



New South Wales

# Courts and Other Legislation Amendment Bill 2012

## 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 simplify the process for referring forfeiture orders under the *Bail Act 1978* to the State Debt Recovery Office for enforcement,
- (b) to ensure that the language used to define carers is consistent in both the *Children (Protection and Parental Responsibility) Act 1997* and the *Children and Young Persons (Care and Protection) Act 1998*,
- (c) to allow the senior judicial officer of a court to direct the registrar or other court official to exercise any of the court's functions,
- (d) to provide for the making of regulations that prescribe additional items, or classes of items, that a security officer may require a person entering or on court premises to deposit with the officer while the person remains on the premises,
- (e) to allow for the making of regulations relating to the payment of court fees by NSW Government agencies and statutory bodies representing the Crown,
- (f) to make it clear that, for the purposes of the *District Court Act 1973* and the *Judges' Pensions Act 1953*, only the period during which the Chief Magistrate

- serves as Chief Magistrate while also holding office as a Judge is to be taken to be service in the office of a Judge,
- (g) to make it clear that the Information Commissioner may disclose government information to the Privacy Commissioner in the course of consulting with the Privacy Commissioner as required by the *Government Information (Public Access) Act 2009*,
  - (h) to clarify the information that the sheriff can request from Roads and Maritime Services for the purposes of determining whether a person should be excluded from jury service,
  - (i) to allow an acting Commissioner of the Land and Environment Court to complete or otherwise deal with any matter that the acting Commissioner had heard or partly heard before the expiry of his or her term of appointment as an acting Commissioner,
  - (j) to require a person (other than an Australian legal practitioner) to provide certain information to a client before the Land and Environment Court may grant leave for the person to appear as an agent for the client in proceedings before that Court,
  - (k) to make it clear that the Land and Environment Court has jurisdiction in respect of disputes arising from a determination made by the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services in relation to an objection to the granting of a mining lease,
  - (l) to allow regulations declaring one public sector agency to be part of another public sector agency made for the purposes of the *Privacy and Personal Information Protection Act 1998* to be limited to specified functions of the relevant agency,
  - (m) to remove the requirement that an application for probate or administration is to be published in the newspaper and enable publication to be made by other means,
  - (n) to allow for the making of rules under the *Civil Procedure Act 2005* regulating practice and procedure with respect to probate and administration,
  - (o) to make consequential amendments and provisions of a savings and transitional nature consequent on the enactment of the proposed Act.

## 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 as follows:

- (a) Schedule 9 [1] and [2] commence on the date of assent to the proposed Act or on the day on which Schedule 1 [20] to the *Jury Amendment Act 2010* commences, whichever is the later,

- (b) Schedules 5 and 10 [2] and [3] commence on a day or days to be appointed by proclamation.

### **Schedule 1      Amendment of Bail Act 1978 No 161**

**Schedule 1 [1]** replaces section 53I of the *Bail Act 1978*. Proposed section 53I provides for the notification of forfeiture orders to the State Debt Recovery Office by the registrar of a court. Such a notification may be made electronically. The proposed section also provides that the State Debt Recovery Office may require the registrar who made the notification to provide certain documents related to the forfeiture order. **Schedule 1 [2]** makes a consequential amendment.

**Schedule 1 [3]** inserts a transitional provision in relation to forfeiture orders made, but in respect of which the State Debt Recovery Office has not been notified, before the commencement of Schedule 1 [1].

### **Schedule 2      Amendment of Children (Protection and Parental Responsibility) Act 1997 No 78**

**Schedule 2** gives effect to the aim set out in paragraph (b) of the Overview above.

### **Schedule 3      Amendment of Civil Procedure Act 2005 No 28**

**Schedule 3 [1]** amends the *Civil Procedure Act 2005* to allow the senior judicial officer of a court to direct that functions of the court under that Act or any other Act or law (including the uniform rules) may be exercised by a registrar or other officer of the court. Presently, such directions are limited to the functions of the court under the *Civil Procedure Act 2005* and the uniform rules.

