

Courts Legislation Amendment Act 2000 No 31

[2000-31]



New South Wales

Status Information

Currency of version

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Provisions in force

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

Notes—

- **Repeal**

The Act was repealed by the *Statute Law (Miscellaneous Provisions) Act 2002 No 53*, Sch 3 with effect from 4.7.2002.

Authorisation

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New South Wales

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Courts Legislation Amendment Act 2000 No 31



New South Wales

An Act to amend various Acts with respect to courts, court procedures, judicial officers and related matters; and for other purposes.

1 Name of Act

This Act is the *Courts Legislation Amendment Act 2000*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.
- (2) Schedule 1 commences on the commencement of Schedule 1 [7] to the *Criminal Procedure Legislation Amendment (Bail Agreements) Act 1998*.
- (3) Schedule 12 [2] commences, or is taken to have commenced, on the commencement of Schedule 6 to the *Courts Legislation Amendment Act 1999*.

3 Amendment of Acts

The Acts specified in Schedules 1–15 are amended as set out in those Schedules.

4 Explanatory notes

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

Schedule 1 Amendment of **Bail Act 1978 No 161**

(Section 3)

[1] Section 53 Definitions (as inserted by Schedule 1 [7] to the **Criminal Procedure Legislation Amendment (Bail Agreements) Act 1998**)

Omit “representing the Crown” from the definition of **appropriate State authority**.

[2] Section 53P Crown etc party to forfeiture proceedings (as inserted by Schedule 1 [7] to the **Criminal Procedure Legislation Amendment (Bail Agreements) Act 1998**)

Insert “and the appropriate State authority” after “Crown”.

Explanatory note

Part 7A of the [Bail Act 1978](#) provides a mechanism for the enforcement of bail agreements entered into under section 36 of that Act. A bail agreement is an agreement under which an accused person, or some other person, agrees to forfeit money (by the operation of a forfeiture order) if an accused person's bail undertaking is not complied with.

Under Part 7A, notice of an objection to the confirmation of a forfeiture order must be given to the appropriate State authority. The term **appropriate State authority** is defined for the purposes of Part 7A as "such person or body representing the Crown as is declared by the regulations to be the appropriate State authority for the purposes of this Part".

Item [1] provides that the term "appropriate State authority" is not restricted to a person or body representing the Crown (eg the amendment will enable the declaration of non-Crown bodies such as locals councils).

Item [2] provides that the appropriate State authority, in addition to the Crown, is entitled to appear and be heard at, and is taken to be a party to, forfeiture proceedings under Part 7A.

Schedule 2 Amendment of [Coroners Act 1980 No 27](#)

(Section 3)

[1] Section 20 Further inquest or inquiry after previous inquest or inquiry terminated under section 19

Omit "that a prima facie case for an indictable offence has been established against a known person" from section 20 (1) (a).

Insert instead "referred to in section 19 (1) (b)".

[2] Section 20 (1) (b)

Omit "that a prima facie case for an indictable offence has been established against a known person".

Insert instead "referred to in section 19 (1) (b)".

Explanatory note

Items [1] and **[2]** are consequential on the amendment to section 19 of the [Coroners Act 1980](#) (as made by the [Crimes Legislation Further Amendment Act 1998](#)) which recast the circumstances in which a coroner is required to refer a matter to the Director of Public Prosecutions so as to mirror the provisions of the [Justices Act 1902](#).

[3] Section 33 Rules of procedure and evidence

Insert ", except in accordance with section 33AA," after "but no witness shall".

Explanatory note

Section 33 of the [Coroners Act 1980](#) currently provides that a witness at an inquest or inquiry held by a coroner cannot be compelled to answer any question which incriminates (or tends to incriminate) the witness of any offence. **Item [3]** provides that this restriction does not apply if the witness is required to give self-incriminating evidence in accordance with proposed section 33AA as inserted by item [4] of this Schedule.

