

[Act 2002 No 99]



New South Wales

## Courts Legislation Miscellaneous Amendments Bill 2002

### Explanatory note

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

### Overview of Bill

The object of this Bill is to make the following amendments to various Acts:

- (a) to make amendments consequential on the repeal of the *Justices Act 1902* and the insertion into the *Criminal Procedure Act 1986* and the *Local Courts Act 1982* of provisions relating to criminal and committal proceedings and application proceedings, respectively (Schedule 1),
  - (b) to make amendments to facilitate the establishment and operation of an electronic case management system for courts (Schedule 2),
  - (c) to enact uniform rules with respect to the kinds of appeals to the Court of Appeal that may only be made by leave of that Court and, in particular, to ensure that appeals against orders and decisions that are made with the consent of parties require such leave (Schedule 3),
  - (d) to make other minor, consequential and ancillary amendments to certain other Acts (Schedule 4).
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## 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 appointed by proclamation, except as provided by the proposed Act.

**Clause 3** is a formal provision giving effect to the amendments to the Acts contained in Schedules 1–4.

### **Schedule 1 Amendments relating to criminal procedure changes**

**Schedule 1.1** amends the *Crimes Act 1900* to enable employees of the Attorney General's Department, authorised by the Attorney General, to act as authorised justices under Part 15A of the *Crimes Act 1900* which enables the making of apprehended violence orders.

**Schedule 1.2 [1] and [5]** amend the *Criminal Procedure Act 1986* to require court attendance notices commencing committal proceedings before a Magistrate or summary proceedings in a Local Court to briefly state the particulars of the alleged offence.

**Schedule 1.2 [2]** omits the requirements for each court attendance notice to relate only to one offence.

**Schedule 1.2 [3]** makes it clear that a deposition made, under a provision of the *Criminal Procedure Act 1986*, by a person who was dangerously ill so that the person's evidence is not lost is an exception to the rule that a written statement made by a person who is dead is not admissible in committal proceedings.

**Schedule 1.2 [4]** removes the requirement under the *Criminal Procedure Act 1986* that a transcript of a record of a statement made by an accused person must be certified in a manner prescribed by rules of court before it can be given in evidence at the trial of the person.

**Schedule 1.2 [7]** inserts into the *Criminal Procedure Act 1986* a provision enabling regulations to be made prescribing proceedings in which a brief of evidence will not be required to be served by a prosecutor on an accused person in summary proceedings. **Schedule 1.2 [6]** makes a consequential amendment.

**Schedule 1.2 [8]–[10]** correct references to the revocation of warrants.

**Schedule 1.2 [11]–[15]** amend an evidentiary provision relating to warrants so as to provide for the evidentiary effect of a warrant signed by an authorised officer and to give to a copy of a warrant produced by an electronic process the same effect as a facsimile copy.

**Schedule 1.3** amends the *Gaming Machines Act 2001* to update a reference to laying an information for an offence.

**Schedule 1.4** reinstates provisions of the *Liquor Act 1982* repealed by the *Justices Legislation Repeal and Amendment Act 2001* relating to adjournments and amendment of documents in proceedings before the Licensing Court.

**Schedule 1.5 [1]** inserts into the *Local Courts Act 1982* a power to make regulations for or with respect to fees payable in respect of criminal or application proceedings in a Local Court or committal proceedings.

**Schedule 1.5 [2]** makes it clear that the general rule-making power under the *Local Courts Act 1982* extends to committal proceedings conducted by Magistrates.

**Schedule 1.5 [3]** enables rules to be made under the *Local Courts Act 1982* for or with respect to any matter for which a rule-making power is conferred by or under any other Act or law in relation to the practice or procedure of an Act or law conferring jurisdiction or functions on a Local Court or a Magistrate in committal proceedings.

**Schedule 1.5 [4]** re-enacts a provision that makes practice notes issued for Local Courts subject to disallowance and publication provisions applying to regulations.

**Schedule 1.5 [5]** continues in force regulations made under the *Justices Act 1902* prescribing fees for criminal and committal proceedings, pending the making of regulations under provisions inserted by the proposed Act.