**Schedule 3 [2]** enables savings and transitional regulations to be made as a consequence of any amendment to the *Civil Procedure Act 2005*.

**Schedule 3 [3]** inserts a transitional provision that validates the exercise of functions of the court under the direction of a senior judicial officer, where the exercise of those functions would have been validly carried out if section 13 (as amended by Schedule 3 [1]) had been in force at the time the direction was given.

### **Schedule 4      Amendment of Court Security Act 2005 No 1**

**Schedule 4** gives effect to the aim set out in paragraph (d) of the Overview above.

**Schedule 5      Amendment of Criminal Procedure Act  
1986 No 209**

Schedule 5 gives effect to the aim set out in paragraph (e) of the Overview above.

**Schedule 6      Amendment of District Court Act 1973  
No 9**

Schedule 6 gives effect to the aim set out in paragraph (f) of the Overview above.

**Schedule 7      Amendment of Government Information  
(Information Commissioner) Act 2009  
No 53**

Schedule 7 amends the *Government Information (Information Commissioner) Act 2009*, as a consequence of the amendment made by Schedule 8, to maintain consistency between that Act and the *Government Information (Public Access) Act 2009*.

**Schedule 8      Amendment of Government Information  
(Public Access) Act 2009 No 52**

Schedule 8 gives effect to the aim set out in paragraph (g) of the Overview above.

**Schedule 9      Amendment of Jury Act 1977 No 18**

Schedule 9 [1] and [2] give effect to the aim set out in paragraph (h) of the Overview above.

Schedule 9 [3] inserts a transitional provision to allow the sheriff, Commissioner of Police and Roads and Maritime Services to disclose information for the purposes of testing information systems in advance of the commencement of the other amendments to the *Jury Act 1977*.

**Schedule 10     Amendment of Land and Environment  
Court Act 1979 No 204**

Schedule 10 [1] gives effect to the aim set out in paragraph (i) of the Overview above.

Schedule 10 [3] amends the *Land and Environment Court Act 1979* to impose conditions on the granting of leave for a person to appear before the Land and Environment Court by an agent (as opposed to being represented by an Australian legal practitioner). The Court must consider whether the agent has provided the

person with the information required by the Land and Environment Court Rules and whether the granting of leave is in the best interests of the person.

**Schedule 10 [2]** extends the requirements for the granting of leave for a person to appear by an agent to all classes of the Court's jurisdiction.

**Schedule 10 [4]** enables savings and transitional regulations to be made as a consequence of any amendment to the *Land and Environment Court Act 1979*.

**Schedule 10 [5]** inserts savings and transitional provisions consequent on the amendment of the *Land and Environment Court Act 1979* by the proposed Act.

### **Schedule 11   Amendment of Local Court Act 2007 No 93**

**Schedule 11** amends the *Local Court Act 2007* as a consequence of the amendment of the *District Court Act 1973* by Schedule 6.

### **Schedule 12   Amendment of Mining Act 1992 No 29**

**Schedule 12** gives effect to the aim set out in paragraph (k) of the Overview above.

### **Schedule 13   Amendment of Privacy and Personal Information Protection Act 1998 No 133**

**Schedule 13** gives effect to the aim set out in paragraph (l) of the Overview above.

### **Schedule 14   Amendment of Probate and Administration Act 1898 No 13**

**Schedule 14 [2]** removes the requirement that an application for probate or administration is to be published in such newspapers as may be prescribed by the Rules of Court, and instead requires that such an application must be published as may be prescribed by the Rules of Court. The amendment also makes provision for notice of an application to be given after the application in cases where the application is made by way of cross-claim. **Schedule 14 [3]** makes similar amendments with respect to an application for the affixing of the seal of the Court to probate or letters of administration granted in another jurisdiction.

**Schedule 14 [4]** allows for the making of Rules of Court under the *Civil Procedure Act 2005* regulating practice and procedure with respect to probate and administration (in addition to the making of such rules under the *Supreme Court Act 1970*). **Schedule 14 [1]** makes a consequential amendment.