[4] Section 33AA

Insert after section 33:

33AA Privilege in respect of self-incrimination

- (1) This section applies if a witness at an inquest or inquiry held by a coroner who is a Magistrate objects to giving particular evidence on the ground that the evidence may tend to prove that the witness has committed an offence or is liable to a civil penalty.
- (2) The coroner is to cause the witness to be given a certificate under this section in respect of the evidence if the objection is overruled but, after the evidence has been given, the coroner finds that there were reasonable grounds for the objection.
- (3) If the coroner is satisfied that the evidence concerned may tend to prove that the witness has committed an offence or is liable to a civil penalty but that the interests of justice require the witness to give the evidence, the coroner may require the witness to give the evidence. If the coroner so requires, the coroner is to cause the witness to be given a certificate under this section in respect of the evidence.
- (4) In any proceedings in a NSW court (within the meaning of the *Evidence Act 1995*):
 - (a) evidence given by a person in respect of which a certificate under this section has been given, and
 - (b) evidence of any information, document or thing obtained as a direct or indirect consequence of the person having given that answer,cannot be used against the person. However, this does not apply to a criminal proceeding in respect of the falsity of the evidence.
- (5) A certificate under this section can only be given in respect of evidence that is required to be given by a natural person.

Explanatory note

Proposed section 33AA, which is based on section 128 of the *Evidence Act 1995*, provides that a witness at an inquest or inquiry may be required by the coroner to give incriminating evidence so long as the coroner gives a certificate to the effect that the evidence cannot be used later against the witness in court proceedings.

[5] Section 45 Offences

Omit section 45 (3) (b). Insert instead:

- (b) a witness in an inquest or inquiry objects to giving evidence on the ground that the evidence may tend to prove that the witness has committed an offence,

[6] Section 45 (3)

Omit “refusal or claim of privilege”. Insert instead “objection or evidence”.

Explanatory note

Items [5] and [6] are consequential amendments.

[7] Schedule 1 Special provisions—inquests concerning deaths or suspected deaths in mines

Omit the definition of *inspector* from clause 1. Insert instead:

investigator means an investigator within the meaning of the *Coal Mines Regulation Act 1982* or an investigator within the meaning of the *Mines Inspection Act 1901*.

Manager means the Manager, Investigations Unit in the Department of Mineral Resources.

[8] Schedule 1, clause 2 (a)

Omit the paragraph. Insert instead:

- (a) If the inquest relates to an explosion or accident that is the subject to an investigation under the *Coal Mines Regulation Act 1982* or the *Mines Inspection Act 1901*, the coroner is to adjourn the inquest unless an investigator is present to watch the proceedings.

[9] Schedule 1, clause 2 (b)

Omit “inspector for the district”. Insert instead “Manager”.

[10] Schedule 1, clause 2 (d)

Omit “inspector of the district”. Insert instead “Manager”.

[11] Schedule 1, clause 2 (d)

Omit “reach the inspector”. Insert instead “reach an investigator”.

[12] Schedule 1, clause 2 (e)

Omit “inspector”. Insert instead “investigator”.

[13] Schedule 1, clause 2 (f)

Omit “an inspector” where firstly occurring. Insert instead “an investigator”.

[14] Schedule 1, clause 2 (f)

Omit “an inspector” where secondly occurring.

Insert instead “the Manager”.

Explanatory note

Schedule 1 to the *Coroners Act 1980* contains special provisions for inquests into deaths or suspected deaths in mines that are caused by an explosion or accident. Items **[7]–[14]** update references in those provisions (as a consequence of amendments made to the relevant Mining Acts by the *Mines Legislation Amendment (Mines Safety) Act 1998*) so as to enable investigators to participate in coronial hearings in the same manner that inspectors have previously participated.

[15] Schedule 3 Savings and transitional provisions

Insert after clause 9:

10 Courts Legislation Amendment Act 2000

- (1) The amendment of section 33 by Schedule 2 [3] to the *Courts Legislation Amendment Act 2000* extends to an inquest or inquiry that has been commenced, but not completed, before the commencement of that amendment.
- (2) Section 33AA, as inserted by Schedule 2 [4] to the *Courts Legislation Amendment Act 2000*, extends to an inquest or inquiry that has been commenced, but not completed, before the commencement of that section.

Explanatory note

Item [15] provides that the amendments relating to the giving of self-incriminating evidence at inquiries or inquests extend to inquiries or inquests commenced, but not completed, before the commencement of those amendments.