**Schedule 1.6** amends the *Local Courts (Civil Claims) Act 1970* as a consequence of the amendment made by Schedule 1.5 [4].

**Schedule 1.7** modifies procedures for applications for noise abatement orders under the *Protection of the Environment Operations Act 1997* to reflect procedures and terminology consequent on the insertion of Part 6 into the *Local Courts Act 1982* which provides for application proceedings in Local Courts.

## **Schedule 2 Amendments relating to electronic case management for courts**

### **Electronic Transactions Act 2000 No 8**

**Schedule 2.1** inserts a new Part 2A into the Act to facilitate the use of electronic transactions in the context of courts administration. The new Part contains the following provisions:

**Proposed section 14A** defines certain words and expressions for the purposes of the proposed Part, including *ECM system* (meaning an electronic case

management system established under proposed section 14B) and *ECM court* (meaning a court in respect of which the use of an ECM system is authorised under proposed section 14C).

**Proposed section 14B** enables the Attorney General to establish an electronic case management system for use in connection with court proceedings.

**Proposed section 14C** enables the Attorney General to authorise the use of an ECM system by specified courts.

**Proposed section 14D** provides that any statutory requirement for documents filed in or issued by an ECM court to be in writing is satisfied by a document filed by means of the ECM system.

**Proposed section 14E** provides that any statutory requirement for documents filed in or issued by an ECM court to be signed or sealed is satisfied (in the case of documents filed or issued by means of the ECM system) if the document is authenticated by a facsimile of the relevant signature or seal or in some other manner allowed by rules of court.

**Proposed section 14F** provides that any statutory requirement for original or certified documents to be filed in an ECM court is satisfied (in the case of documents filed or issued by means of the ECM system) by the filing of a copy of the relevant document.

**Proposed section 14G** provides that any statutory requirement for multiple copies of documents to be filed or served does not apply to documents filed with an ECM court by means of the ECM system or to documents that, having been filed in an ECM court, are served electronically.

**Proposed section 14H** provides that documents created by means of the ECM system, whether by an ECM court or by a party to proceedings in an ECM court, are taken to have been issued by the court, or filed by the party, as the case requires.

**Proposed section 14I** enables the rules of an ECM court to authorise certain kinds of hearing to be conducted by electronic communication sent by means of the ECM system.

**Proposed section 14J** provides that misdirected initiating process (that is, process that is filed with an ECM court that does not have jurisdiction to hear the matter concerned) is to be remitted to a court that has the appropriate jurisdiction and deems that it is taken to have been lodged in the appropriate court as from the time it was originally filed.

**Proposed section 14K** provides that transactions effected by means of the ECM system are taken to have been effected in Sydney (and consequently to have been effected according to Sydney time).

**Proposed section 14L** protects the Crown from actions for defamation and breach of confidence in relation to matter disclosed as a consequence of the use of the ECM system.

**Proposed section 14M** provides that documents that have been filed in, or issued by, an ECM court and that are subsequently served electronically are taken (if served after 5.00pm) to have been served on the following day and (if served on a Saturday, Sunday or public holiday) to have been served on the next day that is not a Saturday, Sunday or public holiday.

**Proposed section 14N** enables the rules of an ECM court (or regulations, in the case of a court whose practice and procedure are governed by regulations) to make provision with respect to the operation, use and control of the system in relation to that court and proceedings before that court.

**Proposed section 14O** enables the regulations under the *Electronic Transactions Act 2000* to contain savings and transitional provisions consequent on the granting or withdrawal of an authorisation under proposed section 14C with respect to the use of the ECM system in relation to a court.

**Proposed section 14P** applies the proposed Part to proceedings before an ECM court that have been remitted to that court by a non-ECM court.

**Proposed section 14Q** provides that proceedings with respect to the assessment of costs under the *Legal Profession Act 1987* are taken to be proceedings before the Supreme Court for the purposes of the proposed Part.

**Proposed section 14R** excludes Part 2 from matters relating to the practice or procedure of a court, so continuing an exclusion that currently exists under the regulations under the *Electronic Transactions Act 2000*.

