

# Courts Legislation Amendment Act 2010 No 63

[2010-63]



New South Wales

## Status Information

### Currency of version

Historical version for 28 June 2010 to 28 June 2010 (accessed 23 December 2024 at 11:57)

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### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **Note**

Amending Acts and amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

### Authorisation

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# Courts Legislation Amendment Act 2010 No 63



New South Wales

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# Courts Legislation Amendment Act 2010 No 63



New South Wales

An Act to amend certain Acts and a Regulation with respect to courts and tribunals and civil and criminal procedure.

## 1 Name of Act

This Act is the *Courts Legislation Amendment Act 2010*.

## 2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) The amendments made by Schedule 1 commence on the day or days specified in that Schedule in relation to the amendments concerned. If a commencement day is not specified, the amendments commence on the date of assent to this Act.

## 3 Explanatory notes

The matter appearing under the heading “Explanatory note” in Schedule 1 does not form part of this Act.

## Schedule 1 Amendment of Acts and Regulation

### 1.1 Administrative Decisions Tribunal Act 1997 No 76

#### [1] Section 24A Constitution of Tribunal for exercise of interlocutory and ancillary functions

Insert in alphabetical order in section 24A (1):

***ancillary function*** means any of the following:

- (a) the making of an order or other decision by the Tribunal (including an Appeal Panel of the Tribunal) in relation to the awarding of costs in proceedings in the Tribunal,
- (b) the function of determining whether the Tribunal (including an Appeal Panel of the Tribunal) has jurisdiction to deal with a matter.

**[2] Section 24A (2) and (2A)**

Omit “interlocutory functions” wherever occurring.

Insert instead “interlocutory or ancillary functions”.

**[3] Section 24A (3)**

Omit “interlocutory function”.

Insert instead “interlocutory or ancillary function”.

**[4] Section 73 Procedure of the Tribunal generally**

Insert after section 73 (5):

- (5A) An application made to the Tribunal to reinstate proceedings under subsection (5) (h) must be made:
- (a) within 28 days after the Tribunal dismissed the proceedings that are sought to be reinstated, or
  - (b) within such further time as the Tribunal may allow.

**[5] Section 113 Right to appeal against appealable decisions of the Tribunal**

Insert after section 113 (2D):

- (2E) If an appeal is made under subsections (1) and (2) against the exercise of an ancillary function (within the meaning of section 24A) by the Tribunal, the Appeal Panel may be constituted in the same way as an Appeal Panel may be constituted under subsection (2B) in relation to appeals against the exercise of an interlocutory function by the Tribunal.
- (2F) The provisions of subsection (2E):
- (a) have effect despite any other requirement of this Act or any other enactment relating to the constitution of an Appeal Panel for the exercise of its functions (including section 24A), and
  - (b) do not prevent a differently constituted Appeal Panel from determining an appeal under subsections (1) and (2) if the Panel is duly constituted to exercise that function apart from subsection (2E).

**[6] Schedule 2 Composition and functions of Divisions**

Omit “practising legal practitioner” from clause 3 (1) of Part 1.

Insert instead “judicial member”.

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

Insert at the end of clause 1 (1):

*Courts Legislation Amendment Act 2010*, to the extent that it amends this Act

**[8] Schedule 5**

Insert at the end of the Schedule (with appropriate Part and clause numbers):

**Part Provision consequent on enactment of *Courts Legislation Amendment Act 2010***

**Constitution of Tribunal in Community Services Division**

The amendment made to clause 3 of Part 1 of Schedule 2 by the *Courts Legislation Amendment Act 2010* extends to proceedings that were pending (but not yet heard) before the commencement of the amendment.

**Explanatory note**

Items [1]-[3] of the proposed amendments to the *Administrative Decisions Tribunal Act 1997* (**the Act**) enable the Administrative Decisions Tribunal to be constituted by a single judicial member (in proceedings at first instance) or by a presidential judicial member (in proceedings on appeal) for the purpose of determining costs or whether a matter is within the Tribunal's jurisdiction.

Item [4] of the proposed amendments to the Act requires an application for the reinstatement of proceedings that have been dismissed because of an applicant's failure to appear to be made within 28 days after the dismissal of the proceedings or such further period as the Tribunal may allow.

Item [5] of the proposed amendments to the Act enables an appeal to an Appeal Panel from a decision of the Tribunal in relation to jurisdiction or costs to be heard by an Appeal Panel constituted in the same way as an Appeal Panel may be constituted in relation to an appeal against an interlocutory decision. The amendment is consequential on the amendments to the Act proposed to be made by items [1]-[3].

