



New South Wales

Courts and Other Legislation Amendment Bill 2014

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 permit annual reports under the *Anti-Discrimination Act 1977*, *Inspector of Custodial Services Act 2012*, *Professional Standards Act 1994*, *Public Defenders Act 1995* and *Workplace Surveillance Act 2005* to be laid before a House of Parliament when the House is not sitting,
- (b) to provide for the re-appointment and suspension of justices of the peace and to provide that the office of justice of the peace is not a public office under the *State Records Act 1998*,
- (c) to clarify that the former President of the Industrial Relations Commission is not taken to be the President when continuing to deal with matters that have been heard, or partly heard,
- (d) to set out the circumstances in which a report about an investigation of a complaint against a judicial officer is to be given to the judicial officer and to the complainant,
- (e) to make provision for an increase in the superannuation guarantee from 9% to 9.25% with respect to the pensions of judges and acting judges,
- (f) to permit oaths, declarations and affidavits to be taken or made before certain employees in Australian overseas posts and for such employees to be able to verify or certify instruments,
- (g) to extend by 2 months the time within which the State Coroner is required to give an annual report on deaths in custody to the Attorney General,
- (h) to permit information to be disclosed to the Bureau of Crime Statistics and Research despite the existence of a suppression order,

- (i) to provide for the qualifications required to be held by commissioners of the Land and Environment Court with respect to matters under the *Aboriginal Land Rights Act 1983*,
- (j) to clarify the application of a provision of the *Supreme Court Act 1970* that stays the execution of sentences.

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, except for amendments to the *Judges' Pensions Act 1953* which are taken to have commenced on 1 July 2013.

Schedule 1 Amendments relating to annual reports

Schedule 1 amends the *Anti-Discrimination Act 1977*, the *Inspector of Custodial Services Act 2012*, the *Professional Standards Act 1994*, the *Public Defenders Act 1995* and the *Workplace Surveillance Act 2005* to permit the annual report that is required to be prepared under each of those Acts to be laid before a House of Parliament when the House is not sitting. This is consistent with the process under the *Annual Reports (Departments) Act 1985* and the *Annual Reports (Statutory Bodies) Act 1984* which cover a significant number of annual reports required to be prepared by Government departments and statutory bodies.

Schedule 2 Amendments relating to justices of the peace

Schedule 2.1 amends the *Justices of the Peace Act 2002* to permit regulations to be made to provide for the extension or shortening of the term of office of particular justices of the peace. It is envisaged that this will be used for the purpose of ensuring that the workload of processing appointments and re-appointments of justices of the peace is more evenly spread (it should be noted that there are currently more than 90,000 justices of the peace in New South Wales). The proposed amendments also provide for the suspension of a person from the office of justice of the peace if the person is charged with certain offences, or if there are circumstances in which the person may be removed from office or in other circumstances prescribed by regulations made under that Act. The proposed amendments also provide for regulations under the *Justices of the Peace Act 2002* to contain provisions of a savings or transitional nature consequent on the enactment of that Act or any Act that amends that Act (including the proposed Act).

Schedule 2.2 amends the *State Records Act 1998* to provide that the office of justice of the peace is not a public office for the purposes of that Act and is therefore not subject to the records management responsibilities under that Act.

Schedule 3 Amendments relating to judicial officers

Schedule 3.1 amends the *Industrial Relations Act 1996* to clarify that a former President of the Industrial Relations Commission of New South Wales who continues to deal with matters relating to proceedings that have been heard, or partly heard, cannot exercise the functions of the President and nor is the former President taken to be the President.

Schedule 3.2 amends the *Judges' Pensions Act 1953* to take account of the increase in the superannuation guarantee from 9% to 9.25% on 1 July 2013. The proposed amendments allow for future changes to the superannuation guarantee to be taken into account without the need for further amendment to that Act. The proposed amendments also provide for regulations under the *Judges' Pensions Act 1953* to contain provisions of a savings or transitional nature consequent on the enactment of that Act or any Act that amends that Act (including the proposed Act).

