

# Local Courts Act 1982 No 164

[1982-164]



New South Wales

## Status Information

### Currency of version

Historical version for 1 January 2009 to 29 March 2009 (accessed 19 May 2024 at 19:04)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**  
[Crimes \(Appeal and Review\) Amendment Bill 2009](#)
- **Note**  
The Act is to be repealed on the commencement of sec 5 (1) of the [Local Court Act 2007 No 93](#).

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Local Courts Act 1982 No 164



New South Wales

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# Local Courts Act 1982 No 164



New South Wales

An Act to provide for Local Courts within New South Wales and for the appointment of Magistrates and registrars of those Courts; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Local Courts Act 1982*.

### 2 Commencement

- (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

### 3 (Repealed)

### 4 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

**applicant** means a person who institutes proceedings under Part 6 or is responsible for the conduct of proceedings against a person and includes (where the subject-matter or context allows or requires) an Australian legal practitioner representing the applicant.

**application proceedings** means proceedings that may be dealt with under Part 6.

**appointed day** means the day appointed and notified under section 2 (2).

**Assessor** means an Assessor appointed under section 76.

**authorised officer** has the same meaning as in the *Criminal Procedure Act 1986*.

**Chief Magistrate** means the person appointed under section 14 (1) to be the Chief Magistrate of the Local Courts.

**Court** means a Local Court established under section 6 (1).

**Deputy Chief Magistrate** means a person appointed under section 15 (1) to be a Deputy Chief Magistrate of the Local Courts.

**Designated Magistrate** means any of the following:

- (a) the State Coroner,
- (b) the Chairman of the Licensing Court,
- (c) the Chief Industrial Magistrate.
- (d) (Repealed)

**jurisdictional limit** of a Court means:

- (a) \$60,000, in relation to the Court sitting in its General Division, and
- (b) \$10,000, in relation to the Court sitting in its Small Claims Division.

**limited tenure**, in relation to the office of Magistrate, means a limitation imposed on the office under section 13.

**Local Court Rule Committee** means the Rule Committee established under section 30.

**Magistrate** means a person appointed under section 12 (1) to be a Magistrate.

**money claim** means a claim for recovery of any debt, demand or damage (whether liquidated or unliquidated).

**part-time Magistrate** means a person:

- (a) appointed to hold the office of Magistrate on a part-time basis, or
- (b) exercising the functions of the office of Magistrate on a part-time basis, as provided by an agreement referred to in section 12A, or
- (c) who, in accordance with section 8 of the [Liquor Act 1982](#), becomes a Magistrate on becoming a licensing magistrate and who holds office as a licensing magistrate on a part-time basis under section 8 (6) (b) of that Act.

**public officer** means any of the following persons, if acting in an official capacity:

- (a) an employee in the Public Service or the Police Service,
- (b) an officer or employee of a statutory body representing the Crown,
- (c) an employee of a council within the meaning of the [Local Government Act 1993](#),

- (d) an officer or employee of a livestock health and pest authority within the meaning of the *Rural Lands Protection Act 1998*,
- (e) the Director of Public Prosecutions, Deputy Director of Public Prosecutions or Solicitor for Public Prosecutions,
- (f) an officer or employee of a body declared by the regulations to be a public body for the purposes of this definition.

**regulation** means a regulation made under this Act.

**respondent** means a person who is issued an application notice in application proceedings and includes (where the subject-matter or context allows or requires) an Australian legal practitioner representing the respondent.

- (2) A reference in this Act to:
  - (a) a function includes a reference to a power, authority and duty, and
  - (b) the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.
- (3) A reference in this Act to:
  - (a) an Act, other than a reference to this Act, includes a reference to an Act of the Commonwealth, and
  - (b) a Magistrate who has limited tenure is a reference to a Magistrate whose term of office is specified under section 13 (1) in the commission by which the Magistrate was appointed.
- (4) Notes included in this Act do not form part of this Act.

## **5 Savings and transitional provisions**

Schedule 1 has effect.

## **Part 2 Local Courts of New South Wales**

### **6 Establishment of Courts and appointment of places and districts**

- (1) The Governor may, by order published in the Gazette:
  - (a) establish Local Courts and appoint the place at and the district for which any such Court shall be held, and
  - (b) abolish any Court established, or alter any place or district appointed, under paragraph (a).
- (2) Notwithstanding the provisions of any other Act, the alteration of the place at or the



district for which a Court shall be held shall not affect any proceedings commenced in the Court before the making of the alteration, and the proceedings may be continued and completed, and any judgment or order given or made in respect thereof enforced, as if the alteration had not been made.

**Editorial note—**

For orders under this section see Gazettes No 178 of 24.12.1998, p 10129; No 92 of 22.7.2005, p 3794; No 58 of 28.4.2006, pp 2447, 2448 and No 189 of 22.12.2006, p 11733.

## **7 Jurisdiction**

- (1) Every Court shall have the same jurisdiction, civil and criminal, as Courts of Petty Sessions possessed in New South Wales immediately before the appointed day.
- (2) Courts shall have the jurisdiction conferred or imposed on them by or under any Act or other law.

### **7A Divisions of Courts exercising civil jurisdiction**

For the purposes of exercising its civil jurisdiction, a Court is to be divided into:

- (a) the General Division, and
- (b) the Small Claims Division.

## **8 Composition of a Court**

Except as may be otherwise provided by or under this or any other Act or law, a Court shall be constituted by a Magistrate sitting alone.

### **8A Local Courts to be courts of record**

A Local Court is a court of record and a judgment of the Court may be set up as a defence in any action brought in a Local Court, in the District Court or the Supreme Court.

### **8B Local Court to have seal**

- (1) A Local Court exercising jurisdiction conferred by or under this or any other Act is to have a seal.
- (2) Any document required by or under this or any other Act to be sealed or stamped with the seal of the Local Court is to be so sealed or stamped.

## **9 Abolition of Courts of Petty Sessions**

Courts of Petty Sessions are abolished.

## **10 Registrars of the Local Court**

- (1) There is to be a registrar of the Local Court for each Local Court.

- (2) The registrar is to be:
  - (a) appointed by the Governor under and subject to the *Public Sector Management Act 1988*, or
  - (b) the holder of an office or position:
    - (i) who was appointed to that office or position otherwise than under and subject to that Act, and
    - (ii) who is appointed by the Governor to be registrar of the Local Court so long as the holder holds that office or position.
- (3) A person holding the office of registrar of a Local Court is taken to vacate that office when the appointment by the Governor of another person to hold that office takes effect.
- (4) The Minister may, by order in writing, appoint a person, or the holder of an office, to act in the office of a registrar of a Local Court during:
  - (a) an absence from duty of the registrar of the Local Court, or
  - (b) a vacancy of not more than 6 months' duration in the office of that registrar.
- (5) The Minister may delegate in writing to the Director-General of the Attorney General's Department the Minister's power of appointment under subsection (4).
- (6) A person appointed for the time being under subsection (4), while acting in the office of a registrar of a Local Court, has and may exercise all of the functions of that office.
- (7) Any act, matter or thing done by a person while purporting to exercise a function conferred on the person by subsection (6) is not ineffective or unlawful merely because either of the circumstances referred to in subsection (4) (a) and (b) did not exist when the act, matter or thing was done.
- (8) Any act, matter or thing done by a person while the person is acting in the office of a registrar of a Local Court is taken to have been done by the registrar of the Local Court.

#### **10A Deputy registrars**

- (1) The Governor may appoint a person, under and subject to the *Public Sector Management Act 1988*, to be a deputy registrar of a Local Court.
- (2) A person appointed as a deputy registrar has, under the registrar, all the functions of the registrar and may exercise those functions.

### **10B Functions of registrars**

- (1) A registrar has the functions conferred on the registrar by or under this Act, the rules or any other Act.
- (2) Without limiting subsection (1), a registrar may exercise the following functions:
  - (a) the functions of a Local Court to adjourn proceedings, without the consent of both parties,
  - (b) the functions of a Local Court to make orders by consent, except as provided by the rules,
  - (c) the function of a Local Court to request, or to agree to a request to obtain, a pre-sentencing report,
  - (d) the functions of a Local Court or Magistrate to set times within which documents (including witnesses' statements) must be served or notice given,
  - (e) the functions of a Local Court under Part 7 of the [Service and Execution of Process Act 1992](#) of the Commonwealth,
  - (f) the functions of a Local Court or Magistrate to determine matters preliminary to the commencement of the hearing of proceedings,
  - (g) (Repealed)
  - (h) the function of remitting or postponing payment of any fees provided for under section 28 (2),
  - (i) the functions of a Local Court with respect to subpoenas.

### **10C Powers of registrar when exercising functions of Local Court**

- (1) A registrar constitutes a Local Court for the purpose of exercising the functions of a Local Court conferred on the registrar under this Act or the rules.
- (2) An order made or a direction given or other act done by a registrar in the exercise of the functions of a Local Court or Magistrate has effect as an order or a direction or an act of a Local Court or Magistrate, whether or not the order, direction or act is within the functions mentioned in this section.

### **10CA Exercise of functions by registrars, assistant registrars and other officers of the District Court**

- (1) A registrar of the District Court may, subject to the rules, exercise the functions of the registrar of a Local Court and, when exercising those functions, is taken to be the registrar of the Local Court.

- (2) An assistant registrar of the District Court may, subject to the rules, exercise the functions of a deputy registrar of a Local Court and, when exercising those functions, is taken to be a deputy registrar of the Local Court.
- (3) An officer of the District Court may, subject to the rules, exercise the functions of an officer of a Local Court and, when exercising those functions, is taken to be an officer of the Local Court.