Schedule 3 Amendment of Criminal Appeal Act 1912 No 16

(Section 3)

[1] Section 5AA Appeal in criminal cases dealt with by Supreme Court in its summary jurisdiction

Omit section 5AA (3) and (3A).

Explanatory note

Section 5AA of the *Criminal Appeal Act 1912* provides for appeals to the Court of Criminal Appeal against convictions made by the Supreme Court in its summary jurisdiction. The section also applies in respect of convictions made by other courts such as the Land and Environment Court. **Item [1]** removes the requirement that any such appeal is to be by way of a rehearing of the original evidence.

[2] Section 5F Appeal against interlocutory judgment or order

Insert at the end of section 5F (1) (b):

, and

- (c) proceedings in Class 5 of the Land and Environment Court's jurisdiction (as referred to in section 21 of the [Land and Environment Court Act 1979](#)).

Explanatory note

Item [2] provides for appeals to be made to the Court of Criminal Appeal against interlocutory judgments or orders given or made by the Land and Environment Court in relation to criminal proceedings (ie Class 5 of its jurisdiction).

[3] Schedule 1 Savings and transitional provisions

Insert after clause 5:

6 Courts Legislation Amendment Act 2000

The amendment made to section 5AA by the [Courts Legislation Amendment Act 2000](#) does not apply in respect of an appeal against a conviction or costs order that was made before the commencement of the amendment.

Explanatory note

Item [3] provides that the amendment made by item [1] of this Schedule does not have any retrospective effect.

Schedule 4 Amendment of Family Provision Act 1982 No 160

(Section 3)

Section 16 Time for application for provision

Omit section 16 (3). Insert instead:

- (3) The Court may not make an order under subsection (2) allowing an application in relation to a deceased person to be made after the end of the prescribed period unless:
- (a) the parties to the proceedings concerned have consented to the application being made after the end of that period, or
 - (b) sufficient cause is shown for the application not having been made within that period.

Explanatory note

At present, section 16 (3) of the [Family Provision Act 1982](#) provides that a court cannot make an order allowing a person to make an application for provision out of the estate of a deceased person after the expiration of the prescribed limitation period unless sufficient cause is shown for the application not having been made within that period.

The amendment will enable the court to make an order allowing an application to be made outside of the prescribed limitation period on the basis that the parties to the proceedings have consented to the application being made.

Schedule 5 Amendment of **Fines Act 1996 No 99**

(Section 3)

[1] Section 122 Payment of share of fine to prosecutor

Insert after section 122 (2):

- (3) For the purposes of this section, **fine** does not include an amount of the kind referred to in section 4 (1) (e) or (f).

Explanatory note

Section 122 of the *Fines Act 1996* provides that if another Act does not make provision for the application of a fine, the court may direct that up to half of the amount of the fine is to be paid to the prosecutor (if the prosecutor is not a police officer). **Item [1]**, which is consequential on item [2] of this Schedule, provides that certain amounts are not “fines” for the purposes of section 122, namely witnesses’ expenses and professional costs awarded in proceedings for offences brought by law enforcement officers, as these amounts will be able to be paid in full to law enforcement officers under proposed section 122A.

[2] Section 122A

Insert after section 122:

122A Payment of law enforcement officers’ costs and expenses

- (1) This section applies in respect of proceedings for an offence that are brought by a law enforcement officer.
- (2) The court before which such proceedings are brought may, when making an order of the kind referred to in section 4 (1) (e) or (f), direct the amount to which the order relates be paid to the law enforcement officer (or to the law enforcement agency on whose behalf the proceedings were brought) in full or in such portion as may be determined by the court.
- (3) This section has effect despite section 121.

Explanatory note

Section 121 of the *Fines Act 1996* provides that any fine imposed by or under any Act is, when recovered, payable into the Consolidated Fund. The term **fine** is defined in section 4 of the Act to include any witnesses’ expenses, and any professional costs, payable under an order made a court in proceedings brought by a law enforcement officer.

Item [2] provides that when the court makes an order for the payment of such expenses or costs, the court may order that the amount is to be paid to or on behalf of the law enforcement officer who brought the proceedings.