Schedule 3.3 amends the *Judicial Officers Act 1986* to require the Conduct Division of the Judicial Commission to provide a report to the Judicial Commission of how it has dealt with a complaint about a judicial officer that has been referred to it. The Judicial Commission must give

a copy of the report to the judicial officer concerned and may give a copy of the report (or a summary of the report) to the complainant unless the Conduct Division has notified the Judicial Commission that this should not occur. The proposed amendments also provide for regulations under the *Judicial Officers Act 1986* to contain provisions of a savings or transitional nature consequent on the enactment of that Act or any Act that amends that Act (including the proposed Act).

Schedule 4 Amendments relating to consular officers

Schedule 4 amends the *Oaths Act 1900*, the *Conveyancing Act 1919* and the *Powers of Attorney Regulation 2011* to expand the class of persons who are to be Australian Consular Officers for the purposes of certain provisions of those Acts and Regulation. Australian Consular Officers now include those employees of the Commonwealth or of the Australian Trade Commission who have been authorised by the Secretary of the Commonwealth Department of Foreign Affairs and Trade. This means that oaths, declarations or affidavits can now be taken or made before any such person for the purposes of the *Oaths Act 1900* and any such person can verify or certify instruments under the *Conveyancing Act 1919* or the *Powers of Attorney Regulation 2011*.

Schedule 5 Other amendments

Schedule 5.1 amends the *Coroners Act 2009* to extend, by 2 months, the period within which the State Coroner is in each year to make an annual report to the Attorney General containing a summary of the details of the deaths or suspected deaths that have occurred in custody or as a result of police operations.

Schedule 5.2 amends the *Court Suppression and Non-publication Orders Act 2010* to permit the disclosure of information to the Bureau of Crime Statistics and Research despite the existence of a suppression order under that Act.

Schedule 5.3 amends the *Land and Environment Court Act 1979* to provide that a Commissioner can hear matters under the *Aboriginal Land Rights Act 1983* if the Commissioner has suitable knowledge of matters concerning land rights for Aborigines and qualifications and experience suitable for the determination of disputes involving Aborigines. Any such Commissioner who has no other qualification that would permit the person to be appointed as a Commissioner may only exercise functions under the *Land and Environment Court Act 1979* in relation to proceedings under the *Aboriginal Land Rights Act 1983*.

Schedule 5.4 amends section 69C (Stay of execution of conviction, order or sentence pending review) of the *Supreme Court Act 1970* to make it clear that section 69C (2) applies to stay the execution of a sentence and to stay the execution of an order. The amendment to that subsection also provides that an apprehended violence order is not stayed. Section 69C is also amended to clarify that a reference in that section to a person who is in custody includes a reference to a person who is the subject of an intensive correction order or home detention order.



New South Wales

Courts and Other Legislation Amendment Bill 2014

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New South Wales

Courts and Other Legislation Amendment Bill 2014

No. , 2014

A Bill for

An Act to make miscellaneous amendments to certain legislation with respect to annual reports, justices of the peace, judicial and consular officers and certain other legislation administered by the Attorney General.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Courts and Other Legislation Amendment Act 2014</i> .	3
2 Commencement	4
(1) This Act commences on the date of assent to this Act except as provided by subsection (2).	5 6
(2) Schedule 3.2 is taken to have commenced on 1 July 2013.	7

