



New South Wales

# Judicial Officers Amendment Bill 2009

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Judicial Officers Act 1986*:

- (a) to enact in NSW model national provisions approved by the Standing Committee of Attorneys-General relating to the temporary exchange of judicial officers between various courts and tribunals in Australia and other countries, and
- (b) to extend to all judicial or quasi-judicial offices (including offices subject to any such temporary exchanges and offices to which permanent appointments are made) the existing provisions of that Act that make it clear that judicial officers may be appointed to act in other judicial offices without having to surrender or vacate their original judicial office.

## 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.

## **Schedule 1      Amendment of Judicial Officers Act 1986 No 100**

### **Judicial exchange arrangements**

**Schedule 1 [3]** inserts a new Part 7A into the *Judicial Officers Act 1986*. Division 1 of Part 7A contains the model national provisions approved by the Standing Committee of Attorneys-General relating to the temporary exchange of judicial officers between various courts and tribunals in Australia and other countries.

Proposed section 43B contains definitions. A *corresponding court* is defined as a court of another jurisdiction outside NSW that is listed in the proposed Schedule 4A in relation to a NSW court. A *participating jurisdiction* is defined as the Commonwealth, another State or Territory or another country if, under the law of that other jurisdiction, a judicial exchange arrangement may be entered into with the NSW Attorney General.

Proposed section 43C enables the NSW Attorney General to enter into arrangements with the Attorney General of a participating jurisdiction for the temporary transfer of judicial officers between NSW courts and corresponding courts (a *judicial exchange arrangement*). However, such an arrangement cannot provide for the transfer of a judicial officer to a federal court of the Commonwealth.

Proposed section 43D enables the senior judicial officer of a NSW court to appoint a judicial officer from a corresponding court as a judicial officer of a NSW court. Such an appointment must be in accordance with a judicial exchange arrangement and with the concurrence of the senior judicial officer of the corresponding court. An appointment cannot be for a term longer than 6 months at any one time and cannot extend beyond the retirement age for a judicial officer of the NSW court. The appointment may be terminated at any time in accordance with the arrangement.

Proposed section 43E provides that a judicial officer from a corresponding court who is appointed to act as a judicial officer of the NSW court is taken for all purposes to be a judicial officer of the NSW court, and has all the applicable powers, authorities, privileges and immunities. However, NSW laws in relation to remuneration, superannuation and removal or suspension from office do not apply to such an officer.

Proposed section 43F provides that, for the purposes of laws relating to remuneration, superannuation and removal or suspension from office, the service of a NSW judicial officer in a corresponding court is taken to be service as a judicial officer of the NSW court.

**Schedule 1 [4]** inserts proposed Schedule 4A into the *Judicial Officers Act 1986* that contains the NSW courts and corresponding courts for the purposes of judicial exchange arrangements. Proposed section 43H provides that the regulations may amend or replace this Schedule.

**Schedule 1 [1]** makes a consequential amendment to a definition.

### **Appointments to additional offices**

**Schedule 1 [3]** also inserts proposed Division 2 of Part 7A into the *Judicial Officers Act 1986* (which replaces section 43A repealed by **Schedule 1 [2]**). The proposed Division confirms that the doctrine of incompatibility of office does not prevent a judicial officer appointed to a court or tribunal from being appointed to any other court or tribunal and that such an appointment does not result in the surrender or vacation of the first judicial office. The new provision extends to all tribunals having judicial or quasi-judicial functions. It also applies to all permanent, acting or temporary appointments and to appointments in other jurisdictions outside New South Wales (which is not currently the case under existing section 43A).

### **Savings and transitional provisions**

**Schedule 1 [5]** enables savings and transitional regulations to be made consequent on the enactment of the proposed Act.

**Schedule 1 [6]** ensures that proposed Division 2 of Part 7A applies to appointments made before the commencement of the Division.



First print



New South Wales

# Judicial Officers Amendment Bill 2009

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New South Wales

## Judicial Officers Amendment Bill 2009

No. , 2009

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### **A Bill for**

An Act to amend the *Judicial Officers Act 1986* in relation to judicial officers exchange arrangements and incompatibility of office.