#### **10D Guidelines for exercise of certain functions**

- (1) The Minister may issue guidelines for the exercise of the following functions:
  - (a) the remitting or postponement of any fees provided for under section 28 (2),
  - (b) the issue of warrants of arrest or commitment.
- (2) The guidelines may be issued by order in writing published in the Gazette from time to time.
- (3) A registrar must, when performing functions, comply with any applicable guidelines. A failure to comply with any such guidelines does not affect the validity of any act done by a registrar.

#### **11 Sittings of Local Courts**

- (1) A Court shall be held at each of the places appointed under section 6 (1).
- (2) Arrangements for the sittings of Courts, including the nomination of the Magistrates to sit at particular places at which Courts are required to be held, shall be in accordance with the directions of the Chief Magistrate.
- (2A) The Chief Magistrate must consult with the Attorney General before making a direction under subsection (2) that substantially alters the frequency of sittings at a particular place relative to the previous calendar year.
- (3) A direction given under subsection (2) may provide for:
  - (a) the establishment of circuits comprised of specified places at which, districts for which, or other parts of New South Wales within which, Courts are required to be held, or
  - (b) the exercise by Magistrates of their functions, at specified times or during specified periods, at different places or within different districts or other parts of New South Wales.
- (4) A Magistrate shall comply with any direction which relates to the Magistrate given under subsection (2) by the Chief Magistrate.

## Part 3 Magistrates

### 12 Appointment of, and qualifications for, Magistrates

- (1) The Governor may, by commission under the public seal of the State, appoint any qualified person to be a Magistrate.
- (2) A person is qualified to be appointed as a Magistrate if the person is an Australian lawyer.
- (3) (Repealed)
- (4) The provisions of the *Public Sector Management Act 1988* shall not apply to or in respect of the appointment of a Magistrate and a Magistrate shall not, in the Magistrate's capacity as a Magistrate, be subject to those provisions during the Magistrate's term of office as a Magistrate.
- (5) A person's appointment as a Magistrate is taken to be an appointment on a full-time basis unless the appointment is expressed, in the commission by which the person was appointed, to be on a part-time basis.

### 12A Part-time arrangements

A Magistrate, although not appointed on a part-time basis, may, by agreement in writing entered into with the Chief Magistrate, exercise the functions of the office of Magistrate on a part-time basis.

### 13 Appointments for limited tenure

- (1) Where the Governor considers it appropriate that a Magistrate should be appointed for a particular term of office, the Governor may, in the commission of the Magistrate's appointment:
  - (a) by a reference to dates, specify the term of office for which the Magistrate is appointed, and
  - (b) fix the terms and conditions (including terms and conditions requiring the Magistrate to exercise the Magistrate's functions at a particular place) subject to which the Magistrate shall serve in the Magistrate's office.
- (2) A person may be so appointed even though the person has reached the age of 72 years (or will have reached that age before the term of office expires), but may not be so appointed for any term of office that extends beyond the day on which he or she reaches the age of 75 years.

#### Note—

Section 44 (3) of the *Judicial Officers Act 1986* provides that a Magistrate must retire on reaching the age of 72 years.

(3), (4) (Repealed)

#### **14 The Chief Magistrate**

- (1) The Governor may, by the commission of a person's appointment as a Magistrate or by a subsequent commission under the public seal of the State, appoint a Magistrate to be Chief Magistrate of the Local Courts.
- (2) The Chief Magistrate shall hold the office of Chief Magistrate so long as the Chief Magistrate holds office as a Magistrate otherwise than pursuant to section 21 (1).
- (3) With the approval of the Governor, the Chief Magistrate may resign the office of Chief Magistrate without resigning the office of Magistrate.
- (4) The Chief Magistrate may require specified functions of Magistrates to be exercised by specified Magistrates or Magistrates of a specified class, and any Magistrate of whom a requirement is made under this subsection shall comply with the requirement.
- (5) The Chief Magistrate may not make such a requirement in respect of a Magistrate who is a Children's Magistrate except with the consent of the Senior Children's Magistrate.
- (6) The Chief Magistrate may not make such a requirement in respect of a Magistrate who is a member of the Victims Compensation Tribunal constituted under the [Victims Compensation Act 1996](#) except with the consent of the Chairperson of the Tribunal.

#### **14A Special provision relating to certain Chief Magistrate**

- (1) This section applies to a person:
  - (a) who was a Judge of the District Court before being appointed as the Chief Magistrate, and
  - (b) who was the first person appointed as Chief Magistrate after the commencement of this section, and
  - (c) whose instrument of appointment declared that this section applies to the person's appointment as Chief Magistrate.
- (2) The appointment of the person as Chief Magistrate, or service by the person as Chief Magistrate, does not affect:
  - (a) the person's tenure as a Judge of the District Court, or
  - (b) the person's rank, title, status, remuneration or other rights or privileges as a Judge of the District Court.
- (3) The person's service as Chief Magistrate is, for all purposes, taken to be service as the holder of the office of Judge of the District Court.

- (4) Despite anything to the contrary in this section, the person is not to exercise the jurisdiction of the District Court while holding office as Chief Magistrate (except, with the approval of the Chief Judge of the District Court, in respect of a matter that was being dealt with by the person immediately before being appointed as Chief Magistrate).

## **15 Deputy Chief Magistrates**

- (1) The Governor may, by the commission of a person's appointment as a Magistrate or by a subsequent commission under the public seal of the State, appoint a Magistrate to be a Deputy Chief Magistrate of the Local Courts.
- (2) More than one person may hold the office of Deputy Chief Magistrate at any one time.
- (3) A Deputy Chief Magistrate shall hold the office of Deputy Chief Magistrate so long as the Deputy Chief Magistrate holds office as a Magistrate otherwise than pursuant to section 21 (1).
- (4) With the approval of the Governor, a Deputy Chief Magistrate may resign the office of Deputy Chief Magistrate without resigning the office of Magistrate.
- (5) A Deputy Chief Magistrate shall, in addition to exercising functions as a Magistrate, exercise such other functions as the Chief Magistrate may direct.
- (6) A Deputy Chief Magistrate nominated for the purposes of this subsection by an order in writing of the Minister (which order the Minister is hereby authorised to make) may act in the office of the Chief Magistrate during:
  - (a) an absence from duty of the Chief Magistrate, or
  - (b) a vacancy in the office of Chief Magistrate.
- (7) The Deputy Chief Magistrate nominated for the time being under subsection (6) shall, while the Deputy Chief Magistrate is acting in the office of the Chief Magistrate, have and may exercise all of the functions of that office.
- (8) Any act, matter or thing done by a Deputy Chief Magistrate while purporting to exercise a function conferred on the Deputy Chief Magistrate by subsection (7) is not ineffective or unlawful by reason only that either of the circumstances referred to in subsection (6) (a) and (b) did not exist when the act, matter or thing was done.
- (9) Any act, matter or thing done by a Deputy Chief Magistrate while the Deputy Chief Magistrate is acting in the office of the Chief Magistrate shall be deemed to have been done by the Chief Magistrate.

## **16 Oaths to be taken by Magistrates**

- (1) A person appointed under section 12 (1) shall not exercise the functions of a

Magistrate, or of the Chief Magistrate or a Deputy Chief Magistrate, unless the person has:

(a) taken and subscribed under the [Oaths Act 1900](#) both the oath of allegiance and the judicial oath, or

(b) made and subscribed solemn affirmations in the form of those oaths,

and has transmitted them to the Minister.

(2) An oath or affirmation referred to in subsection (1) may be taken or made before and may be administered and received by:

(a) a Judge of the Supreme Court or of the District Court of New South Wales,

(b) except where the oath or affirmation is taken or made by the Chief Magistrate—the Chief Magistrate, or

(c) the holder of an office prescribed for the purposes of this paragraph.

(3) A Magistrate who does not, within the period of 3 months after the Magistrate's appointment as such:

(a) take the oaths or make the affirmations referred to in subsection (1), and

(b) transmit them to the Minister,

ceases to hold office as a Magistrate when that period ends.

## **17 Jurisdiction of Magistrates**

(1) Except as may be otherwise provided by or under this or any other Act or the regulations:

(a) a Magistrate may exercise the functions of the office of Magistrate at any place within New South Wales, and

(b) each Magistrate shall have the same jurisdiction and may exercise the same functions.

(2) Any act, matter or thing done by a Magistrate while purporting to exercise a function of the office of Magistrate is not ineffective or unlawful by reason only of any contravention by the Magistrate of section 11 (4), 14 (4), 15 (5) or 23 (1) or (3).

## **18-19A (Repealed)**

## **20 Vacation of office**

Subject to this and any other Act, a Magistrate is taken to have vacated the office of Magistrate if:



- (a) the Magistrate dies, or
- (b) the Magistrate resigns that office by instrument in writing served on the Minister, and the Governor accepts the resignation, or
- (c) after attaining the age of sixty years, the Magistrate, by instrument in writing served on the Minister, signifies a desire to retire from that office and the Governor consents to the retirement, or
- (d) by operation of section 16 (3), the Magistrate ceases to hold that office, or
- (e) the Magistrate retires from that office under a provision of any other Act under which the Magistrate may so retire, or
- (f) the Magistrate is a Magistrate who has limited tenure and the term of the Magistrate's office specified in the Magistrate's commission of appointment expires without the Magistrate's having been appointed to hold the office of Magistrate on and from the day on which that term expires, or
- (g) (Repealed)

## **20A Continuation of proceedings after vacation of office**

- (1) A person who vacates office as a Magistrate otherwise than by having been removed from office may, despite vacating his or her office, continue to hear and determine, and otherwise deal with, any proceedings that have been heard, or partly heard, by the person before vacating his or her office.
- (2) While a person continues to deal with, under subsection (1), any proceedings that have been heard or partly heard by the person before vacating office, the person has all the entitlements and functions of a Magistrate and, for the purpose of those proceedings, is taken to continue to be a Magistrate.

