and manner of taking oaths

Insert “or the registrar of a Local Court” after “Magistrate” in section 3 (2A) (b).

Schedule 12 Amendment of Public Defenders Act 1995 No 28

(Section 3)

[1] Schedule 1 Provisions relating to Public Defenders

Insert after clause 8:

9 Special arrangements for Crown Prosecutors appointed as Public Defenders

- (1) A person appointed as a Senior Officer who, immediately before the appointment, held office as a Crown Prosecutor is taken to have been appointed also as a Public Defender.
- (2) Any such Senior Officer remains a Public Defender while holding office as a Senior Officer and, subject to this Act, after ceasing to hold that office.

[2] Schedule 3 Savings, transitional and other provisions

Omit “enactment of this Act.” from clause 1 (1). Insert instead:

enactment of the following Acts:

this Act

Courts Legislation Amendment Act 2005

[3] Schedule 3, clause 1 (2)

Omit “this Act”. Insert instead “the Act concerned”.

Schedule 13 Amendment of Supreme Court Act 1970 No 52

(Section 3)

[1] Section 19 Definitions generally

Insert “but does not include an associate Judge” after “the Court” in the definition of *Judge* in section 19 (1).

[2] Section 19 (1), definition of “registrar”

Omit the definition. Insert instead:

registrar means a person who is for the time being appointed to and holding an office of registrar, as referred to in section 119, and includes:

- (a) a person who is for the time being appointed to act temporarily in an office of registrar (as referred to in section 120 (b)), and
- (b) a person who is for the time being appointed as a deputy to the holder of an office of registrar (as referred to in section 120 (c)), whether designated as a deputy, assistant or otherwise, but only when the person is exercising a power conferred by or under this Act or the *Criminal Appeal Act 1912* on the holder of an office of registrar with the authority of that holder or a person for the time being appointed to act temporarily in the office of that holder, and
- (c) a person who is authorised under section 120A to exercise any power conferred by or under this Act or the *Criminal Appeal Act 1912* on the holder of an office of registrar, but only when the person is exercising such a power.

[3] Section 25 Composition of Court

Omit “such other Judges of Appeal and Judges”.

Insert instead “such other Judges of Appeal, Judges and associate Judges”.

[4] Section 30 Interest in rate or tax

Omit “master” from section 30 (1). Insert instead “associate Judge”.

[5] Section 40 Single Judge to constitute the Court

Omit “a master” from section 40 (2). Insert instead “an associate Judge”.

- [6] Section 48 Assignment to the Court of Appeal**
Omit “a master” from section 48 (2) (i). Insert instead “an associate Judge”.
- [7] Section 53 Assignment of business**
Omit “a master” from section 53 (3). Insert instead “an associate Judge”.
- [8] Section 77 Procedures under other Acts superseded**
Omit “master”. Insert instead “associate Judge”.
- [9] Section 104 Exclusion of appeal from associate Judges and others**
Omit “a master”. Insert instead “an associate Judge”.
- [10] Part 8, heading**
Omit “Officers”. Insert instead “Associate Judges and officers”.
- [11] Part 8, Division 1, heading**
Omit “Masters”. Insert instead “Associate Judges”.
- [12] Section 111 Appointment of associate Judges and acting associate Judges**
Omit “master” and “masters” wherever occurring.
Insert instead “associate Judge” and “associate Judges” respectively.
- [13] Section 112 Terms of appointment**
Omit “master” from section 112 (1) wherever occurring.
Insert instead “associate Judge”.
- [14] Section 112 (2)**
Omit “A master or acting master”.
Insert instead “An associate Judge or acting associate Judge”.
- [15] Section 112 (2) (b)**
Omit “master or acting master”.
Insert instead “associate Judge or acting associate Judge”.

[16] Section 113

Omit the section. Insert instead:

113 Public Sector Employment and Management Act 2002

- (1) The *Public Sector Employment and Management Act 2002* does not apply to an associate Judge.
- (2) Despite subsection (1), if the *Public Sector Employment and Management Act 2002* applies to a person immediately before the person's appointment as associate Judge, the person is entitled to receive any deferred or extended leave and any privileges as if the person had remained an officer within the meaning of that Act.
- (3) The *Public Sector Employment and Management Act 2002* does not apply to an acting associate Judge unless that Act applies to the acting associate Judge immediately before his or her appointment as acting associate Judge.

[17] Section 114 Superannuation Act 1916

Omit "a master", "the master" and "the master's" wherever occurring.

Insert instead "an associate Judge", "the associate Judge" and "the associate Judge's" respectively.