New South Wales

# Courts and Other Legislation Amendment Bill 2012

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New South Wales

# Courts and Other Legislation Amendment Bill 2012

No. , 2012

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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 Legislation Amendment Act 2012</i> .	3
<b>2 Commencement</b>	4
(1) This Act commences on the date of assent to this Act, except as otherwise provided by this section.	5 6
(2) Schedule 9 [1] and [2] commence on the date of assent to this Act or the commencement of Schedule 1 [20] to the <i>Jury Amendment Act 2010</i> , whichever is the later.	7 8 9
(3) Schedules 5 and 10 [2] and [3] commence on a day or days to be appointed by proclamation.	10 11

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**Schedule 1      Amendment of Bail Act 1978 No 161**

**[1]    Section 53I**

Omit the section. Insert instead:

**53I    Notice of forfeiture order for enforcement**

- (1) If any bail money to which a forfeiture order relates remains unpaid after the order takes effect, the registrar of the court by which the order was made is to notify the State Debt Recovery Office of that fact and of the amount of bail money that remains unpaid as at the date of the notice.
- (2) A registrar who makes a notification under this section must, on the request of the State Debt Recovery Office, provide the State Debt Recovery Office with one or more of the following:
  - (a) a copy of the forfeiture order,
  - (b) a copy of the bail undertaking and the relevant bail agreement,
  - (c) a copy of all documents evidencing any relevant bail security,
  - (d) a copy of a certificate, prepared by the registrar who made the notification, indicating the amount of bail money that remained unpaid as at the date notification was given.
- (3) A copy of the certificate referred to in subsection (2) (d) is admissible in any legal proceedings and is evidence of the matters stated in the certificate.

**[2]    Section 53J Payment of forfeited bail money**

Omit “a copy of the order is referred to the State Debt Recovery Office” wherever occurring in section 53J (1) (a) and (b).

Insert instead “the State Debt Recovery Office is notified of the order”.

<b>[3] Schedule 1 Savings and transitional provisions</b>	1
Insert after Part 21:	2
<b>Part 22 Courts and Other Legislation Amendment Act 2012</b>	3
	4
<b>41 Notice of forfeiture order for enforcement</b>	5
Section 53I, as substituted by the <i>Courts and Other Legislation Amendment Act 2012</i> , extends to a forfeiture order made before the substitution of that section:	6
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(a) in respect of which an amount of bail money remains unpaid, and	9
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(b) that was not referred to the State Debt Recovery Office before that substitution.	11
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<b>Schedule 2</b>	<b>Amendment of Children (Protection and Parental Responsibility) Act 1997 No 78</b>	1
		2
<b>Section 3 Definitions</b>		3
	Omit “the daily care and control of a child” from the definition of <i>carer</i> .	4
	Insert instead “residential care and control of a child”.	5

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<b>Schedule 3</b>	<b>Amendment of Civil Procedure Act 2005</b>	1
	<b>No 28</b>	2
<b>[1]</b>	<b>Section 13 Officers of the court may be authorised to exercise court’s functions</b>	3
	Omit “or the uniform rules” from section 13 (1) (a).	4
	Insert instead “or any other Act or law in respect of which the court has jurisdiction (including any rules of court)”.	5
<b>[2]</b>	<b>Schedule 6 Savings, transitional and other provisions</b>	6
	Insert at the end of clause 1 (1):	7
	any other Act that amends this Act	8
<b>[3]</b>	<b>Schedule 6, Part 7</b>	9
	Insert after Part 6:	10
<b>Part 7</b>	<b>Provision consequent on enactment of the Courts and Other Legislation Amendment Act 2012</b>	11
		12
<b>20</b>	<b>Validation of exercise of court’s functions</b>	13
	The exercise of a function of a court under this Act, or any other Act or law, by a registrar or other officer of the court pursuant to a direction given by instrument in writing by the senior judicial officer of the court is taken to be, and is taken to always have been, valid as it would have been had section 13 (as amended by the <i>Courts and Other Legislation Amendment Act 2012</i> ) been in force at the time the direction was given.	14
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<b>Schedule 5</b>	<b>Amendment of Criminal Procedure Act</b>	1
	<b>1986 No 209</b>	2
<b>Section 4A Fees</b>		3
Insert after section 4A (2):		4
(2A)	Despite subsection (2), such fees are payable by any NSW Government agency or statutory body representing the Crown prescribed by the regulations for the purposes of this subsection.	5
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**Schedule 6      Amendment of District Court Act 1973  
                         No 9**