Schedule 6 Amendment of **Industrial Relations Act 1996 No 17**

(Section 3)

Section 162A

Insert after section 162:

162A Transfer of certain proceedings to Industrial Magistrates

- (1) This section applies to the following proceedings:
 - (a) proceedings for a civil penalty under Part 1 of Chapter 7,
 - (b) proceedings for the recovery of money under Part 2 of Chapter 7.
- (2) If any proceedings to which this section applies have been instituted in or before the Commission in Court Session, but the hearing of the matter has not been commenced, the President of the Commission, or a judicial member of the Commission authorised by the President for the purposes of this section, may order the transfer of the proceedings to a Local Court to be dealt with by that court.
- (3) The President or judicial member is not to make an order under this section unless:
 - (a) the President or judicial member is satisfied that the proceedings concerned should have been instituted in a Local Court because of the nature of the proceedings, and
 - (b) the Local Court has jurisdiction to deal with the proceedings.
- (4) Any proceedings to which this section applies that are transferred to a Local Court under this section are to continue before the Local Court as if they had been instituted there.
- (5) In this section:

Local Court means a Local Court constituted by an Industrial Magistrate sitting alone.

Explanatory note

The amendment provides for the transfer of certain proceedings that have been instituted in or before the Industrial Relations Commission in Court Session so that they can be dealt with by Industrial Magistrates.

Schedule 7 Amendment of **Judges' Pensions Act 1953 No 41**

(Section 3)

[1] Part 1, heading

Insert "**Part 1 Preliminary**" before section 1.

[2] Section 2 Definitions

Insert in alphabetical order in section 2 (1):

Acting judge means:

- (a) an Acting Judge of the Supreme Court of New South Wales, or
- (b) an acting member of the Industrial Relations Commission of New South Wales, or
- (c) an Acting Judge of the Industrial Court, or
- (d) an acting judicial member of the Industrial Relations Commission of New South Wales, or
- (e) an acting Judge of the Land and Environment Court (under the *Land and Environment Court Act 1979*), or
- (f) an Acting Judge of a District Court (under the *District Court Act 1973*), or
- (g) an acting Judge of the Compensation Court (under the *Compensation Court Act 1984*).

[3] Part 2, heading

Insert "**Part 2 Pensions**" before section 3.

[4] Section 10A

Insert after section 10:

10A Reduction in pensions where lump sum benefit paid

- (1) Despite any other provision of this Act, if a pension is payable under this Act to or in respect of a judge or former judge who has previously been paid a lump sum benefit:
 - (a) under this Act, or
 - (b) under an Act of another State, a Territory or the Commonwealth in respect of any prior judicial service,

the amount of any pension payable from time to time under this Act is to be reduced having regard to the value of the lump sum benefit paid.

- (2) If a pension is reduced under this section, any subsequent reversionary pension payable from time to time under this Act is to be reduced.
- (3) The amount of the reduced pension or reversionary pension is to be determined by the Attorney-General in accordance with actuarial advice.
- (4) In this section:

prior judicial service has the same meaning as it has in section 8.

reversionary pension means a pension paid under this Act to a person as a result of a pension being previously paid to another person under this Act (for example, a pension paid to a widow or widower of a judge).

[5] Part 3

Insert at the end of the Act:

Part 3 Lump sum benefits

13 Calculation of lump sum benefits

- (1) The lump sum benefit payable under this Act to or in respect of a judge or acting judge qualified under section 15 is an amount calculated as follows:

$$B = 0.09 \times F \times Y$$

where:

B represents the amount to be ascertained

F represents the final salary of the judge or acting judge

Y represents the years of service calculated on a daily basis, commencing on or after the appointed day.

- (2) In this section:

attributed salary of a judge or acting judge at any time means:

- (a) if the judge or acting judge is employed on a full-time basis—the salary of the judge or acting judge at that time, or
- (b) if the judge or acting judge is employed on a part-time basis—the salary that would be payable to the judge or acting judge at that time if employed on a full-time basis.

final salary of a judge or acting judge means the rate of attributed salary paid or payable to the judge or acting judge on the exit date of the judge or acting judge.