Schedule 1	Amendments relating to annual reports	1
1.1	Anti-Discrimination Act 1977 No 48	2
	Section 122 Annual report	3
	Insert after section 122 (2):	4
	(3) If a House of Parliament is not sitting when the Minister seeks to lay the report before it, the Minister is to cause a copy of the report to be presented to the Clerk of that House of Parliament.	5 6 7
	(4) A report presented under subsection (3):	8
	(a) is, on presentation and for all purposes, taken to have been laid before the House, and	9 10
	(b) may be printed by authority of the Clerk of the House, and	11
	(c) if so printed, is taken to be a document published by or under the authority of the House, and	12 13
	(d) is to be recorded:	14
	(i) in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, and	15 16
	(ii) in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly,	17 18
	on the first sitting day of the House after receipt of the copy of the report by the Clerk.	19 20
1.2	Inspector of Custodial Services Act 2012 No 55	21
[1]	Section 13 Other reports to be provided to Parliament	22
	Omit the section.	23
[2]	Section 16 Provisions relating to reports to Parliament	24
	Insert before section 16 (1):	25
	(1A) Any report to Parliament made by the Inspector under this Act is to be made by furnishing the report to the Presiding Officer of each House of Parliament.	26 27
[3]	Section 16 (6) and (7)	28
	Insert after section 16 (5):	29
	(6) If the report is an annual report under section 12 and a House of Parliament is not sitting when the Inspector seeks to make the report to that House, the Inspector may furnish the report to the Clerk of that House of Parliament rather than the Presiding Officer of that House.	30 31 32 33
	(7) A report presented under subsection (6):	34
	(a) is, when furnished to the Clerk and for all purposes, taken to have been made to the House, and	35 36
	(b) may be printed by authority of the Clerk of the House, and	37
	(c) if so printed, is taken to be a document published by or under the authority of the House, and	38 39

(d)	is to be recorded:	1
(i)	in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, and	2 3
(ii)	in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly,	4 5
	on the first sitting day of the House after receipt of the report by the Clerk.	6 7
1.3	Professional Standards Act 1994 No 81	8
	Section 47 Annual report	9
	Insert after section 47 (2):	10
(2A)	If a House of Parliament is not sitting when the Minister seeks to lay the report before it, the Minister is to cause a copy of the report to be presented to the Clerk of that House of Parliament.	11 12 13
(2B)	A report presented under subsection (2A):	14
(a)	is, on presentation and for all purposes, taken to have been laid before the House, and	15 16
(b)	may be printed by authority of the Clerk of the House, and	17
(c)	if so printed, is taken to be a document published by or under the authority of the House, and	18 19
(d)	is to be recorded:	20
(i)	in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, and	21 22
(ii)	in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly,	23 24
	on the first sitting day of the House after receipt of the copy of the report by the Clerk.	25 26
1.4	Public Defenders Act 1995 No 28	27
	Section 17 Annual report	28
	Insert after section 17 (2):	29
(3)	If a House of Parliament is not sitting when the Attorney General seeks to lay the report before it, the Attorney General is to cause a copy of the report to be presented to the Clerk of that House of Parliament.	30 31 32
(4)	A report presented under subsection (3):	33
(a)	is, on presentation and for all purposes, taken to have been laid before the House, and	34 35
(b)	may be printed by authority of the Clerk of the House, and	36
(c)	if so printed, is taken to be a document published by or under the authority of the House, and	37 38
(d)	is to be recorded:	39
(i)	in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, and	40 41

(ii) in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly,	1 2
on the first sitting day of the House after receipt of the copy of the report by the Clerk.	3 4
1.5 Workplace Surveillance Act 2005 No 47	5
Section 42 Annual report	6
Insert after section 42 (1):	7
(1A) If a House of Parliament is not sitting when the Minister seeks to lay the report before it, the Minister is to cause a copy of the report to be presented to the Clerk of that House of Parliament.	8 9 10
(1B) A report presented under subsection (1A):	11
(a) is, on presentation and for all purposes, taken to have been laid before the House, and	12 13
(b) may be printed by authority of the Clerk of the House, and	14
(c) if so printed, is taken to be a document published by or under the authority of the House, and	15 16
(d) is to be recorded:	17
(i) in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, and	18 19
(ii) in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly,	20 21
on the first sitting day of the House after receipt of the copy of the report by the Clerk.	22 23