### **Coroners Act 1980 No 27**

**Schedule 2.2** amends section 58 of the *Coroners Act 1980* so as to enable the regulations under that Act to make provision with respect to the use of an electronic case management system whose use, in respect of inquests and inquiries, is authorised under proposed section 14C of the *Electronic Transactions Act 2000*.

## **Schedule 3 Amendments relating to appeals to the Court of Appeal**

**Schedule 3** amends the following Acts so as to enact uniform rules with respect to the kinds of appeals to the Court of Appeal that may only be made by leave of that Court and, in particular, to ensure that appeals against orders and decisions that are made with the consent of parties require such leave:

- (a) *Administrative Decisions Tribunal Act 1997,*
- (b) *Compensation Court Act 1984,*
- (c) *District Court Act 1973,*
- (d) *Dust Diseases Tribunal Act 1989,*
- (e) *Land and Environment Court Act 1979,*
- (f) *Local Courts (Civil Claims) Act 1970,*
- (g) *Workplace Injury Management and Workers Compensation Act 1998.*

## **Schedule 4 Miscellaneous amendments**

**Schedule 4.1** repeals an unintended consequential amendment to the *Coroners Act 1980*, which would have removed the discretion of the Coroner as to whether to hold inquests in certain cases. The amendment commences, or is taken to have commenced, on the date of assent to the proposed Act or on the commencement of the *Community Services Legislation Amendment Act 2002*, whichever is the earlier.

**Schedule 4.2** makes it clear that a certificate under the *Costs in Criminal Cases Act 1967* may be granted where a direction is given by the Director of Public Prosecutions that no further proceedings be taken.

**Schedule 4.3** amends section 80 of the *Interpretation Act 1987* so as to apply that section not only to forms that are prescribed by an Act or statutory rule but also to forms that are approved under an Act or statutory rule, and so as to allow rules of court to provide for forms to be approved even though some other Act or statutory rule requires those forms to be prescribed by the rules.

**Schedule 4.4** amends the *Legal Profession Act 1987* in the following respects:

- (a) so as to ensure that references to the Manager, Costs Assessment, extend to delegates of the Manager (**Schedule 4.4 [1]**),
- (b) so as to enable the Manager, Costs Assessment, to allow further time for the lodgment of an application for the assessment of costs under section 200 (**Schedule 4.4 [2]**),
- (c) so as to restrict the circumstances in which further time may be allowed as referred to in paragraph (b) (**Schedule 4.4 [3]**),
- (d) so as to remove a requirement that the form for an application for the assessment of costs be prescribed by regulation (**Schedule 4.4 [4]**),
- (e) so as to replace the strict requirement for all parties to be given copies of an application for assessment of costs with a requirement for reasonable steps to be taken to ensure that such copies are given (**Schedule 4.4 [5]**),

- (f) so as to enable applicants who are in a position to do so to provide documentation to a costs assessor in electronic form (**Schedule 4.4 [6]**),
- (g) so as to ensure that any judgment arising from the filing of a costs assessor's determination as to costs is varied under section 208JB (Correction of error in determination) only when the corrected determination is duly filed (**Schedule 4.4 [7]**),
- (h) so as to enable the Manager, Costs Assessment, to allow further time for the lodgment of an application for review of a costs assessor's determination as to costs under section 208KA (Application for review of determination) (**Schedule 4.4 [8]**),
- (i) so as to restrict the circumstances in which further time may be allowed as referred to in paragraph (h) (**Schedule 4.4 [9]**),
- (j) so as to remove a requirement that the form for an application for the review of an assessment of costs be prescribed by regulation (**Schedule 4.4 [10]**),
- (k) so as to ensure that any judgment arising from the filing of a determination as to costs is varied under section 208KHA (Correction of error in determination) only when the corrected determination is duly filed (**Schedule 4.4 [11]**),
- (l) so as to enable savings and transitional regulations to be made as a consequence of the amendment of the *Legal Profession Act 1987* by the proposed Act (**Schedule 4.4 [12]**),
- (m) so as to enact specific savings and transitional provisions as a consequence of the amendment of the *Legal Profession Act 1987* by the proposed Act (**Schedule 4.4 [13]**).