

Justice Legislation Amendment Act (No 2) 2017

No 44

[2017-44]



New South Wales

Status Information

Currency of version

Historical version for 26 September 2017 to 25 November 2017 (accessed 1 May 2024 at 19:19)

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

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

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

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Justice Legislation Amendment Act (No 2) 2017 No 44



New South Wales

An Act to amend various legislation relating to courts and crimes and other related matters.

1 Name of Act

This Act is the *Justice Legislation Amendment Act (No 2) 2017*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by this section.
- (2) Schedules 1.2 [2] and [3], 1.3 [4]–[6], 1.6 [1] and [7]–[13], 1.10 and 1.17 [2] commence on a day or days to be appointed by proclamation.
- (3) Schedule 1.3 [1] commences 3 months after the date of assent to this Act, unless commenced sooner by proclamation.

Schedule 1 Amendment of legislation

1.1

(Repealed)

1.2 Civil and Administrative Tribunal Act 2013 No 2

[1] (Repealed)

[2] Section 17 Division Schedule for a Division of Tribunal

Insert “(except Part 3A)” after “this Act” in section 17 (3).

[3] Part 3A

Insert after Part 3:

Part 3A Diversity proceedings

34A Definitions

In this Part:

authorised court means any of the following:

- (a) the District Court,
- (b) the Local Court.

federal diversity jurisdiction means jurisdiction of the kind referred to in section 75 (iv) of the Commonwealth Constitution.

jurisdictional limit, in relation to an authorised court, means the jurisdictional limit of the court within the meaning of the [Civil Procedure Act 2005](#).

substituted proceedings—see section 34C.

34B Applications or appeals involving federal diversity jurisdiction may be made to authorised court

- (1) A person with standing to make an original application or external appeal may, with the leave of an authorised court, make the application or appeal to the court instead of the Tribunal.
- (2) The authorised court may grant leave for the application or appeal to be made to the court only if it is satisfied that:
 - (a) the application or appeal was first made with the Tribunal, and
 - (b) the Tribunal does not have jurisdiction to determine the application or appeal because its determination involves the exercise of federal diversity jurisdiction, and
 - (c) the Tribunal would otherwise have had original jurisdiction or external appellate jurisdiction enabling it to determine the application or appeal, and
 - (d) substituted proceedings on the application or appeal would be within the jurisdictional limit of the court.
- (3) An application for leave must be:
 - (a) filed with the authorised court along with:
 - (i) an application or appeal that has been completed in the form and manner required under this Act for the kind of application or appeal concerned, and

- (ii) if the parties to the application or appeal have reached a settlement before leave is sought using a resolution process referred to in section 37—a copy of the terms of settlement, and
 - (b) accompanied by the applicable fee (if any) payable in the Tribunal for the application or appeal unless it has already been paid to the Tribunal.
- (4) If an appeal is made under this Act in relation to any matter in issue in the application or appeal:
 - (a) for an appeal lodged before the application for leave is made to an authorised court—the court cannot grant leave unless and until the appeal is determined, or
 - (b) for an appeal lodged on or after leave is granted by an authorised court—proceedings in the court concerning the application or appeal are stayed until the appeal made under this Act is determined.
- (5) An authorised court may remit an application or appeal to the Tribunal to determine the application or appeal if the court is satisfied that the Tribunal has jurisdiction to determine it. The court may do so instead of granting leave or after granting leave.
- (6) An authorised court that remits an application or appeal to the Tribunal may make such orders that it considers appropriate to facilitate the determination of the application or appeal by the Tribunal.
- (7) The Tribunal is to determine any application or appeal that is remitted to it in accordance with any orders made by the authorised court.
- (8) The following provisions apply if the authorised court is the District Court:
 - (a) the District Court may grant leave and then transfer the proceedings on the application or appeal to the Local Court in accordance with the provisions of Division 2 (Transfer of proceedings from higher to lower court) of Part 9 of the [Civil Procedure Act 2005](#),
 - (b) if a transfer order is made under that Division, this Part applies to the proceedings as if the Local Court had granted leave for the application or appeal to be made to it instead of the Tribunal.

34C Proceedings after leave granted

- (1) **Proceedings taken to be commenced if leave granted** If an authorised court grants leave for an original application or external appeal to be made to it instead of the Tribunal:
 - (a) proceedings for the determination of the application or appeal (***substituted***

proceedings) are taken to have been commenced in the authorised court on the day on which the application or appeal was first made to the Tribunal, and