14 When lump sum benefit is payable

- (1) A lump sum benefit calculated in accordance with section 13 is payable to or in respect of a judge or acting judge qualified under section 15:
 - (a) if the judge or acting judge dies, or
 - (b) if the judge or acting judge ceases to be employed as a judge or acting judge in the circumstances in which a benefit is payable for the purposes of complying with a relevant Commonwealth superannuation standard, or
 - (c) in any other circumstances in which a benefit is payable to comply with any such standard or may be paid in respect of a member of a regulated superannuation fund under any such standard,and is so payable in accordance with subsections (4) and (5).
- (2) If the whole or part of a lump sum benefit payable to a former judge or former acting judge would be required to be preserved if a relevant Commonwealth superannuation standard applied to the benefit, that amount must, on the election of the former judge or former acting judge, be paid to:
 - (a) a regulated superannuation fund, or
 - (b) an approved deposit fund, or
 - (c) an RSA institution.
- (3) If the former judge or former acting judge does not make an election referred to in subsection (2), the amount is to be paid on behalf of the former judge or former acting judge to a regulated superannuation fund or approved deposit fund approved by the Attorney General.
- (4) The lump sum benefit in respect of a former judge or former acting judge is payable:
 - (a) unless the former judge or former acting judge has died—to the former judge or former acting judge, or
 - (b) if the former judge or former acting judge has died and is survived by a widow or widower—to the widow or widower, or
 - (c) if the former judge or former acting judge has died and is not survived by a widow or widower—to the legal personal representatives of the former judge or former acting judge for payment in respect of any eligible children of the

former judge or former acting judge, or

(d) if the former judge or former acting judge has died and is not survived by a widow or widower or any eligible children—to the legal personal representatives of the former judge or former acting judge.

(5) A lump sum payable under this section is charged on and payable out of the Consolidated Fund.

(6) For the purposes of this section, an acting judge whose term of appointment as an acting judge ends, and who is appointed for a further consecutive term as an acting judge, is taken not to have ceased to be employed as an acting judge.

(7) In this section:

approved deposit fund has the same meaning as it has in the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

regulated superannuation fund has the same meaning as it has in the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

relevant Commonwealth superannuation standard means a standard that would be applicable if a benefit were payable from a regulated superannuation fund.

RSA institution has the same meaning as it has in the *Retirement Savings Accounts Act 1997* of the Commonwealth.

15 Judges and acting judges who are qualified for lump sum benefits

(1) A judge or acting judge is qualified for payment of a lump sum benefit payable under this Act if the judge or acting judge is not a person referred to in subsection (2).

(2) A lump sum benefit is not payable to or in respect of the following persons:

(a) a judge who is entitled to payment of a pension under this Act on ceasing to be a judge or in respect of whom such a pension is payable if the judge dies,

(b) an acting judge who ceases to be an acting judge because of appointment as a judge.

[6] Part 4, heading

Insert “**Part 4 Miscellaneous**” after new section 15 as inserted by item [5] of this Schedule.

[7] Sections 16 and 17A

Renumber existing sections 11 and 11A as sections 16 and 17, respectively.

[8] Section 18

Renumber section 12B (as inserted by Schedule 1 [3] to the *Judges' Pensions Amendment Act 1998*) as section 18.

[9] Section 19

Insert after section 18 (as renumbered by item [8] of this Schedule):

19 Savings and transitional provisions

Schedule 1 has effect.

[10] Schedule 1

Insert after new section 19 (as inserted by item [9] of this Schedule):

Schedule 1 Savings and transitional provisions

(Section 19)

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Courts Legislation Amendment Act 2000

- (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.

2 Past service to be taken into account

For the purposes of calculating a lump sum benefit payable under this Act to a judge or acting judge, any period of service as a judge or acting judge on or after 1 July 1992 is to be taken into account, whether or not the period of service was continuous.

Explanatory note

The amendments to the *Judges' Pensions Act 1953* provide for a lump sum superannuation benefit for judges and acting judges who are not eligible for a pension under that Act. The Act does not currently provide any benefits to acting judges for work as acting judges and only provides a pension to judges who complete a period of 5 years judicial service, if they retire at the statutory retirement age, or 10 years judicial service, if they retire after the age of 60 and before the statutory retirement age.

Item [5] inserts proposed Part 3 (Lump sum benefits), containing proposed sections 13–15.

Proposed section 13 sets out the amount of the lump sum benefit. It is to be 9% of the final salary of the judge or acting judge multiplied by the years of service of the judge or acting judge calculated on a daily basis.