Item [6] of the proposed amendments to the Act provides for the Tribunal in its Community Services Division to be constituted in certain circumstances by 3 Division members, one of whom must be a judicial member. Currently, the Act provides for the Tribunal in that Division to be constituted by 3 Division members, one of whom must be a practising legal practitioner. Item [8] of the proposed amendments inserts a transitional provision relating to the amendment proposed to be made by item [6].

Item [7] of the proposed amendments to the Act enables the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed amendments to the Act.

**1.2 Children and Young Persons (Care and Protection) Act 1998 No 157**

**[1] Section 3 Definitions**

Omit "preliminary conference" from paragraph (b) of the definition of ***non-court proceedings***.

Insert instead “dispute resolution conference”.

**[2] Section 65 Dispute resolution conferences**

Omit “preliminary conference” from section 65 (1), (1A) and (3) wherever occurring.

Insert instead “dispute resolution conference”.

**[3] Section 65 (2) and (2A)**

Omit section 65 (2). Insert instead:

- (2) The purpose of a dispute resolution conference is to provide the parties with an opportunity to agree on action that should be taken in the best interests of the child or young person concerned.
- (2A) In conducting a dispute resolution conference, a Children’s Registrar is to act as a conciliator between the parties. In so doing:
  - (a) the Children’s Registrar should seek to encourage the parties to agree on action that should be taken in relation to the child or young person concerned (including the formulation of final or interim orders that may be made by consent), or
  - (b) if the parties cannot agree on the action to be taken in relation to the child or young person, the Children’s Registrar should encourage the parties:
    - (i) to identify areas of agreement between the parties, and
    - (ii) to identify issues in dispute between the parties, and
    - (iii) to determine the best way of resolving any issues in dispute, including by referring the application to independent alternative dispute resolution, and
    - (iv) if it is not appropriate to refer the application to independent alternative dispute resolution, to set a timetable for the hearing of the application by the Children’s Court.

**[4] Section 264 Regulations**

Omit “preliminary conferences” from section 264 (1A) (c).

Insert instead “dispute resolution conferences”.

**[5] Schedule 3 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Courts Legislation Amendment Act 2010*, to the extent that it amends this Act

**Explanatory note**

Items [2] and [3] of the proposed amendments to the *Children and Young Persons (Care and Protection) Act 1998 (the Act)* confirm that preliminary conferences held under section 65 of the Act are intended to be used for the purpose of dispute resolution. To emphasise this purpose, such conferences will be renamed as “dispute resolution conferences” and the role of a Children’s Registrar as a conciliator in such conferences is reaffirmed. Items [1] and [4] of the proposed amendments make consequential amendments.

Item [5] of the proposed amendments enables the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed amendments to the Act.

### **1.3 Children and Young Persons (Care and Protection) Regulation 2000**

#### **Clause 11 Protection of information disclosed in alternative dispute resolution**

Omit “preliminary conference” wherever occurring in paragraph (b) of the definition of ***alternative dispute resolution*** in clause 11 (1).

Insert instead “dispute resolution conference”.

**Explanatory note**

The proposed amendment to the *Children and Young Persons (Care and Protection) Regulation 2000* makes an amendment that is consequential on the renaming of a preliminary conference under section 65 of the *Children and Young Persons (Care and Protection) Act 1998* as a dispute resolution conference by the amendments proposed to be made to that section by Schedule 1.2.

### **1.4 Children (Criminal Proceedings) Act 1987 No 55**

#### **[1] Section 41 Enforcement of conditions of good behaviour bond or probation or compliance with outcome plan**

Insert after section 41 (1):

(1A) Without limiting subsection (1), the Children’s Court (in the case of a person who is under the age of 21 years) or the Local Court (in the case of a person who is of or above the age of 21 years) may call on a person to appear before it if the Court suspects that the person:

- (a) has entered into a good behaviour bond, or been released on probation, under section 33 (1), or been released under section 33 (1) (c1) on condition that the person complies with an outcome plan, and
- (b) has failed to comply with a condition of the person’s good behaviour bond or probation, or has failed to comply with the outcome plan.

(1B) If the person fails to appear after being called to do so under subsection (1A), the Court may:

- (a) issue a warrant for the person's arrest, or
- (b) authorise an authorised officer to issue a warrant for the person's arrest.

**[2] Section 41 (2)**

Insert "or (1B)" after "subsection (1) (d)".

**[3] Schedule 2 Savings and transitional provisions**

Insert at the end of the Schedule (with appropriate Part and clause numbers):

## **Part Courts Legislation Amendment Act 2010**

### **Application of amendments to section 41**

The amendments made to section 41 by the *Courts Legislation Amendment Act 2010* extend to a failure of a person of the kind referred to in section 41 (1A) (as inserted by that Act) occurring before the commencement of the amendments.

