

Passed by both Houses



New South Wales

Courts Legislation Amendment Bill 2006

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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, , 2006*



New South Wales

Courts Legislation Amendment Bill 2006

Act No , 2006

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

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 2006*.

2 Commencement

- (1) This Act commences on the date of assent except as provided by subsection (2).
- (2) Schedules 2 and 5 commence on a day or days to be appointed by proclamation.

3 Amendment of Acts

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

4 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Civil Procedure Act 2005 No 28

(Section 3)

[1] Section 64 Amendment of documents generally

Insert “as” after “made a party” in section 64 (4).

[2] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Courts Legislation Amendment Act 2006, to the extent that it amends this Act

[3] Schedule 6, Part 3

Insert after Part 2:

Part 3 Provisions relating to dismissal of proceedings

12 Dismissal of proceedings

- (1) Any proceedings taken to have been dismissed under clause 18 of the *Civil Procedure Regulation 2005* before the repeal of that clause by the *Civil Procedure Amendment (Savings and Transitional) Regulation 2005* are taken to have never been dismissed under that clause and may be continued accordingly.
- (2) Subclause (1) does not apply to any such proceedings to the extent to which they relate to a cause of action for which relief has been claimed in fresh proceedings, as referred to in section 91.
- (3) The District Court or Local Court, as the case may be, may make such orders as are necessary to enable the proceedings to be continued.

Schedule 2 Amendment of Criminal Procedure Act 1986 No 209

(Section 3)

[1] Section 182 Written pleas

Omit “5” from section 182 (3). Insert instead “7”.

[2] Section 213 When professional costs may be awarded to accused persons

Insert “professional” after “pay” in section 213 (1).

[3] Section 213 (3)

Omit section 213 (3) and (4). Insert instead:

- (3) Without limiting the operation of subsection (1), a court may order that the prosecutor in summary proceedings pay professional costs if the matter is dismissed because:
 - (a) the prosecutor fails to appear or both the prosecutor and the accused person fail to appear, or
 - (b) the matter is withdrawn or the proceedings are for any reason invalid.

[4] Section 214 Limit on award of professional costs to accused person against prosecutor acting in public capacity

Insert “professional” after “award” in section 214 (1) (d).

[5] Section 215 When costs may be awarded to prosecutor

Insert after section 215 (1):

- (1A) The court may not order the accused person to pay professional costs referred to in subsection (1) (a) if the conviction or order concerned relates to an offence:
 - (a) for which a penalty notice, within the meaning of section 20 of the *Fines Act 1996*, has been issued, and
 - (b) in respect of which the person has elected to have the matter dealt with by a court, and
 - (c) in respect of which the person has lodged a written plea of guilty, in accordance with section 182, not later than 7 days before the date on which the person is required to first attend before the court.
- (1B) Subsection (1A) does not apply in relation to proceedings for an offence against the *Occupational Health and Safety Act 2000*, the

regulations under that Act or the associated occupational health and safety legislation within the meaning of that Act.

[6] Section 249 Procedure where prosecutor does not, but accused person does, appear

Insert after section 249 (2):

- (3) Division 4 applies to any award of costs arising from proceedings being dealt with under subsection (1).

[7] Section 253 Court may order payment of costs

Omit the section.

[8] Section 254 Enforcement of fines and orders

Insert "under Division 4" after "for costs".

[9] Chapter 4, Part 5, Division 4

Insert after Division 3:

Division 4 Costs

257A Definition

In this Division:

professional costs means costs (other than court costs) relating to professional expenses and disbursements (including witnesses' expenses) in respect of proceedings before a court.

257B When costs may be awarded to prosecutor

A court may, in and by a conviction or order, order an accused person to pay to the registrar of the court, for payment to the prosecutor, such costs as the court specifies or, if the conviction or order directs, as may be determined under section 257G, if:

- (a) the court convicts the accused person of an offence, or
(b) the court makes an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999* in respect of an offence.

257C When professional costs may be awarded to accused person

- (1) A court may at the end of proceedings under this Part order that the prosecutor pay professional costs to the registrar of the court, for payment to the accused person, if the matter is dismissed or withdrawn.

- (2) The amount of professional costs is to be such professional costs as the court specifies or, if the order directs, as may be determined under section 257G.
- (3) Without limiting the operation of subsection (1), a court may order that the prosecutor in proceedings under this Part pay professional costs if:
 - (a) the accused person is discharged as to the offence the subject of the proceedings, or
 - (b) the matter is dismissed because the prosecutor fails to appear, or
 - (c) the matter is withdrawn or the proceedings are for any reason invalid.

