

# Local Court Act 2007 No 93

[2007-93]



New South Wales

## Status Information

### Currency of version

Historical version for 15 January 2016 to 31 August 2016 (accessed 3 January 2025 at 14:39)

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—

- **Does not include amendments by**
  - [Strata Schemes Management Act 2015 No 50](#) (not commenced — to commence on 30.11.2016)
  - [Courts Legislation Amendment \(Disrespectful Behaviour\) Act 2016 No 26](#) (not commenced — to commence on 1.9.2016)

### Authorisation

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File last modified 26 August 2016

# Local Court Act 2007 No 93



New South Wales

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# Local Court Act 2007 No 93



New South Wales

An Act to establish the Local Court of New South Wales; to provide for the appointment of Magistrates and other officers of the Court; to confer certain jurisdiction on the Court; to abolish the Local Courts within New South Wales; to repeal the *Local Courts Act 1982*; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Local Court Act 2007*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

(1) In this Act:

**acting Magistrate** means a person appointed under section 16 to be an acting Magistrate of the Local Court.

**Assessor** means a person appointed under section 17 (1) to be an Assessor of the Local Court.

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

**civil jurisdiction**, in relation to the Local Court, means the jurisdiction referred to in section 9 (a).

**Court** means the Local Court constituted by section 7 (1).

**criminal jurisdiction**, in relation to the Local Court, means the jurisdiction referred to in section 9 (c).

**criminal proceedings** means proceedings against a person for an offence (whether summary or indictable), and includes the following:

- (a) committal proceedings,
- (b) proceedings relating to bail,
- (c) proceedings relating to sentence,
- (d) proceedings for the review of a conviction or sentence under the *Crimes (Appeal and Review) Act 2001*,

but does not include the following:

- (e) proceedings on an application for an order under the *Crimes (Forensic Procedures) Act 2000*,
- (f) proceedings on an application for an order, or an application to vary or revoke any such order, under the *Child Protection (Offenders Prohibition Orders) Act 2004*,
- (g) proceedings on an application for an order under Part 16A of the *Law Enforcement (Powers and Responsibilities) Act 2002*,
- (h) applications for an order under section 3E or 3F of the *Child Protection (Offenders Registration) Act 2000*,
- (i) proceedings on an appeal against an order under section 282I of the *Fisheries Management Act 1994*.

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

**designated place** means a place at which sittings of the Local Court are to be held in accordance with section 22 (1).

**exercise** a function includes perform a duty.

**function** includes power, authority and duty.

**government sector** has the same meaning as it has in the *Government Sector Employment Act 2013*.

**Magistrate** means a person appointed or taken to be appointed under this Act to be a Magistrate of the Local Court.

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

- (a) who is appointed to hold the office of Magistrate on a part-time basis, or
- (b) who exercises the functions of the office of Magistrate on a part-time basis, as provided by an agreement referred to in clause 1 (2) of Schedule 1.
- (c) (Repealed)

**practice note** means a practice note issued under section 27.

**Rule Committee** means the Local Court Rule Committee established under section 25.

**rules** means the rules made under section 26.

**special jurisdiction**, in relation to the Local Court, means the jurisdiction referred to in section 9 (b).

(2) Notes included in this Act do not form part of this Act.

**Note—**

In the notes to this Act, **LCA 1982** means the *Local Courts Act 1982*, **CPA** means the *Civil Procedure Act 2005* and **DCA** means the *District Court Act 1973*.

#### **4 Regulations** (cf LCA 1982, section 28)

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.

#### **5 Repeal and savings and transitional provisions**

(1) The *Local Courts Act 1982* is repealed.

(2) Schedule 4 has effect.

#### **6 Review of Act**

(1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Part 2 The Local Court of New South Wales**

### **Division 1 Constitution and jurisdiction**

#### **7 Constitution of the Court** (cf LCA, sections 6, 8A and 8B)

(1) There is constituted by this Act a court of record to be known as the Local Court of New South Wales.

(2) There is to be a seal of the Court and any document that is required by or under this



Act or any other Act or law to be sealed or stamped with the seal of the Court is to be so sealed or stamped.

**8 Single Magistrate to constitute the Court** (cf LCA 1982, section 8)

Except as may be otherwise provided by or under this Act or any other Act or law, all proceedings in the Court, including all business arising out of any such proceedings, are to be heard and determined by a Magistrate, who is to constitute the Court.

**9 Jurisdiction** (cf LCA 1982, section 7)

The Court has:

- (a) a civil jurisdiction consisting of the jurisdiction conferred on it by Part 3, and
- (b) a special jurisdiction consisting of the jurisdiction conferred on it by or under any other Act or law with respect to proceedings to which Part 4 applies, and
- (c) a criminal jurisdiction consisting of the jurisdiction conferred on it by or under any other Act or law with respect to criminal proceedings.

**10 Divisions of the Court** (cf LCA 1982, section 7A)

For the purpose of exercising its civil jurisdiction, the Court is divided into:

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

**11 State-wide jurisdiction** (cf LCA 1982, section 17)

The Court, wherever sitting, has jurisdiction throughout the whole of New South Wales.

## **Division 2 Magistrates**

**12 Composition of the Court**

The Court is to be composed of a Chief Magistrate appointed by the Governor and such other Magistrates as the Governor may from time to time appoint.

**13 Appointment and qualifications of Magistrates** (cf LCA 1982, section 12)

- (1) The Governor may, by commission under the public seal of the State, appoint any qualified person to be a Magistrate.
- (2) For the purposes of this section, a person is qualified for appointment as a Magistrate if the person is:
  - (a) an Australian lawyer of at least 5 years' standing, or
  - (b) a person who holds, or has held, a judicial office of this State or of the

Commonwealth, another State or Territory.

- (3) A Magistrate, while holding office as such, is taken to have been appointed as a justice of the peace.
- (4) Part 1 of Schedule 1 has effect with respect to Magistrates.

#### **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.

#### **15 Deputy Chief Magistrates** (cf LCA 1982, section 15)

- (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 Court.

- (2) More than one person may hold the office of Deputy Chief Magistrate at any one time.
- (3) Part 3 of Schedule 1 has effect with respect to Deputy Chief Magistrates.

## **16 Acting Magistrates**

- (1) The Governor may, by commission under the public seal of the State, appoint any person who is qualified for appointment as a Magistrate under section 13 to act as a Magistrate for a term not exceeding 5 years to be specified in the commission.
- (2) A person who holds, or has held, a judicial office of this State, or of the Commonwealth, another State or Territory, may be appointed under this section even if he or she has reached the age of 72 years (or will have reached that age before the appointment expires) but may not be so appointed for any period extending beyond the day on which he or she reaches the age of 77 years.
- (3) Part 4 of Schedule 1 has effect with respect to acting Magistrates.

