



New South Wales

# Civil Procedure Amendment (Transfer of Proceedings) Bill 2009

## Explanatory note

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

## Overview of Bill

Currently, Division 2A of Part 9 of the *Civil Procedure Act 2005* enables the Supreme Court to transfer proceedings to the Land and Environment Court if it is satisfied that those proceedings could properly have been commenced in the Land and Environment Court.

The object of this Bill is to amend the *Civil Procedure Act 2005* so as to enable either the Supreme Court or the Land and Environment Court to transfer proceedings to the other court if:

- (a) the court is satisfied that it is more appropriate for proceedings before it to be heard in the other court, or
- (b) there are related proceedings pending in the other court and the court is satisfied that it is more appropriate for all the proceedings to be heard together in the other court.

## 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 Civil Procedure Act 2005 No 28**

Schedule 1 to the proposed Act substitutes Division 2A of Part 9 of the *Civil Procedure Act 2005* to give effect to the objects set out in the Overview above. More specifically:

- (a) proposed section 149A contains definitions for the purposes of the proposed new Division, and
- (b) proposed section 149B contains provisions to enable the Supreme Court and the Land and Environment Court to make orders to transfer proceedings between the courts as referred to in the Overview above, and
- (c) proposed section 149C deals with the operation of those transfer orders, and
- (d) proposed section 149D deals with the conduct of proceedings after such a transfer, and
- (e) proposed section 149E provides that the transferee court has, and may exercise, all of the jurisdiction of the transferor court in relation to any proceedings to which such a transfer order relates, including jurisdiction to determine any question arising in any such proceedings.

First print



New South Wales

# Civil Procedure Amendment (Transfer of Proceedings) Bill 2009

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New South Wales

# Civil Procedure Amendment (Transfer of Proceedings) Bill 2009

No. , 2009

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## A Bill for

An Act to amend the *Civil Procedure Act 2005* to enable the transfer of proceedings between the Supreme Court and the Land and Environment Court.

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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>Civil Procedure Amendment (Transfer of Proceedings) Act 2009</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on the date of assent to this Act.	6

<b>Schedule 1</b>	<b>Amendment of Civil Procedure Act 2005</b>	1
	<b>No 28</b>	2
<b>Part 9</b>	<b>Transfer of proceedings between courts</b>	3
	Omit Division 2A of Part 9. Insert instead:	4
<b>Division 2A</b>	<b>Transfer of proceedings between Supreme</b>	5
	<b>Court and Land and Environment Court</b>	6
<b>149A</b>	<b>Definitions</b>	7
(1)	In this Division:	8
	<i>transfer order</i> means an order referred to in section 149B (1)	9
	or (2).	10
	<i>transferee court</i> means the court to which proceedings are to be	11
	transferred pursuant to a transfer order.	12
	<i>transferor court</i> means the court from which proceedings are	13
	transferred pursuant to a transfer order.	14
(2)	For the purposes of this Division, proceedings are <i>related</i> if the	15
	matters with which they deal are so closely associated as to form	16
	part of the same controversy.	17
<b>149B</b>	<b>Transfer of proceedings between Supreme Court and Land and</b>	18
	<b>Environment Court</b>	19
(1)	If either the Supreme Court or the Land and Environment Court	20
	is satisfied, in relation to proceedings before it, that it is more	21
	appropriate for the proceedings to be heard in the other court, it	22
	may, on application by a party to the proceedings or of its own	23
	motion, order that the proceedings be transferred to the other	24
	court.	25
(2)	If either the Supreme Court or the Land and Environment Court	26
	is satisfied, in relation to proceedings before it, that:	27
(a)	there are related proceedings pending in the other court,	28
	and	29
(b)	it is more appropriate for the proceedings to be heard,	30
	together with the related proceedings, in the other court,	31
	it may, on application by a party to the proceedings or of its own	32
	motion, order that the proceedings be transferred to the other	33
	court and heard together with the related proceedings.	34
(3)	No appeal lies against a decision of the transferor court to make,	35
	or not to make, an order under this section.	36

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<b>149C</b>	<b>Transfer orders</b>	1
(1)	A transfer order takes effect when it is made.	2
(2)	A transfer order does not invalidate any order made or other thing done in the proceedings before the order was made.	3 4
(3)	Any order made by the transferor court (other than the transfer order) may be varied or revoked by an order of the transferee court.	5 6 7
<b>149D</b>	<b>Proceedings after transfer</b>	8
(1)	Subject to the rules of court applicable in the transferee court:	9
(a)	any proceedings with respect to which a transfer order takes effect continue in the transferee court:	10 11
(i)	as if the proceedings had been duly commenced in the transferee court on the date on which they were commenced in the transferor court, and	12 13 14
(ii)	as if any cross-claim in the proceedings had been duly made in the transferee court on the date on which it was made in the transferor court, and	15 16 17
(b)	any proceedings with respect to which a transfer order under section 149B (2) takes effect are to be heard together with, and are taken to form part of, the related proceedings in the transferee court.	18 19 20 21
(2)	For the purposes of any proceedings continued in the transferee court:	22 23
(a)	any admission duly made in the transferor court is to be treated as if it had been made in the transferee court, and	24 25
(b)	in the case of proceedings affected by a transfer order under section 149B (2), any process or other documentation before the transferee court may be amended so as to reflect the merger of the proceedings concerned.	26 27 28 29 30
(3)	Subject to the rules of court applicable in the transferee court, the power of the transferee court to make orders as to costs includes a power to make orders with respect to the costs of:	31 32 33
(a)	the application for, and the making of, the transfer order, and	34 35
(b)	any step taken in the proceedings before the transfer order was made.	36 37



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**149E Jurisdiction of transferee court**

The transferee court has, and may exercise, all of the jurisdiction of the transferor court in relation to any proceedings to which a transfer order relates, including jurisdiction to determine any question arising in any such proceedings.

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