#### **Explanatory note**

Item [1] of the proposed amendments to the *Children (Criminal Proceedings) Act 1987 (the Act)* enables the Children's Court and the Local Court to call, of the Court's own motion, on a person to appear before the Court if it suspects that the person has failed to comply with a good behaviour bond or a condition of probation or outcome plan determined under the *Young Offenders Act 1997*. Item [2] of the proposed amendments to the Act makes a consequential amendment.

Item [3] of the proposed amendments to the Act inserts a transitional provision to enable the Children's Court and the Local Court to use the new power to call on a person to appear before the Court in relation to failures occurring before the commencement of the amendments proposed to be made by items [1] and [2] of the proposed amendments.

## **1.5 Children's Court Act 1987 No 53**

### **Section 6A President of Children's Court**

Omit section 6A (8). Insert instead:

- (8) The President may, while holding office as the President, exercise the jurisdiction of the District Court if:
  - (a) the President is requested to do so by the Chief Judge of the District Court in relation to particular proceedings before that Court, and
  - (b) the President agrees to the request.

#### **Explanatory note**

Section 6A of the *Children's Court Act 1987 (the Act)* provides that the President of the Children's Court must be a District Court Judge. However, the section currently prevents the President from exercising the jurisdiction of the District Court while he or she holds office as President.



The proposed amendment to the Act will enable the President of the Children's Court to agree to sit as a District Court Judge (if the workload of the Children's Court permits) in particular proceedings before the District Court if requested to do so by the Chief Judge of the District Court.

## **1.6 Civil Liability Act 2002 No 22**

### **[1] Section 17 Indexation of maximum amount relating to non-economic loss**

Omit "in the Gazette" from section 17 (1) and (6) wherever occurring.

Insert instead "on the NSW legislation website".

### **[2] Section 26QA**

Insert after section 26Q:

#### **26QA Court may deal with victim claim on the papers**

A court is to determine a victim claim made to it without conducting a hearing unless it is satisfied that the interests of justice require that a hearing be held in the presence of the parties.

### **[3] Part 2A, Division 7**

Insert after Division 6:

## **Division 7 Miscellaneous**

### **26X Limitation on exemplary, punitive and aggravated damages against protected defendant in cases of vicarious liability**

- (1) In an action against a protected defendant for the award of personal injury damages where the act or omission that caused the injury or death was a tort (whether or not negligence) of a person for whose tort the protected defendant is vicariously liable, a court cannot award exemplary or punitive damages or damages in the nature of aggravated damages.
- (2) Subsection (1) does not limit the application of section 21 to actions for the award of personal injury damages to which this Part applies.

#### **Note—**

Section 21 provides that a court cannot award exemplary or punitive damages or damages in the nature of aggravated damages in an action for the award of personal injury damages where the act or omission that caused the injury or death was negligence.

### **[4] Schedule 1 Savings and transitional provisions**

Insert at the end of the Schedule (with appropriate Part and clause numbers):

## Part Provision consequent on enactment of **Courts Legislation Amendment Act 2010**

### Application of section 26X

Section 26X (as inserted by the *Courts Legislation Amendment Act 2010*) extends to civil liability arising, and any award of damages in respect of such civil liability made, before the commencement of the section, but not so as to affect any final determination of legal proceedings made by a court or tribunal before the commencement of the section.

#### Explanatory note

##### Publication of order under section 17

Item [1] of the proposed amendments to the *Civil Liability Act 2002* (**the Act**) provides for an order under section 17 of the Act to be published on the NSW legislation website instead of in the Gazette. Orders made by the Minister under section 17 of the Act enable the maximum amount of damages payable for non-economic loss for personal injury imposed by the Act to be increased by reference to changes in the consumer price index.

##### Determining victim claims on the papers

Item [2] of the proposed amendments to the Act provides for a victim claim made to a court under Part 2A of the Act to be determined by the court without a hearing unless the court is satisfied that the interests of justice require that a hearing be held in the presence of the parties.

##### Recovery of exemplary, punitive or aggravated damages by offender in custody

Item [3] of the proposed amendments to the Act provides that a court cannot award exemplary or punitive damages or damages in the nature of aggravated damages in an action against a protected defendant for the award of personal injury damages in respect of the death or injury of an offender in custody where the act or omission that caused the injury or death was the tort of a person for which the protected defendant was vicariously liable. Section 21 of the Act already makes similar provision in relation to all actions in negligence for personal injury damages.