## **Division 3 Assessors**

### **17 Assessors** (cf LCA 1982, section 76)

- (1) The Minister may appoint any person who is an Australian lawyer to be an Assessor.
- (2) Schedule 2 has effect with respect to Assessors.

## **Division 4 Registrars and other officers**

### **18 Registrars and deputy registrars** (cf LCA 1982, sections 10 and 10A)

- (1) Such registrars and deputy registrars as may be necessary to assist in the administration of this Act are to be employed under Part 4 of the *Government Sector Employment Act 2013*.
- (2) A registrar may (but need not) be appointed as the registrar for one or more designated places.

### **19 Registrar's functions generally** (cf LCA 1982, section 10B)

- (1) A registrar has and may exercise the functions conferred on a registrar by or under this Act, the rules or any other Act or law.
- (2) Subject to any direction of the Secretary of the Department of Justice, a registrar (including a registrar for a designated place or places) may exercise such functions as are conferred on the registrar under subsection (1) in respect of any place, or any particular designated place or places, in the State.

- (3) A person employed as a deputy registrar has, under the registrar, all of the functions of the registrar and may exercise those functions in respect of any place in the State at which the registrar may exercise the functions.
- (4) The Secretary may delegate the exercise of the Secretary's function under subsection (2) to:
  - (a) any member of staff employed in the administration of the business of the Court, or
  - (b) any other person (or person belonging to a class of persons) prescribed by the regulations.

## **20 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 a registrar of the Local Court and, when exercising those functions, is taken to be a 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 the 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 the Local Court and, when exercising those functions, is taken to be an officer of the Local Court.

## **21 References to registrars**

In any other Act or instrument, a reference to the **relevant registrar** of the Local Court is a reference to:

- (a) when used in connection with a particular place, a registrar authorised to exercise functions at or in relation to that place, or
- (b) when used in connection with a particular function, the registrar authorised to exercise that function, or
- (c) when used in connection with a particular place and a particular function, the registrar authorised to exercise that function at or in relation to that place, or
- (d) when used in relation to particular proceedings, the registrar for the place at which the proceedings are being, or are to be, heard or (if they have been determined) the place at which the proceedings were determined.

## **Division 5 Exercise of jurisdiction**

### **22 Sittings of the Court** (cf LCA 1982, section 11)

- (1) Sittings of the Court are to be held at such places and times as the Chief Magistrate may from time to time direct by notice published in the Gazette.
- (2) More than one sitting of the Court may be held at the same time.

### **23 Arrangement of business of the Court** (cf LCA 1982, sections 11 and 14)

- (1) The Chief Magistrate is responsible for ensuring the orderly and expeditious discharge of the business of the Court and for that purpose may, subject to this Act, give directions as to:
  - (a) the Magistrates or Assessors who are to exercise the Court's jurisdiction in specified matters or matters of a specified class, and
  - (b) the Magistrates or Assessors who are to sit at places (including one or more designated places) in the State or exercise certain functions at those places, and
  - (c) the matters or classes of matters that may be dealt with at those places, and
  - (d) the specified functions that are to be exercised by specified Magistrates or Magistrates of a specified class.
- (2) The Chief Magistrate must consult with the Attorney General before making a direction under subsection (1) that substantially alters the frequency of sittings at a particular place relative to the previous calendar year.
- (3) The Chief Magistrate may have such consultation with other Magistrates as is appropriate and practicable before making any direction under subsection (1).
- (4) A direction given under subsection (1) may provide for:
  - (a) the establishment of circuits comprised of places at which sittings of the Court are required to be held, or
  - (b) the exercise by Magistrates of their functions, at specified times or during specified periods, at different places.

### **24 Contempt of court** (cf LCA 1982, sections 27A and 27B)

- (1) The 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 has in those circumstances.
- (2) Without limiting subsection (1), the 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 the 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) a reference in section 200 of that Act to a proclaimed place is taken to be a reference to a designated place, and
  - (c) section 201 of that Act applies to a ruling, order, direction or decision of the Local Court under those provisions as so applied.
- (4) Without prejudice to the powers of the Court under this section, 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.
- (5) The Supreme Court is to dispose of any matter referred to it under this section in the manner it considers appropriate.

## **Division 6 Rules of court and practice notes**

### **25 Local Court Rule Committee** (cf LCA 1982, sections 30 and 31)

- (1) There is to be a Local Court Rule Committee.
- (2) The Rule Committee is to consist of the following members:
  - (a) the Chief Magistrate,
  - (b) at least one and not more than 6 Magistrates (in addition to the Chief Magistrate) appointed by the Chief Magistrate,
  - (c) a barrister appointed by the Bar Council,
  - (d) a solicitor appointed by the Law Society Council,
  - (e) an officer of the Court appointed by the Chief Magistrate,
  - (f) a person appointed by the Secretary of the Department of Justice,
  - (g) if the Minister thinks that it is appropriate to appoint a person as a member—a person appointed by the Minister,
  - (h) the additional member or members appointed in accordance with subsection (3) or (4), as the case requires.
- (3) The Rule Committee, when exercising its functions in respect of matters relating to the jurisdiction referred to in section 9 (a) and (b), is to have an additional member,

being a person appointed by the Chief Magistrate to represent consumer groups.

- (4) The Rule Committee, when exercising its functions in respect of matters relating to the jurisdiction referred to in section 9 (c), is to have 3 additional members as follows:
  - (a) a person appointed by the Chief Magistrate on the nomination of the Director of Public Prosecutions,
  - (b) a person appointed by the Chief Magistrate on the nomination of the Legal Aid Commission,
  - (c) a police prosecutor who is an Australian lawyer appointed by the Chief Magistrate on the nomination of the Commissioner of Police.
- (5) Schedule 3 has effect in respect of the Rule Committee.

**26 Rules generally** (cf LCA 1982, section 28A)

- (1) The Rule Committee may make rules, not inconsistent with this Act, for or with respect to 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 of the Local Court.
- (2) In particular, the rules may make provision for or with respect to the following matters:
  - (a) the practice or procedure to be followed in criminal proceedings,
  - (b) the functions of registrars and other officers of the Court,
  - (c) the review of orders or decisions of registrars,
  - (d) any matter incidental to, or relating to, any such practice or procedure.
- (3) A rule may be made under this Act in relation to any matter for which a rule-making power is conferred on the Court by or under any other Act or law.

