



New South Wales

# Courts and Other Miscellaneous Legislation Amendment Bill 2013

## 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 *Anti-Discrimination Act 1977* to make it clear that in the case of indirect discrimination there is no need to prove that a ground of discrimination under the Act is a reason for the discriminatory requirement or condition,
- (b) to amend the *Civil Procedure Act 2005* to update the way in which the maximum total payment under a garnishee order is calculated,
- (c) to amend the *Dust Diseases Tribunal Act 1989* to enable the President of the Tribunal to delegate to another member of the Tribunal functions relating to managing the proceedings list, namely, fixing the time, place and before whom proceedings are to be held,
- (d) to amend the *Evidence (Audio and Audio Visual Links) Act 1998* to allow accused detainees to appear in first appearance bail proceedings via an audio or audio visual link during the Christmas/New Year period in each year and the Local Court Annual Conference in any year,

- (e) to amend the *Fines Act 1996* to allow certain court registrars to authorise employees of the Department of Attorney General and Justice to consider applications for further time to pay a court-imposed fine,
- (f) to amend the *Government Information (Public Access) Act 2009* to exclude information relating to the functions of the DNA Review Panel, other than its functions relating to reporting and making recommendations to the Minister, from being able to be accessed under that Act,
- (g) to amend the *Local Court Act 2007* to provide for the appointment of a legally qualified and admitted police prosecutor as a member of the Local Court Rule Committee when the Committee is exercising its functions in respect of matters relating to the Court's criminal jurisdiction,
- (h) to amend the *Young Offenders Act 1997* to authorise the exchange of information relating to early intervention and diversionary programs administered by the Department of Attorney General and Justice.

## 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 the date of assent to the proposed Act.

**Clause 3** makes it clear that the explanatory notes contained in proposed Schedule 1 do not form part of the proposed Act.

## Schedule 1      Amendment of Acts

**Schedule 1** makes the amendments described above in the Overview. The amendments are explained in detail in the explanatory note that relates to the Act concerned.

First print



New South Wales

# Courts and Other Miscellaneous Legislation Amendment Bill 2013

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Explanatory notes	2
Schedule 1 Amendment of Acts	3





New South Wales

# Courts and Other Miscellaneous Legislation Amendment Bill 2013

No. , 2013

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## **A Bill for**

An Act to make miscellaneous amendments to certain legislation with respect to courts and certain other legislation administered by the Attorney General.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Courts and Other Miscellaneous Legislation Amendment Act 2013</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on the date of assent to this Act.	6
<b>3 Explanatory notes</b>	7
The matter appearing under the heading “Explanatory note” in Schedule 1 does not form part of this Act.	8 9

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<b>Schedule 1</b>	<b>Amendment of Acts</b>	1
<b>1.1</b>	<b>Anti-Discrimination Act 1977 No 48</b>	2
<b>[1]</b>	<b>Section 7 What constitutes discrimination on the ground of race</b>	3
	Omit “, on the ground of the aggrieved person’s race or the race of a relative or associate of the aggrieved person,” from section 7 (1).	4 5
<b>[2]</b>	<b>Section 7 (1) (a)</b>	6
	Insert “on the ground of the aggrieved person’s race or the race of a relative or associate of the aggrieved person,” before “treats the aggrieved person”.	7 8
<b>[3]</b>	<b>Section 7 (1) (b)</b>	9
	Insert “on the ground of the aggrieved person’s race or the race of a relative or associate of the aggrieved person,” before “segregates”.	10 11
<b>[4]</b>	<b>Section 7 (1) (c)</b>	12
	Omit “such”.	13
<b>[5]</b>	<b>Section 24 What constitutes discrimination on the ground of sex</b>	14
	Omit “, on the ground of the aggrieved person’s sex or the sex of a relative or associate of the aggrieved person,” from section 24 (1).	15 16
<b>[6]</b>	<b>Section 24 (1) (a)</b>	17
	Insert “on the ground of the aggrieved person’s sex or the sex of a relative or associate of the aggrieved person,” before “treats the aggrieved person”.	18 19
<b>[7]</b>	<b>Section 24 (1) (b)</b>	20
	Omit “such”.	21
<b>[8]</b>	<b>Section 38B What constitutes discrimination on transgender grounds</b>	22
	Omit “, on the ground of the aggrieved person being transgender or a relative or associate of the aggrieved person being transgender,” from section 38B (1).	23 24
<b>[9]</b>	<b>Section 38B (1) (a)</b>	25
	Insert “on the ground of the aggrieved person being transgender or a relative or associate of the aggrieved person being transgender,” before “treats the aggrieved person”.	26 27 28

