

[Act 2001 No 85]



New South Wales

Courts Legislation Amendment Bill 2001

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Costs in Criminal Cases Act 1967* to provide that:
 - (i) a costs certificate may be granted under that Act in cases where, after a trial has commenced, a defendant has been acquitted or discharged, and
 - (ii) a prosecutor may adduce additional evidence to the Court, Judge or Justice or Justices determining whether to grant a costs certificate, being evidence that was in the possession of the prosecutor at the time the decision to institute criminal proceedings was made and that was not adduced in the proceedings,

* Amended in committee—see table at end of volume.

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- (b) to amend the *District Court Act 1973* to permit judges or former judges from other States and Territories to be appointed as judges or acting judges of the District Court,
- (c) to amend the *Judges' Pensions Act 1953* to make it clear that the Chief Judge of the Land and Environment Court is a "judge" for the purposes of that Act,
- (d) to amend the *Jury Act 1977* to permit courts and certain specified law enforcement agencies to solicit information from jurors and former jurors, and allow the sheriff to disclose information relating to jurors to courts and such law enforcement agencies, for the purposes of an investigation or prosecution of a contempt of court or an offence relating to jurors or juries,
- (e) to make amendments to the *Justices Act 1902* relating to committal proceedings and appeals,
- (f) to amend the *Legal Profession Act 1987*:
 - (i) to provide that the proper officer of the Supreme Court in relation to a costs assessment matter is the Manager, Costs Assessment in the Attorney General's Department, and
 - (ii) to enable lessees and mortgagors, who have been given a bill of costs for the lessor's or mortgagee's legal costs relating to the preparation of their lease or mortgage, to apply to the Manager, Costs Assessment of the Supreme Court for an assessment of those costs, and
 - (iii) to enable a court to which an appeal against a decision or determination of a costs assessor has been made to refer the appeal to a review panel if the matter has not previously been reviewed by a review panel,
- (g) to amend the *Local Courts (Civil Claims) Act 1970*:
 - (i) to provide that a judgment debtor subject to a writ of execution may keep ordinary tools of trade, plant and equipment, professional instruments and reference books to a value of \$2,000 (rather than \$500, as is currently the case), and
 - (ii) to provide that the Sheriff and bailiffs of a court may decline to seize or take property under a writ of execution if, in the opinion of the Sheriff or bailiff, the costs of the seizure, removal, storage and sale of the property to be seized or taken under that writ are likely to exceed the total sale price of that property,
- (h) to amend the *Victims Support and Rehabilitation Act 1996* with respect to the admissibility and use of certain documents relating to statutory compensation and approved counselling services under that Act.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides that the proposed Act commences on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments set out in Schedules 1–8 to the Acts specified in those Schedules.

Schedule 1 Amendment of Costs in Criminal Cases Act 1967

The *Costs in Criminal Cases Act 1967* provides that where:

- (a) a defendant in criminal proceedings, after a hearing on the merits, is acquitted or discharged, or has a conviction quashed on appeal, and
- (b) the defendant was discharged as to the indictment on which he or she was convicted or the information or complaint on which the defendant was convicted was dismissed,

the Court or Judge or Justice or Justices concerned (the *Court*) may grant to that defendant a costs certificate under that Act (section 2). A person to whom such a certificate is granted may apply to the Director-General of the Attorney General's Department for payment of the costs incurred in defending the proceedings to which the certificate relates (section 4).

The costs certificate must state that, in the opinion of the Court concerned:

- (a) if the prosecution had, before the proceedings were instituted, been in possession of evidence of all the relevant facts, it would not have been reasonable to institute the proceedings, and
- (b) that any act or omission of the defendant that contributed, or might have contributed, to the institution or continuation of the proceedings was reasonable in the circumstances (section 3).

In determining whether or not to grant a costs certificate the Court is to have regard to all the relevant facts established in the criminal proceedings together with any further relevant facts established by the defendant in the course of the defendant's application (but not any further facts established by the prosecutor) (section 3A).

Schedule 1 [1] and [2] amend section 2 of the *Costs in Criminal Cases Act 1967* to provide that a costs certificate may be granted under that Act if a defendant is acquitted or discharged at any time after a trial has commenced and not only after a hearing has concluded.

Schedule 1 [3] and [4] amend section 3A of the *Costs in Criminal Cases Act 1967* to allow a prosecutor to adduce evidence to the Court determining whether to grant a costs certificate, being evidence that was in the possession of the prosecutor at the time the decision to institute criminal proceedings was made and that was not adduced in the proceedings. The Court concerned may allow the defendant to comment on the evidence of those further adduced facts and, if it thinks it desirable to do so, allow the defendant to examine any witness giving evidence for the prosecutor.