[18] Section 114 (2)

Omit "as master". Insert instead "as associate Judge".

[19] Section 114 (3)

Omit "acting master" and "acting master's" wherever occurring.

Insert instead "acting associate Judge" and "acting associate Judge's" respectively.

[20] Section 115 Resignation and tenure of associate Judges and acting associate Judges

Omit "A master", "acting master", "acting master's" and "the master" wherever occurring.

Insert instead "An associate Judge", "acting associate Judge", "acting associate Judge's" and "the associate Judge" respectively.

[21] Section 116 Assignment

Omit "a master" and "acting master" wherever occurring.

Insert instead "an associate Judge" and "acting associate Judge" respectively.

[22] Section 117 Seniority

Omit “masters”. Insert instead “associate Judges”.

[23] Section 117A Powers: associate Judge in Court of Appeal

Omit section 117A (1). Insert instead:

- (1) In this section, *associate Judge in the Court of Appeal* means an associate Judge or acting associate Judge assigned to the Court of Appeal or an associate Judge or acting associate Judge directed by the Chief Justice to act in the Court of Appeal.

[24] Section 117A (2)–(5)

Omit “A master” and “a master” wherever occurring.

Insert instead “An associate Judge” and “an associate Judge” respectively.

[25] Section 117A (2)

Insert “(and only such powers)” after “such powers of the Court of Appeal”.

[26] Section 118 Powers: divisional associate Judge

Omit section 118 (1). Insert instead:

- (1) In this section, *divisional associate Judge* means, in relation to any Division, an associate Judge or acting associate Judge assigned to the Division or an associate Judge or acting associate Judge directed by the Chief Justice to act in the Division.

[27] Section 118 (2)–(5)

Omit “A divisional master”, “a master”, “a divisional master” and “the divisional master” wherever occurring.

Insert instead “A divisional associate Judge”, “an associate Judge”, “a divisional associate Judge” and “the divisional associate Judge” respectively.

[28] Section 118 (2)

Insert “(and only such powers)” after “such powers of the Court in the Division”.

[29] Section 120

Omit the section. Insert instead:

120 Appointment

The following persons may be employed under Chapter 2 of the *Public Sector Employment and Management Act 2002*:

-
- (a) persons to fill the offices mentioned in section 119,
 - (b) persons to act temporarily in any of those offices,
 - (c) persons to be deputies of any of those officers (whether designated as deputies, assistants or otherwise),
 - (d) such other officers as may be necessary for carrying out the provisions of this Act and the rules and any other Act, regulations or rules relating to the Court.

[30] Section 120A

Insert after section 120:

120A Other officers may be authorised to exercise powers of deputy registrar

- (1) The Chief Justice may, by order in writing, authorise a particular court officer, or a court officer of a particular class, to exercise the powers of deputy registrar of the Supreme Court.
- (2) A court officer so authorised may exercise the powers conferred on a deputy registrar of the Court by or under this Act and, when exercising those powers, is taken to be a deputy registrar of the Court.
- (3) A court officer so authorised may also exercise the powers conferred on a registrar of the Court by or under this Act or the *Criminal Appeal Act 1912*, if he or she is authorised to do so by the Chief Justice by the order referred to in subsection (1) or by further order in writing.

Note. The *Criminal Appeal Act 1912* confers power on a registrar of the Court to exercise the powers conferred on a registrar of the Court of Criminal Appeal.

- (4) In this section:
court officer means:
 - (a) an officer of the Supreme Court, or
 - (b) a registrar of a Local Court or a member of staff of the Attorney General's Department employed in a Local Court.

[31] Section 124 Rule-making power

Omit "masters, acting masters" from section 124 (1) (h).

Insert instead "associate Judges, acting associate Judges".

[32] Section 124 (1) (s)

Omit “masters, acting masters”.

Insert instead “associate Judges, acting associate Judges”.

[33] Section 124 (2) (b)

Omit “master”. Insert instead “associate Judge”.

[34] Section 124 (4)

Omit “a master” wherever occurring. Insert instead “an associate Judge”.

[35] Section 124 (4)

Omit “that master” wherever occurring. Insert instead “that associate Judge”.