## **21 Additional terms of office**

- (1) If a former Magistrate has vacated office by reason of section 20 (c) or (e), the Governor may, by notification published in the Gazette and with the written consent of the former Magistrate, reinstate the former Magistrate in the Magistrate's former office of Magistrate for a period specified in the notification.
- (1A) A person may be so reinstated even though the person has reached the age of 72 years (or will have reached that age before the period of reinstatement expires), but may not be so reinstated for any period that extends beyond the day on which he or she reaches the age of 75 years.
- (2) During the period for which a former Magistrate is reinstated under subsection (1):
  - (a) subject to this Act, the Magistrate is taken to be a Magistrate and to hold office as

such,

- (b) section 16 does not apply to or in respect of the Magistrate,
  - (c) if the Magistrate has vacated office under section 20 (e), the Magistrate is taken not to be an employee for the purposes of the [Superannuation Act 1916](#) (except for section 94 of that Act).
- (3) Subject to any other Act, while a person holds the office of Magistrate by reason of the publication of a notification under subsection (1), the person is taken to hold any other office specified in the notification, being an office that the person held:
- (a) when the person last held the office of Magistrate before the person's reinstatement, and
  - (b) by reason of the person's being a Magistrate when the person was appointed to, or nominated for, that other office.
- (4) Where a notification is published in the Gazette under subsection (1), a statement in the notification that a consent referred to in that subsection has been given shall be conclusive evidence of the giving of that consent.
- (5) Nothing in this section affects the operation of section 66 of the [Crimes \(Local Courts Appeal and Review\) Act 2001](#).

**Note—**

Section 44 (3) of the [Judicial Officers Act 1986](#) provides that a Magistrate must retire on reaching the age of 72 years.

## **22 Conditions of service generally**

- (1) The terms and conditions of service (including leave of absence) of Magistrates shall be as determined by the Minister after consultation with the Chief Magistrate.
- (2) This section extends to the terms and conditions to be included in any agreement referred to in section 12A.

**Editorial note—**

For terms and conditions of service published in the Gazette, see Gazettes of 21.8.1995; 1.12.2000; 20.4.2001; 3.6.2005 and 23.9.2005.

## **23 Employment of Magistrates in other offices etc**

- (1) Except as provided by this section, a Magistrate shall devote the whole of the Magistrate's time to the duties of the Magistrate's office.
- (2) A person may, with the approval of the Governor (which approval the Governor is hereby authorised to grant), hold and exercise the functions of the office of Magistrate

and another office or appointment.

- (3) A Magistrate may not, however, practise as an Australian legal practitioner for fee, gain or reward, and no approval under subsection (2) may be granted to permit it.
- (4) Subsection (1) does not prevent a person from holding office as and exercising the functions of a Magistrate on a part-time basis, but such a person must not, while so holding office:
  - (a) accept or continue to hold or discharge the duties of or be employed in any paid office in connection with any commercial business, or
  - (b) engage in or undertake any such business, whether as principal or agent, or
  - (c) engage in or continue in the private practice of any profession, occupation or trade, or enter into any employment, whether remunerated or not, with any person so engaged.
- (5) To the extent specified in the commission by which the Magistrate was appointed, subsections (1) and (3) do not apply to a Magistrate who has limited tenure.

## **24 Remuneration**

- (1) A Magistrate, other than a Magistrate referred to in subsection (2), is entitled to be paid:
  - (a) remuneration in accordance with the [Statutory and Other Offices Remuneration Act 1975](#), and
  - (b) (Repealed)
- (2) A Magistrate who has limited tenure is entitled to be paid:
  - (a) such remuneration as the Governor considers appropriate, and
  - (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the Magistrate.
- (3) (Repealed)
- (4) The remuneration and allowances referred to in this section and payable to a Magistrate shall be paid to the Magistrate so long as the Magistrate continues to hold office as such.

## **25 Superannuation and certain other rights**

- (1) Where a person was, immediately before the person's appointment as a Magistrate, an officer of the Public Service or an employee within the meaning of the [Superannuation Act 1916](#), the person shall retain any rights which have accrued or are

accruing to the person as such an officer or employee and the person shall continue to contribute to any fund or account and shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity as if the person had continued to be such an officer or employee during the person's service as a Magistrate and, for the purposes of this subsection, the person's service as a Magistrate shall be deemed to be service for the purposes of that Act and the [Public Sector Management Act 1988](#).

- (2) A Magistrate shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.
- (3) A Magistrate who has limited tenure, not being a person to whom subsection (1) applies, shall be deemed not to be an employee for the purposes of the [Superannuation Act 1916](#), section 94 of that Act excepted.
- (4) Nothing in this section affects the operation, with respect to Magistrates, of any provision of the [Superannuation Act 1916](#).
- (5) This section is subject to section 25A.

#### **25A Extended, annual and sick leave accrued or accruing at time of appointment**

- (1) A person who was employed in a public sector service (within the meaning of Schedule 5A to the [Public Sector Management Act 1988](#)) before the person's appointment as a Magistrate does not retain, on his or her appointment, any entitlement to extended, annual or sick leave accrued or accruing to the person as such an employee.
- (2) Subsection (1) does not apply in relation to a Magistrate with limited tenure.
- (3) Nothing in subsection (1) prevents the payment to a person to whom that subsection applies of the money value of any extended, annual or sick leave accrued or accruing to the person as an employee in a public sector service before the person's appointment as a Magistrate.
- (4) This section applies only in relation to a person appointed as a Magistrate on or after the commencement of this section.

## **Part 4 Miscellaneous**

### **26 Directions as to procedure**

If the manner or form of procedure for taking any step in any proceedings is not prescribed by or under this Act, the [Criminal Procedure Act 1986](#), the [Civil Procedure Act 2005](#) or any other law under which the step is to be taken or by the practice of Courts, a Court, on application made to it in such manner as it considers appropriate, may direct what manner or form of procedure is to be followed, and any step taken in accordance with a direction so given shall, for the purposes of the proceedings, be regular and

sufficient.

## **27 Periodic reports**

The Chief Magistrate shall submit to the Minister, at such times and in respect of such periods as the Minister directs, and, subject to any such direction, at such times and in respect of such periods as the Chief Magistrate considers appropriate, reports setting forth:

- (a) particulars of:
  - (i) the incidence of delays in Courts,
  - (ii) arrangements which have been made for the sittings of Courts, and
  - (iii) any matters relating to discipline which have arisen and which may have affected or may affect the availability of Magistrates or the disposal of business by Courts,
- (b) particulars of projected workloads in Courts and an assessment of the number of Magistrates which will, in the opinion of the Chief Magistrate, be available to meet those workloads, and
- (c) comments upon any other matters relating to Courts or Magistrates about which, in the opinion of the Chief Magistrate, the Minister should be advised or about which the Minister has requested to be advised by the Chief Magistrate.

## **27A How contempt of court is to be dealt with**

- (1) A Local Court has, if it is alleged, or appears to the Court on its own view, that a person is guilty of contempt of court committed in the face of the Court or in the hearing of the Court, the same powers as the District Court in those circumstances.
- (2) Without limiting subsection (1), a Local Court may vacate or revoke an order with respect to contempt of court.
- (3) For the purposes of this section:
  - (a) sections 199, 200 and 202 of the [District Court Act 1973](#) apply to a Local Court and a Magistrate in the same way as they apply to the District Court and a Judge of the District Court, and
  - (b) section 201 of that Act applies to a ruling, order, direction or decision of a Local Court under those provisions as so applied.

## **27B Referral of contempt allegations to Supreme Court**

- (1) Without prejudice to the powers of a Local Court under section 27A, if it is alleged, or appears to the Court on its own view, that a person is guilty of contempt of the Court, whether committed in the face or hearing of the Court or not, the Court may refer the

matter to the Supreme Court for determination.

- (2) The Supreme Court is to dispose of any matter referred to it under this section in the manner it considers appropriate.

## **28 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to fees payable in respect of proceedings to which Part 6 applies.

## **28A Rules**

- (1) The Local Court Rule Committee may make rules, not inconsistent with this Act, for or with respect to the following matters:
  - (a) any matter that is required or permitted to be prescribed by rules, or that is necessary or convenient to be prescribed by rules, in relation to the practice or procedure to be followed to give effect to this or any other Act or law conferring jurisdiction or functions on a Local Court or on a Magistrate in committal proceedings,
  - (b) the functions of registrars,
  - (c) the review of orders or decisions of registrars,
  - (d) any matter incidental to, or relating to, any such practice or procedure.
- (2) A rule does not take effect until it has been approved in writing by the Attorney General.
- (3) A rule may be made under this Act in relation to any matter for which a rule-making power is conferred by or under any other Act or law in relation to a matter referred to in subsection (1).
- (4) Subsection (3) does not prevent a rule being made under the other Act or law, if authorised by that Act or law.

## **28B Tabling and disallowance of practice notes**

A practice note (including any other document, however described, which regulates the practice or procedure of a Local Court, any Division of a Local Court or of any class of proceedings in a Local Court, but excluding a decision of a Local Court) issued by or on behalf of all or any Local Courts is taken to be a statutory rule for the purposes of Part 6 of the [Interpretation Act 1987](#).