257D Limit on award of professional costs against a prosecutor acting in a public capacity

- (1) Professional costs are not to be awarded in favour of an accused person in proceedings under this Part unless the court is satisfied as to one or more of the following:
 - (a) that the investigation into the alleged offence was conducted in an unreasonable or improper manner,
 - (b) that the proceedings were initiated without reasonable cause or in bad faith or were conducted by the prosecutor in an improper manner,
 - (c) that the prosecutor unreasonably failed to investigate (or to investigate properly) any relevant matter of which it was aware or ought reasonably to have been aware and which suggested either that the accused person might not be guilty or that, for any other reason, the proceedings should not have been brought,
 - (d) that, because of other exceptional circumstances relating to the conduct of the proceedings by the prosecutor, it is just and reasonable to award professional costs.
- (2) This section:
 - (a) does not apply to the awarding of costs against a prosecutor acting in a private capacity, and
 - (b) does not apply in relation to proceedings for an offence against the *Occupational Health and Safety Act 2000*, the regulations under that Act or the associated occupational health and safety legislation within the meaning of that Act.

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- (3) An officer of an approved charitable organisation under the *Prevention of Cruelty to Animals Act 1979* is taken not to be acting in a private capacity if the officer acts as the prosecutor in any proceedings under that Act or section 9 (1) of the *Veterinary Practice Act 2003*.

257E Public officers and police officers not personally liable for costs

- (1) A public officer or a police officer is entitled to be indemnified by the State for any costs awarded against the officer personally as the prosecutor in any criminal proceedings in a court in which the officer is acting in his or her capacity as a public officer or a police officer.
- (2) In this section:
public officer does not include a councillor or an employee of a council or any other person prescribed by the regulations for the purposes of this section.

257F Costs on adjournment

- (1) A court may in any proceedings under this Part, at its discretion or on the application of a party, order that one party pay costs if the matter is adjourned.
- (2) An order may be made only if the court is satisfied that the other party has incurred additional costs because of the unreasonable conduct or delays of the party against whom the order is made.
- (3) The order must specify the amount of costs payable or may provide for the determination of the amount at the end of the proceedings.
- (4) An order may be made whatever the result of the proceedings.

257G Calculation of costs

The professional or other costs payable by a prosecutor or accused person in accordance with an order directing that the amount of costs is to be determined under this section are to be determined:

- (a) by agreement between the prosecutor and accused person, or
- (b) if no such agreement can be reached, in accordance with Division 11 of Part 3.2 of the *Legal Profession Act 2004* (with or without modifications prescribed by the regulations).

[10] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Courts Legislation Amendment Act 2006, to the extent that it amends this Act

[11] Schedule 2, Part 11

Insert after Part 10:

**Part 11 Provisions consequent on enactment of
Courts Legislation Amendment Act 2006**

49 Definition

In this Part:

amending Act means the *Courts Legislation Amendment Act 2006*.

50 Amendments

- (1) An amendment made to this Act by the amending Act does not extend to proceedings instituted before the commencement of that amendment.
- (2) Such proceedings may be dealt with as if the amendment had not commenced.

Schedule 3 Amendment of Crown Prosecutors Act 1986 No 208

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

part-time Crown Prosecutor means a Crown Prosecutor exercising his or her functions as a Crown Prosecutor on a part-time basis, as provided by an agreement referred to in section 4 (3A).

[2] Section 4 Crown Prosecutors

Insert after section 4 (3):

(3A) A Crown Prosecutor may, by agreement in writing entered into with the Director of Public Prosecutions, exercise his or her functions as a Crown Prosecutor on a part-time basis.

[3] Section 14 Savings and transitional provisions

Insert after section 14 (7):

- (8) Section 4 (3A) applies to a Crown Prosecutor appointed before the commencement of that subsection.
- (9) Until a relevant determination is made and takes effect under the *Statutory and Other Offices Remuneration Act 1975*, a part-time Crown Prosecutor is entitled to be paid in accordance with the determination in force for the time being for Crown Prosecutors, but on a pro rata basis (according to time spent in service), as calculated by the Attorney General.

Schedule 4 Amendment of District Court Act 1973 No 9

(Section 3)

[1] Section 18FB Powers of Judicial Registrar

Omit section 18FB (2).

[2] Section 18FB (3)

Omit “Subject to subsection (2), a”. Insert instead “A”.

[3] Section 127 Right of appeal to Supreme Court

Insert “or a Judicial Registrar’s” after “Judge’s” in section 127 (1).

[4] Schedule 3 Savings and transitional provisions consequent on amendments to this Act

Insert at the end of clause 1 (1):

Courts Legislation Amendment Act 2006, to the extent that it amends this Act

[5] Schedule 3, Part 8

Insert after Part 7:

Part 8 Provisions consequent on enactment of Courts Legislation Amendment Act 2006

11 Application of amendments to existing interlocutory orders

Section 127 (1), as amended by the *Courts Legislation Amendment Act 2006*, extends to an interlocutory order made in proceedings that were instituted before the commencement of that amendment but not finally determined before that commencement.

12 Proceedings to set aside or vary judgment or order of Judicial Registrar

- (1) The amendments made to section 18FB by the *Courts Legislation Amendment Act 2006* do not extend to an application to set aside or vary a judgment or order of the Judicial Registrar that has been made before the commencement of those amendments but not finally determined before the commencement of those amendments.

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- (2) Such an application may be dealt with as if those amendments had not commenced.