[36] Fourth Schedule Savings and transitional provisions

Insert at the end of clause 1 (2):

Courts Legislation Amendment Act 2005

[37] Fourth Schedule, Part 15

Insert after Part 14:

**Part 15 Provisions consequent on enactment of
Courts Legislation Amendment Act 2005**

22 Abolition of office of master and acting master of Supreme Court

- (1) The offices of master of the Supreme Court and acting master of the Supreme Court are abolished.
- (2) On the abolition of the office of master and acting master of the Supreme Court:
 - (a) a person holding office as a master of the Supreme Court immediately before that abolition is by this clause appointed as an associate Judge of the Supreme Court, and
 - (b) a person holding office as an acting master of the Supreme Court immediately before that abolition is by this clause appointed as an acting associate Judge of the Supreme Court.
- (3) Any such person holds office subject to such terms and conditions as are specified in the instrument of the person’s appointment as a master or acting master of the Supreme Court or as may be agreed by the Governor and the person.

-
- (4) In particular, any such person who was holding office for a specified term is taken to have been appointed to the new office for the balance of that term of office.
 - (5) Sections 113 and 114 apply to an associate Judge or acting associate Judge appointed by this clause as if a reference to the person's appointment as an associate Judge or acting associate Judge were a reference to the person's appointment as a master or acting master of the Supreme Court.
 - (6) Any assignment of a master or acting master to the Court of Appeal or to a Division that had effect under section 116 immediately before the abolition of the office of master or acting master is taken, on that abolition, to continue to have effect as an assignment of the associate Judge or acting associate Judge to the Court of Appeal or to the relevant Division.
 - (7) Subclause (6) does not affect the Governor's power to revoke an assignment under section 116 (b).
 - (8) The seniority of a person appointed as associate Judge or acting associate Judge by this clause is to be determined under section 117 as if the date of his or her assignment as an associate Judge or acting associate Judge to the Court of Appeal or to a Division were the date of his or her assignment as a master or acting master to the Court of Appeal or the relevant Division.
 - (9) Service as a master or acting master of the Supreme Court is to be reckoned for all purposes as service as an associate Judge or acting associate Judge of the Supreme Court.

23 Abolition of offices to have no effect on proceedings

- (1) Proceedings pending before or being heard by a person who held the office of master or acting master of the Supreme Court immediately before the abolition of that office may continue to be heard and determined by the person as an associate Judge or acting associate Judge.
- (2) Section 104, as in force immediately before the abolition of the office of master and acting master of the Supreme Court, continues to apply in respect of any decision, judgment, order, opinion, direction or determination of the Court in a Division constituted by a master that was made or given before the abolition of the office.

24 Construction of references

- (1) A reference in any other Act (except the *Constitution Act 1902*), or in any instrument made under any Act, to a master or acting master of the Supreme Court (however expressed) is to be read as a reference to an associate Judge or acting associate Judge of the Supreme Court, unless otherwise provided by the regulations.
- (2) A reference in section 111 of this Act to a retired associate Judge includes a reference to a retired master of the Supreme Court.

Schedule 14 Consequential amendments to other Acts

(Section 3)

14.1 Director of Public Prosecutions Act 1986 No 207

Schedule 1 Provisions relating to Senior Officers

Insert after clause 10 (5):

- (6) In this clause, *spouse* has the meaning given by the *Judges' Pensions Act 1953*.

14.2 First State Superannuation Act 1992 No 100

[1] Section 8 Employees who are excluded from being full members of Fund

Omit "masters" from the note. Insert instead "associate Judges".

[2] Schedule 2 Employees who are not full members of the Fund

Omit "a master" from clause 1 (1) (b). Insert instead "an associate Judge".

14.3 Judicial Officers Act 1986 No 100

[1] Section 3 Definitions

Omit "Master" from paragraph (a) of the definition of *judicial officer* in section 3 (1).

Insert instead "associate Judge".

[2] Section 3 (5) (a)

Omit "Master". Insert instead "associate Judge".

[3] Section 44C Immunity of officers performing duties of judicial officers

Omit "a Master of the Supreme Court".

Insert instead "an associate Judge of the Supreme Court".

14.4 State Authorities Non-contributory Superannuation Act 1987 No 212

Schedule 2 Excluded persons

Omit "a master" from paragraph (b). Insert instead "an associate Judge".

14.5 State Authorities Superannuation Act 1987 No 211

Schedule 2 Excluded persons

Omit “a master” from clause 1 (1) (d). Insert instead “an associate Judge”.

14.6 Statutory and Other Offices Remuneration Act 1975 (1976 No 4)

Schedule 1 Public offices

Omit “Master or acting master”.

Insert instead “Associate Judge or acting associate Judge”.

14.7 Superannuation Act 1916 No 28

Section 3 Definitions

Omit “a master of the Supreme Court” from the definition of *Employee* in section 3 (1).

Insert instead “an associate Judge of the Supreme Court”.