##### Savings and transitional provision

Item [4] of the proposed amendments to the Act provides for the amendment proposed to be made by item [3] to extend to certain proceedings commenced before the commencement of the amendment.

## 1.7 Civil Procedure Act 2005 No 28

### [1] Part 9 Transfer of proceedings between courts

Insert after Division 2A:

## Division 3 Transfer of proceedings between Supreme Court and Industrial Court

### 150 Definitions

(1) In this Division:

**transfer order** means an order referred to in section 151 (1) or (2).

**transferee court** means the court to which proceedings are to be transferred pursuant to a transfer order.

**transferor court** means the court from which proceedings are transferred pursuant to a transfer order.

- (2) For the purposes of this Division, proceedings are **related** if the matters with which they deal are so closely associated as to form part of the same controversy.

### **151 Transfer of proceedings between Supreme Court and Industrial Court**

- (1) If either the Supreme Court or the Industrial Court is satisfied, in relation to proceedings before it, that it is more appropriate for the proceedings to be heard in the other court, it may, on application by a party to the proceedings or of its own motion, order that the proceedings be transferred to the other court.
- (2) If either the Supreme Court or the Industrial Court is satisfied, in relation to proceedings before it, that:
- (a) there are related proceedings pending in the other court, and
  - (b) it is more appropriate for the proceedings to be heard, together with the related proceedings, in the other court,
- it may, on application by a party to the proceedings or of its own motion, order that the proceedings be transferred to the other court and heard together with the related proceedings.
- (3) No appeal lies against a decision of the transferor court to make, or not to make, an order under this section.

### **152 Transfer orders**

- (1) A transfer order takes effect when it is made.
- (2) A transfer order does not invalidate any order made or other thing done in the proceedings before the order was made.
- (3) Any order made by the transferor court (other than the transfer order) may be varied or revoked by an order of the transferee court.

### **153 Proceedings after transfer**

- (1) Subject to the rules of court applicable in the transferee court:
- (a) any proceedings with respect to which a transfer order takes effect continue in the transferee court:

- (i) as if the proceedings had been duly commenced in the transferee court on the date on which they were commenced in the transferor court, and
    - (ii) as if any cross-claim in the proceedings had been duly made in the transferee court on the date on which it was made in the transferor court, and
  - (b) any proceedings with respect to which a transfer order under section 151 (2) takes effect are to be heard together with, and are taken to form part of, the related proceedings in the transferee court.
- (2) For the purposes of any proceedings continued in the transferee court:
- (a) any admission duly made in the transferor court is to be treated as if it had been made in the transferee court, and
  - (b) in the case of proceedings affected by a transfer order under section 151 (2), any process or other documentation before the transferee court may be amended so as to reflect the merger of the proceedings concerned.
- (3) Subject to the rules of court applicable in the transferee court, the power of the transferee court to make orders as to costs includes a power to make orders with respect to the costs of:
- (a) the application for, and the making of, the transfer order, and
  - (b) any step taken in the proceedings before the transfer order was made.

#### **154 Jurisdiction of transferee court**

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

#### **[2] Schedule 6 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Courts Legislation Amendment Act 2010* (but only to the extent that it amends this Act)

#### **Explanatory note**

Item [1] of the proposed amendments to the *Civil Procedure Act 2005* (**the Act**) enables civil proceedings to be transferred between the Supreme Court and the Industrial Court.

Item [2] of the proposed amendments to the Act enables the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed amendments to the Act.

## 1.8 Criminal Procedure Act 1986 No 209

### Schedule 1 Indictable offences triable summarily

Omit “\$15,000” from item 8 (b) in Part 2 of Table 1. Insert instead “\$60,000”.

#### Explanatory note

The proposed amendment to the *Criminal Procedure Act 1986* enables offences under section 112 (1) of the *Crimes Act 1900* to be dealt with summarily unless the prosecutor or accused elects otherwise provided that the value of the property stolen or destroyed, or the value of the damage to the property, does not exceed \$60,000. Currently, the value must not exceed \$15,000 in order for the offence to be dealt with summarily.

## 1.9 District Court Act 1973 No 9

### [1] Section 13 Appointment and qualifications of Judges

Insert after paragraph (b) in the definition of **qualified person** in section 13 (2):

(c) without limiting paragraph (a) or (b), the Chief Magistrate of the Local Court.