## Part 5 Rule Committees

### 29 Definitions

In this Part:

**barrister** has the same meaning as in the [Legal Profession Act 2004](#).

**Director-General** means the Director-General of the Attorney General's Department.

**Rule Committee** means a Rule Committee established by this Part.

**solicitor** has the same meaning as in the [Legal Profession Act 2004](#).

### 30 Local Court Rule Committee

- (1) There is to be a Local Court Rule Committee.
- (2) The Local Court Rule Committee is to consist of the following members:
  - (a) the Chief Magistrate,
  - (b) at least 1 and not more than 6 Magistrates (in addition to the Chief Magistrate),
  - (c) a barrister,
  - (d) a solicitor,
  - (e) a Clerk of a Local Court,
  - (f) a person nominated by the Director of Public Prosecutions,
  - (g) a person nominated by the Legal Aid Commission,
  - (h) a person appointed by the Director-General,
  - (i) a person appointed by the Minister.
- (3) A member referred to in subsection (2) (b)–(g):
  - (a) is to be appointed by the Chief Magistrate, and
  - (b) is to hold office for the period specified in the member's instrument of appointment and is eligible (if otherwise qualified) for re-appointment.
- (4) The member appointed by the Director-General is to hold office as such until the Director-General otherwise directs.
- (5) The member appointed by the Minister is to hold office as such until the Minister otherwise directs.
- (6) A member ceases to hold office:

- (a) in the case of a member referred to in subsection (2) (a)–(e), when the member ceases to hold the qualification by virtue of which the member was appointed or holds office, or
  - (b) in the case of a member appointed by the Chief Magistrate, if the member resigns as a member by instrument in writing addressed to the Chief Magistrate, or
  - (c) in the case of the member appointed by the Director-General, if the member resigns as a member by instrument in writing addressed to the Director-General, or
  - (d) in the case of the member appointed by the Minister, if the member resigns as a member by instrument in writing addressed to the Minister.
- (7) If the office of an appointed member becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.

### **31 Local Court (Civil Claims) Rule Committee**

- (1) There is to be a Local Court (Civil Claims) Rule Committee.
- (2) The Local Court (Civil Claims) Rule Committee is to be composed of the following members:
  - (a) the Chief Magistrate,
  - (b) at least 1 and not more than 6 Magistrates (in addition to the Chief Magistrate),
  - (c) a barrister,
  - (d) a solicitor,
  - (e) a person appointed to represent consumer groups,
  - (f) a person appointed by the Director-General,
  - (g) a person appointed by the Minister.
- (3) A member referred to in subsection (2) (b)–(e):
  - (a) is to be appointed by the Chief Magistrate, and
  - (b) is to hold office for the period specified in the member's instrument of appointment and is eligible (if otherwise qualified) for re-appointment.
- (4) The member appointed by the Director-General is to hold office as such until the Director-General otherwise directs.
- (5) The member appointed by the Minister is to hold office as such until the Minister otherwise directs.



(6) A member ceases to hold office:

- (a) in the case of a member referred to in subsection (2) (a)–(d), when the member ceases to hold the qualification by virtue of which the member was appointed or holds office, or
- (b) in the case of a member appointed by the Chief Magistrate, if the member resigns as a member by instrument in writing addressed to the Chief Magistrate, or
- (c) in the case of the member appointed by the Director-General, if the member resigns as a member by instrument in writing addressed to the Director-General, or
- (d) in the case of the member appointed by the Minister, if the member resigns as a member by instrument in writing addressed to the Minister.

(7) If the office of an appointed member becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.

### **32 Deputies**

(1) The Chief Magistrate may, from time to time, appoint to a Rule Committee:

- (a) a barrister to be the deputy of the barrister member of the Committee, and
- (b) a solicitor to be the deputy of the solicitor member of the Committee.

(2) The Chief Magistrate may revoke any such appointment.

(3) In the absence of the barrister member or the solicitor member of a Rule Committee, the member's deputy:

- (a) may, if available, act in the place of the member, and
- (b) while so acting, has the functions of the member and is taken to be the member.

### **33 Chairperson**

(1) The Chief Magistrate is to be the chairperson of each Rule Committee.

(2) The Chief Magistrate is to appoint in writing one of the other members of a Rule Committee who is a Magistrate as deputy chairperson.

### **34 Meetings**

(1) A Rule Committee is (subject to this section) to regulate its own procedure.

(2) The chairperson of a Rule Committee or, in the absence of the chairperson, the deputy chairperson of the Committee is to preside at a meeting of the Committee.

(3) In the absence from a meeting of a Rule Committee of both the chairperson and the

deputy chairperson, another member of the Committee who is a Magistrate is to be chosen by the members present to preside at the meeting.

- (4) The quorum for a meeting of a Rule Committee is a majority of the number of the members for the time being. Any duly convened meeting of a Rule Committee at which a quorum is present is competent to transact any business of the Rule Committee and has and may exercise all the functions of the Rule Committee.
- (5) A decision supported by a majority of the votes cast at a meeting of a Rule Committee at which a quorum is present is the decision of the Rule Committee.
- (6) The person presiding at a meeting of a Rule Committee has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- (7) The Chief Magistrate is to call meetings of a Rule Committee as the Chief Magistrate thinks necessary (subject to any decision of the Committee under subsection (1)).
- (8) A Rule Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Committee for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Committee.

## **Part 6 Application proceedings in Local Courts**

### **Division 1 Jurisdiction**

#### **35 Matters that may be dealt with by Local Courts**

- (1) If a Local Court is given power under any Act or other law to determine any matter or to make an order or impose a penalty, the matter is to be dealt with by a Local Court in accordance with this Part.
- (2) This section applies to a power conferred before or after the commencement of this section.
- (3) This section extends to the following matters:
  - (a) matters for which a complaint could, immediately before the commencement of this section, be made to a Justice under the *Justices Act 1902* in a case where a Justice or Justices or Magistrate had authority to make an order for the payment of money or any other order,
  - (b) matters for which a complaint or an application could, immediately before the commencement of this section, be made to a Justice or Justices or Magistrate under an Act other than the *Justices Act 1902*.

### **36 Proceedings to which Part does not apply**

- (1) This Part does not apply to the following proceedings:
  - (a) proceedings for a summary or indictable offence,
  - (b) proceedings with respect to any order that may be made in, or as a result of, criminal proceedings,
  - (c) proceedings with respect to any matter for which jurisdiction is conferred on the Local Court under the *Crimes (Domestic and Personal Violence) Act 2007*,
  - (d) proceedings with respect to any matter for which jurisdiction is conferred on a Local Court under Part 7.
- (2) To avoid doubt, and despite subsection (1) (b), this Part applies to the following proceedings:
  - (a) applications for orders under the *Crimes (Forensic Procedures) Act 2000*,
  - (b) proceedings for the purposes of Part 2 of Chapter 7 of the *Criminal Procedure Act 1986*,
  - (c) applications for orders, or to vary or revoke any such orders, under the *Child Protection (Offenders Prohibition Orders) Act 2004*,
  - (d) applications for orders under Part 16A of the *Law Enforcement (Powers and Responsibilities) Act 2002*,
  - (e) applications for an order under section 3E or 3F of the *Child Protection (Offenders Registration) Act 2000*.

## **Division 2 Commencement of proceedings**

### **37 Commencement of proceedings by application notice**

Application proceedings are to be commenced in a Local Court by the issuing and filing of an application notice in accordance with this Division.

### **38 Commencement of proceedings by police officer or public officer**

If a police officer or public officer is authorised to commence application proceedings against a person, the officer may commence the proceedings by issuing an application notice and filing the notice in accordance with this Division.

### **39 Commencement of private actions**

- (1) If a person other than a police officer or public officer is authorised to commence application proceedings against a person, the person may commence the proceedings by issuing an application notice, signed by a registrar, and filing the notice in

accordance with this Division.

- (2) A registrar must not sign an application notice if:
  - (a) the registrar is of the opinion that the notice does not disclose grounds for the proceedings, or
  - (b) the registrar is of the opinion that the notice is not in the form required by or under this Act, or
  - (c) the registrar is of the opinion that a ground for refusal set out in the rules applies to the notice.
- (3) If a registrar refuses to sign an application notice proposed to be issued by any such person, the question of whether the application notice is to be signed and issued is to be determined by the Local Court on application by the person.

#### **40 Form of application notice**

- (1) An application notice must be in writing and be in the form prescribed by the rules.
- (2) The rules may prescribe one or more forms of application notice.
- (3) An application notice must do the following:
  - (a) describe the grounds for the proceedings and the remedy sought,
  - (b) contain the name of the applicant,
  - (c) require the respondent to appear before the Local Court or a Magistrate at a specified date, time and place.
- (4) The rules may prescribe additional matters to be included in application notices.

#### **41 Application notice to be for one cause of action only**

An application notice may not relate to more than one cause of action.

#### **42 Service of application notice**

- (1) An application notice issued by a police officer must be served by a police officer in accordance with the rules.
- (2) An application notice issued by a public officer must be served by a police officer or public officer or other person authorised by the rules in accordance with the rules.
- (3) An application notice issued by a person other than a police officer or a public officer must be served by a person authorised by the rules in accordance with the rules.
- (4) A copy of an application notice must be filed in a Local Court in accordance with the

rules.