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<b>[10] Section 39 What constitutes discrimination on the ground of marital or domestic status</b>	1 2
Omit “, on the ground of the aggrieved person’s marital or domestic status or the marital or domestic status of a relative or associate of the aggrieved person,” from section 39 (1).	3 4 5
<b>[11] Section 39 (1) (a)</b>	6
Insert “on the ground of the aggrieved person’s marital or domestic status or the marital or domestic status of a relative or associate of the aggrieved person,” before “treats the aggrieved person”.	7 8 9
<b>[12] Section 39 (1) (b)</b>	10
Omit “such”.	11
<b>[13] Section 49B What constitutes discrimination on the ground of disability</b>	12
Omit “, on the ground of the aggrieved person’s disability or the disability of a relative or associate of the aggrieved person,” from section 49B (1).	13 14
<b>[14] Section 49B (1) (a)</b>	15
Insert “on the ground of the aggrieved person’s disability or the disability of a relative or associate of the aggrieved person,” before “treats the aggrieved person”.	16 17 18
<b>[15] Section 49B (1) (b)</b>	19
Omit “such”.	20
<b>[16] Section 49T What constitutes discrimination on the ground of a person’s responsibilities as a carer</b>	21 22
Omit “, on the ground of the aggrieved person having responsibilities as a carer,” from section 49T (1).	23 24
<b>[17] Section 49T (1) (a)</b>	25
Insert “on the ground of the aggrieved person having responsibilities as a carer,” before “treats the aggrieved person”.	26 27
<b>[18] Section 49ZG What constitutes discrimination on the ground of homosexuality</b>	28 29
Omit “, on the ground of the aggrieved person’s homosexuality or the homosexuality of a relative or associate of the aggrieved person,” from section 49ZG (1).	30 31 32



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<b>[19] Section 49ZG (1) (a)</b>	1
Insert “on the ground of the aggrieved person’s homosexuality or the homosexuality of a relative or associate of the aggrieved person,” before “treats the aggrieved person”.	2 3 4
<b>[20] Section 49ZG (1) (b)</b>	5
Omit “such”.	6
<b>[21] Section 49ZYA What constitutes discrimination on the ground of age</b>	7
Omit “, on the ground of the aggrieved person’s age or the age of a relative or associate of the aggrieved person,” from section 49ZYA (1).	8 9
<b>[22] Section 49ZYA (1) (a)</b>	10
Insert “on the ground of the aggrieved person’s age or the age of a relative or associate of the aggrieved person,” before “treats the aggrieved person”.	11 12
<b>[23] Section 49ZYA (1) (b)</b>	13
Omit “such”.	14
<b>Explanatory note</b>	15
The proposed amendments to the <i>Anti-Discrimination Act 1977</i> make it clear that in the case of indirect discrimination (which involves a discriminatory requirement or condition) there is no need to prove that a particular ground of discrimination under the Act is a reason for the discriminatory requirement or condition. The amendments reflect the NSW Court of Appeal decision in <i>Amery &amp; Ors v State of New South Wales</i> ( <i>Director-General NSW Department of Education and Training</i> ) [2004] NSWCA 404.	16 17 18 19 20 21
<b>1.2 Civil Procedure Act 2005 No 28</b>	22
<b>[1] Section 122 Maximum total payment under all garnishee orders</b>	23
Omit “the standard workers compensation weekly benefit” from section 122 (1).	24 25
Insert instead “\$447.70 as adjusted under Division 6 of Part 3 of the <i>Workers Compensation Act 1987</i> ”.	26 27
<b>[2] Section 122 (1A)</b>	28
Insert after section 122 (1):	29
(1A) The amount of \$447.70 referred to in subsection (1) is an <i>adjustable amount</i> for the purposes of Division 6 of Part 3 of the <i>Workers Compensation Act 1987</i> .	30 31 32

