

[Act 1997 No 141]



New South Wales

Courts Legislation Further Amendment Bill 1997

Explanatory note

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

Overview of Bill

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

- *the Administrative Decisions Tribunal Act 1997*
- *the Bail Act 1978*
- *the Compensation Court Act 1984*
- *the Costs in Criminal Cases Act 1967*
- *the District Court Act 1973*
- *the District Court Amendment Act 1997*
- *the Family Provision Act 1982*

* Amended in committee—see table at end of volume.

- *the Legal Profession Act 1987*
- *the Local Courts Act 1982*
- *the Suitors' Fund Act 1951*
- *the Supreme Court Act 1970*
- *the Testator's Family Maintenance and Guardianship of Infants Act 1916*
- *the Uncollected Goods Act 1995*

Outline of provisions

Clause 1 specifies 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.

Clause 3 is a formal provision giving effect to the Schedule of amendments to various Acts administered by the Attorney General.

Schedule 1.1 amends the *Administrative Decisions Tribunal Act 1997* so as:

- (a) to correct a cross-reference (Schedule 1.1 [1]: proposed amendment to the definition of **application** in section 4), and
- (b) to make the language used in provisions of the Act dealing with the making of applications consistent, with the intention that the amendments not affect the right of any interested person to have the assistance of a legal practitioner or other agent in the preparation or lodgment of an application in accordance with any rules made under section 90 (Schedule 1.1 [2] and [4]): proposed amendments to sections 42 (a) and 55 (1) (a)), and
- (c) to make it clear that an application may be lodged with the Administrative Decisions Tribunal if the applicant has been notified of the result of an internal review under that Act, or after the expiry of 14 days from the lodgment of the internal review application where no such notification has been received within that period (or other agreed period) (Schedule 1.1 [3]: proposed amendment to section 53), and
- (d) to make it clear that the Tribunal can direct the Registrar to make a document already lodged with it under section 58 (4) available to a party seeking a summons for the production of the document rather than, as at present, only documents lodged by a party under section 58 (1) (Schedule 1.1 [7]: proposed amendment to section 58), and

- (e) to enable the Tribunal to dismiss applications that are misconceived or lacking in substance as well as proceedings that are frivolous or vexatious (Schedule 1.1 [8]: proposed amendment to section 73), and
- (f) to enable orders of the Tribunal for the payment of fines and other penalties to be registered (and therefore enforced) as judgment debts in courts of competent jurisdiction, complementing section 82 which deals with the recovery of amounts (other than penalties) ordered to be paid by the Tribunal (Schedule 1.1 [9]: proposed section 82A), and
- (g) to make it clear that parties to proceedings may consent to a member with a conflicting interest participating in the determination of proceedings, and to enable the President to direct a member not to participate in the determination of proceedings if the member has a conflicting interest (Schedule 1.1 [11]: proposed clause 14 of Schedule 3), and
- (h) to ensure that decisions of an abolished body that are appealable to a court before its abolition (but which have not yet been appealed) may be appealed instead to an Appeal Panel of the Tribunal (Schedule 1.1 [14]: proposed clause 14A of Schedule 3), and
- (i) to make other minor, consequential or ancillary amendments (Schedule 1.1 [5], [6], [10], [12] and [13]).

Schedule 1.2 amends the *Bail Act 1978* so as to substitute section 48B (which deals with the review of bail conditions by a justice) (Schedule 1.2 [1]). The new section extends the matters in relation to which a justice may vary bail reporting conditions (paragraphs (b), (c), (d) and (e) of proposed section 48B (3)). The powers conferred by paragraphs (c), (d) and (e) (relating to the number of days on which the accused must report to a police station, the revocation of bail conditions requiring the accused to report to a police station and the accused's place of residence) are not to be exercisable over the objections of the appropriate prosecuting authority or in relation to a bail condition imposed by the Supreme Court, nor are they to be exercisable after summary or committal proceedings against the accused have been determined (proposed section 48B (4)).

The Schedule also makes amendments of a savings or transitional nature (Schedule 1.2 [2]: proposed Part 4 of Schedule 1).

Schedule 1.3 amends the *Compensation Court Act 1984* so as:

- (a) to impose an upper limit of 70 years on the age of acting commissioners (Schedule 1.3 [1]: proposed section 13 (IA)) and commissioners (Schedule 1.3 [4]: proposed amendments to clauses 1 and 9 of Schedule 2), and

- (b) to provide for the appointment of acting registrars (Schedule 1.3 [2]: proposed section 14AA), and
- (c) to provide that an appeal to the Court of Appeal (other than an appeal from a final decision or award involving a claim for, or a question relating to, an amount of \$20,000 or more) may not be made without the leave of the Court of Appeal (Schedule 1.3 [3]: proposed section 32 (4)), and
- (d) to make other minor, consequential or ancillary amendments (Schedule 1.3 [5], [6] and [7]).