Proposed section 14 sets out the circumstances in which the lump sum benefit is payable to or in respect of a judge or acting judge, including on death and in circumstances in which a benefit would be payable under Commonwealth legislation applicable to superannuation funds. In circumstances in which a benefit would be required to be preserved under Commonwealth legislation applicable to superannuation funds, the amount of the benefit must be paid to a regulated superannuation fund or an approved deposit fund or to a retirement savings account elected by the judge or acting judge. Provision is made for payment to a regulated superannuation fund or approved deposit fund approved by the Attorney General if no election is made. The proposed section also sets out the persons to whom the lump sum benefit is payable. The benefit is to be charged on and is payable from the Consolidated Fund.

Proposed section 15 provides that a judge or acting judge is qualified for payment of a lump sum benefit unless he or she is entitled to a pension under the Act or, if an acting judge, is appointed as a judge.

Item [2] inserts a definition of “acting judge”.

Item [4] requires a pension payable to a judge to be reduced if the judge has previously been paid a lump sum benefit under the Act, or in respect of any prior judicial service in another jurisdiction that is counted as service for the purposes of paying a pension under the Act.

Items [9] and **[10]** enable savings and transitional regulations to be made as a consequence of the amendments and enable service as a judge or acting judge on or after 1 July 1992 to be taken into account for the purposes of determining the amount of a lump sum benefit payable to the judge or acting judge.

Items [1], [3] and **[6]–[8]** insert Part headings and renumber provisions for the purpose of dividing the Act (as amended by this Act and the *Judges' Pensions Amendment Act 1998*) into 4 Parts.

Schedule 8 Amendment of *Jury Act 1977 No 18*

(Section 3)

Section 57 Majority verdicts in civil proceedings

Insert at the end of the section:

- (2) A reference in this section to a verdict includes a reference to an answer to any specific question put to the jury by the court.

Explanatory note

At present, section 57 of the *Jury Act 1977* provides for a majority verdict in civil proceedings if the jury is unable to agree on its verdict after more than 4 hours of deliberation. The amendment will enable a majority answer to be given on any question put to the jury by the court in civil proceedings in cases where the jury is unable to agree on the answer.

Schedule 9 Amendment of *Justices Act 1902 No 27*

(Section 3)

[1] Section 81 Payment of costs

Omit section 81 (1). Insert instead:

- (1) When convicting or making an order against a defendant, the Justice or Justices may order:
 - (a) that the defendant pay to the prosecutor or complainant such professional costs as the Justice or Justices consider to be just and reasonable, and
 - (b) that the defendant:
 - (i) if the prosecutor or complainant has paid court costs—pay those costs to the Clerk of the Local Court for payment to the prosecutor or complainant, or
 - (ii) in any other case—pay court costs to the Clerk of the Local Court.
- (1A) When making an order dismissing the information, complaint or charge against a defendant, the Justice or Justices may order that the prosecutor or complainant pay to the defendant such professional costs as the Justice or Justices consider to be just and reasonable.
- (1B) The amount that may be awarded under subsection (1) (b) for court costs is:
 - (a) the amount specified in item 1 of Schedule 1 to the *Justices (General) Regulation 1993*, or
 - (b) such other amount as the Justice or Justices consider to be just and reasonable in the circumstances of the case.

[2] Section 81 (4)

Omit “Costs”. Insert instead “Professional costs”.

[3] Section 81 (4) (d) and (5)

Insert “professional” before “costs” wherever occurring.

[4] Section 81 (7)

Insert after section 81 (6):

(7) In this section:

professional costs means costs (other than court costs) relating to professional expenses and disbursements (including witnesses' expenses) in respect of proceedings before a Justice or Justices.

Explanatory note

The amendments to section 81 of the *Justices Act 1901* clarify the manner and extent to which a Magistrate may order a defendant to pay costs when convicting or making an order against the defendant. Such costs may comprise the prosecution's "professional costs", and also "court costs". The amount that may be awarded as professional costs is such amount as the Magistrate considers to be just and reasonable, and the amount that may be awarded as court costs is the appropriate fee prescribed by the regulations (or such other amount as the Magistrate considers to be just and reasonable).