### [2] Section 13 (3)

Insert after section 13 (2):

(3) The following provisions apply to and in respect of the Chief Magistrate of the Local Court if he or she also holds office as a Judge:

- (a) service by the Chief Magistrate in the office of the Chief Magistrate is, for the purposes of this Act (including section 15) and the *Judges’ Pensions Act 1953*, taken to be service in the office of a Judge,
- (b) the Chief Magistrate may not hear or determine an appeal in his or her capacity as a Judge from any decision made by the Chief Magistrate in his or her capacity as a Magistrate of the Local Court,
- (c) nothing in this Act or any other law requires the Chief Magistrate to devote the whole of his or her time to the duties of a Judge.

#### Note—

Section 14 (5) of the *Local Court Act 2007* enables a Chief Magistrate who has been appointed as a Judge to exercise the jurisdiction of the District Court while holding office as the Chief Magistrate by arrangement with the Chief Judge.

#### Explanatory note

Item [1] of the proposed amendments to the *District Court Act 1973* (**the Act**) enables the Governor to appoint the Chief Magistrate of the Local Court as a Judge of the District Court.

Item [2] of the proposed amendments to the Act sets out special provisions that will apply to a Chief Magistrate who is also

appointed as a Judge of the District Court in connection with the exercise of his or her functions as a Judge.

## 1.10 Industrial Relations Act 1996 No 17

### Section 162B

Insert after section 162A:

#### **162B Exercise of Commission's functions by Industrial Registrar and Registry officers**

- (1) The President may, by instrument in writing:
  - (a) direct that any function of the Commission under this Act or the rules of the Commission may be exercised by the Industrial Registrar, or by a Registry officer, in such circumstances, and subject to such conditions, as are specified in the instrument, and
  - (b) vary or revoke any such instrument.
- (2) This section does not limit any provision of this Act by which the Commission is constituted with respect to the exercise of the Commission's functions.

#### **Note—**

Similar instruments may be made under section 13 of the *Civil Procedure Act 2005* in relation to the functions of the Commission under that Act and the uniform rules made under that Act.

#### **Explanatory note**

The proposed amendment to the *Industrial Relations Act 1996* enables the President of the Industrial Relations Commission to direct that specified functions of the Commission under that Act or the rules of the Commission be exercised by the Industrial Registrar or by a Registry officer. The proposed amendment mirrors the power conferred on the President by section 13 of the *Civil Procedure Act 2005* in relation to functions conferred on the Commission by that Act and the uniform rules made under that Act.

## 1.11 Land and Environment Court Act 1979 No 204

### Section 11A

Insert after section 11:

#### **11A Supreme Court Judges may act as Land and Environment Court Judges**

- (1) This section applies to each of the Judges of the Supreme Court (an **eligible judicial officer**) other than the following:
  - (a) the Chief Justice,
  - (b) the President of the Court of Appeal,

- (c) the other Judges of Appeal,
  - (d) the Chief Judge at Common Law,
  - (e) the Chief Judge in Equity,
  - (f) an acting Judge.
- (2) An eligible judicial officer may act as a Judge for a particular period or in relation to particular proceedings in the Court if:
- (a) the Chief Judge certifies that it is expedient that the eligible judicial officer should act as a Judge of the Court for the period or in relation to the proceedings, and
  - (b) the eligible judicial officer consents to acting as a Judge for the period or in relation to the proceedings, and
  - (c) the Chief Justice consents to the eligible judicial officer acting as a Judge for the period or in relation to the proceedings.
- (3) The following provisions apply to and in respect of an eligible judicial officer who acts as a Judge of the Court pursuant to the provisions of this section:
- (a) the eligible judicial officer has, while acting as a Judge, all the powers, authorities, privileges and immunities of a Judge of the Land and Environment Court,
  - (b) the eligible judicial officer may attend the sittings of the Court for the purpose of giving judgment in, or otherwise completing, any proceedings which have been heard by the Court while the eligible judicial officer was acting as a Judge in the proceedings even if the eligible judicial officer is no longer acting as a Judge,
  - (c) the eligible judicial officer is not, while receiving remuneration as a Judge of the Supreme Court, entitled to remuneration for acting as a Judge of the Land and Environment Court,
  - (d) any service of the eligible judicial officer while acting as a Judge is taken for all purposes (including for the purposes of the *Supreme Court Act 1970* and the *Judges' Pensions Act 1953*) to be service as a Judge of the Supreme Court,
  - (e) nothing in this Act or any other law requires the eligible judicial officer to devote the whole of his or her time to the duties of acting as a Judge of the Land and Environment Court.

**Explanatory note**

The proposed amendment to the *Land and Environment Court Act 1979* enables the puisne Judges of the Supreme Court to act as Judges of the Land and Environment Court.