- (b) the court may make such orders (including in relation to the Tribunal) as it considers appropriate to facilitate its determination of the application or appeal.
- (2) Subsection (1) applies despite any limitation period under the [Limitation Act 1969](#) or any enabling legislation that applies to the application or appeal concerned provided it was first lodged with the Tribunal before the expiry of the period.
- (3) **Jurisdiction and functions of authorised court** The authorised court has, and may exercise, all of the jurisdiction and functions in relation to the substituted proceedings that the Tribunal would have had if it could exercise federal diversity jurisdiction, including jurisdiction and functions conferred or imposed on the Tribunal by or under this Act or enabling legislation.
- (4) **Modifications to certain functions** Despite subsections (1)–(3), the following provisions apply in relation to substituted proceedings:
 - (a) the authorised court is to be constituted as provided by its relevant courts legislation instead of as provided by this Act or enabling legislation,
 - (b) a party to the substituted proceedings is not required to pay any fees in relation to the commencement of the proceedings in the authorised court other than the fees referred to in section 34B (3) (b) unless the authorised court determines that additional fees are payable under its relevant courts legislation because of a substantial alteration in the nature of the claims in the proceedings,
 - (c) the legislation applicable to appeals against decisions of the authorised court apply to decisions of the court in the substituted proceedings instead of Divisions 2 and 3 of Part 6,
 - (d) if the authorised court is the District Court—the practice and procedure applicable in the District Court under its relevant courts legislation (and any laws applicable in relation to contempt of court) apply to the substituted proceedings instead of Parts 4 and 5, any enabling legislation, the procedural rules and practice directions,
 - (e) if the authorised court is the Local Court—the practice and procedure applicable in the Local Court under its relevant courts legislation applies to the substituted proceedings instead of Part 4, any enabling legislation, the procedural rules and practice directions, except that:

- (i) the rules of evidence are to be applied to the proceedings if they would have been required to be applied if the proceedings were before the Tribunal, but the Local Court may, if it decides that it is appropriate to do so in the circumstances, not apply the rules of evidence if they were not required to be applied by the Tribunal, and
 - (ii) a person who is not an Australian legal practitioner can, with the leave of the Local Court, represent a party to the proceedings, but only in the circumstances that the Tribunal would have been permitted to allow it if the proceedings were before the Tribunal, and
 - (iii) a person who could have been made a party to, or intervened in, the proceedings if the proceedings were before the Tribunal can, with the leave of the Local Court, also be made a party or intervene, and
 - (iv) the Local Court may award costs in the proceedings only in the circumstances that the Tribunal would have been permitted to award them (and the costs are to be assessed in the same way as they would have been) if the proceedings were before the Tribunal,
 - (f) the authorised court may make orders giving effect to any settlement reached by the parties even if that settlement was reached before the substituted proceedings commenced,
 - (g) the power of the authorised court to make orders as to costs in relation to the substituted proceedings includes a power to make orders with respect to:
 - (i) the application for, and the granting of, leave for the application or appeal to which the substituted proceedings relate to be made to the court, and
 - (ii) any step taken in the Tribunal before leave was granted,
 - (h) any other modifications (including to the provisions of this Act or other legislation) as may be prescribed by the regulations for substituted proceedings of the kind concerned.
- (5) The Minister is not to recommend the making of a regulation for the purposes of subsection (4) (h) unless the Minister certifies that:
- (a) if the proposed amendments affect the exercise of jurisdiction or functions by the Tribunal—the President has agreed to the amendments, and
 - (b) if the proposed amendments affect the exercise of jurisdiction or functions by the District Court—the Chief Judge of the District Court has agreed to the amendments, and

- (c) if the proposed amendments affect the exercise of jurisdiction or functions by the Local Court—the Chief Magistrate of the Local Court has agreed to the amendments.

(6) **References to Tribunal in legislation** To avoid doubt (but subject to the regulations):

- (a) any reference to the Tribunal in a provision of legislation that confers or imposes a function on the Tribunal is to be read as including a reference to an authorised court if the function is conferred or imposed on the court because of the operation of this section, and
- (b) any reference to proceedings in the Tribunal in a provision of the kind referred to in paragraph (a) is to be read as including a reference to proceedings in the authorised court.

(7) **Definitions** In this section:

modification includes addition, exception, omission or substitution.

relevant courts legislation means:

- (a) for the District Court—the [District Court Act 1973](#) and the rules of court under that Act, and
- (b) for the Local Court—the [Local Court Act 2007](#) and the rules of court under that Act,

and includes the [Civil Procedure Act 2005](#) and the regulations and uniform rules under that Act in their application to the Court concerned.

34D Relationship of Part to this Act and other laws

- (1) The provisions of this Part prevail to the extent of any inconsistency between those provisions and any other provisions of this Act or other legislation.
- (2) To avoid doubt, subsection (1) applies despite anything in a Division Schedule for a Division of the Tribunal.

[4]-[6] (Repealed)

1.3 Civil Procedure Act 2005 No 28

[1] Section 106 Judgments for payment of money

Omit section 106 (3). Insert instead:

- (3) The power conferred on the Sheriff by subsection (2) (a) may not be exercised in

relation to any property referred to in section 116 (2) of the [Bankruptcy Act 1966](#) of the Commonwealth. For that purpose, a reference in section 116 (2) of that Act to the property of the bankrupt is taken to be a reference to the goods of the judgment debtor.

[2], [3] (Repealed)

[4] Section 118A

Insert after section 118:

118A Minimum account balance of judgment debtor

- (1) The amounts attached under one or more garnishee orders must not, in total, reduce the amount of the aggregate debt that is due and accruing from the garnishee to the judgment debtor to less than \$447.70.
- (2) The amount of \$447.70 referred to in subsection (1) is taken to be an **adjustable amount** for the purposes of Division 6 of Part 3 of the [Workers Compensation Act 1987](#).

