

Passed by both Houses



New South Wales

Civil Procedure Amendment (Transfer of Proceedings) Bill 2009

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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, , 2009*



New South Wales

Civil Procedure Amendment (Transfer of Proceedings) Bill 2009

Act No , 2009

An Act to amend the *Civil Procedure Act 2005* to enable the transfer of proceedings between the Supreme Court and the Land and Environment Court.

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

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Civil Procedure Amendment (Transfer of Proceedings) Act 2009*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Civil Procedure Act 2005 No 28

Part 9 Transfer of proceedings between courts

Omit Division 2A of Part 9. Insert instead:

Division 2A Transfer of proceedings between Supreme Court and Land and Environment Court

149A Definitions

(1) In this Division:

transfer order means an order referred to in section 149B (1) or (2).

transferee court means the court to which proceedings are to be transferred pursuant to a transfer order.

transferor court means the court from which proceedings are transferred pursuant to a transfer order.

(2) For the purposes of this Division, proceedings are *related* if the matters with which they deal are so closely associated as to form part of the same controversy.

149B Transfer of proceedings between Supreme Court and Land and Environment Court

(1) If either the Supreme Court or the Land and Environment Court is satisfied, in relation to proceedings before it, that it is more appropriate for the proceedings to be heard in the other court, it may, on application by a party to the proceedings or of its own motion, order that the proceedings be transferred to the other court.

(2) If either the Supreme Court or the Land and Environment Court is satisfied, in relation to proceedings before it, that:

(a) there are related proceedings pending in the other court, and

(b) it is more appropriate for the proceedings to be heard, together with the related proceedings, in the other court,

it may, on application by a party to the proceedings or of its own motion, order that the proceedings be transferred to the other court and heard together with the related proceedings.

(3) No appeal lies against a decision of the transferor court to make, or not to make, an order under this section.

149C Transfer orders

- (1) A transfer order takes effect when it is made.
- (2) A transfer order does not invalidate any order made or other thing done in the proceedings before the order was made.
- (3) Any order made by the transferor court (other than the transfer order) may be varied or revoked by an order of the transferee court.

149D Proceedings after transfer

- (1) Subject to the rules of court applicable in the transferee court:
 - (a) any proceedings with respect to which a transfer order takes effect continue in the transferee court:
 - (i) as if the proceedings had been duly commenced in the transferee court on the date on which they were commenced in the transferor court, and
 - (ii) as if any cross-claim in the proceedings had been duly made in the transferee court on the date on which it was made in the transferor court, and
 - (b) any proceedings with respect to which a transfer order under section 149B (2) takes effect are to be heard together with, and are taken to form part of, the related proceedings in the transferee court.
- (2) For the purposes of any proceedings continued in the transferee court:
 - (a) any admission duly made in the transferor court is to be treated as if it had been made in the transferee court, and
 - (b) in the case of proceedings affected by a transfer order under section 149B (2), any process or other documentation before the transferee court may be amended so as to reflect the merger of the proceedings concerned.
- (3) Subject to the rules of court applicable in the transferee court, the power of the transferee court to make orders as to costs includes a power to make orders with respect to the costs of:
 - (a) the application for, and the making of, the transfer order, and
 - (b) any step taken in the proceedings before the transfer order was made.

149E Jurisdiction of transferee court

The transferee court has, and may exercise, all of the jurisdiction of the transferor court in relation to any proceedings to which a transfer order relates, including jurisdiction to determine any question arising in any such proceedings.