## **1.12 Legal Profession Act 2004 No 112**

### **[1] Section 302B**

Insert after section 302A:

#### **302B Costs assessment is to take into account GST**

A costs assessor (or, in the case of a review of or an appeal against a costs assessment, a panel under Subdivision 5 of Division 11 or a court) is to take into account the GST (within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth) referable to the provision of legal services when making or reviewing a determination of legal costs payable.

### **[2] Section 329 Regulations to provide for fixed costs**

Insert after section 329 (1) (b):

(b1) fixing the costs payable for legal services provided in connection with small claims applications (within the meaning of section 379 of the *Industrial Relations Act 1996*),

### **[3] Section 362 Costs fixed by regulations or other legislation**

Insert "(b1)," after "(b)," in section 362 (1).

### **[4] Schedule 9 Savings, transitional and other provisions**

Insert at the end of the Schedule (with appropriate Part and clause numbers):

## **Part Provision consequent on enactment of Courts Legislation Amendment Act 2010**

### **Application of section 302B**

- (1) Section 302B (as inserted by the *Courts Legislation Amendment Act 2010*) extends to any applications for the assessment of costs made (but not determined) before the commencement of that section.
- (2) However, section 302B does not extend to any application for a review of, or any appeal against, an assessment of costs by a costs assessor (whether the application for review or the appeal is made before or after the commencement of that section) if the assessment of costs was determined by the costs assessor



before that commencement.

- (3) For the purposes of this clause, an assessment of costs has been determined by a costs assessor if a certificate setting out the cost assessor's determination has been issued under section 368.

#### **Explanatory note**

Item [1] of the proposed amendments to the *Legal Profession Act 2004* (**the Act**) provides that the incidence of GST payable for legal services is to be taken into account in determining legal costs that are payable in relation to the provision of those services. The proposed amendment seeks to overcome uncertainty resulting from the decision of the Court of Appeal in *Boyce v McIntyre*[2009] NSWCA 185 concerning whether the GST referable to the provision of legal services can be taken into account by a costs assessor. Item [4] enacts a transitional provision to confirm that the new provision proposed to be inserted by item [1] extends to certain pending costs assessments.

Item [2] of the proposed amendments to the Act enables the regulations to provide for the fixing of the costs payable for legal services provided in connection with small claims applications (within the meaning of section 379 of the *Industrial Relations Act 1996*). Item [3] of the proposed amendments makes a consequential amendment.

## **1.13 Local Court Act 2007 No 93**

### **[1] Section 14**

Omit the section. Insert instead:

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

- (1) The Governor may appoint a qualified person to be the Chief Magistrate of the Local Court.
- (2) A person is a **qualified person** if the person is:
  - (a) a Magistrate, or
  - (b) a Judge of the District Court.
- (3) The appointment may be made:
  - (a) by the commission of a person's appointment as a Magistrate or a Judge of the District Court, or
  - (b) by a subsequent commission under the public seal of the State.
- (4) The appointment of a person who is a Judge of the District Court as the Chief Magistrate also operates to appoint the person as a Magistrate.
- (5) If the Chief Magistrate also holds office as a Judge of the District Court, the Chief Magistrate may (while holding office as the Chief Magistrate) exercise the jurisdiction of the District Court if:
  - (a) the Chief Magistrate is requested to do so by the Chief Judge of the District

Court in relation to particular proceedings before that Court, and

(b) the Chief Magistrate agrees to the request.

**Note—**

Section 13 of the *District Court Act 1973* enables the Governor to appoint the Chief Magistrate as a Judge of the District Court.

(6) Subsection (5) has effect despite clause 5 (Effect of employment as Magistrate) of Schedule 1.

(7) Part 2 of Schedule 1 has effect with respect to the Chief Magistrate.

**[2] Schedule 1 Provisions relating to Magistrates**

Omit “A” from clause 6. Insert instead “Subject to clause 10A, a”.

**[3] Schedule 1, clause 7**

Omit “clause 8” from clause 7 (6). Insert instead “clauses 8 and 10B”.

**[4] Schedule 1, clause 10**

Insert after clause 10 (2):

(2A) The Governor may not grant an approval under subclause (2) if the Chief Magistrate holds office as a Judge of the District Court unless the Chief Magistrate also seeks to resign from office as a Judge.

**[5] Schedule 1, clauses 10A and 10B**

Insert after clause 10:

**10A Remuneration of Chief Magistrate who is District Court Judge**

If the Chief Magistrate also holds office as a Judge of the District Court, the Chief Magistrate is not entitled to receive remuneration as a Magistrate or the Chief Magistrate while he or she receives remuneration as a Judge.