Schedule 5 Amendment of Judges' Pensions Act 1953 No 41

(Section 3)

[1] Section 10 Payment of pensions

Omit "monthly" from section 10 (1) (b). Insert instead "fortnightly".

[2] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

Courts Legislation Amendment Act 2006, to the extent that it amends this Act

Schedule 6 Amendment of Land and Environment Court Act 1979 No 204

(Section 3)

[1] Section 69 Costs

Omit “the Chief” from section 69 (8). Insert instead “a”.

[2] Schedule 3 Savings, transitional and other provisions

Insert after clause 6:

**7 Provisions consequent on enactment of Courts Legislation
Amendment Act 2006**

An amendment made to this Act by the *Courts Legislation Amendment Act 2006* extends to proceedings before the Court that were instituted or that the Court started to hear before the commencement of that amendment but had not finally determined before that commencement.

**Schedule 7 Amendment of Legal Profession
Act 2004 No 112**

(Section 3)

Section 353 Application for assessment of party/party costs

Insert “except as provided by section 257G of the *Criminal Procedure Act 1986*” after “court” in section 353 (3).

Schedule 8 Amendment of Local Courts Act 1982 No 164

(Section 3)

[1] Section 13 Appointments for limited tenure

Omit “(not being a term continuing past the date on which the Magistrate will attain the age of 72 years)” from section 13 (1) (a).

[2] Section 13 (2)

Insert after section 13 (1):

- (2) A person may be so appointed even though the person has reached the age of 72 years (or will have reached that age before the term of office expires), but may not be so appointed for any term of office that extends beyond the day on which he or she reaches the age of 75 years.

Note. Section 44 (3) of the *Judicial Officers Act 1986* provides that a Magistrate must retire on reaching the age of 72 years.

[3] Section 21 Additional terms of office

Omit “(not being a period continuing past the date on which the former Magistrate will attain the age of 72 years)” from section 21 (1).

[4] Section 21 (1A)

Insert after section 21 (1):

- (1A) A person may be so reinstated even though the person has reached the age of 72 years (or will have reached that age before the period of reinstatement expires), but may not be so reinstated for any period that extends beyond the day on which he or she reaches the age of 75 years.

[5] Section 21, note

Insert at the end of the section:

Note. Section 44 (3) of the *Judicial Officers Act 1986* provides that a Magistrate must retire on reaching the age of 72 years.

[6] Schedule 1 Savings and transitional provisions

Insert at the end of clause 8 (1):

Courts Legislation Amendment Act 2006, but only in relation to the amendments made to this Act

[7] Schedule 1, clause 18

Insert after clause 17:

18 Additional terms of office

The amendments made to sections 13 and 21 by the *Courts Legislation Amendment Act 2006* apply to a person who reached the age of 72 years before the commencement of those amendments.

Schedule 9 Amendment of Public Defenders Act 1995 No 28

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order:

part-time Public Defender means a Public Defender exercising his or her functions as a Public Defender on a part-time basis, as provided by an agreement referred to in section 6 (2A).

[2] Section 6 Appointment of Public Defenders

Insert after section 6 (2):

(2A) A Public Defender may, by agreement in writing entered into with the Senior Public Defender, exercise his or her functions as a Public Defender on a part-time basis.

[3] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Courts Legislation Amendment Act 2006, to the extent that it amends this Act

[4] Schedule 3, Part 3

Insert after Part 2:

Part 3 Provision consequent on enactment of Courts Legislation Amendment Act 2006

6 Part-time Public Defender

- (1) Section 6 (2A) applies to a Public Defender appointed before the commencement of that subsection.
- (2) Until a relevant determination is made and takes effect under the *Statutory and Other Offices Remuneration Act 1975*, a part-time Public Defender is entitled to be paid in accordance with the determination in force for the time being for Public Defenders, but on a pro rata basis (according to time spent in service), as calculated by the Attorney General.

Schedule 10 Amendment of Public Trustee Act 1913 No 19

(Section 3)

[1] Section 11 Property vested and powers transferred

Omit “the court” wherever occurring in section 11 (1).

Insert instead “the Court”.

[2] Section 36G

Omit the section. Insert instead:

36G Investment in common fund of money paid into court

- (1) Money paid into court that has subsequently been paid to the Public Trustee for payment into the common fund must be so paid by the Public Trustee.
- (2) The money must be paid into the common fund within one day after the date of the receipt of the money by the Public Trustee.
- (3) On demand by any registrar of the court in respect of which the relevant money was paid under subsection (1), the Public Trustee must repay the money together with interest on the money calculated in accordance with section 36A (3) and (4).
- (4) In this section, *court* means the following:
 - (a) the Supreme Court,
 - (b) the District Court,
 - (c) the Dust Diseases Tribunal,
 - (d) a Local Court.

[3] Section 55 Reciprocity where deceased domiciled in other States or New Zealand

Omit “the court”. Insert instead “the Court”.

[4] Section 56 Where deceased domiciled in New South Wales and administration granted in other States or New Zealand

Omit “the court” from section 56 (1). Insert instead “the Court”.