#### **43 When proceedings commence**

- (1) All proceedings are taken to have commenced on the date on which an application notice is filed in a Local Court.
- (2) An application notice may be filed even though it has not been served if:
  - (a) the notice is not able to be served, despite reasonable attempts to do so, or
  - (b) the registrar gives leave to do so after forming the opinion that it is not reasonable in the circumstances of the case to require prior service of the notice.
- (3) Nothing in this section affects any other Act or law under which proceedings are taken to have commenced on another date.

#### **44 Time limit for commencement of proceedings**

- (1) Application proceedings must be commenced not later than 6 years from when the cause of action is alleged to have arisen.
- (2) This section is subject to any other Act or law.

#### **45 Relationship to other law or practice**

If an Act or a statutory rule provides for application proceedings to be commenced otherwise than by issuing an application notice, the proceedings may be commenced in accordance with this Act.

### **Division 3 Hearing of proceedings**

#### **46 Time for hearing**

- (1) On the first return date for an application notice in any civil proceedings, or at such later time as the Local Court determines, the Court must set the date, time and place for hearing and determining the matter.
- (2) The Local Court must notify the respondent of the date, time and place, if the respondent is not present.
- (3) However, if the respondent is not present at the first return date, the Local Court may proceed to hear and determine the matter on that day at its discretion.

#### **Note—**

The powers of a Local Court to adjourn proceedings are set out in section 54.

#### **47 Proceedings to be open to public**

- (1) Application proceedings before a Local Court are to be heard in open court.

- (2) This section is subject to the provisions of any other Act or law.

#### **48 Place of hearing**

A Local Court may remove application proceedings to a Local Court in another place, if it thinks it appropriate in the circumstances.

#### **49 Right to defend action**

A respondent in application proceedings may defend the action and any proceedings ancillary to the action.

#### **50 Right of representation**

- (1) An applicant or respondent may appear personally or by an Australian legal practitioner or other person empowered by an Act or other law to appear for the applicant or respondent.
- (2) An applicant who is a police officer may appear personally or by a person permitted by subsection (1) or by a police prosecutor.

#### **51 Conduct of case**

- (1) The applicant's case may be conducted by the applicant or by the applicant's Australian legal practitioner or any other person permitted to appear for the applicant (whether under this or any other Act).
- (2) The respondent's case may be conducted by the respondent or by the respondent's Australian legal practitioner or any other person permitted to appear for the respondent (whether under this or any other Act).

#### **52 Evidence to be on oath**

The usual oath must be administered to a witness before the witness is examined.

**Note—**

For the form of oaths and declarations see the [Oaths Act 1900](#).

#### **53 Recording of evidence**

- (1) The evidence of each witness in application proceedings must be recorded.
- (2) Rules may be made for or with respect to the manner in which the evidence may be recorded and the authentication of evidence or of transcripts of evidence given in proceedings.

#### **54 Adjournments**

- (1) The Local Court may at any stage of proceedings adjourn the proceedings generally or to a specified time and place.

- (2) An adjournment of proceedings may be in such terms as the Local Court thinks fit.
- (3) A matter that is adjourned generally must be listed before a Local Court or registrar not later than 2 years after the adjournment.

## **55 Irregularity**

- (1) If, in or in connection with application proceedings or the commencement of application proceedings, there is a failure to comply with any requirement of this Act or the rules, the failure is to be treated as an irregularity and does not nullify the proceedings or any step taken in the proceedings, or any judgment, document or order in the proceedings.
- (2) Subsection (1) applies to a failure to comply with a requirement relating to time, place, manner, form or content or any other failure.
- (3) In the case of an irregularity, a Local Court may, on terms, set aside wholly or in part the proceedings or any step taken in the proceedings or any document, judgment or order in the proceedings or exercise its powers under the rules to allow judgments and to make orders dealing with the proceedings generally.
- (4) The Local Court must not take action under subsection (3) on the application of a party unless that application is made within a reasonable time and before the party has taken any fresh step after becoming aware of the irregularity.

## **56 Power to dispense with rules**

- (1) A Local Court determining application proceedings may, if of the opinion that it is in the interests of justice to do so, dispense with or vary a requirement of the rules.
- (2) For the purposes of subsection (1), a Local Court may make directions as to the conduct of application proceedings.
- (3) The power conferred by this section does not extend to any rule declared by the rules to be mandatory.

### **Note—**

A Local Court may also direct the manner and form of procedure for taking any step in proceedings if it is not prescribed by or under this Act (see section 26).

## **57 Power to stay proceedings**

- (1) A Local Court may order, on such terms as it thinks fit, that any application proceedings be stayed at any stage of the proceedings.
- (2) The power to stay proceedings includes power to order a stay of an enforcement of an order.

- (3) A Magistrate who is satisfied that because of urgent circumstances it is not practicable for the power conferred by this section to be exercised by the court on which they are conferred may exercise that power.

## **58 Arrest of respondent during proceedings**

- (1) A Magistrate may, at any time when or after a matter is first before a Local Court or Magistrate and before it is finally disposed of by the Court or Magistrate, issue a warrant to arrest a respondent if the respondent fails to appear personally or to appear by an Australian legal practitioner or other representative at the Court and the Magistrate is satisfied that the respondent had notice of the date, time and place of the proceedings.
- (2) A Magistrate, registrar or authorised officer before whom a respondent is brought on arrest on a warrant issued under this section may, if bail is not dispensed with or granted, issue a warrant:
  - (a) committing the respondent to a correctional centre or other place of security, and
  - (b) ordering the respondent to be brought before a Local Court at the date, time and place specified in the order.
- (3) The Magistrate, registrar or authorised officer must give notice of the date, time and place set to the applicant.

## **59 Witnesses and the production of evidence**

The provisions of Part 3 of Chapter 4 of the [Criminal Procedure Act 1986](#) apply, with any necessary modifications, to application proceedings under this Act in the same way as they apply to proceedings for summary offences under that Act.

## **60 Warrants of arrest and warrants of commitment**

The provisions of Part 4 of Chapter 4 of the [Criminal Procedure Act 1986](#) apply, with any necessary modifications, to warrants of arrest, or warrants of commitment, issued under this Act in the same way as they apply to warrants of arrest or warrants of commitment issued under that Act.

## **61 Enforcement of orders for payment of money**

An order for the payment of money by a party to application proceedings (including an order as to payment of costs) may be enforced in a court of competent jurisdiction as if it were a debt due to the person to whom the money is ordered to be paid.

## **62 Costs**

- (1) A Local Court may award costs in application proceedings at its discretion and may determine by whom, to whom and to what extent costs are to be paid in or in relation



to application proceedings.

- (2) A Local Court may order costs to be assessed on the basis set out in Division 11 of Part 3.2 of the [Legal Profession Act 2004](#) or on an indemnity basis.
- (3) This section is subject to this Act, the rules and any other Act.

### **63 Rules**

- (1) The rules may make provision for or with respect to the following matters relating to application proceedings:
  - (a) regulating the practice and procedure in Local Courts and in proceedings before registrars,
  - (b) service of application notices and other documents,
  - (c) endorsement of service of application notices and other documents,
  - (d) the form of subpoenas,
  - (e) additional requirements for the form of warrants,
  - (f) the functions of registrars,
  - (g) the hearing of proceedings, including the procedure to be followed and the orders to be made, when a party fails to attend,
  - (h) empowering a Local Court to dispense with rules of evidence for proving any matter that is not genuinely in dispute in any proceedings and to dispense with rules of evidence that might cause expense or delay in proceedings if those rules were applied in specified circumstances,
  - (i) prescribing matters relating to expert evidence, including the disclosure, by providing copies of reports or otherwise, of the nature of expert evidence to be given, and including the exclusion of expert evidence in the case of non-compliance with the rules relating to expert evidence or with any order for disclosure of the nature of expert evidence,
  - (j) providing for any matter relating to the costs of proceedings.
- (2) Without limiting the generality of subsection (1), the rules may make provision for or with respect to empowering a court to make the following orders:
  - (a) that a party give discovery of documents to any party,
  - (b) that a party produce documents for inspection by any party,
  - (c) that a party produce documents at the hearing of any action,

- (d) that a party attend for a medical examination,
  - (e) that a party make admissions for the purposes of the action,
  - (f) that a party give further particulars of any action commenced or grounds of defence filed,
  - (g) any further order prescribed in the event of the failure of a party to comply with an order made under rules made for the purposes of this subsection.
- (3) This section does not give power to make rules with respect to any matter relating to costs that is regulated by Part 3.2 of the [Legal Profession Act 2004](#).

## **64 Appeals**

- (1) In relation to any order arising from an application notice under this Part:
- (a) an application for annulment may be made in accordance with Part 2 of the [Crimes \(Local Courts Appeal and Review\) Act 2001](#), and
  - (b) an appeal to the District Court may be made in accordance with Part 3 of the [Crimes \(Local Courts Appeal and Review\) Act 2001](#), and
  - (c) an appeal to the Supreme Court may be made in accordance with Part 5 of the [Crimes \(Local Courts Appeal and Review\) Act 2001](#),
- in the same way as such an application or appeal may be made in relation to a sentence arising from a court attendance notice dealt with under Part 2 of Chapter 4 of the [Criminal Procedure Act 1986](#).
- (1A) An application or appeal may not be made under subsection (1) in relation to an order referred to in that subsection if the making of such an application or appeal is prohibited by the Act or law pursuant to which the order is made.
- (2) If any other Act:
- (a) provides for an appeal to the District Court against an order of a Magistrate or Justice under that Act, or
  - (b) provides for an appeal against such an order without identifying to which court such an appeal is to be made,
- such an appeal is to be made to the District Court in accordance with Part 3 of the [Crimes \(Local Courts Appeal and Review\) Act 2001](#) in the same way as an appeal under that Part may be made in relation to a sentence arising from a court attendance notice dealt with under Part 2 of Chapter 4 of the [Criminal Procedure Act 1986](#).
- (3) If any other Act provides for an appeal to the Supreme Court against an order of a Magistrate or Justice under that Act, such an appeal is to be made to the Supreme

Court in accordance with Part 5 of the *Crimes (Local Courts Appeal and Review) Act 2001* in the same way as an appeal under that Part may be made in relation to a sentence arising from a court attendance notice dealt with under Part 2 of Chapter 4 of the *Criminal Procedure Act 1986*.