**Note—**

See also sections 42 (Rules in civil jurisdiction) and 71 (Rules in application proceedings).

**27 Practice notes** (cf CPA, section 15; LCA 1982, section 28B)

- (1) Subject to the rules, the Chief Magistrate may issue practice notes in relation to any matter with respect to which rules may be made.
- (2) A practice note must be published in the Gazette.
- (3) Sections 40 and 41 of the *Interpretation Act 1987* apply to a practice note in the same way as they apply to a statutory rule.

**28 Court may give directions in circumstances not covered by rules** (cf CPA, section 16; LCA 1982, section 26)

- (1) In relation to particular proceedings, the Court may give directions with respect to any aspect of practice or procedure not provided for by or under this Act, the *Criminal Procedure Act 1986*, the *Civil Procedure Act 2005* or any other Act.
- (2) Anything done in accordance with such a direction (including the commencing of proceedings and the taking of any step in proceedings) is taken to have been validly done.

## **Part 3 Civil jurisdiction**

### **Division 1 Preliminary**

#### **29 Jurisdictional limit of Court**

- (1) For the purposes of this Part, the **jurisdictional limit** of the Court is:
  - (a) \$100,000, when sitting in its General Division, and
  - (b) \$10,000, when sitting in its Small Claims Division.
- (2) However, the jurisdictional limit of the Court, when sitting in its General Division, in relation to a claim for damages arising from personal injury or death is \$60,000.

#### **29A Money claim—meaning**

In this Part, **money claim** means a claim for recovery of any debt, demand or damages (whether liquidated or unliquidated).

### **Division 2 Jurisdiction**

#### **30 Conferral of jurisdiction** (cf LCA 1982, section 65)

- (1) Subject to this Part, the Court sitting in its General Division has jurisdiction to hear and determine:
  - (a) proceedings on any money claim, so long as the amount claimed, whether on a balance of account or after an admitted set-off or otherwise, does not exceed 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, so long as the value of the goods, together with the amount of any consequential damages claimed for their detention, does not exceed the jurisdictional limit of the Court when sitting in that Division, and
- (b1) proceedings involving company title home unit disputes under section 34A, 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, the Court sitting in its Small Claims Division has jurisdiction to hear and determine:
  - (a) proceedings on any money claim, so long as the amount claimed, whether on a balance of account or after an admitted set-off or otherwise, does not exceed 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, so long as the value of the goods, together with the amount of any consequential damages claimed for their detention, does not exceed the jurisdictional limit of the Court when sitting in that Division, and
  - (c) proceedings involving company title home unit disputes under section 34A.
- (3) Nothing in subsection (2) prevents proceedings under that subsection from being heard and determined by the Court sitting in its General Division.
- (4) In determining an amount for the purposes of subsection (1) or (2), any interest up to judgment under section 100 of the *Civil Procedure Act 2005* is to be disregarded.
- (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 the 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.

**31 Jurisdictional limits may be exceeded for certain money claims** (cf LCA 1982, section 66)

- (1) When sitting in its General Division, 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 proceedings commences.
- (2) A memorandum of consent referred to in subsection (1) (a) does not have effect unless:

- (a) it is signed by each party to the proceedings, or by the party's Australian legal practitioner, and
- (b) it states 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.

(3) This section applies despite section 30 (1) (a).

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

**32 Jurisdiction in proceedings for review of contracts** (cf LCA 1982, section 68)

- (1) The Court has the same jurisdiction as the Supreme Court, and may exercise all the powers and authority of the Supreme Court, to refuse to enforce any or all of the provisions of a contract 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 have previously been commenced in the Court but have not been determined.

**33 Certain jurisdiction excluded** (cf LCA 1982, section 67)

- (1) The Court does not have jurisdiction under this Part to hear or determine any of the following kinds of proceedings:
  - (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 or defamation,
  - (c) proceedings for infringement of letters patent or copyright,
  - (d) (Repealed)
  - (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 the Court in proceedings on a claim in respect of which the question of the title to land is merely incidental, as referred to in subsection (1) (e), is not admissible as evidence of the title to the land in any other legal proceedings.

**34 Jurisdiction when cause of action or defendant outside the State** (cf LCA 1982, section 69)

- (1) The 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.

#### **34A Jurisdiction in company title home unit disputes**

- (1) The Court has jurisdiction to hear and determine proceedings involving company title home unit disputes.
- (2) A **company title home unit dispute** is a dispute between interested parties about any of the following matters:
  - (a) the health, safety and security of persons occupying or visiting the land owned by a company title corporation or residential premises located on that land (including, for example, safety of children on the premises and waste disposal),
  - (b) the common property on the land owned by a company title corporation (including, for example, parking and vehicle access, repair and maintenance, design and appearance),
  - (c) the use of residential premises located on the land owned by a company title corporation occupied by a shareholder of the corporation (including, for example, external appearance of premises or the keeping of pets),
  - (d) the behaviour of persons occupying or visiting the land owned by a company title corporation or residential premises located on the land (including, for example, noise),
  - (e) the refusal by a company title corporation to allow a shareholder of the

corporation to grant a lease or licence to use or occupy premises located on the land owned by the corporation,

(f) administrative matters relating to the running of a company title corporation (including, for example, levies).

(3) However, a **company title home unit dispute** does not include the following:

(a) a dispute arising under a residential tenancy agreement to which the *Residential Tenancies Act 2010* applies,

(b) a dispute arising under a lease to which the *Landlord and Tenant (Amendment) Act 1948* applies,

(c) a dispute about the sale, transfer or other disposition of shares in a company title corporation or the forfeiture of such shares,

(d) a dispute about any matter that is a superior court matter within the meaning of the *Corporations Act 2001* of the Commonwealth.

**Note—**

Section 1337E of the *Corporations Act 2001* of the Commonwealth confers jurisdiction on the Local Court in relation to civil matters (other than superior court matters) under that Act. Examples of superior court matters in relation to company title home unit disputes include the winding up of a company title corporation or the oppressive conduct of a company title corporation's affairs.

(4) A **company title corporation** is a company registered under the *Corporations Act 2001* of the Commonwealth that is the owner of land if ownership of a share or shares in that company entitles the owner of the share or shares to the exclusive use and occupation of residential premises on that land, but does not include an owners corporation within the meaning of the *Strata Schemes Management Act 1996* or an association within the meaning of the *Community Land Management Act 1989*.