Schedule 2	Amendments relating to justices of the peace	1
2.1	Justices of the Peace Act 2002 No 27	2
[1]	Section 4 Appointment of justices of the peace	3
	Insert “(subject to the regulations)” after “appointment” in section 4 (3).	4
[2]	Section 4 (3A)	5
	Insert after section 4 (3):	6
	(3A) A regulation under subsection (3) cannot provide for a reduction of the term of office of any justice of the peace by more than 1 year and cannot provide for an extension of the term of office of any justice of the peace by more than 2 years.	7 8 9 10
[3]	Section 4 (4)	11
	Omit “subsection (3)”. Insert instead “subsections (3) and (3A)”.	12
[4]	Section 9A	13
	Insert after section 9:	14
	9A Suspension	15
	(1) The Minister may at any time suspend a justice of the peace from office.	16
	(2) Without limiting subsection (1), the Minister may at any time suspend a justice of the peace from office:	17 18
	(a) if the person is charged with an offence referred to in section 9 (3) (c), or	19
	(b) in any of the circumstances set out in section 9 (3) (a)–(d), or	20
	(c) in any other circumstances prescribed by the regulations.	21
	(3) A suspension takes effect on the day on which written notice of the suspension is given to the justice of the peace concerned or at such later time as may be specified in the notice.	22 23 24
	(4) A person who is suspended under this section is taken not to be a justice of the peace and cannot exercise any function of a justice of the peace during that suspension.	25 26 27
	(5) The purported exercise of any function by a justice of the peace during any period that the justice of the peace is suspended cannot be used to challenge or call into question any document or other thing unless the person relying on the document or other thing knew, or ought reasonably to have known, that the justice of the peace was suspended when purporting to exercise the relevant function.	28 29 30 31 32 33
	(6) A suspension ceases to have effect when it is withdrawn by the Minister by notice in writing given to the person who is suspended.	34 35
[5]	Schedule 1 Savings and transitional provisions	36
	Omit clause 1 (1). Insert instead:	37
	(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.	38 39

[6] Schedule 1, clause 4	1
Insert after clause 3:	2
4 Amendments made by Courts and Other Legislation Amendment Act 2014	3
Section 4 (3A) as inserted by the <i>Courts and Other Legislation Amendment Act 2014</i> extends to a term of office of a justice of the peace that was commenced before the commencement of that subsection.	4 5 6
2.2 State Records Act 1998 No 17	7
Section 3 Definitions	8
Insert “or a justice of the peace within the meaning of the <i>Justices of the Peace Act 2002</i> ” after “ <i>Workers Compensation Act 1987</i> ” in the definition of public office in section 3 (1).	9 10

Schedule 3	Amendments relating to judicial officers	1
3.1	Industrial Relations Act 1996 No 17	2
	Schedule 2 Provisions relating to members of Commission	3
	Insert after clause 10A (3):	4
	(3A) For the avoidance of doubt, a former member who held office as the President cannot exercise the functions of the President and is not taken to be the President.	5 6 7
3.2	Judges' Pensions Act 1953 No 41	8
[1]	Section 13 Calculation of lump sum benefits	9
	Omit "0.09" from the formula in section 13 (1). Insert instead "S".	10
[2]	Section 13 (1)	11
	Insert after " B represents the amount to be ascertained.":	12
	S represents the superannuation guarantee.	13
[3]	Section 13 (1A)	14
	Insert after section 13 (1):	15
	(1A) More than one calculation is required under subsection (1) if the superannuation guarantee level changes during the years of service of a judge or acting judge. In such a case, separate calculations are to be made in respect of each such level with Y being limited to the years of service (calculated on a daily basis) of the judge or acting judge during the period when the superannuation guarantee is at that particular level.	16 17 18 19 20 21
[4]	Section 13 (2)	22
	Insert in alphabetical order:	23
	<i>superannuation guarantee</i> means:	24
	(a) before 1 July 2013—9%, or	25
	(b) for any other time—the charge percentage specified at the time in section 19 (2) of the <i>Superannuation Guarantee (Administration) Act 1992</i> of the Commonwealth.	26 27 28
[5]	Schedule 1 Savings and transitional provisions	29
	Omit clause 1 (1). Insert instead:	30
	(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.	31 32
3.3	Judicial Officers Act 1986 No 100	33
[1]	Section 26 Dismissal of complaint by Conduct Division	34
	Insert at the end of the section:	35
	(2) If the Conduct Division dismisses a complaint it must give a report to the Commission setting out the Division's conclusions.	36 37
	(3) The Commission must give a copy of the report to the judicial officer concerned.	38 39