The amendments also make it clear that, if a Magistrate makes an order dismissing the information or complaint against a defendant, the Magistrate may order the prosecution or complainant to pay the defendant's "professional costs".

Schedule 10 Amendment of [Land and Environment Court Act 1979 No 204](#)

(Section 3)

[1] Section 57 Class 1, 2 and 3 proceedings—appeals

Insert "or decision" after "question of law" in section 57 (3) (a).

[2] Section 57 (3) (c)

Omit the paragraph. Insert instead:

(c) except by leave of the Supreme Court, in respect of a question of law that has been determined by a Judge under section 36, or in respect of any subsequent decision of a Commissioner made after such a determination where that determination is the subject of an appeal to the Supreme Court.

Explanatory note

Section 57 of the [Land and Environment Court Act 1979](#) presently allows a party to certain proceedings in the Land and Environment Court ("the Court") to appeal to the Supreme Court against an order or decision of the Court on a question of law. Such an appeal does not, however, lie to the Supreme Court against an order or decision of a Commissioner of the Court (unless it is an appeal in respect of a question of law that has been referred to and determined by a Judge of the Court under section 36 of the Act).

The amendments provide for an appeal to the Supreme Court on a question of law arising from a decision of a Commissioner in circumstances where the Commissioner's decision is based on a determination that is subject to an appeal to the Supreme Court.

Schedule 11 Amendment of [Legal Profession Act 1987 No 109](#)

(Section 3)

[1] Section 208E Interest on amount outstanding

Insert after section 208E (3):

- (4) This section does not apply to or in respect of the assessment of costs referred to in Subdivision 3 (party/party costs).

[2] Section 208J Certificate as to determination

Insert “, and the rate of any interest payable in respect of that amount of costs is the rate of interest in the court in which the certificate is filed” after “unpaid costs” in section 208J (3).

Explanatory note

Item [2] provides that if an unspecified amount of costs is assessed in accordance with the cost assessment scheme under the [Legal Profession Act 1987](#), the rate of any interest payable on those costs is the rate payable in the court in which the relevant certificate is filed under that scheme.

[3] Section 208J (4A)

Insert after section 208J (4):

- (4A) To avoid any doubt, this section applies to or in respect of both the assessment of costs referred to in Subdivision 2 of this Division (practitioner/client costs) and the assessment of costs referred to in Subdivision 3 of this Division (party/party costs).

Explanatory note

Items [1] and **[3]** merely clarify the operation of the costs assessment scheme under Division 6 of Part 11 of the [Legal Profession Act 1987](#).

Schedule 12 Amendment of [Local Courts \(Civil Claims\) Act 1970 No 11](#)

(Section 3)

[1] Section 34 Costs to be in discretion of court

Omit section 34 (2). Insert instead:

- (2) If, in accordance with subsection (1A), the rules provide for a court sitting in its Small Claims Division to award costs, the amount of any such costs is to be determined in accordance with the rules. This subsection prevails to the extent of any inconsistency with section 84 (4), or with the provisions of the [Legal Profession Act 1987](#) (in particular section 196 of that Act) and the regulations under that Act.

Explanatory note

Item [1] makes it clear that party/party costs in relation to civil actions in the Local Court's Small Claims Division may be determined in accordance with the rules under the *Local Courts (Civil Claims) Act 1970*.

[2] Schedule 2 Savings and transitional provisions

Insert after Part 5:

Part 6 Provision consequent on enactment of Courts Legislation Amendment Act 1999

1 Increase in jurisdiction of Small Claims Division

The amendments made to section 12 of this Act by the *Courts Legislation Amendment Act 1999* do not apply in respect of proceedings commenced before those amendments.

Explanatory note

Item [2] makes it clear that the increase (from \$3,000 to \$10,000) in the jurisdiction of the Small Claims Division of the Local Court (as made by the *Courts Legislation Amendment Act 1999*) does not apply in relation to proceedings commenced before the relevant amendment.

[3] Schedule 2

Insert in Schedule 2 with the appropriate Part number:

Part Provision consequent on enactment of Courts Legislation Amendment Act 2000

1 Validation of rules

Any rule made (or purporting to be made) under section 34 (2) before the commencement of Schedule 12 [1] to the *Courts Legislation Amendment Act 2000* that could have been made under section 34 (2) (as amended by that Schedule) is taken to be made under that subsection as so amended.