- (4) The *Crimes (Local Courts Appeal and Review) Act 2001* applies to an application or appeal arising under this section with such modifications as are made by or in accordance with the regulations under that Act.
- (5) In this section, a reference to an order includes a reference to any determination that a Local Court has jurisdiction to make, and any penalty that a Local Court has jurisdiction to impose, as referred to in section 35.

## **Part 7 Civil proceedings in Local Courts**

### **Division 1 Jurisdiction**

#### **65 Jurisdiction generally** (cf Act No 11 1970, section 12)

- (1) Subject to this Part, a Court sitting in its General Division has jurisdiction to hear and determine:
  - (a) proceedings on any money claim, if the amount claimed, whether on a balance of account or after an admitted set-off or otherwise, is less than or equal to the jurisdictional limit of the Court when sitting in that Division, and
  - (b) proceedings to recover detained goods, or to recover the assessed value of detained goods, if the value of the goods, together with the amount of any consequential damages claimed for their detention, is less than or equal to the jurisdictional limit of the Court when sitting in that Division, and
  - (c) proceedings that, pursuant to any other Act, are required to be dealt with by the Court sitting in that Division.
- (2) Subject to this Part, a Court sitting in its Small Claims Division has jurisdiction to hear and determine:
  - (a) proceedings on any money claim, if the amount claimed, whether on a balance of account or after an admitted set-off or otherwise, is less than or equal to the jurisdictional limit of the Court when sitting in that Division, and
  - (b) proceedings to recover goods that are detained, or to recover the assessed value of the goods, if the value of the goods, together with the amount of any consequential damages claimed for their detention, is less than or equal to the jurisdictional limit of the Court when sitting in that Division.
- (3) Nothing in subsection (2) prevents proceedings under that subsection from being heard and determined by a Court sitting in its General Division.

- (4) If the amount claimed in proceedings includes interest up to judgment under section 100 of the *Civil Procedure Act 2005*, that interest is to be disregarded for the purpose of determining:
- (a) whether the maximum amount for which the proceedings are authorised by this Part to be brought has been exceeded or not, and
  - (b) whether or not the court sitting in a Division has jurisdiction to hear and determine the proceedings.
- (5) If:
- (a) the jurisdictional limit of a Division is increased, and
  - (b) proceedings in which an amount of money is claimed are pending in a Court when that increase takes effect,
- the Court may, on the application of a plaintiff, make an order altering the amount specified in the claim to an amount not exceeding the new jurisdictional limit.
- (6) In this section, **admitted set-off**, in relation to proceedings, means set-off admitted by the plaintiff in the originating process in the proceedings.
- (7) In this section, a reference to proceedings extends to an action referred to in section 68 of the *Fair Trading Act 1987*.

**Note—**

The effect of subsection (7) is to confer jurisdiction on a Court in respect of proceedings for damages referred to in section 68 of the *Fair Trading Act 1987*. That jurisdiction is similar to the jurisdiction conferred on a Court by section 86 of the *Trade Practices Act 1974* of the Commonwealth in respect of proceedings for damages referred to in section 82 of that Act.

## **66 Limits may be exceeded for certain money claims**

- (1) This section applies to proceedings before a Court sitting in its General Division, and so applies despite section 65 (1) (a).
- (2) The Court has jurisdiction to hear and determine proceedings on a money claim for an amount not exceeding 20 per cent more than the jurisdictional limit of the Court when sitting in its General Division:
- (a) if a memorandum of consent has been filed in relation to the proceedings, or
  - (b) if no objection to the Court's jurisdiction has been raised by any of the parties prior to one month before the trial of the action commences.
- (3) A memorandum of consent referred to in subsection (2) (a):
- (a) must be signed by each party to the proceedings, or by the party's solicitor, and

(b) must state that each of those parties consents to the proceedings being heard and determined by the Court and is aware that, unless the memorandum is filed, the Court will not have jurisdiction to hear or determine the proceedings.

(4) Nothing in this section limits the operation of section 140 of the *Civil Procedure Act 2005*.

**67 Limitation of jurisdiction** (cf Act No 11 1970, section 19)

(1) A Court does not have jurisdiction under this Part in any of the following circumstances:

- (a) proceedings in which the validity or effect of any devise, bequest or limitation under any will or settlement, or under any document in the nature of a settlement, is disputed,
- (b) proceedings for passing-off, wrongful arrest, false imprisonment, malicious prosecution, defamation, seduction, enticement or breach of promise of marriage,
- (c) proceedings for infringement of letters patent or copyright,
- (d) proceedings for the detention of goods:
  - (i) where the goods are the subject of a hire-purchase agreement, or
  - (ii) where the goods are detained by their owner or by some other person acting on the owner's behalf,
- (e) proceedings in which the title to land is in question, other than proceedings on a claim in respect of which the question of the title to land is merely incidental.

(2) The judgment of a Court in proceedings in which the title to land has been in question, as referred to in subsection (1) (e), is not admissible as evidence of the title to the land in any other proceedings in that or any other court, whether or not a Court.

(3) Except as may be provided by the rules, a Court sitting in its Small Claims Division has no power to award costs to or against a party to proceedings in the Division.

**68 Jurisdiction in proceedings for review of contracts** (cf Act No 11 1970, section 12A)

(1) In relation to a contract, a Court has the same jurisdiction as the Supreme Court, and may exercise all the powers and authority of the Supreme Court, to grant relief under section 7 (1) (a) of the *Contracts Review Act 1980*.

(2) This section applies only if application for the exercise of the jurisdiction is made in proceedings concerning the contract that are in the course of being heard by the Court.

(3) This section does not authorise a Court to exercise the jurisdiction conferred by any

other provision of the [Contracts Review Act 1980](#).

**69 Jurisdiction when cause of action or defendant outside the State** (cf Act No 11 1970, section 17)

- (1) A Court has jurisdiction to hear and determine proceedings with respect to a cause of action:
  - (a) even if part of the cause of action arose outside New South Wales, so long as a material part of the cause of action arose within New South Wales, and
  - (b) even if the whole cause of action arose outside New South Wales, so long as the defendant was resident in New South Wales at the time of service of the document that commenced the proceedings, and
  - (c) even if the defendant is not within New South Wales, so long as:
    - (i) the whole or a material part of the cause of action arose within New South Wales, and
    - (ii) the defendant was within a State or a part of the Commonwealth (within the meaning of the [Service and Execution of Process Act 1992](#) of the Commonwealth) at the time of service of the document that commenced the proceedings.
- (2) Subsection (1) (c) applies whether or not the defendant has ever been resident or carried on business in New South Wales.
- (3) In this section, **defendant** includes, if there are 2 or more defendants, any one of those defendants.

## **Division 2 Proceedings in Small Claims Division**

**70 Procedure generally in Small Claims Division** (cf Act No 11 1970, section 23B)

- (1) The jurisdiction conferred by or under this Act on a Court sitting in its Small Claims Division is to be exercised by a Magistrate or an Assessor.
- (2) Proceedings in a Court's Small Claims Division are to be conducted with as little formality and technicality as the proper consideration of the matter permits.
- (3) The rules of evidence do not apply to proceedings being heard or other proceedings in a Court's Small Claims Division.
- (4) Witnesses may not be cross-examined except in circumstances in which, and to the extent to which, the cross-examination of witnesses is authorised by a practice note.
- (5) An Assessor or Magistrate exercising the jurisdiction of a Court sitting in its Small Claims Division may inform himself or herself on any matter relating to proceedings

being heard or other proceedings in the Small Claims Division in such manner as he or she thinks fit.

- (6) Proceedings in a Court's Small Claims Division (other than any judgment given or order made in respect of the proceedings) are not required to be recorded.

**71 Conciliation of parties** (cf Act No 11 1970, section 23A)

- (1) An Assessor or Magistrate is not to give judgment or make a final order in respect of proceedings being heard in a Court's Small Claims Division unless the Assessor or Magistrate has brought, or has used his or her best endeavours to bring, the parties to the proceedings to a settlement acceptable to the parties.
- (2) If such a settlement is reached, the Assessor or Magistrate is to give judgment or make a final order that gives effect to the terms of the settlement.

### **Division 3 Appeals from Local Courts**

**72 Judgments and orders final** (cf Act No 11 1970, section 69 (1))

Subject to this Division, all judgments and orders of a Court exercising jurisdiction under this Part are final and conclusive.

**73 Appeals as of right** (cf Act No 11 1970, section 69 (2) and (2A))

- (1) A party to proceedings under this Part who is dissatisfied with the judgment or order of a Court sitting in its General Division may appeal to the Supreme Court against the judgment or order, but only as being erroneous in point of law.
- (2) A party to proceedings under this Part who is dissatisfied with the judgment or order of a Court sitting in its Small Claims Division may appeal to the District Court against the judgment or order, but only on the ground of lack of jurisdiction or denial of natural justice.