(5) In determining proceedings involving a company title home unit dispute, the Court may make any of the following orders:

(a) an order requiring a person to do, or refrain from doing, any act,

(b) an order for the payment of damages or other money,

(c) an order:

(i) declaring the rights and obligations arising under a constitution of a company title corporation or any other contract or agreement, or

(ii) declaring the meaning of any term of a constitution of a company title corporation, or of any other contract or agreement, or

(iii) declaring that any such term is or is not void, invalid or otherwise

unenforceable.

- (6) However, the Court does not have jurisdiction to make an order on a money or other claim in the proceedings that would exceed the jurisdictional limit of the Court under this Part when sitting in the Division concerned.
- (7) A term of a constitution of a company title corporation, or of any other contract or agreement, that purports to exclude, limit or modify the jurisdiction of the Court in relation to company title home unit disputes is void to the extent that it would otherwise have effect.
- (8) The provisions of this section are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of that Act generally.

**Note—**

Section 5G of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

- (9) In this section, ***interested party*** means any of the following:
  - (a) a company title corporation,
  - (b) a shareholder or former shareholder of a company title corporation,
  - (c) a resident or former resident of premises on land owned by a company title corporation.

## **Division 3 Proceedings in Small Claims Division**

### **35 Procedure generally in Small Claims Division** (cf LCA 1982, section 70)

- (1) The jurisdiction of the Court sitting in its Small Claims Division may be exercised by a Magistrate or an Assessor.
  - (1A) However, the jurisdiction of the Court in proceedings involving company title home unit disputes under section 34A may only be exercised by a Magistrate.
- (2) Proceedings in the 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 the 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 the rules or a practice note.

- (5) A Magistrate or an Assessor exercising the jurisdiction of the 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 the Small Claims Division (other than any judgment given or order made in respect of the proceedings) are not required to be recorded.

**36 Conciliation of parties** (cf LCA 1982, section 71)

- (1) A Magistrate or an Assessor is not to give judgment or make a final order in respect of proceedings being heard in the Court's Small Claims Division unless the Magistrate or an Assessor 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 Magistrate or an Assessor is to give judgment or make a final order that gives effect to the terms of the settlement.

**37 Costs in Small Claims Division** (cf LCA 1982, section 67)

Except as provided by the rules, the Court sitting in its Small Claims Division has no power to award costs.

## **Division 4 Appeals from the Local Court**

**38 Judgments and orders final** (cf LCA 1982, section 72)

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

**39 Appeals as of right** (cf LCA 1982, section 73)

- (1) A party to proceedings before the Court sitting in its General Division who is dissatisfied with a judgment or order of the Court may appeal to the Supreme Court, but only on a question of law.
- (2) A party to proceedings before the Court sitting in its Small Claims Division who is dissatisfied with a judgment or order of the Court may appeal to the District Court, but only on the ground of lack of jurisdiction or denial of procedural fairness.

**40 Appeals requiring leave** (cf LCA 1982, section 74)

- (1) A party to proceedings before the Court sitting in its General Division who is dissatisfied with a judgment or order of the Court on a ground that involves a question of mixed law and fact may appeal to the Supreme Court but only by leave of the Supreme Court.
- (2) A party to proceedings before the Court sitting in its General Division who is

dissatisfied with any of the following judgments or orders of the Court may appeal to the Supreme Court, 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.

**41 Determination of appeals** (cf LCA 1982, section 75)

- (1) The Supreme Court may determine an appeal made under section 39 (1) or 40:
  - (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 Local 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 39 (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 Local Court for determination in accordance with the District Court's directions, or
  - (d) by dismissing the appeal.

## **Division 5 Rules**

**42 Rules in civil jurisdiction** (cf LCA 1982, section 79)

- (1) The rules may make provision for or with respect to the following matters relating to the civil jurisdiction of the Court:
  - (a) the practice and procedure in the Court and in proceedings before a registrar,
  - (b) the transfer of proceedings between the Small Claims Division and the General Division,
  - (c) the referral of matters to Community Justice Centres for mediation under the [Community Justice Centres Act 1983](#),
  - (d) the functions of registrars,
  - (e) the filing and serving of notices under this Act,

- (f) the times for doing any matter or thing for the purposes of this Part,
  - (g) the excusal of non-compliance with the rules,
  - (h) costs in relation to proceedings in the Court's Small Claims Division,
  - (i) the manner of doing any matter or thing for the purposes of this Part.
- (2) This section does not give power to make rules with respect to any matter relating to costs that is regulated by the legal costs legislation (as defined in section 3A of the [Legal Profession Uniform Law Application Act 2014](#)).
- (3) 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.
- (4) The rules made under this section may authorise or require the use of an ECM system established under clause 2 of Schedule 1 to the [Electronic Transactions Act 2000](#) in relation to any proceedings in the Court in respect of which the use of such a system is authorised by an order in force under clause 3 of Schedule 1 to that Act.

## Part 4 Special jurisdiction

### Division 1 Preliminary

#### 43 Definitions (cf LCA 1982, section 4)

In this Part:

**applicant** means a person by whom application proceedings are commenced.

**application proceedings** means proceedings to which this Part applies as referred to in section 44.

**authorised officer** has the same meaning as in the [Criminal Procedure Act 1986](#).

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

- (a) an employee in the Public Service or the NSW Police Force,
- (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) a member of staff of Local Land Services,
- (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.

**respondent** means a person against whom application proceedings are commenced.

#### **44 Application of Part**

This Part applies to any proceedings with respect to matters for which jurisdiction is conferred on the Court by or under any other Act or law, other than:

- (a) criminal proceedings, or
- (b) proceedings with respect to any matter for which jurisdiction is conferred on the Court by Part 3.

### **Division 2 Commencement of proceedings**

#### **45 Commencement of proceedings by application notice** (cf LCA 1982, section 37)

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

#### **46 Commencement of proceedings by police officer or public officer** (cf LCA 1982, section 38)

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.

#### **47 Commencement of private actions** (cf LCA 1982, section 39)

- (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 appropriate form, 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 Court on application by the person.
- (4) An application under subsection (3) is not required to be signed by a registrar.

**48 Application notice to be for one matter only** (cf LCA 1982, section 41)

An application notice may not relate to more than one matter.

**49 Service of application notice** (cf LCA 1982, section 42)

- (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 the Court in accordance with the rules.

**50 When proceedings commence** (cf LCA 1982, section 43)

- (1) All proceedings are taken to have commenced on the date on which an application notice is filed.
- (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.