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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>Judicial Officers Amendment Act 2009</i> .	3
<b>2 Commencement</b>	4
This Act commences on the date of assent to this Act.	5

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<b>Schedule 1</b>	<b>Amendment of Judicial Officers Act 1986</b>	1
	<b>No 100</b>	2
<b>[1]</b>	<b>Section 3 Definitions</b>	3
	Insert “(except in Part 7A)” after “means” in the definition of <i>judicial officer</i> in section 3 (1).	4 5
<b>[2]</b>	<b>Section 43A Judicial office not affected by appointment to act in another judicial office</b>	6 7
	Omit the section.	8
<b>[3]</b>	<b>Part 7A</b>	9
	Insert after Part 7:	10
	<b>Part 7A Appointment of judicial officers to other positions</b>	11 12
	<b>Division 1 Judicial officers exchange</b>	13
<b>43B</b>	<b>Definitions</b>	14
	In this Division:	15
	<i>corresponding court</i> , in relation to a NSW court, means a court of another jurisdiction listed in Column 2 of Schedule 4A opposite the NSW court listed in Column 1 of Schedule 4A.	16 17 18
	<i>court</i> includes tribunal.	19
	<i>judicial exchange arrangement</i> means an arrangement under section 43C.	20 21
	<i>judicial officer</i> means a judge, magistrate or other person who, whether alone or together with others, constitutes a court, but does not include a lay member of a court.	22 23 24
	<i>NSW court</i> means a court of this jurisdiction listed in Column 1 of Schedule 4A.	25 26
	<i>participating jurisdiction</i> means the Commonwealth, another State, a Territory or another country if under the law of that jurisdiction a judicial exchange arrangement may be entered into with the Attorney General of this jurisdiction.	27 28 29 30
	<i>this jurisdiction</i> means New South Wales.	31

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<b>43C</b>	<b>Establishment of judicial exchange arrangements</b>	1
(1)	The Attorney General of this jurisdiction may enter into an arrangement with the Attorney General of a participating jurisdiction for the temporary transfer of judicial officers between NSW courts and corresponding courts.	2 3 4 5
(2)	An arrangement under this section cannot provide for the transfer of judicial officers to a federal court of the Commonwealth.	6 7
(3)	Without limiting subsection (1), an arrangement under this section:	8 9
(a)	may require transfers to a court to be subject to the prior approval of either or both of the following:	10 11
(i)	the Attorney General of this jurisdiction,	12
(ii)	the Attorney General of the participating jurisdiction, and	13 14
(b)	may establish the manner and form in which a transfer to a court is to be made or terminated, and	15 16
(c)	may determine the rank, title, status and precedence of a transferred judicial officer.	17 18
<b>43D</b>	<b>Transfer of judicial officer of another jurisdiction to NSW court</b>	19
(1)	This section applies if a judicial exchange arrangement provides for the transfer to a NSW court of a judicial officer of a corresponding court.	20 21 22
(2)	The senior judicial officer of the NSW court may, in accordance with the judicial exchange arrangement and with the concurrence of the senior judicial officer of the corresponding court, appoint a judicial officer of the corresponding court to act as a judicial officer of the NSW court.	23 24 25 26 27
(3)	The judicial officer of the corresponding court is qualified for appointment despite any law of this jurisdiction to the contrary.	28 29
(4)	The maximum term for which an appointment under this section may be made on any one occasion is 6 months.	30 31
(5)	However, an appointment under this section may not extend beyond the retirement age for judicial officers of the NSW court.	32 33
(6)	A judicial officer of a corresponding court may be appointed under this section to more than one NSW court.	34 35

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(7)	An appointment under this section may at any time be terminated, in accordance with the judicial exchange arrangement, by the senior judicial officer of either the NSW court or the corresponding court.	1 2 3 4
(8)	A judicial officer whose appointment under this section has ceased may complete or otherwise continue to deal with any matters relating to proceedings in the NSW court that have been heard, or partly heard, by the judicial officer before the appointment under this section ceased.	5 6 7 8 9
<b>43E</b>	<b>Service in NSW court of judicial officer of another jurisdiction</b>	10
(1)	This section applies to a judicial officer of a corresponding court who is appointed to act as a judicial officer of a NSW court in accordance with a judicial exchange arrangement.	11 12 13
(2)	While acting as a judicial officer of the NSW court, the judicial officer of the corresponding court has all the powers, authorities, privileges and immunities of, and is taken to be for all purposes, a judicial officer of the NSW court.	14 15 16 17
(3)	Despite subsection (2), the laws of this jurisdiction concerning:	18
(a)	the remuneration, allowances and other conditions of service of judicial officers, and	19 20
(b)	the pension or other superannuation entitlements of judicial officers and related provisions, and	21 22
(c)	the removal or suspension of judicial officers from office, do not apply to the judicial officer of the corresponding court while acting as a judicial officer of the NSW court.	23 24 25
<b>43F</b>	<b>Service of NSW judicial officer in corresponding court</b>	26
(1)	This section applies to a judicial officer of a NSW court who is appointed to act as a judicial officer of a corresponding court in accordance with a judicial exchange arrangement.	27 28 29
(2)	For the purposes of the laws of this jurisdiction concerning:	30
(a)	the remuneration, allowances and other conditions of service of judicial officers, and	31 32
(b)	the pension or other superannuation entitlements of judicial officers and related provisions, and	33 34
(c)	the removal or suspension of judicial officers from office, the judicial officer's service as a judicial officer of the corresponding court is taken to be service as a judicial officer of the NSW court.	35 36 37 38

