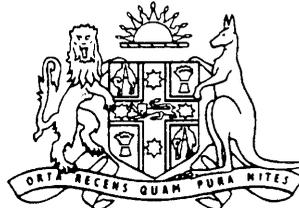


[Act 1998 No 49]



New South Wales

Courts Legislation Amendment Bill 1998

Explanatory note

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

Overview of Bill

The object of this Bill is to make miscellaneous amendments to various Acts and regulations relating to courts and associated matters.

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

Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act on a day or days to be proclaimed.

Clause 3 is a formal provision giving effect to the amendments in the Schedules to the proposed Act.

Schedule 1 Amendment of Arbitration (Civil Actions) Act 1983

This Schedule introduces the option for rehearings by courts of civil actions referred to arbitration to be limited in nature, rather than full rehearings. At present, a rehearing can only be a full rehearing. A limited rehearing can be limited to particular issues or other matters specified in the order for rehearing. When an order for a limited rehearing is made, the award is suspended and can be amended by the court after the rehearing. The opportunity has been taken to recast the provisions relating to rehearings, and to divide the Act into Parts for ease of reference.

Schedule 1 [1] divides the Act into Parts.

Schedule 1 [2] inserts a new section 16A, which provides that awards made by an arbitrator are final, subject only to section 17 (where judicial review can occur on the ground of lack of jurisdiction or denial of natural justice) and to Part 3 (which deals with full or limited rehearings by the court that originally ordered the reference of the action to arbitration). The section is substantially the same as the present section 18 (1).

Schedule 1 [3] inserts a new Part 3, which sets out provisions for the rehearing by courts of civil actions that had been referred to arbitration. The Part is the same in substance as the present section 18 (2)–(4), though re-expressed and with additional provisions to deal with limited rehearings.

Schedule 1 [4] and **[5]** insert savings and transitional provisions relating to the proposed amendments.

Schedule 2 Consequential amendment of Arbitration (Civil Action) Regulation 1994

This Schedule makes amendments to the Regulation that are consequential on the renumbering of provisions of the *Arbitration (Civil Actions) Act 1983* effected by Schedule 1.

Schedule 3 Amendment of Compensation Court Act 1984

This Schedule makes provision for an acting Judge of the Compensation Court to complete or continue to deal with part-heard matters after completion of the term of the appointment as an acting Judge.

Schedule 4 Amendment of Coroners Act 1980

This Schedule makes several amendments to the Act.

Schedule 4 [2] omits section 34 (8), which prevents a coroner from supplying a copy of a file to interested persons where the file relates to an inquest or inquiry terminated under section 19 (where indictable offences are involved). **Schedule 4 [1]** amends section 34 (6), so that the coroner may give a direction in individual cases that such a file not be supplied.

Schedule 4 [3] amends section 44, so as to authorise a coroner to make an order excluding persons from an inquest or inquiry, or to order that evidence given at an inquest or inquiry not be published, if of the opinion that it is in the public interest to do so. For this purpose, the coroner can have regard to the administration of justice, national security or personal security, but not so as to limit the matters to which the coroner can have regard.

Schedule 4 [4] makes it an offence to fail to comply with such an order.

Schedule 5 Amendment of Costs in Criminal Cases Act 1967

This Schedule makes the decision of the Director-General of the Attorney General's Department final as to whether costs should be paid to a person under the Act and, if so, the amount that is payable. At present, the Treasurer has a discretion as to these matters.

Schedule 5 [1] inserts a definition of *Director-General*, to replace an out-of-date definition.

Schedule 5 [2] replaces section 4 for the purpose mentioned above.

Schedule 5 [3] and **[4]** make minor amendments by way of statute law revision.

Schedule 5 [5] gives the Director-General a power of delegation in connection with functions under the Act, and inserts provisions of a savings or transitional nature. Existing certificates under the Act are preserved.

Schedule 6 Amendment of Criminal Appeal Act 1912

This Schedule makes various amendments to the Act.

Schedule 1 [1] and **[2]** empower the Environment Protection Authority to appeal to the Court of Criminal Appeal against sentences imposed by the Supreme Court or the Land and Environment Court in proceedings for environmental offences prosecuted by the Authority.

Schedule 1[3] inserts express provisions into the Act in connection with the manner in which the Court of Criminal Appeal exercises its powers, based on provisions that apply to the Court of Appeal, setting out the procedures for majority decisions. Proposed section 21A (3) enables a decision of the Court to be given despite the death of one or more judges involved in the case, so long as a majority of the remaining judges are in agreement. Proposed section 21A (4) enables the Court when dismissing an appeal to give reasons for a decision in short form. if the Court is of the unanimous decision that the appeal does not raise any questions of general principle.

Schedule 7 Amendment of Criminal Procedure Act 1986

This Schedule provides for proceedings for contempt of court to be instituted in the name of the “State of New South Wales”, by the Attorney General or (under delegation) by the Solicitor General or Crown Advocate.

The amendment will be capable of extending to civil contempt, although the Act generally only deals with criminal matters. Civil contempt has been regarded as quasi-criminal in nature. For example, the High Court suggested that “all contempts should be punished as if they are quasi-criminal in character”: *Australasian Meat Industry Employees’ Union v Mudginberri Station Pty Ltd* (1986) 161 CLR 98, 109.

Schedule 8 Amendment of Crown Advocate Act 1979

This Schedule authorises the Attorney General to delegate functions to the Crown Advocate, in a manner similar to that available for delegations to the Solicitor General.