**51 Time limit for commencement of proceedings** (cf LCA 1982, section 44)

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

**52 Relationship to other law or practice** (cf LCA 1982, section 45)

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

## **Division 3 Hearing of proceedings**

**53 Time for hearing** (cf LCA 1982, section 46)

- (1) On the first return date for an application notice in any proceedings, or at such later

time as the Court determines, the Court must set the date, time and place for hearing and determining the matter.

- (2) The 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 Court may proceed to hear and determine the matter on that day at its discretion.

**Note—**

The powers of the Court to adjourn proceedings are set out in section 61.

**54 Proceedings to be open to public** (cf LCA 1982, section 47)

- (1) Application proceedings before the Court are to be heard in open court.
- (2) This section is subject to the provisions of any other Act or law.

**55 Change of venue** (cf LCA 1982, section 48)

The Court may make an order changing the venue of the proceedings if it thinks it appropriate in the circumstances.

**56 Right to defend action** (cf LCA 1982, section 49)

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

**57 Right of representation** (cf LCA 1982, section 50)

- (1) An applicant or respondent may appear personally or by an Australian legal practitioner or other representative 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.

**58 Conduct of case** (cf LCA 1982, section 51)

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

**59 Evidence to be on oath** (cf LCA 1982, section 52)

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](#).

**60 Recording of evidence** (cf LCA 1982, section 53)

- (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.

**61 Adjournments** (cf LCA 1982, section 54)

- (1) The Court may at any stage of proceedings adjourn the proceedings to a specified time and place.
- (2) An adjournment of proceedings may be in such terms as the Court thinks fit.

**62 Irregularity** (cf LCA 1982, section 55)

- (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, the 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 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.

**63 Power to dispense with rules** (cf LCA 1982, section 56)

- (1) In relation to particular application proceedings, the Court 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), the 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—**

The Court may also give directions with respect to any aspect of practice or procedure not provided for by or under this Act or any other Act (see section 28).

**64 Power to stay proceedings** (cf LCA 1982, section 57)

- (1) Subject to the rules, the Court may at any time and from time to time, by order, stay any application proceedings before it, either permanently or until a specified day.
- (2) The power to stay proceedings includes power to order a stay of an enforcement of an order.

**65 Arrest of respondent during proceedings** (cf LCA 1982, section 58)

- (1) A Magistrate may, at any time when or after a matter is first before the Court and before it is finally disposed of by the Court, 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 and the Magistrate is satisfied that the respondent had notice of the date, time and place of the proceedings.
- (1A) A Magistrate, registrar or authorised officer before whom the respondent is brought after having been arrested under the warrant may make a bail decision in respect of the respondent under the *Bail Act 2013*.
- (1B) The *Bail Act 2013* applies to the respondent as if:
- (a) the respondent were accused of an offence, and
  - (b) the proceedings at which the respondent is required to appear were proceedings for that offence.
- (1C) Bail may be granted for the period between:
- (a) the respondent's being brought before the Magistrate, registrar or authorised officer, and
  - (b) the respondent's appearance before the Court in the proceedings at which he or she is required to appear.
- (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 the 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.
- (4) For the purpose of applying the *Bail Act 2013*, an authorised officer has the same functions as an authorised justice under that Act.

**66 Witnesses and production of evidence** (cf LCA 1982, section 59)

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

**67 Warrants of arrest and warrants of commitment** (cf LCA 1982, section 60)

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.

**68 Enforcement of orders for payment of money** (cf LCA 1982, section 61)

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.

**69 Costs** (cf LCA 1982, section 62)

- (1) The 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) The Court may order costs to be assessed on the basis set out in the legal costs legislation (as defined in section 3A of the *Legal Profession Uniform Law Application Act 2014*) or on an indemnity basis.
- (3) This section is subject to this Act, the rules and any other Act.

**70 Appeals** (cf LCA 1982, section 64)

- (1) In relation to any order arising from an application notice:
  - (a) an application for annulment may be made in accordance with Part 2 of the *Crimes (Appeal and Review) Act 2001*, and
  - (b) an appeal to the District Court may be made in accordance with Part 3 of the *Crimes (Appeal and Review) Act 2001*, and

(c) an appeal to the Supreme Court may be made in accordance with Part 5 of the *Crimes (Appeal and Review) Act 2001*,

in the same way as such an application or appeal may be made in relation to a conviction arising from a court attendance notice dealt with under Part 2 of Chapter 4 of the *Criminal Procedure Act 1986*.

(2) 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 was made.

(3) If any other Act:

(a) provides for an appeal to the District Court against an order of the Court 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 (Appeal and Review) Act 2001* in the same way as an appeal under that Part may be made in relation to a conviction arising from a court attendance notice dealt with under Part 2 of Chapter 4 of the *Criminal Procedure Act 1986*.

(4) If any other Act provides for an appeal to the Supreme Court against an order of the Court under that Act, such an appeal is to be made to the Supreme Court in accordance with Part 5 of the *Crimes (Appeal and Review) Act 2001* in the same way as an appeal under that Part may be made in relation to a conviction arising from a court attendance notice dealt with under Part 2 of Chapter 4 of the *Criminal Procedure Act 1986*.

(5) The *Crimes (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.

(6) In this section, a reference to an order includes a reference to any determination that the Court has jurisdiction to make, and any penalty that the Court has jurisdiction to impose.

## **Division 4 Rules and forms**

### **71 Rules in application proceedings** (cf LCA 1982, section 63)

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

(a) the practice and procedure in the Court and in proceedings before a registrar,

- (b) the filing and service (including substituted service) of notices under this Act,
  - (c) additional requirements for the form of warrants,
  - (d) the functions of registrars,
  - (e) the hearing of proceedings, including the procedure to be followed and the orders to be made, when a party fails to attend,
  - (f) empowering the 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,
  - (g) 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,
  - (h) providing for any matter relating to the costs of proceedings.
- (2) Without limiting subsection (1), the rules may adopt, with or without modification, the provisions of any rules made under the *Civil Procedure Act 2005*.
- (3) This section does not give power to make rules with respect to any matter relating to costs that is regulated by the legal costs legislation (as defined in section 3A of the *Legal Profession Uniform Law Application Act 2014*).

**72 Forms** (cf CPA, section 17; LCA 1982, section 40)

- (1) The Chief Magistrate:
- (a) may approve forms for documents to be used in connection with application proceedings, and
  - (b) in the case of documents filed with the Court, or issued by the Court, by means of an ECM system within the meaning of the *Electronic Transactions Act 2000*, may approve the format in which such documents are to be filed or issued.
- (2) Copies of the approved forms are to be made available for public inspection at each registry of the Court and on the Court's internet website.
- (3) If a form is approved in relation to a document to be used in connection with proceedings in the Court, a document that is filed with or issued by the Court is to be in that form.
- (4) 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 Court or a Magistrate at a specified date, time and place.