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<b>43G</b>	<b>Other arrangements not affected</b>	1
	This Division does not limit or affect any other arrangements under which:	2
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	(a) a judicial officer of another jurisdiction may be appointed or act as a judicial officer of this jurisdiction, or	4
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	(b) a judicial officer of this jurisdiction may be appointed or act as a judicial officer of another jurisdiction.	6
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<b>43H</b>	<b>Amendment of Schedule 4A</b>	8
	The regulations may amend or replace Schedule 4A.	9
<b>Division 2</b>	<b>General</b>	10
<b>43I</b>	<b>Judicial office not affected by appointment to another judicial office</b>	11
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	(1) In this section:	13
	<i>court</i> includes a tribunal (however described) that exercises functions of a judicial nature or functions of a similar nature (such as conciliation functions, arbitration functions, disciplinary functions or administrative review functions).	14
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	<i>judicial office</i> extends to the office of any member of a court, but only if the holder of the office is required to be a judicial officer or have legal qualifications.	18
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	(2) The doctrine of incompatibility of office:	21
	(a) does not operate to prevent the holder of a judicial office (the <i>original office</i> ) from being appointed to another judicial office (the <i>additional office</i> ), and	22
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	(b) does not operate to effect or require the surrender or vacation of the original office as a result of the appointment to the additional office.	25
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	(3) This section applies:	28
	(a) even if the original office or the additional office is held on an acting or temporary basis, and	29
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	(b) even if the original office or the additional office is a judicial office of another jurisdiction (including, but not limited to, judicial offices to which appointments are made in accordance with arrangements under Division 1), and	31
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	(c) even if an appeal lies from a decision of the court of one of the judicial offices to the court of the other judicial office, and	35
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- (d) even if the courts of the judicial offices are not of the same status.

**[4] Schedule 4A**

Insert after Schedule 4:

**Schedule 4A NSW and corresponding courts**

Column 1	Column 2
NSW court	Corresponding court
Supreme Court; Industrial Court; Land and Environment Court	Federal Court of Australia Supreme Court of any State (other than Queensland) or of a Territory
District Court; Drug Court	County Court of Victoria District Court of South Australia Youth Court of South Australia (constituted by a Judge) Environment, Resources and Development Court of South Australia Industrial Relations Court of South Australia District Court of Western Australia
Local Court; Children's Court; Coroner's Court	Magistrates Courts of Victoria, Tasmania, South Australia, Western Australia and the ACT Coroners Court of South Australia Youth Court of South Australia (constituted by a Magistrate) Warden's Courts of South Australia and the Northern Territory Court of Summary Jurisdiction of the Northern Territory Local Court of the Northern Territory Alcohol Court of the Northern Territory Youth Justice Court of the Northern Territory Work Health Court of the Northern Territory Children's Court of Western Australia
Administrative Decisions Tribunal	Victorian Civil and Administrative Tribunal State Administrative Tribunal of Western Australia

**[5] Schedule 6 Savings and transitional provisions**

Insert at the end of clause 1 (1):

*Judicial Officers Amendment Act 2009*

<b>[6]    Schedule 6</b>	1
Insert at the end of the Schedule with appropriate Part and clause numbers:	2
<b>Part      Provision consequent on enactment of             Judicial Officers Amendment Act 2009</b>	3 4
<b>Application of substituted incompatibility of office provision</b>	5
Section 43I, as inserted by the <i>Judicial Officers Amendment Act 2009</i> , extends to an appointment made before the commencement of that section, and applies to such an appointment as if that section had been in force when the appointment was made.	6 7 8 9