Schedule 9 Amendment of Crown Proceedings Act 1988

This Schedule removes an unlikely argument that proceedings can be brought under the Act against the Crown for matters that do not affect the Crown, contrary to the clear intention of the Act.

Schedule 10 Amendment of District Court Act 1973

This Schedule provides that an appeal to the Supreme Court (ie the Court of Appeal) from a judgment or order of the District Court on an application for summary judgment under the rules of the District Court can only be made with the leave of the Supreme Court. This will bring these appeals from the District Court into line with similar appeals from Divisions of the Supreme Court (section 101 (2) (l) of the *Supreme Court Act 1970*).

Schedule 11 Amendment of Dust Diseases Tribunal Act 1989

This Schedule brings the provisions relating to appeals to the Supreme Court (ie the Court of Appeal) from decisions of the Dust Diseases Tribunal into line with those relating to appeals from the Compensation Court. Thus appeals will lie from decisions of the Tribunal only on points of law and on questions as to the admission or rejection of evidence, and appeals from final decisions will only be made with the leave of the Supreme Court, unless the appeals involve amounts of \$20,000 or more.

Schedule 12 Consequential amendment of Fines Regulation 1997

This Schedule omits a provision that has been superseded by amendments made to the *Justices Act 1902* by the proposed Act.

Schedule 13 Amendment of Industrial Relations Act 1996

This Schedule makes provision for an acting Deputy President, acting Commissioner or acting judicial member to complete or continue to deal with part-heard matters after completion of the term of the acting appointment.

Schedule 14 Amendment of Judgment Creditors' Remedies Act 1901

This Schedule confers on the District Court and a Local Court the same powers with respect to enabling a prospective purchaser of land under a writ of execution to inspect the land as are presently exercised by the Supreme court.

Schedule 15 Amendment of Jury Act 1977

This Schedule creates an offence of threatening an employee with dismissal from, injury in, or prejudice to, employment because of a jury summons. At present there is an offence limited to actual dismissal, injury or employment.

Schedule 16 Amendment of Justices Act 1902

This Schedule makes several amendments to the Act.

Schedule 16 [1] inserts in section 3 a definition of *authorised justice* that had earlier been omitted by the repeal of section 86A. **Schedule 16 [5]** omits from section 80AA a definition of the expression that refers to section 86A.

Schedule 16 [4] and **[6]** deal with the right of an accused person who is served with a summons or attendance notice to notify a plea in writing, as contemplated by the *Justices Amendment (Procedure) Act 1997*. The proposed amendments will enable information about this right to accompany the summons or notice, rather than be set out in it.

Schedule 16 [7] empowers the Local Court Rule Committee to make rules relating to the practice and procedure of Local Courts. The Rule Committee is proposed to be established under the *Local Courts Act 1982*, as amended by the proposed Act. **Schedule 16 [2]** inserts a definition of the Rule Committee. **Schedule 16 [3]** omits the current section that authorises the making of general rules (existing rules are taken to have been made by the Rule Committee).

Schedule 17 Consequential amendment of Justices (General) Regulation 1993

This Schedule is consequential on amendments proposed to be made to the *Justices Act 1902* by the proposed Act. The amendments in this Schedule continue the prescription of prescribed offices for the purposes of the definition of *authorised justice*, made necessary by the new location of that definition in the *Justices Act 1902*.

Schedule 18 Amendment of Land and Environment Court Act 1979

This Schedule makes two amendments to the Act.

Schedule 18 [1] makes provision for an acting Judge of the Land and Environment Court to complete or continue to deal with part-heard matters after completion of the term of the appointment as an acting Judge.

Schedule 18 [2] enables provisions of the *Legal Profession Act 1987* relating to the assessment of costs to be applied where the Land and Environment Court orders the payment of costs in criminal matters.

Schedule 19 Consequential amendment of Legal Profession Act 1987

This Schedule makes an amendment that is consequential on an amendment to the *Land and Environment Court Act 1979* to be made by the proposed Act. The amendment will make it clear that regulations can be made under the *Land and Environment Court Act 1979* to apply provisions of the *Legal Profession Act 1987* in the assessment of costs in criminal cases even though the latter Act itself contains a provision excluding the application of relevant provisions to criminal cases.

Schedule 20 Amendment of Liquor Act 1982

This Schedule enables regulations to be made applying provisions of the *Justices Act 1902* to the Licensing Court, with or without modifications. This will clarify the relationship between the two Acts.

Schedule 21 Amendment of Local Courts Act 1982

This Schedule establishes the Local Court Rule Committee and the Local Court (Civil Claims) Rule Committee. The latter committee is currently established under the *Local Courts (Civil Claims) Act 1970*, and the former committee is a new committee, whose responsibility will be to make rules under the *Justices Act 1902*.

Schedule 22 Amendment of Local Courts (Civil Claims) Act 1970

This Schedule makes amendments that are consequential on the proposed relocation of the provisions for the establishment of the Local Court (Civil Claims) Rule Committee in the *Local Courts Act 1982*.

Schedule 23 Amendment of Supreme Court Act 1970

This Schedule makes amendments that will enable appeals from the Dust Diseases Tribunal as to the amount of compensation awarded, and applications for leave to appeal from any court or tribunal in an interlocutory matter, to the Court of Appeal to be heard by two Judges of Appeal. In the case of such an interlocutory matter, it will be possible for the application for leave and the appeal itself to be heard by the same two Judges of Appeal.