(5) The rules may prescribe additional matters to be included in application notices.

## **Schedule 1 Provisions relating to Magistrates**

(Sections 13 (4), 14 (2), 15 (3) and 16 (3))

### **Part 1 Magistrates**

#### **1 Part-time arrangements** (cf LCA 1982, section 12A)

- (1) 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.
- (2) 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.

#### **2 Government Sector Employment Act 2013 not to apply**

The office of Magistrate is a statutory office and the *Government Sector Employment Act 2013* (including Part 6) does not apply to that office.

#### **3 Vacation of office** (cf LCA 1982, section 20)

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 addressed to the Governor, or
- (c) the Magistrate retires from office pursuant to the requirements of the *Judicial Officers Act 1986*, or
- (d) the Magistrate retires from that office under a provision of any other Act under which the Magistrate may so retire, or
- (e) the Magistrate is removed from office pursuant to section 53 of the *Constitution Act 1902*.

**4 Continuation of proceedings after vacation of office** (cf DCA, section 13 (8) and (9))

- (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 subclause (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.

**5 Effect of employment as Magistrate** (cf LCA 1982, section 23)

- (1) Except as provided by this clause, a Magistrate must not engage in any business or employment outside the duties of his or her office except with the approval of the Governor.
- (2) Subclause (1) does not allow the Governor to give approval for a Magistrate to practise as an Australian legal practitioner for fee, gain or reward.
- (3) Subclause (1) does not apply to a part-time Magistrate, but such a person must not:
  - (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) practise as an Australian legal practitioner for fee, gain or reward or engage in or continue in the private practice of any other profession, occupation or trade, or enter into any employment, whether remunerated or not, with any person so engaged.

**6 Remuneration** (cf LCA 1982, section 24)

Subject to clause 10A, a Magistrate is entitled to be paid remuneration in accordance with the [Statutory and Other Offices Remuneration Act 1975](#).

**7 Superannuation and leave—preservation of rights**

- (1) In this clause:

**eligible member** means a Magistrate who, immediately before his or her appointment as a Magistrate, was a person employed in the Public Service or an officer or employee of a public authority declared by an Act or proclamation to be an authority to which this clause applies.

**superannuation scheme** means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or

under an Act.

(2) An eligible member:

- (a) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before becoming an eligible member, and
- (b) is entitled to receive any payment, pension or gratuity accrued or accruing under the scheme,

as if he or she had continued to be such a contributor during service as a Magistrate.

- (3) Service by an eligible member as a Magistrate is taken to be service as an officer or employee in his or her previous employment for the purposes of any law under which the member continues to contribute to the scheme or by which an entitlement under the scheme is conferred.
- (4) An eligible member is to be regarded as an officer or employee, and the State is to be regarded as the employer, for the purposes of the scheme.
- (5) This clause ceases to apply to an eligible member if he or she becomes a contributor to another superannuation scheme, but the eligible member is not prevented from receiving a resignation benefit from the first superannuation scheme.
- (6) This clause is subject to clauses 8 and 10B.

**8 Extended, annual and sick leave accrued or accruing at time of appointment** (cf LCA 1982, section 25A)

- (1) A person who was employed in the government sector 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) Nothing in subclause (1) prevents the payment to a person to whom that subclause applies of the money value of any extended, annual or sick leave accrued or accruing to the person as an employee in the government sector before the person's appointment as a Magistrate.
- (3) This clause applies only in relation to a person appointed as a Magistrate on or after 20 September 2002 (being the date of commencement of section 25A of the *Local Courts Act 1982*).

**9 Conditions of service generally** (cf LCA 1982, section 22)

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

referred to in clause 1 (Part-time arrangements).

- (3) A determination by the Minister under this clause is referred to in this Schedule as a **conditions of service determination**.

#### **9A Cashing out of pre-2002 extended leave entitlements**

- (1) A conditions of service determination may make provision for an alternative extended leave scheme for Magistrates with pre-2002 extended leave entitlements.
- (2) An **alternative extended leave scheme** is a scheme under which a Magistrate accrues extended leave on a different basis to his or her pre-2002 extended leave entitlement.
- (3) A conditions of service determination may permit a Magistrate to elect:
- (a) to be paid, as a gratuity, the monetary value of the Magistrate's pre-2002 extended leave entitlement, and
  - (b) to accrue extended leave, on and from the date of election, in accordance with the alternative extended leave scheme.
- (4) An alternative extended leave scheme may provide that the Magistrate accrues extended leave as if the Magistrate had first been appointed as a Magistrate on or after the election takes effect (that is, disregarding service as a Magistrate or in the government sector before the election takes effect).
- (5) In this section, a **pre-2002 extended leave entitlement** is any right to extended leave or to accrue extended leave that a Magistrate appointed before 20 September 2002 has by virtue of section 25 (1) of the *Local Courts Act 1982*, as in force immediately before its repeal.

#### **Note—**

Section 30 (1) (c) of the *Interpretation Act 1987* provides that the repeal of an Act does not affect any right, privilege, obligation or liability acquired, accrued or incurred under the Act.

## **Part 2 The Chief Magistrate**

### **10 The Chief Magistrate** (cf LCA 1982, section 14)

- (1) Subject to subclause (2), the Chief Magistrate holds the office of Chief Magistrate while he or she holds office as a Magistrate.
- (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.
- (3) The Chief Magistrate may delegate to a Deputy Chief Magistrate any of the Chief

Magistrate's functions other than this power of delegation.

#### **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 (during any period for which he or she also holds office as a Judge) 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.

### **Part 3 Deputy Chief Magistrates**

#### **11 Deputy Chief Magistrates** (cf LCA 1982, section 15)

- (1) Subject to subclause (2), a Deputy Chief Magistrate holds the office of Deputy Chief Magistrate while he or she holds office as a Magistrate.
- (2) With the approval of the Governor, a Deputy Chief Magistrate may resign the office of Deputy Chief Magistrate without resigning the office of Magistrate.
- (3) A Deputy Chief Magistrate nominated for the purposes of this subclause by an order in writing of the Attorney General may, in accordance with the terms of that order, 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.
- (3A) The Attorney General may make any such nomination for a particular vacancy or absence or for any vacancy or absence that occurs from time to time.
- (4) A Deputy Chief Magistrate has and may exercise all of the functions of the Chief Magistrate while acting in that office.