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**Section 13 Appointment and qualifications of Judges**

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Insert “(during any period for which he or she also holds office as a Judge)”  
after “office of the Chief Magistrate” in section 13 (3) (a).

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<b>Schedule 7</b>	<b>Amendment of Government Information (Information Commissioner) Act 2009 No 53</b>	1 2 3
	<b>Section 35 Restriction on disclosure of information by Commissioner</b>	4
	Insert at the end of the section:	5
	(2) Despite section 91 of the GIPA Act, the Commissioner may disclose information to the Privacy Commissioner in the course of consulting with the Privacy Commissioner under section 94 of the GIPA Act before making a recommendation against a decision of an agency that there is an overriding public interest against disclosure of the information.	6 7 8 9 10 11

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**Schedule 8      Amendment of Government Information  
(Public Access) Act 2009 No 52**

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**Section 94 Recommendation as to public interest against disclosure**

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Insert after section 94 (2):

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- (3) Despite section 91, the Information Commissioner may disclose information to the Privacy Commissioner in the course of consulting with the Privacy Commissioner under this section.

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## Schedule 9 Amendment of Jury Act 1977 No 18

### [1] Section 75A Information to be supplied to sheriff

Omit section 75A (2B) and (2C) (as inserted by Schedule 1 [20] to the *Jury Amendment Act 2010*).

Insert instead:

(2B) For the purposes of determining whether a person proposed to be summoned for jury service should be excluded from jury service, the sheriff may obtain the following information from Roads and Maritime Services:

- (a) the person's driver licence number,
- (b) the person's residential address,
- (c) if the person is disqualified from holding a driver licence and the disqualification period is 12 months or more—the date on which the person's disqualification ends.

(2C) The sheriff and Roads and Maritime Services may enter into an arrangement in relation to the manner and form in which information requested under this section is to be provided.

(2D) The Commissioner of Police or Roads and Maritime Services is required and permitted to comply with a request made by the sheriff under this section.

### [2] Section 75A (4)

Insert after section 75A (3):

- (4) The sheriff may disclose information obtained under this section to the Commissioner of Police in connection with a request by the sheriff for information from the Commissioner of Police for the purposes of determining whether a person proposed to be summoned for jury service should be excluded from jury service.