Schedule 1.4 amends the *Costs in Criminal Cases Act 1967* so as to abolish an existing requirement for a justice (but not a judge) to specify an amount of costs in a certificate given under that Act for the purpose of enabling a person who is acquitted or discharged in criminal proceedings to recover costs paid in connection with that person's defence in those proceedings (proposed repeal of section 3 (2)).

Schedule 1.5 amends the *District Court Act 1973* so as:

- (a) to clarify the meaning of the expression motor accident claim when used in that Act (Schedule 1.5 [1]: proposed amendment to that definition in section 4 (1)), and
- (b) to remove any doubt as to the kinds of action with respect to which the District Court has jurisdiction (Schedule 1.5 [2] and [3]: proposed section 44 (1) (a) and (e)), and
- (c) to provide that an appeal to the Supreme Court (other than an appeal from a final judgment or order involving a claim for, or a question relating to, an amount of \$100,000 or more) may not be made without the leave of the Supreme Court (Schedule 1.5 [6]: proposed section 127 (2) (c)), and
- (d) to make other minor, consequential or ancillary amendments (Schedule 1.5 [4], [5] and [7]).

Schedule 1.6 amends the *District Court Amendment Act 1997* as a consequence of amendments being made by Schedule 1.7 and 1.12 to the *Family Provision Act 1982* and the *Testator's Family Maintenance and Guardianship of Infants Act 1916*.

Schedule 1.7 amends the *Family Provision Act 1982* so as to clarify the definition of **Court** in section 6 (1).

Schedule 1.8 amends the *Legal Profession Act 1987* so as to allow the Legal Services Tribunal:

- (a) to make orders for costs in relation to its determinations under section 48K of that Act (Schedule 1.8 [1]: proposed amendment to section 48L), and
- (b) to make orders for costs for specified or unspecified amounts, including amounts to be determined on a specified basis (Schedule 1.8 [I] and [S]: proposed amendments to sections 48L and 171E), and
- (c) to make other minor, consequential or ancillary amendments (Schedule 1.8 [2], [3] and [4]).

Schedule 1.9 amends the *Local Courts Act 1982* so as allow a former Magistrate to be reinstated as a Magistrate up to the age of 70 years, instead of 65 years as is presently the case (proposed amendment to section 21 (l)).

Schedule 1.10 amends the *Suitors' Fund Act 1951* so as:

- (a) to impose a limit on the costs payable with respect to indemnity certificates issued under that Act for appeals to the High Court (where the limit is set at \$20,000) or to any other court (where the limit is set at \$10,000) (Schedule 1.10 [2]: proposed section 6 (2A)), and
- (b) to provide that where more than one such certificate is issued for the same appeal proceedings, the maximum amount payable in respect of any one certificate is the amount equal to the maximum limit for the appeal divided by the number of certificates that have been issued, unless the court otherwise determines (Schedule 1.10 [2]: proposed section 6 (2B)), and
- (c) to make other minor, consequential or ancillary amendments (Schedule 1.10 [1] and [3]).

Schedule 1.11 amends the *Supreme Court Act 1970* so as:

- (a) to clarify which appeals may be dealt with by 2 Judges of Appeal rather than 3 (Schedule 1.11 [1]: proposed amendment to section 46A), and
- (b) to provide that an appeal to the Court of Appeal from a Divisional Court (other than an appeal from a final judgment or order involving a claim for, or a question relating to, an amount of \$100,000 or more, an application for a writ of habeas corpus, the committal or arrest of a person or contempt) may not be made without the leave of the Court of Appeal (Schedule 1.11 [2]: proposed section 101 (2) (r)), and
- (c) to clarify the occasions on which video link facilities may be used (Schedule 1.11 [3] and [4]: proposed amendment to section 110A and proposed section 110AA), and

- (d) to make amendments of a savings or transitional nature (Schedule 1.11 [5]).

Schedule 1.12 amends the *Testator's Family Maintenance and Guardianship of Infants Act 1916* so as to clarify the definition of **Court** in section 2.

Schedule 1.13 amends the *Uncollected Goods Act 1995* so as:

- (a) to clarify the definition of **bailed goods** in section 3 (Schedule 1.13 [1]), and
- (b) to confer jurisdiction on the District Court to hear applications under that Act involving property valued up to the jurisdictional limit of the District Court (currently \$750,000) (Schedule 1.13 [2], [3], [4] and [5]): proposed amendments to section 18).