### **Part 4 Acting Magistrates**

#### **12 Acting Magistrates**

- (1) An acting Magistrate has the powers and authorities of a Magistrate, is to fulfil the duties of a Magistrate and for the purposes of this or any other Act (other than the *Statutory and Other Offices Remuneration Act 1975*) is taken to be a Magistrate.
- (2) A person appointed as an acting Magistrate may, despite the expiration of the person's term of office, complete or otherwise continue to hear and determine and otherwise deal with any proceedings that have been heard, or partly heard, by the person before the expiration of that term.
- (3) While a person continues to deal with or determine, under subclause (2), any proceedings that have been heard or partly heard by the person before the expiration of the person's term of office, the person has all the entitlements and functions of a Magistrate and, for the purposes of those proceedings, is taken to continue to be a

Magistrate.

- (4) A person appointed as an acting Magistrate is entitled to be paid such remuneration as the Governor considers appropriate and such travelling and subsistence allowances as the Minister may from time to time determine in respect of the Magistrate.

## **Schedule 2 Provisions relating to Assessors**

(Section 17 (2))

### **1 Term of office** (cf LCA 1982, clause 1 of Schedule 2)

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** (cf LCA 1982, clause 2 of Schedule 2)

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 Appointment on full-time or part-time basis**

The appointment of an Assessor may be on a full-time or part-time basis.

### **4 Effect of employment as Assessor**

- (1) Except as provided by this clause, an Assessor must not engage in any business or employment outside the duties of his or her office except with the approval of the Governor.
- (2) Subclause (1) does not allow the Governor to give approval for an Assessor to practise as an Australian legal practitioner for fee, gain or reward.
- (3) Subclause (1) does not apply to an Assessor appointed on a part-time basis, but such a person must not:
- (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) practise as an Australian legal practitioner for fee, gain or reward or engage in or continue in the private practice of any other profession, occupation or trade, or enter into any employment, whether remunerated or not, with any person so

engaged.

**5 Leave** (cf LCA 1982, clause 4 of Schedule 2)

(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.

**6 Effect of certain other Acts** (cf LCA 1982, clause 3 of Schedule 2)

(1) The office of Assessor is a statutory office and the *Government Sector Employment Act 2013* does not apply to that office.

(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 the Court to accept or retain any remuneration payable to the officer as an Assessor.

**7 Vacation of office** (cf LCA 1982, clause 6 of Schedule 2)

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 8.



**8 Removal from office** (cf LCA 1982, clause 5 of Schedule 2)

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

**Schedule 3 Provisions relating to Rule Committee**

(Section 25 (5))

**1 Term of office** (cf LCA 1982, sections 30 and 31)

A member other than the Chief Magistrate is to hold office for the period specified in the member's instrument of appointment and is eligible (if otherwise qualified) for re-appointment.

**2 Vacancy of office** (cf LCA 1982, sections 30 and 31)

(1) A member ceases to hold office in any of the following circumstances:

- (a) in the case of a member referred to in section 25 (2) (a)–(e), if the member ceases to hold the qualification by virtue of which the member was appointed or holds office,
- (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,
- (c) in the case of the member appointed by the Secretary of the Department of Justice, if the member resigns as a member by instrument in writing addressed to the Secretary,
- (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.

(2) If the office of a member other than the Chief Magistrate becomes vacant, a person must, subject to this Act, be appointed to fill the vacancy.

**3 Deputies for members**

- (1) A reference to a power to appoint a member of the Rule Committee includes a power to appoint a deputy for that member.
- (2) In the absence of a member appointed under section 25 (2), (3) or (4), the member's deputy:
  - (a) may, if available, act in the place of the member, and
  - (b) subject to clause 4 (3)—while so acting, has the functions of the member and is taken to be the member.

#### **4 Chairperson** (cf LCA 1982, section 33)

- (1) The Chief Magistrate is to be the chairperson of the Rule Committee.
- (2) The Chief Magistrate is to appoint in writing one of the other members of the Rule Committee who is a Magistrate as deputy chairperson.
- (3) A person nominated as a deputy for the Chief Magistrate is not entitled to exercise any of the functions of the Chief Magistrate as chairperson of the Rule Committee.

#### **5 Meetings** (cf LCA 1982, section 34)

- (1) The Rule Committee is (subject to this clause) to regulate its own procedure with respect to conducting meetings.
- (2) The chairperson of the 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 the 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) A decision supported by a majority of the votes cast at a meeting of the Rule Committee at which a quorum is present is the decision of the Rule Committee.
- (5) The person presiding at a meeting of the Rule Committee has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- (6) The Chief Magistrate is to call meetings of the Rule Committee as the Chief Magistrate thinks necessary (subject to any decision of the Committee under subclause (1)).
- (7) The 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.

#### **6 Quorum**

The quorum for a meeting of the Rule Committee is a majority of the number of the members for the time being.

### **Schedule 4 Savings, transitional and other provisions**

(Section 5 (2))

#### **Part 1 General**

##### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent

on the enactment of the following Acts:

this Act

*Courts and Crimes Legislation Amendment Act 2008*

*Courts and Crimes Legislation Further Amendment Act 2010*

any other Act that amends this Act

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision 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, 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.

## **Part 2 Provisions consequent on enactment of this Act**

### **2 Definitions**

In this Part:

**former Act** means the *Local Courts Act 1982*.

**former Court** means a court established under the *Local Courts Act 1982*.

**relevant repeal date** means that date on which the former Act is repealed by the *Local Court Act 2007*.

### **3 Abolition of Local Courts**

All former Courts are abolished on the relevant repeal date.

### **4 Continuation of judicial office**

- (1) A commission of appointment made under the former Act is, to the extent that the commission has effect immediately before the relevant repeal date, taken to have been issued under this Act.
- (2) A person who, immediately before the relevant repeal date, held office as a Magistrate under Part 3 of the former Act is, on that date, taken to have been appointed as a Magistrate under this Act:

- (a) subject to any conditions of the Magistrate's appointment under the former Act, and
  - (b) if the person was appointed for a specified term—for the remainder of that term.
- (3) A person who, immediately before the relevant repeal date, held office as the Chief Magistrate under Part 3 of the former Act is, on that date, taken to have been appointed as Chief Magistrate under this Act.
- (4) A person who, immediately before the relevant repeal date, held office as a Deputy Chief Magistrate under Part 3 of the former Act is, on that date, taken to have been appointed as a Deputy Chief Magistrate under this Act.