**Note—**

Section 13 (3) (a) of the *District Court Act 1973* provides that where the Chief Magistrate also holds office as a Judge of the District Court, his or her service as the Chief Magistrate counts as service as a Judge of that Court for the purposes of receiving the remuneration and superannuation entitlements to which a Judge of that Court is entitled.

**10B Superannuation entitlements of Chief Magistrate who is District Court Judge**

(1) This clause applies to the Chief Magistrate if the Chief Magistrate:

- (a) is appointed as a Judge of the District Court at the same time as being appointed as the Chief Magistrate or while he or she holds office as the Chief Magistrate, and
  - (b) is a contributor to a State public sector superannuation scheme immediately before being appointed as a Judge.
- (2) When this clause applies to the Chief Magistrate, the Chief Magistrate:
- (a) ceases on his or her appointment as a Judge to be an employee who is entitled to be a contributor under the State public sector superannuation scheme concerned, and
  - (b) is taken on that appointment to have preserved his or her superannuation benefits under the scheme in accordance with the relevant statutory provisions governing the scheme.
- (3) This clause does not:
- (a) prevent the Chief Magistrate from contributing to the FSS Fund in a capacity other than as an employee within the meaning of the *First State Superannuation Act 1992* if he or she is permitted to do so by the trust deed under which the Fund is maintained and administered, or
  - (b) otherwise affect the provisions of any other Act or regulation relating to the rights of contributors under superannuation schemes.
- (4) In this clause:
- FSS Fund** means the Fund within the meaning of the *First State Superannuation Act 1992*.
- State public sector superannuation scheme** means each of the following:
- (a) a STC scheme within the meaning of the *Superannuation Administration Act 1996*,
  - (b) the FSS Fund,
  - (c) any other scheme or fund prescribed by the regulations for the purposes of this clause.

**[6] Schedule 4 Savings, transitional and other provisions**

Insert at the end of the Schedule (with appropriate Part and clause numbers):

**Part Provision consequent on enactment of Courts**

## Legislation Amendment Act 2010

### Effect of amendments on current Chief Magistrate

A person who holds office as the Chief Magistrate immediately before the substitution of section 14 by the *Courts Legislation Amendment Act 2010* continues to hold office as such for the purposes of section 14 (as substituted).

#### Explanatory note

Item [1] of the proposed amendments to the *Local Court Act 2007* (**the Act**) is consequential on the amendments made by Schedule 1.9 to the *District Court Act 1973* that enable the Governor to appoint the Chief Magistrate of the Local Court as a Judge of the District Court. The proposed amendment enables a Chief Magistrate who also holds office as a Judge of the District Court to exercise jurisdiction as a Judge while in office as the Chief Magistrate.

Item [4] of the proposed amendments to the Act ensures that if the Chief Magistrate is a Judge of the District Court, the Chief Magistrate cannot resign the office of Chief Magistrate without also resigning office as a Magistrate if the Chief Magistrate intends to continue in office as a Judge.

Item [5] of the proposed amendments to the Act ensures that a Chief Magistrate who also holds office as a Judge of the District Court is only entitled to receive remuneration as a Judge while he or she holds office as a Judge. The proposed amendment also deals with the superannuation entitlements of a Chief Magistrate who is appointed as a Judge at the same time or after being appointed as the Chief Magistrate. Items [2] and [3] of the proposed amendments make consequential amendments.

Item [6] of the proposed amendments to the Act confirms that the amendment proposed to be made by item [1] does not affect the continued efficacy of the current Chief Magistrate's appointment.

## 1.14 Supreme Court Act 1970 No 52

### Section 37B

Insert after section 37A:

#### **37B Land and Environment Court Judges may act as Supreme Court Judges**

- (1) This section applies to the Chief Judge and each of the other Judges of the Land and Environment Court (an **eligible judicial officer**), but not to an acting Judge of that Court.
- (2) An eligible judicial officer may act as a Judge for a particular period or in relation to particular proceedings in the Court if:
  - (a) the Chief Justice certifies that it is expedient that the eligible judicial officer should act as a Judge of the Court for the period or in relation to the proceedings, and
  - (b) the eligible judicial officer consents to acting as a Judge for the period or in relation to the proceedings, and
  - (c) in the case where the eligible judicial officer is not the Chief Judge of the Land and Environment Court—the Chief Judge consents to the eligible

judicial officer acting as a Judge for the period or in relation to the proceedings.