Schedule 1 [5] inserts a savings and transitional provision into the *Costs in Criminal Cases Act 1967*.

Schedule 2 Amendment of District Court Act 1973

Sections 13 and 18 of the *District Court Act 1973* allow the Governor to appoint persons as judges and acting judges of the District Court.

Schedule 2 [1] amends section 13 of that Act to provide that judges and former judges of the Federal Court of Australia and the Supreme Court, District Court or County Court of other States and Territories may be appointed as judges of the District Court. By operation of section 18 (2), persons qualified to be appointed as judges of the District Court are also qualified to be appointed as acting judges of that Court.

Schedule 2 [2] is a consequential amendment that provides that a judge or former judge of the Federal Court of Australia or of the Supreme Court, District Court or County Court of another State or Territory may be appointed as an acting judge of the District Court even though that judge or former judge has reached the age of 72 years (or will have reached that age before the appointment expires) but may not be appointed for any period that extends beyond the day on which he or she reaches the age of 75 years.

Schedule 3 Amendment of Judges' Pensions Act 1953

The *Judges' Pensions Act 1953* makes provision for pensions for judges and for the widows and widowers of deceased judges and deceased retired judges. Section 2 (1) of that Act currently defines **Judge** to include a Judge of the Land and Environment Court, but does not specifically include a reference to the Chief Judge of that Court.

Schedule 3 [1] amends the definition of **Judge** in section 2 (1) of that Act to make it clear that the provisions of the Act applying to judges apply to the Chief Judge of the Land and Environment Court.

Schedule 3 [2] inserts a consequential provision into the *Judges' Pensions Act 1953* (proposed section 11B) that provides that the Chief Judge of the Land and Environment Court is taken from 1 September 1980 to have been a Judge for the purposes of this Act.

Schedule 4 Amendment of Jury Act 1977

Section 68 of the *Jury Act 1977*, among other things, prohibits the disclosure of any information that is likely to lead to the identification of a juror or former juror in a particular trial or inquest. Section 68A of that Act, among other things, prohibits the soliciting of information from jurors or former jurors for the purpose of obtaining information on the deliberations of a jury.

Schedule 4 [1] amends section 68 of the *Jury Act 1977* to provide that the sheriff may disclose information relating to jurors to courts and certain specified law enforcement agencies for the purposes of an investigation or prosecution of a contempt of court or an offence relating to jurors or juries.

Schedule 4 [2] amends section 68A of the *Jury Act 1977* to provide that courts and certain specified law enforcement agencies may solicit information from jurors and former jurors for the purposes of an investigation or prosecution of a contempt of court or an offence relating to jurors or juries.

Schedule 4 [3] and **[4]** make amendments for savings and transitional purposes.

Schedule 5 Amendment of Justices Act 1902

Schedule 5 [1] omits section 41 (1B) (d) (ii) of the *Justices Act 1902*. Section 41 (1B) (d) provides that a committal hearing may commence or continue in the absence of the defendant (after the defendant has appeared or been brought before the court in relation to the matter) if no good and proper reason has been shown for the absence of the defendant and a warrant for the apprehension of the defendant has been issued. **Schedule 5 [1]** omits the obligation on the prosecution to show the court that a warrant for the apprehension of the defendant has been issued.

Schedule 5 [2] inserts proposed section 41 (11) into the *Justices Act 1902* to provide that the Justice or Justices hearing committal proceedings may, at any time, on the application of the defendant and with the consent of the informant, commit the defendant for trial.

Schedule 5 [3] inserts proposed section 48E (1A) into the *Justices Act 1902* to provide that the Justice or Justices hearing committal proceedings must direct a witness who has given a written statement for the purposes of the committal to attend the proceedings, if an application is made by the defendant or the informant and the other party consents to the direction being given. **Schedule 5 [4]** makes a consequential amendment.

Schedule 5 [5] replaces section 48E (6) of the *Justices Act 1902*. Section 48E provides that the Justice or Justices hearing committal proceedings may direct that a witness who has given a written statement for the purposes of the committal must attend at the proceedings. The proposed section 48E (6) provides that any such direction given on the application of a defendant may be withdrawn only on the application, or with the consent, of the defendant, or if the defendant fails to appear, on the application of the other party.

Schedule 5 [6] omits section 100P of the *Justices Act 1902*. Section 100P is a machinery provision that restricts the ability of a person to make an application to a Local Court under section 100D or 100G of the *Justices Act 1902* for an annulment or review of the person's conviction.