## **5 Continuation of other offices**

- (1) A person who, immediately before the relevant repeal date, held office as an Assessor under Part 7 of the former Act is taken to hold office under this Act as an Assessor, subject to any terms and conditions specified in the Assessor's instrument of appointment, for the remainder of the term for which the person was appointed as an Assessor.
- (2) A person who, immediately before the relevant repeal date, held office as a registrar of a former Court under Part 2 of the former Act is taken to hold office under this Act as a registrar.
- (3) A person who, immediately before the relevant repeal date, held office as a deputy registrar of a former Court under Part 2 of the former Act is taken to hold office under this Act as a deputy registrar.
- (4) Unless the Chief Magistrate otherwise directs, a direction is taken to have been duly made under section 23 by the Chief Magistrate that a registrar, deputy registrar or Assessor is to exercise his or her functions at the designated place or places where he or she was entitled to exercise his or her functions under the former Act immediately before the relevant repeal date.

## **6 Pending applications and proceedings under former Act**

- (1) Subject to subclause (2), this Act and the rules apply to proceedings commenced before the relevant repeal date in the same way as they apply to proceedings commenced on or after that date.
- (2) The Court may make such orders dispensing with the requirements of the rules in relation to the proceedings commenced before the relevant repeal date, and such consequential orders (including orders as to costs), as are appropriate in the circumstances.

## **7 Special jurisdiction**

Any matter being dealt with by a former Court under Part 6 of the former Act before the relevant repeal date is taken to form part of the Court's special jurisdiction under Part 4.

## **8 Continuation of proceedings after Magistrate's vacation of office**

Clause 4 of Schedule 1 applies in respect of proceedings commenced before or after the commencement of that clause.

## **9 Designated places**

A place at which a former Court could be held, pursuant to an appointment made under section 6 (1) of the former Act, immediately before the relevant repeal date is taken, on that date, to have been the subject of a direction and notification by the Chief Magistrate, pursuant to section 22, that each such place is a designated place for the purposes of this Act.

## **10 General savings provision**

- (1) Subject to this Act and the regulations, anything done under or for the purposes of a provision of the former Act is, to the extent that the thing has effect immediately before the repeal of the provision, taken to have been done under or for the purposes of the corresponding provision of this Act.
- (2) Without limiting subclause (1), any approval, authority or appointment in force under a provision of the former Act immediately before the repeal of the provision is taken to be an approval, authority or appointment in force under the corresponding provision of this Act.

## **11 References to a Local Court**

Subject to this Act and the regulations, a reference in another Act or in an instrument made under an Act or in any document enacted or made before the relevant repeal date to:

- (a) a Local Court is to be read as a reference to the Local Court, and
- (b) a registrar of a Local Court is to be read as a reference to a registrar of the Local Court, and
- (c) a deputy registrar of a Local Court is to be read as a reference to a deputy registrar of the Local Court, and
- (d) a Local Court at a particular place is to be read as a reference to the Local Court sitting at that place.

## **Part 3 Provision consequent on enactment of [Courts and Crimes](#)**

## Legislation Amendment Act 2008

### 12 Pending appeals

An appeal to the Supreme Court for which a hearing date had been allocated before the commencement of Schedule 15 [2]–[6] to the *Courts and Crimes Legislation Amendment Act 2008* is to be determined as if that Act had not been enacted.

## Part 4 Provision consequent on enactment of Courts and Crimes Legislation Amendment Act 2009

### 13 Member of Rule Committee appointed by Attorney General

A person appointed and holding office under section 25 (2) (g), as in force immediately before its substitution by the *Courts and Crimes Legislation Amendment Act 2009*, is taken to have been appointed under section 25 (2) (g) as substituted by that Act.

## Part 5 Provision consequent on enactment of Courts Legislation Amendment Act 2010

### 14 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).

## Part 6 Provisions consequent on enactment of Courts and Crimes Legislation Further Amendment Act 2010

### 15 Changes to the jurisdictional limit of the Court

The amendment made to section 29 by the *Courts and Crimes Legislation Further Amendment Act 2010* does not apply to proceedings instituted in the Court before the commencement of the amendment.

### 16 Validation of 2005 Extended Leave Determination

- (1) A provision of the 2005 Extended Leave Determination that could have been made as a condition of service determination if this Act, as amended by the *Courts and Crimes Legislation Further Amendment Act 2010*, had been in force at the time that it was made, is taken to have been, and to have always been, validly made under section 22 of the *Local Courts Act 1982*.
- (2) The 2005 Extended Leave Determination is taken to include, and to have always included, a provision to the effect that, on and from the date an election by a Magistrate to be paid an extended leave gratuity takes effect, any service by the Magistrate as a Magistrate or in the public sector service before that date is to be

disregarded in determining the Magistrate's entitlement to extended leave for service after that date.

- (3) Anything done in connection with the 2005 Extended Leave Determination that would have been validly done if the amendments made to this Act by the *Courts and Crimes Legislation Further Amendment Act 2010* had been in force when it was done is taken to have been, and to have always been, validly done.
- (4) A Magistrate or former Magistrate who was paid an extended leave gratuity before the commencement of this clause may elect to have his or her pre-2002 extended leave entitlement reinstated in accordance with arrangements approved by the Minister.
- (5) As a precondition to reinstatement, the Magistrate or former Magistrate must repay the gratuity amount to the Minister.
- (6) The amount to be repaid is to be determined by the Minister on the basis of a reasonable estimate of the present day value of the extended leave gratuity paid to the Magistrate or former Magistrate.
- (7) On reinstatement, the Magistrate or former Magistrate is taken to have accrued, and to always have accrued, extended leave as if the Magistrate had never elected to be paid the extended leave gratuity.
- (8) Expressions used in this clause have the same meaning as they have in clause 9A of Schedule 1.
- (9) In this clause:

**extended leave gratuity** means a gratuity paid to a Magistrate on election under clause 2A of the *Magistrates' Leave and Related Conditions Determination* as inserted by the 2005 Extended Leave Determination.

**2005 Extended Leave Determination** means the *Magistrates' Leave and Related Conditions Amendment (Extended Leave) Determination 2005* published in Gazette No 65 of 3.6.2005 at page 1923.

## **Part 7 Provision consequent on enactment of *Local Court Amendment (Company Title Home Unit Disputes) Act 2013***

### **17 Jurisdiction in company title home unit disputes**

Section 34A extends to any company title home unit dispute that involves or relates to conduct by an interested party that occurred before the commencement of that section.