[5] Section 124A

Insert after section 124:

124A Variation, suspension or repayment of payments under garnishee orders

The court may, at any time on the application by a judgment debtor, vary or suspend the making of payments by the judgment debtor under a garnishee order, or order the total amount paid by the judgment debtor under the garnishee order to be repaid, if the court is satisfied that it is appropriate to do so.

[6] Schedule 1 Application of Act

Insert in Column 2 after the matter relating to civil proceedings under the [Property \(Relationships\) Act 1984](#) in the Local Court:

All civil proceedings that are substituted proceedings within the meaning of Part 3A of the [Civil and Administrative Tribunal Act 2013](#)

Note—

Section 34C of the [Civil and Administrative Tribunal Act 2013](#) modifies the application of this Act. Those modifications prevail because of section 34D of that Act.

1.4, 1.5

(Repealed)

1.6 Crimes (Domestic and Personal Violence) Act 2007 No 80

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

non-local domestic violence order means a non-local DVO within the meaning of Part 13B.

[2]-[6] (Repealed)

[7] Section 84 Review and appeal provisions concerning making etc of apprehended violence orders

Insert at the end of section 84 (2) (d):

, or

- (e) by a party to a non-local domestic violence order against the variation or revocation of the order by the Local Court or the Children's Court or against a refusal by the Local Court or the Children's Court to vary or revoke the order.

[8] Section 89B

Insert after section 89A:

89B Detention of defendant where recognised domestic violence order may be in force

- (1) A police officer who has grounds to make an application for a provisional order against a person may, for the purposes of ascertaining whether there is already a non-local domestic violence order in force against the person or obtaining a copy of any such order (or both), give any of the following directions to the person:
 - (a) that the person remain at the scene where the relevant incident occurred,
 - (b) in a case where the person has left the scene of that incident—that the person remain at another place where the police officer locates the person,
 - (c) that the person go to and remain at another place that has been agreed to by the person,

- (d) that the person go to and remain at a specified police station,
 - (e) that the person accompany a police officer to a police station and remain at the police station,
 - (f) that the person accompany a police officer to another place that has been agreed to by the person, or to another place (whether or not agreed to by the person) for the purpose of receiving medical attention, and remain at that other place.
- (2) If a person refuses or fails to comply with a direction under this section, the police officer who gave the direction or another police officer may detain the person at the scene of the relevant incident or other place, or detain the person and take the person to a police station.
- (3) If a direction is given under subsection (1) (e) or (f), the police officer may detain the person in the vehicle in which the person accompanies the police officer to the police station or other place for so long as is necessary to transport the person to the police station or other place.
- (4) In considering whether to detain a person under subsection (3), a police officer may have regard to the following matters:
- (a) the need to ensure the safety of the person who would be protected by the provisional order, including the need to:
 - (i) remove the defendant from the scene of the relevant incident, and
 - (ii) prevent substantial damage to property,
 - (b) the circumstances of the defendant,
 - (c) any other relevant matter.

[9] Section 90 Detention of defendant for service of order or variation

Insert after section 90 (1):

- (1A) A police officer who reasonably suspects that a person is a defendant under a non-local domestic violence order may direct the person to remain where the person is for the purpose only of serving on the person a copy of the order, or a variation of the order, if the law of the jurisdiction in which the order or variation was made requires the order or variation to be served personally.

[10] Section 90A Period for which person may be directed to remain or be detained

Insert after section 90A (1) (a):

- (a1) in the case of a direction under section 89B—a police officer to ascertain whether a non-local domestic violence order is in force against the person or to obtain a copy of any such order (or both), or

[11] Section 90A (1) (b)

Insert “(or the non-local domestic violence order)” after “apprehended violence order”.

[12] Section 90A (2) (a) (ia)

Insert after section 90A (2) (a) (i):

- (ia) in the case of detention under section 89B—a police officer to ascertain whether a non-local domestic violence order is in force against the person or to obtain a copy of any such order (or both), or

[13] Section 90A (2) (a) (ii)

Insert “(or the non-local domestic violence order)” after “apprehended violence order”.

1.7-1.9

(Repealed)

1.10 District Court Act 1973 No 9

Section 44 Actions

Insert after section 44 (1) (d1):

- (d2) any substituted proceedings within the meaning of Part 3A of the *Civil and Administrative Tribunal Act 2013*, so long as the amount (if any) claimed does not exceed the Court’s jurisdictional limit,

1.11-1.16

(Repealed)

1.17 Local Court Act 2007 No 93

[1] (Repealed)

[2] Section 30 Conferral of jurisdiction

Insert after section 30 (1) (b1):

- (b2) substituted proceedings within the meaning of Part 3A of the *Civil and Administrative Tribunal Act 2013*, so long as the amount of any money claim, or the

value of any goods or property, to which the proceedings relate does not exceed the jurisdictional limit of the Court when sitting in that Division, and

1.18-1.24

(Repealed)