- (3) The following provisions apply to and in respect of an eligible judicial officer who acts as a Judge of the Court pursuant to the provisions of this section:
- (a) the eligible judicial officer has, while acting as a Judge, all the powers, authorities, privileges and immunities of a Judge of the Supreme Court,
  - (b) the eligible judicial officer may attend the sittings of the Court for the purpose of giving judgment in, or otherwise completing, any proceedings which have been heard by the Court while the eligible judicial officer was acting as a Judge in the proceedings even if the eligible judicial officer is no longer acting as a Judge,
  - (c) the eligible judicial officer is not, while receiving remuneration as a Judge of the Land and Environment Court, entitled to remuneration for acting as a Judge of the Supreme Court,
  - (d) any service of the eligible judicial officer while acting as a Judge is taken for all purposes (including for the purposes of the *Land and Environment Court Act 1979* and the *Judges' Pensions Act 1953*) to be service as a Judge of the Land and Environment Court,
  - (e) nothing in this Act or any other law requires the eligible judicial officer to devote the whole of his or her time to the duties of acting as a Judge of the Supreme Court.
- (4) If the eligible judicial officer holds office as the Chief Judge of the Land and Environment Court, a reference in subsection (3) to remuneration or service as a Judge of the Land and Environment Court is to be read as a reference to remuneration or service in that office.
- (5) Nothing in this section limits the operation of section 37A, or of section 3 of the *Criminal Appeal Act 1912*, in their application to the Chief Judge of the Land and Environment Court.

**Explanatory note**

The proposed amendment to the *Supreme Court Act 1970* enables the Chief Judge and the other Judges of the Land and Environment Court to act as Judges of the Supreme Court.

## **1.15 Victims Support and Rehabilitation Act 1996 No 115**

### **[1] Section 79 Imposition of compensation levy**

Omit "\$140" from section 79 (1) (a). Insert instead "\$148".

**[2] Section 79 (1) (b)**

Omit "\$60". Insert instead "\$64".

**[3] Section 80**

Omit the section. Insert instead:

**80 CPI adjustments of compensation levy**

- (1) Starting at the end of the 2010–2011 financial year, each of the amounts of the levy payable under section 79 (1) is to be adjusted as provided by this section at the end of each financial year (the **current financial year**) to provide a **new amount** for the next financial year. The new amount applies for the next financial year and replaces the amount that applied for the current financial year.
- (2) The new amount for a financial year is to be calculated in accordance with the following formula:
$$A = \frac{L \times B}{C}$$
where:
  - A** is the new amount being calculated.
  - L** is the amount of the levy for the current financial year.
  - B** is the Sydney CPI number for March in the current financial year.
  - C** is the Sydney CPI number for March in the financial year before the current financial year.
- (3) Before the end of each financial year (starting with the 2010–2011 financial year), the Minister is to publish a notice on the NSW legislation website of the amounts that are to apply for the purposes of section 79 for the next financial year. Failure to publish the notice or late publication of the notice does not affect the validity of an adjustment under this section.
- (4) If the amount calculated pursuant to an adjustment under this section as the new amount for a financial year is not a whole number of dollars, the amount is to be rounded up to the nearest whole dollar.
- (5) If an adjustment under this section would result in the new amount for the next financial year being less than the amount for the current financial year, the new amount for the next financial year is to be the same as the amount for the current financial year.

- (6) The new amount for a financial year is to be adjusted in accordance with the regulations if the Australian Statistician:
- (a) stops issuing Sydney CPI numbers, or
  - (b) fails to issue a relevant Sydney CPI number before the start of the financial year for which the new amount is required to be calculated.
- (7) It is to be presumed, in the absence of evidence to the contrary, that any amounts specified in a notice published under this section for a particular financial year are correct.
- (8) In this section:

***financial year*** means a year starting on 1 July.

***Sydney CPI number*** means the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician.

#### **[4] Schedule 3 Savings, transitional and other provisions**

Insert at the end of the Schedule (with appropriate Part and clause numbers):

## **Part Provision consequent on enactment of [Courts Legislation Amendment Act 2010](#)**

### **Payment of levies payable under section 79**

Any amount that a person was liable to pay under section 79 (1) immediately before the commencement of the amendments made to this Act by the [Courts Legislation Amendment Act 2010](#) continues to be payable after the commencement of those amendments.

#### **Explanatory note**

Items [1] and [2] of the proposed amendments to the Act update the amounts of compensation levy payable by offenders by reference to changes in the consumer price index since the amounts were first inserted in the Act.

Item [3] of the proposed amendments to the Act re-enacts in plainer English the provisions concerning the adjustment of the amounts of compensation levy payable by offenders by reference to changes in the consumer price index (the **CPI**). The proposed amendment also corrects a typographical error in the current CPI formula.

Item [4] of the proposed amendments to the Act inserts a transitional provision relating to the amendments proposed to be made by items [1]-[3].