**74 Appeals requiring leave** (cf Act No 11 1970, section 69 (2B) and (3))

- (1) A party to proceedings under this Part who is dissatisfied with the judgment or order of a Court sitting in its General Division may appeal to the Supreme Court against the judgment or order on a ground that involves a question of mixed law and fact, but only by leave of the Supreme Court.
- (2) A party to proceedings under this Part who is dissatisfied with any of the following judgments or orders of a Court sitting in its General Division may appeal to the Supreme Court against the judgment or order, but only by leave of the Supreme Court:
  - (a) an interlocutory judgment or order,
  - (b) a judgment or order made with the consent of the parties,

- (c) an order as to costs.

**75 Determination of appeals** (cf Act No 11 1970, section 69 (4) and (5))

- (1) The Supreme Court may determine an appeal made under section 73 (1) or 74:
  - (a) by varying the terms of the judgment or order, or
  - (b) by setting aside the judgment or order, or
  - (c) by setting aside the judgment or order and remitting the matter to the Court for determination in accordance with the Supreme Court's directions, or
  - (d) by dismissing the appeal.
- (2) The District Court may determine an appeal made under section 73 (2):
  - (a) by varying the terms of the judgment or order, or
  - (b) by setting aside the judgment or order, or
  - (c) by setting aside the judgment or order and remitting the matter to the Court for determination in accordance with the District Court's directions, or
  - (d) by dismissing the appeal.

**Division 4 Miscellaneous**

**76 Appointment of, and qualifications for, Assessors** (cf Act No 11 1970, section 10)

- (1) The Minister may appoint any qualified person to be an Assessor.
- (2) The appointment of an Assessor may be on a full-time or part-time basis.
- (3) A person is qualified to be appointed as an Assessor if the person is an Australian lawyer.
- (4) If appointed on a full-time basis, an Assessor is to devote the whole of his or her time to the duties of the office of an Assessor.
- (5) Schedule 2 has effect with respect to Assessors.

**77 Consequences of abolition of Court** (cf Act No 11 1970, section 77 (1))

- (1) All proceedings pending under this Act in a Court that has been abolished may be continued and completed in such other Court as the Governor, by order published in the Gazette, may specify.
- (2) Any judgment or order of a Court that has been abolished may be enforced in the same manner as if it had been given, entered or made by the specified Court.



(3) An order under this section may direct that the records of the Court that has been abolished be removed at or within a time stated in the order to the specified Court.

(4) An order under this section may be included in an order abolishing a Court, in an order under section 78 or may be published separately.

**78 Governor may deprive Court of civil jurisdiction** (cf Act No 11 1970, section 77 (3))

(1) The Governor may, by order published in the Gazette, declare that the jurisdiction conferred by this Part may not be exercised by any Court specified in the order.

(2) A Court in respect of which an order is in force under this section, and the registrar of such a Court, do not have and may not exercise any of the jurisdiction or functions conferred or imposed on a Court or registrar by or under this Part.

(3) Section 77 applies to a Court in respect of which an order is made under this section if that Court had been abolished.

**79 Rules** (cf Act No 11 1970, section 84)

(1) The rules may make provision for or with respect to the following matters:

- (a) the practice and procedure in a court and in proceedings before a registrar,
- (b) the transfer of proceedings between Divisions,
- (c) the assignment of proceedings to Divisions,
- (d) the referral of matters to Community Justice Centres,
- (e) the functions of registrars,
- (f) the filing and serving of notices under this Act,
- (g) the times for doing any matter or thing for the purposes of this Act,
- (h) the excusal of non-compliance with the rules,
- (i) costs in relation to proceedings in a Court's Small Claims Division,
- (j) the manner of doing any matter or thing for the purposes of this Act.

(2) In this section, a reference to a court includes a reference to a Division of a court.

(3) This section does not give power to make rules with respect to any matter relating to costs that is regulated by Division 11 of Part 3.2 of the [Legal Profession Act 2004](#).

(4) This section does not give power to make rules in terms inconsistent with those of the uniform rules under the [Civil Procedure Act 2005](#) unless the uniform rules expressly permit rules under this section to be made in those terms.

- (5) The rules made under this section may authorise or require the use of an electronic case management system established under section 14B of the [Electronic Transactions Act 2000](#) in relation to any proceedings in a court in respect of which the use of such a system is authorised by an order in force under section 14C of that Act.
- (6) The rules made under this section may provide for the exercise by a registrar or other officer of a court of any of the court's administrative or judicial functions under this or any other Act and for the review by a court of the exercise by a registrar or other such officer of any such function.

## Schedule 1 Savings and transitional provisions

(Section 5)

### 1 Definition

In this Schedule, **corresponding Court**, in relation to a Court of Petty Sessions, means the Local Court required by clause 2 (2) to be held at the place at which the Court of Petty Sessions was required under section 5 (1) of the [Justices Act 1902](#) to be held immediately before the appointed day.

### 2 Former Courts of Petty Sessions to be Local Courts

- (1) All Courts of Petty Sessions which existed immediately before the appointed day shall be deemed to be Local Courts established under section 6 (1).
- (2) The place at and the district for which each Court which is deemed to have been established by subclause (1) shall be held shall:
  - (a) be the same place and district as was appointed under section 5 (1) of the [Justices Act 1902](#) in relation to the Court of Petty Sessions held at that place immediately before the appointed day, and
  - (b) be deemed to have been appointed under section 6 (1).

### 3 Saving relating to abolition of Courts of Petty Sessions

Any Act or other law which, if section 9 had not been enacted, would have applied, on or after the appointed day:

- (a) to or in respect of all Courts of Petty Sessions, shall apply to or in respect of all Local Courts as if Local Courts were Courts of Petty Sessions, or
- (b) to or in respect of a particular Court of Petty Sessions, shall apply to or in respect of the corresponding Court as if the corresponding Court were that Court of Petty Sessions.

#### 4 Acts done by former Courts of Petty Sessions etc

- (1) Any act, matter or thing done, before the appointed day, under any Act or other law:
  - (a) by a stipendiary magistrate or a justice or justices constituting and exercising any of the functions of a Court of Petty Sessions—shall be deemed to have been done by a Magistrate or a justice or justices constituting and exercising a function of the corresponding Court,
  - (b) by a person exercising any of the functions of the chairman of the bench of stipendiary magistrates—shall be deemed to have been done by the Chief Magistrate,
  - (c) by a person exercising any of the functions of a stipendiary magistrate, otherwise than when the person constituted a Court of Petty Sessions—shall be deemed to have been done by a Magistrate,
  - (d) by a person exercising any of the functions of a clerk of petty sessions at a particular Court of Petty Sessions—shall be deemed to have been done by the Clerk of the Local Court which is the corresponding Court, or
  - (e) by a bailiff of a Court of Petty Sessions—shall be deemed to have been done by a bailiff of the corresponding Court.
- (2) In subclause (1), a reference to an Act does not include a reference to the *Courts of Petty Sessions (Civil Claims) Act 1970*.
- (3) In subclause (1) (b), a reference to a person exercising any of the functions of the chairman of the bench of stipendiary magistrates includes a reference to a person exercising any of the functions of an office held by the person under any other Act, where the person held that office by reason of the person's holding the office of chairman of the bench of stipendiary magistrates.
- (4) In subclause (1) (c), a reference to a person exercising any of the functions of a stipendiary magistrate includes a reference to a person exercising any of the functions of:
  - (a) the office, under the *Coroners Act 1980*, of a coroner, or
  - (b) an office held by the person under any other Act,where the person held that office by reason of the person's holding the office of a stipendiary magistrate.
- (5) In subclause (1) (d), a reference to a person exercising any of the functions of a clerk of petty sessions at a particular Court of Petty Sessions includes a reference to a person exercising any of the functions of:

(a) the office, under the *Landlord and Tenant (Amendment) Act 1948*, of clerk of the Fair Rents Board, if any, at the place at which that Court of Petty Sessions was required to be held under the *Justices Act 1902*, or

(b) an office held by the person under any other Act,

where the person held that office by reason of the person's holding the office of a clerk of petty sessions.

## 5 Savings relating to stipendiary magistrates

(1) In this clause, **former Magistrate** means a person who, immediately before the appointed day, was employed under the *Public Service Act 1979* in the position of stipendiary magistrate.

(2) A former Magistrate who:

(a) accedes to the office of a Magistrate on the appointed day, and

(b) immediately before the appointed day, held another office under any other Act (other than the office of chairman of the bench of stipendiary magistrates) by reason of the former Magistrate's having been a stipendiary magistrate when the former Magistrate was appointed to, or nominated for, that other office,

shall not vacate that other office by reason only of the former Magistrate's not having been a Magistrate when the former Magistrate was appointed to, or nominated for, that other office.

(3) A former Magistrate who does not accede to the office of a Magistrate on the appointed day is, if the former Magistrate has not attained the age of 60 years, entitled to be appointed to some position in the Public Service and is, until:

(a) attaining that age, or

(b) ceasing to be a public servant,

whichever first occurs, entitled to be paid salary at a rate not lower than the rate of salary for the time being payable to a Magistrate of the rank or grading that is the equivalent (or the nearest equivalent) of the rank or grading held by the former Magistrate immediately before the appointed day.

(4) Neither the enactment of nor the provisions of subclause (3) shall be treated by any court or tribunal, or in any other way, as a precedent for the manner in which other persons may be dealt with.