(4)	The Commission may give a copy of the report (or a summary of the report) to the complainant unless the Conduct Division has notified the Commission in writing that this should not occur.	1 2 3
[2]	Section 28 Substantiation of complaint	4
	Insert after section 28 (3):	5
(4)	A copy of a report under subsection (2) must also be given to the Commission.	6
(5)	The Commission must give a copy of the report to the judicial officer concerned.	7 8
(6)	The Commission may give a copy of the report (or a summary of the report) to the complainant unless the Conduct Division has notified the Commission in writing that this should not occur.	9 10 11
[3]	Schedule 6 Savings and transitional provisions	12
	Omit clause 1 (1). Insert instead:	13
(1)	The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.	14 15

Schedule 4	Amendments relating to consular officers	1
4.1	Conveyancing Act 1919 No 6	2
	Section 168 Verification of instruments executed out of New South Wales	3
	Omit the definition of <i>Australian Consular Officer</i> from section 168 (5). Insert instead:	4
	<i>Australian Consular Officer</i> has the same meaning as in section 26 of the	5
	<i>Oaths Act 1900</i> .	6
4.2	Oaths Act 1900 No 20	7
	Section 26 Before whom oaths and affidavits may be taken	8
	Omit the definition of <i>Australian Consular Officer</i> from section 26 (2). Insert instead:	9
	<i>Australian Consular Officer</i> means a person referred to in section 3 (a)–(d) of	10
	the <i>Consular Fees Act 1955</i> of the Commonwealth.	11
	Note. Those paragraphs refer to:	12
	(a) an Australian Diplomatic Officer or an Australian Consular Officer, or	13
	(b) the person holding or acting in the office of Secretary of the Department	14
	of Foreign Affairs and Trade or an officer of the Department acting with	15
	the authority of the Secretary, or	16
	(c) an employee of the Commonwealth authorised, in writing, by the	17
	Secretary, or	18
	(d) an employee of the Australian Trade Commission authorised, in writing,	19
	by the Secretary.	20
4.3	Powers of Attorney Regulation 2011	21
	Schedule 1 Persons who may endorse documents under section 44 (1) (a) (ii) of the	22
	Act	23
	Omit “Australian or British Consular Officers” from Part 2.	24
	Insert instead “Australian Consular Officers, or British Consular Officers, within the	25
	meaning of section 26 of the <i>Oaths Act 1900</i> ,”.	26

Schedule 5	Other amendments	1
5.1	Coroners Act 2009 No 41	2
	Section 37 State Coroner to report on deaths in custody	3
	Omit “2 months” from section 37 (2). Insert instead “4 months”.	4
5.2	Court Suppression and Non-publication Orders Act 2010 No 106	5
	Section 15 Disclosures that are not prevented by suppression orders	6
	Insert at the end of the section:	7
	(2) A suppression order does not prevent the disclosure of information to the Bureau of Crime Statistics and Research if the disclosure is not by publication and the disclosure is made for the purposes of the compilation of statistical data about crime and criminal justice.	8 9 10 11
5.3	Land and Environment Court Act 1979 No 204	12
[1]	Section 30 Arrangement of business of the Court	13
	Omit “the qualification for the Commissioner’s appointment was” from section 30 (2A).	14
	Insert instead “the Commissioner has”.	15
[2]	Section 30 (2B)	16
	Omit “for appointment was”. Insert instead “under section 12 (2) or (2AA) is”.	17
5.4	Supreme Court Act 1970 No 52	18
[1]	Section 69C Stay of execution of conviction, order or sentence pending review	19
	Omit section 69C (2). Insert instead:	20
	(2) The execution of the following is stayed when proceedings seeking judicial review are commenced:	21 22
	(a) a sentence imposed as a consequence of a conviction,	23
	(b) any order other than an apprehended violence order under the <i>Crimes (Domestic and Personal Violence) Act 2007</i> .	24 25
[2]	Section 69C (6)	26
	Insert after section 69C (5):	27
	(6) In this section, a reference to a person who is in custody includes a reference to a person who is the subject of an intensive correction order, or home detention order, within the meaning of the <i>Crimes (Administration of Sentences) Act 1999</i> .	28 29 30 31