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<b>[3] Section 122 (2)</b>	1
Omit the definition of <i>standard workers compensation weekly benefit</i> .	2
<b>Explanatory note</b>	3
The proposed amendments update the way in which the maximum total payment under a garnishee order is calculated.	4 5
<b>1.3 Dust Diseases Tribunal Act 1989 No 63</b>	6
<b>Section 13 Proceedings before the Tribunal</b>	7
Insert after section 13 (2):	8
(3) The President may delegate to a member the President's functions under subsection (2).	9 10
<b>Explanatory note</b>	11
The proposed amendment enables the President of the Dust Diseases Tribunal to delegate to another member of the Tribunal functions relating to managing the proceedings list, namely, fixing the time, place and before whom proceedings are to be held.	12 13 14 15
<b>1.4 Evidence (Audio and Audio Visual Links) Act 1998 No 105</b>	16
<b>Section 5BA Accused detainee to appear physically in physical appearance proceedings</b>	17 18
Omit section 5BA (2). Insert instead:	19
(2) Subsection (1) does not apply to any bail proceedings that:	20
(a) occur during a weekend, or	21
(b) occur on a public holiday, or	22
(c) occur during each period commencing on 24 December and ending on the first Friday following 31 December, or	23 24
(d) occur on each of the days on which the Local Court Annual Conference is held in any year, or	25 26
(e) relate to an accused detainee who is being held in custody at a place prescribed by the regulations.	27 28
<b>Explanatory note</b>	29
The proposed amendment expands the occasions on which an accused detainee is permitted to appear in first appearance bail proceedings via an audio or audio visual link as an exception to the requirement in section 5BA (1) of the <i>Evidence (Audio and Audio Visual Links) Act 1998</i> to appear physically in those proceedings. The further occasions are the Christmas/New Year period in each year and during the Local Court Annual Conference in any year.	30 31 32 33 34 35

<b>1.5 Fines Act 1996 No 99</b>	1
<b>Section 11 Provisions relating to application for further time to pay fine</b>	2
Insert after section 11 (7):	3
(8) Without limiting subsection (7), the principal registrar of the District Court, a registrar of the Local Court at the Downing Centre and a registrar of the Children’s Court may authorise, subject to any conditions specified in the authorisation, a person employed in the Department of Attorney General and Justice to deal with an application and to make, amend or revoke an order allowing further time to pay a fine.	4 5 6 7 8 9 10
<b>Explanatory note</b>	11
The proposed amendment allows specified registrars of the District Court, Local Court and Children’s Court to authorise employees of the Department of Attorney General and Justice to consider applications for further time to pay a court-imposed fine.	12 13 14
<b>1.6 Government Information (Public Access) Act 2009 No 52</b>	15
<b>Schedule 2 Excluded information of particular agencies</b>	16
Insert at the end of clause 2:	17
The DNA Review Panel—all functions other than functions under section 91 (1) (d) of the <i>Crimes (Appeal and Review) Act 2001</i> .	18 19 20
<b>Explanatory note</b>	21
The proposed amendment excludes information relating to the functions of the DNA Review Panel, other than its functions relating to reporting and making recommendations to the Minister, from being able to be accessed under the <i>Government Information (Public Access) Act 2009</i> .	22 23 24 25
<b>1.7 Local Court Act 2007 No 93</b>	26
<b>Section 25 Local Court Rule Committee</b>	27
Omit section 25 (4). Insert instead:	28
(4) The Rule Committee, when exercising its functions in respect of matters relating to the jurisdiction referred to in section 9 (c), is to have 3 additional members as follows:	29 30 31
(a) a person appointed by the Chief Magistrate on the nomination of the Director of Public Prosecutions,	32 33

- (b) a person appointed by the Chief Magistrate on the nomination of the Legal Aid Commission, 1  
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- (c) a police prosecutor admitted to the legal profession under the *Legal Profession Act 2004* appointed by the Chief Magistrate on the nomination of the Commissioner of Police. 3  
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**Explanatory note** 7

The proposed amendment provides for the appointment of a legally qualified and admitted police prosecutor as a member of the Local Court Rule Committee when the Committee is exercising its functions in respect of matters relating to the Court's criminal jurisdiction. 8  
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**1.8 Young Offenders Act 1997 No 54** 12

**[1] Section 66 Disclosure of records** 13

Insert after section 66 (2) (f): 14

- (g) records of, or relating to, warnings, cautions and conferences under this Act may (subject to any regulations made for the purposes of subsection (3)) be divulged to an authorised officer of the Department of Attorney General and Justice for use in connection with the Department's Youth on Track scheme or such other early intervention or diversionary program administered by the Department that is prescribed by the regulations, 15  
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- (h) any records divulged to an authorised officer of the Department of Attorney General and Justice under paragraph (g) may (subject to any regulations made for the purposes of subsection (3)) be divulged by an authorised officer of the Department to a non-government organisation engaged by the Department to provide services in connection with the Department's Youth on Track scheme or such other early intervention or diversionary program administered by the Department that is prescribed by the regulations. 23  
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<b>[2] Section 66 (3)</b>	1
Omit “(e) or (f)”. Insert instead “(e)–(h)”.	2
<b>Explanatory note</b>	3
The proposed amendments authorise the disclosure of records of, or relating to, warnings, cautions and conferences under the <i>Young Offenders Act 1997</i> by the NSW Police Force to the Department of Attorney General and Justice, and the disclosure of those records by the Department to certain bodies, for the purposes of the Department’s Youth on Track scheme or such other prescribed early intervention or diversionary program administered by the Department.	4 5 6 7 8 9