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<b>[3] Schedule 8 Transitional and savings provisions</b>	1
Insert at the end of the Schedule with appropriate Part and clause numbering:	2
<b>Part Transitional provision consequent on enactment of Courts and Other Legislation Amendment Act 2012</b>	3
	4
	5
<b>Testing of information systems</b>	6
The sheriff, Commissioner of Police and Roads and Maritime Services may, before the commencement of Schedule 1 [20] to the <i>Jury Amendment Act 2010</i> , disclose information if the sheriff, Commissioner of Police or Roads and Maritime Services is satisfied that:	7
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(a) the disclosure is made in relation to the testing of an information system being developed for the purposes of the implementation of the amendments made to this Act by Schedule 1 [20] to the <i>Jury Amendment Act 2010</i> and Schedule 9 [1] and [2] to the <i>Courts and Other Legislation Amendment Act 2012</i> , and	12
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(b) the disclosure would be authorised if:	18
(i) it was made for the purposes of determining whether a person proposed to be summoned for jury service should be excluded from jury service, and	19
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(ii) the provisions referred to in paragraph (a) had commenced.	22
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<b>Schedule 10</b>	<b>Amendment of Land and Environment Court Act 1979 No 204</b>	1
		2
<b>[1] Section 13 Acting Commissioners</b>		3
Insert after section 13 (5):		4
(6) A person so appointed may, despite the expiration of the term of the person's appointment, complete or otherwise continue to deal with any matter relating to proceedings that have been heard or partly heard, or a conciliation conference that has been presided over or partly presided over, by the person before the expiration of that term.		5 6 7 8 9 10
<b>[2] Section 63 Right of appearance</b>		11
Omit "in proceedings in Class 8 of the Court's jurisdiction" from section 63 (2).		12 13
<b>[3] Section 63 (3) and (4)</b>		14
Insert after section 63 (2):		15
(3) In determining whether to grant leave for a person to appear by an agent the Court is to consider:		16 17
(a) whether the agent has provided the person with the information required by the rules, and		18 19
(b) whether granting leave is in the best interests of the person.		20
(4) Leave granted under this section may:		21
(a) be granted subject to conditions, and		22
(b) be revoked at any time for any reason.		23
<b>[4] Schedule 3 Savings, transitional and other provisions</b>		24
Insert at the end of clause 1A (1):		25
any other Act that amends this Act		26
<b>[5] Schedule 3</b>		27
Insert after clause 11:		28
<b>12 Provisions consequent on enactment of Courts and Other Legislation Amendment Act 2012</b>		29 30
(1) Section 13 (6), as inserted by the amending Act, extends to a person who, immediately before that insertion, was an acting Commissioner.		31 32 33

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|-----|---|-------------|
| (2) | Section 63, as in force immediately before the amendment of that section by the amending Act, continues to apply in respect of proceedings commenced before that amendment. | 1<br>2<br>3 |
| (3) | In this clause:<br><i>amending Act</i> means the <i>Courts and Other Legislation Amendment Act 2012</i> .   | 4<br>5<br>6 |

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**Schedule 11 Amendment of Local Court Act 2007  
No 93**

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**Schedule 1 Provisions relating to Magistrates**

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Insert “(during any period for which he or she also holds office as a Judge)”  
before “counts” in the note to clause 10A.

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**Schedule 12 Amendment of Mining Act 1992 No 29**

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**Section 293 Jurisdiction of Land and Environment Court**

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Insert at the end of section 293 (1) (q) (iii):

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or

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- (iv) the determination of the Director-General in relation to an objection to the granting of a mining lease,

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<b>Schedule 13</b>	<b>Amendment of Privacy and Personal Information Protection Act 1998 No 133</b>	1
		2
<b>Section 4B</b>	<b>Regulations may declare whether agency is part of or separate from a public sector agency</b>	3
		4
	Insert “in respect of specified functions” after “another specified public sector agency” in section 4B (1) (a).	5
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**Schedule 14    Amendment of Probate and  
Administration Act 1898 No 13**

**[1]    Section 3 Definitions**

Insert “or the *Civil Procedure Act 2005*” after “*Supreme Court Act 1970*” in the definition of **Rules** in section 3 (1).

**[2]    Section 42 Application for probate or administration**

Omit section 42 (2). Insert instead:

(2) Notice of an application is to be published in the manner prescribed by the rules:

(a) in the case of an application made by way of a cross-claim—within the period prescribed by the rules in relation to such an application, or

(b) in any other case—not less than 14 days before the making of the application.

**[3]    Section 109**

Omit the section. Insert instead:

**109    Notice of application**

The seal of the Court must not be affixed to any such probate or letters of administration unless notice of the application for the resealing of the probate or letters of administration has been published in the manner prescribed by the rules:

(a) in the case of an application made by way of a cross-claim—within the period prescribed by the rules in relation to such an application, and

(b) in any other case—not less than 14 days before the making of the application,

and no caveat has been lodged in respect of the application.

Courts and Other Legislation Amendment Bill 2012

Schedule 14 Amendment of Probate and Administration Act 1898 No 13

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**[4] Section 152A Rules of Court**

Insert “or the *Civil Procedure Act 2005*” after “*Supreme Court Act 1970*”  
wherever occurring in section 152A (1) and (2).

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