## 6 Saving relating to clerks of petty sessions

A person who, immediately before the appointed day, held the office of clerk of petty sessions at a particular Court of Petty Sessions shall be deemed to have been appointed

by the Governor as the Clerk of the Local Court which is the corresponding Court:

- (a) where the person was employed under the *Public Service Act 1979* immediately before that day—under and subject to that Act, or
- (b) in any other case—under section 10 (2) (b).

## **7 References to former Courts of Petty Sessions etc**

- (1) Except in so far as the context or subject-matter otherwise indicates or requires (and subject to the prescribed exceptions, if any), a reference in any other Act (whether that Act was assented to before, or is assented to on or after, the appointed day) or in any regulation, by-law, rule or other statutory instrument or in any other document, whether of the same or a different kind, to:
  - (a) Courts of Petty Sessions or Petty Sessions shall be read and construed as a reference to Local Courts established under section 6 (1),
  - (b) a particular Court of Petty Sessions shall be read and construed as a reference to the corresponding Court,
  - (c) a stipendiary magistrate or police magistrate shall be read and construed as a reference to a Magistrate,
  - (d) the chief stipendiary magistrate or the chairman of the bench of stipendiary magistrates shall be read and construed as a reference to the Chief Magistrate,
  - (e) a clerk of petty sessions (other than the clerk of petty sessions at a particular Court of Petty Sessions) shall be read and construed as a reference to a Clerk of a Local Court, and
  - (f) the clerk of petty sessions at a particular Court of Petty Sessions shall be read and construed as a reference to the Clerk of the Local Court which is the corresponding Court.
- (2) In subclause (1), a reference to another Act does not include a reference to the *Justices (Local Courts) Amendment Act 1982*, the *Courts of Petty Sessions (Civil Claims) Further Amendment Act 1982* or the *Miscellaneous Acts (Local Courts) Amendment Act 1982*.

### **7A Oath of office**

- (1) In this clause, **re-appointed person** means a person:
  - (a) who held the office of stipendiary magistrate immediately before the appointed day, and
  - (b) who is appointed under this Act by the Governor to be a Magistrate so as to accede to that office on the appointed day.

- (2) A re-appointed person who complied with section 9 of the *Justices Act 1902* before the appointed day shall be deemed to have:
- (a) taken and subscribed the oaths, or made and subscribed the affirmations, referred to in section 16 (1) of this Act, and
  - (b) transmitted them to the Minister,
- within 3 months of the person's appointment as a Magistrate.

## **8 Regulations of a saving or transitional nature**

- (1) The regulations may contain provisions of a saving or transitional nature consequent on the enactment of this Act, the *Justices (Local Courts) Amendment Act 1982*, the *Courts of Petty Sessions (Civil Claims) Further Amendment Act 1982* or the *Miscellaneous Acts (Local Courts) Amendment Act 1982* or any of the following Acts:
- Courts Legislation Further Amendment Act 1998*, but only in relation to the amendments made to this Act
  - Local Courts Amendment (Part-time Magistrates) Act 1999*
  - Justices Legislation Repeal and Amendment Act 2001*, but only in relation to the amendments made to this Act
  - Courts Legislation Amendment Act 2006*, but only in relation to the amendments made to this Act
  - Courts Legislation Amendment Act 2007* (but only to the extent to which it amends this Act)
  - Courts and Crimes Legislation Amendment Act 2008*
- (2) A provision made under subclause (1) may take effect as from the appointed day or a later day.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication therein, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication therein.
- (4) A provision made under subclause (1) shall, if the regulations so provide, have effect

notwithstanding:

- (a) any other clause of this Schedule, except clause 5 (3) and (4),
- (b) Schedule 9 to the *Justices (Local Courts) Amendment Act 1982*, and
- (c) Schedule 2 to the *Courts of Petty Sessions (Civil Claims) Further Amendment Act 1982*.

## **9 Application of age limits to appointments of existing acting Magistrates**

The amendment made to section 13 of this Act by Schedule 7 [1] to the *Courts Legislation Further Amendment Act 1998* does not affect the validity of any appointment made before the commencement of the amendment that is still in force on that commencement.

## **10 Remuneration of part-time Magistrates**

Until a relevant determination is made and takes effect under the *Statutory and Other Offices Remuneration Act 1975*, a part-time Magistrate is entitled to be paid in accordance with the determination in force for the time being for Magistrates, but on a pro rata basis (according to time spent in service), as calculated by the Minister.

## **11 Existing Clerks of Local Courts**

A person who, immediately before the commencement of this clause, held office as a Clerk of a Local Court is taken to have been appointed under this Act as a registrar of the Local Court.

## **12 Existing registrars for civil claims jurisdiction**

A person who, immediately before the commencement of this clause, held office as a registrar or a deputy registrar of a Local Court under the *Local Courts (Civil Claims) Act 1970* (but not as a Clerk of a Local Court) is taken to have been appointed under this Act as a deputy registrar of the Court.

## **13 Contempt of court**

- (1) Sections 27A and 27B, as inserted by the *Justices Legislation Repeal and Amendment Act 2001*, do not apply to a contempt committed before the commencement of those sections.
- (2) The provisions of the *Justices Act 1902* and the *Local Courts (Civil Claims) Act 1970*, as in force before the commencement of sections 27A and 27B, continue to apply to a contempt committed before the commencement of those sections.

## **14 Matters arising before insertion of Part 6**

- (1) Part 6 of this Act, and any instruments made under this Act, apply to or in relation to proceedings for a cause of action for which proceedings may be taken under that Part,

that arose before the commencement of this clause, if proceedings in respect of the matter were not commenced before the commencement of this clause.

- (2) The provisions of the *Justices Act 1902*, and any instruments made under that Act, as in force immediately before the commencement of this clause, continue to apply to or in relation to proceedings for any such cause of action, if proceedings in respect of the cause of action were commenced before the commencement of this clause.
- (3) For the purposes of this clause, proceedings are taken to have been commenced in respect of an offence if a complaint was made, or an attendance notice issued, in relation to a cause of action, before the commencement of this clause.

## **15 Provisions about appearances and service of documents**

Without limiting the generality of clause 14 (2), the provisions of the *Justices Act 1902* and any instrument made under that Act continue to apply to or in relation to:

- (a) requiring the appearance of accused persons, witnesses and other persons at proceedings referred to in clause 14 (2), and
- (b) the issue and enforcement of and requirements for warrants of apprehension and commitment relating to proceedings referred to in clause 14 (2), and
- (c) the service of process and other documents relating to proceedings referred to in clause 14 (2).

## **16 Costs**

- (1) Without limiting the generality of clause 14 (2), the provisions of the *Justices Act 1902* and any instrument made under that Act continue to apply to or in relation to:
  - (a) orders for, and the payment of, costs by accused persons or other persons in any proceedings commenced under that Act before the commencement of this clause, and
  - (b) the enforcement of any such order.
- (2) Part 2 of and Schedule 1 to the *Justices (General) Regulation 2000* continue to apply, with any necessary modifications, in respect of proceedings before a Local Court or a Magistrate until otherwise provided by the regulations.

- (3) This clause ceases to have effect on the commencement of section 18 of the *Civil Procedure Act 2005*.

### **Editorial note—**

Date of commencement of that section, 15.8.2005. See Gazette No 100 of 10.8.2005, p 4205.



## **17 References to issue of summonses and informations**

A reference in a provision of an Act or a statutory rule to the issue of a summons, or the laying of an information, in relation to a cause of action referred to in clause 14 for which proceedings could (immediately before the commencement of this clause) be commenced under the *Justices Act 1902*, is taken to be a reference to the issue of an application notice under this Act.

## **18 Additional terms of office**

The amendments made to sections 13 and 21 by the *Courts Legislation Amendment Act 2006* apply to a person who reached the age of 72 years before the commencement of those amendments.

## **19 Pending appeals**

An appeal to the Supreme Court for which a hearing date had been allocated before the commencement of Schedule 16 to the *Courts and Crimes Legislation Amendment Act 2008* is to be determined as if that Act had not been enacted.

# **Schedule 2 Provisions relating to Assessors**

(Section 76)

### **1 Term of office**

Subject to this Schedule, an Assessor holds office, for such period (not exceeding 7 years) as may be specified in the Assessor's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

### **2 Remuneration**

An Assessor is entitled to be paid:

- (a) remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*, and
- (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the Assessor.

### **3 Effect of certain other Acts**

- (1) The provisions of the *Public Sector Employment and Management Act 2002* do not apply to or in respect of the appointment of an Assessor and an Assessor is not, as an Assessor, subject to that Act.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

- (b) prohibiting a person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also the office of an Assessor appointed on a part-time basis or, subject to subclause (3), from accepting and retaining any remuneration payable to the person under this Act as an Assessor appointed on a part-time basis.

- (3) Subclause (2) does not operate to authorise an officer of a Local Court to accept or retain any remuneration payable to the officer as an Assessor.

#### **4 Leave**

- (1) An Assessor, if appointed on a full-time basis, is entitled to such leave:

- (a) as is determined by the Minister, or
- (b) as may be specified in respect of the Assessor in the Assessor's instrument of appointment.

- (2) Leave may be determined or specified as referred to in subclause (1) by reference to the leave entitlement of the holder of any other office or class of office.

#### **5 Removal from office**

The Minister may remove an Assessor from office for incapacity, incompetence or misbehaviour.

#### **6 Vacation of office**

An Assessor vacates office if the Assessor:

- (a) completes a term of office and is not re-appointed, or
- (b) dies, or
- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) becomes a mentally incapacitated person, or
- (e) is removed from office by the Minister under clause 5.