Explanatory note

Item [3] validates certain rules as a consequence of the amendment to section 34 of the Act.

Schedule 13 Amendment of Supreme Court Act 1970 No 52

(Section 3)

[1] Section 46A Certain appeals may be heard by 2 Judges of Appeal

Insert "(other than an order for the payment of costs)" after "tribunal" in section 46A (1)

(d) (ii).

Explanatory note

Item [1] provides that 2 Judges of the Court of Appeal may determine an appeal from a court or tribunal (other than the Supreme Court) where the appeal is against an order for the payment of costs only.

[2] Section 101A Question of law concerning criminal contempt may be submitted to Court of Appeal

Omit “Proceedings” from section 101A (7).

Insert instead “Unless the Court orders otherwise (whether on the application of a party to the proceedings or of its own accord), proceedings”.

[3] Section 101A (8) (b)

Insert “unless the contemnor has, during the proceedings, consented to his or her name or identity being disclosed” after “contemnor”.

Explanatory note

Items [2] and **[3]** remove the requirement that criminal contempt proceedings in the Court of Criminal Appeal must be held in camera.

[4] Section 109

Insert after section 108:

109 Effect of minor variations to judgments, orders or injunctions appealed against

If:

- (a) a Judge of Appeal or the Court of Appeal dismisses an appeal against a judgment, order or injunction, and
- (b) at that time, the Judge or Court makes a judgment or order that involves the variation of the judgment, order or injunction the subject of the appeal, and
- (c) the Judge or Court declares the variation to be a minor variation,

the varied judgment, order or injunction is, for all purposes, taken to be a judgment, order or injunction of the court, tribunal or Division that made the original judgment, order or injunction the subject of the appeal.

Explanatory note

Item [4] enables a Judge of Appeal or the Court of Appeal, in dismissing an appeal against a judgment, order or injunction, to make a minor variation of the matter that is the subject of the appeal without affecting its status as a judgment, order or injunction of the court that made it.

[5] Fourth Schedule Savings and transitional provisions

Insert at the end of clause 1 (2):

Courts Legislation Amendment Act 2000, but only in relation to the amendments made to this Act

[6] Fourth Schedule, Part 10

Insert after clause 14:

Part 10 Provisions consequent on enactment of *Courts Legislation Amendment Act 2000*

15 Definition

In this Part, **amending Act** means the *Courts Legislation Amendment Act 2000*.

16 Application of amendment relating to appeals

Section 46A, as amended by the amending Act, extends to an appeal against an order made before the commencement of the amendment to that section.

17 Application of amendment relating to contempt proceedings

Section 101A, as amended by the amending Act, extends to proceedings that were commenced before the commencement of the amendment.

Explanatory note

Items [5] and [6] make savings and transitional provisions.

Schedule 14 Amendment of *Workplace Injury Management and Workers Compensation Act 1998 No 86*

(Section 3)

[1] Section 96 Maximum period of weekly payments of compensation under direction of conciliator

Omit “constituted by a commissioner” from section 96 (2).

[2] Section 97 Revocation of directions of conciliator

Omit “constituted by a commissioner” from section 97 (2).

Explanatory note

The amendments provide that the Compensation Court may revoke a direction given by a conciliation officer in relation to weekly payments of compensation. At present, such a direction may only be revoked by the Compensation Court constituted by

a commissioner.

Schedule 15 Amendment of *Workers Compensation Act 1987 No 70*

(Section 3)

Section 85A

Insert after section 85:

85A Payment of benefits to beneficiaries

- (1) Despite section 85, the Compensation Court may authorise the payment of compensation referred to in section 85 (1):
 - (a) to the person who is entitled to the compensation, or
 - (b) to such other person, for the benefit of the person entitled to the compensation, as the Court thinks fit.
- (2) Any such payment is to be made in the manner authorised by the Compensation Court.

Explanatory note

The amendment enables the Compensation Court to authorise payments of compensation to a beneficiary (or to another person on behalf of the beneficiary) rather than to the Public Trustee for the benefit of the beneficiary.