Schedule 5 [7] inserts proposed section 120 (3) and (4) into the *Justices Act 1902*.

Proposed section 120 (3) provides that the prosecution may appeal to the District Court against an order by a Magistrate to pay any costs of a defendant in committal proceedings.

Section 120 (1) of the *Justices Act 1902* provides that any person may appeal to the District Court against a conviction or order made, or sentence imposed, by a Magistrate in summary proceedings. Proposed section 120 (4) provides that such

an appeal may be made only after a Magistrate has sentenced the person (whether the person is appealing the sentence or the conviction or any other order of the Magistrate).

Schedule 5 [8]–[10] amend section 123 of the *Justices Act 1902*.

Section 123 (2) provides that if a person has not exhausted all their rights of appeal under Part 4A of that Act, the person may appeal to the District Court under Division 2 of Part 5 of that Act only with the leave of that Court.

Part 4A of the *Justices Act 1902* includes section 100G which provides that the Attorney General may, if satisfied that a question or doubt has arisen as to the guilt of a person or the person's liability for a penalty, refer a question relating to a conviction or an order (other than an interlocutory order) made against the person by a Magistrate or a sentence imposed on the person by a Magistrate in the absence of the person to the Local Court for review by that Court. Section 100G, therefore, creates a limited right of review in special circumstances.

Schedule 5 [8] amends section 123 (2) of the *Justices Act 1902* to provide that a person may appeal to the District Court (without seeking leave of that Court) even if the person has not exhausted his or her rights under section 100G. **Schedule 5 [9]** and **[10]** make consequential amendments.

Schedule 5 [11] inserts savings and transitional provisions into the *Justices Act 1902*.

Schedule 6 Amendment of Legal Profession Act 1987

Schedule 6 [1], [3], [5], [6] and **[8]** amend various provisions of the *Legal Profession Act 1987* to provide that the proper officer of the Supreme Court in relation to costs assessment matters is the person holding office as the Manager, Costs Assessment in the Attorney General's Department.

Schedule 6 [4] amends the definition of *client* in section 199 (4) of the *Legal Profession Act 1987* to enable a lessee or mortgagor, who has been given a bill of costs for the lessor's or mortgagee's legal costs relating to the preparation of their lease or mortgage to apply, to the Manager, Costs Assessment of the Supreme Court for an assessment of those costs. **Schedule 6 [2]** makes a consequential amendment.

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Schedule 6 [7] inserts proposed section 208NC into the *Legal Profession Act 1987* to enable a court or tribunal to which an appeal against a decision or determination of a costs assessor has been made to refer the appeal to a review panel under Subdivision 4A of Division 6 of Part 11 of that Act, if the matter has not previously been reviewed by such a panel.

Schedule 6 [9] inserts a savings and transitional provision into the *Legal Profession Act 1987*.

Schedule 7 Amendment of Local Courts (Civil Claims) Act 1970

Section 59 (1) (a) of the *Local Courts (Civil Claims) Act 1970* currently provides that the Sheriff or a bailiff of a court may seize and take personal property under any writ of execution and cause it to be sold except for:

- (a) any wearing apparel and any bedroom or kitchen furniture, and
- (b) any ordinary tools of trade, plant and equipment, professional instruments and reference books, not exceeding in the aggregate \$500 in value,

being used as such by the judgment debtor concerned or any member of his or her family.

Schedule 7 [1] amends section 59 (1) (a) (ii) of the *Local Courts (Civil Claims) Act 1970* to increase the value of ordinary tools of trade, plant and equipment, professional instruments and reference books that a judgment debtor (or member of his or her family) may retain from \$500 to \$2,000.

Schedule 7 [2] inserts proposed section 59 (2A) into the *Local Courts (Civil Claims) Act 1970* to provide that the Sheriff and bailiffs of a court may decline to seize or take property under a writ of execution if, in the opinion of the Sheriff or bailiff, the costs of the seizure, removal, storage and sale of the property to be seized or taken under that writ are likely to exceed the total sale price of that property.

Schedule 7 [3] inserts a savings and transitional provision into the *Local Courts (Civil Claims) Act 1970*.

Schedule 8 Amendment of Victims Support and Rehabilitation Act 1996

Schedule 8 [1] and [2] amend section 84 of the *Victims Support and Rehabilitation Act 1996* to clarify that:

- (a) applications for payment for approved counselling services under that Act, and
- (b) documents furnished to, or prepared by or on behalf of, the Victims Compensation Tribunal in connection with any such application,

are inadmissible in any criminal proceedings (other than proceedings against the applicant).

Schedule 8 [3]–[5] make amendments for savings and transitional purposes.