



New South Wales

# Courts Legislation Further Amendment Act 2001 No 108

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New South Wales

# **Courts Legislation Further Amendment Act 2001 No 108**

Act No 108, 2001

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An Act to amend various Acts with respect to courts, court procedures, judicial officers and related matters; and for other purposes. [Assented to 14 December 2001]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Courts Legislation Further Amendment Act 2001*.

**2 Commencement**

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

**3 Amendment of Acts**

The Acts specified in Schedules 1–5 are amended as set out in those Schedules.

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## **Schedule 1 Amendment of District Court Act 1973 No 9**

(Section 3)

### **[1] Section 63A Arbitration under Arbitration (Civil Actions) Act 1983**

Omit section 63A (3) (b) and (c).

### **[2] Section 162 Purpose of Part**

Omit “if the parties to the proceedings concerned have agreed to that course of action” from section 162 (1).

### **[3] Sections 164A–164C**

Omit the sections. Insert instead:

#### **164A Referral by Court**

- (1) If it considers the circumstances appropriate, the Court may, by order, refer any proceedings, or part of any proceedings, before it (other than any or part of any criminal proceedings) for mediation or neutral evaluation, and may do so either with or without the consent of the parties to the proceedings concerned.
- (2) The mediation or neutral evaluation is to be undertaken by a mediator or evaluator agreed to by the parties or, if the parties cannot agree, by a mediator or evaluator appointed by the Court, who (in either case) may, but need not, be a person whose name is on a list compiled under this Part.

#### **164B Duty of parties to participate**

It is the duty of each party to the proceedings the subject of a referral under section 164A to participate, in good faith, in the mediation or neutral evaluation.

**164C Costs of mediation and neutral evaluation**

The costs of mediation or neutral evaluation, including the costs payable to the mediator or evaluator, are payable:

- (a) by the parties to the proceedings, in such proportions as they may agree among themselves, or
- (b) if the Court makes an order as to the payment of those costs—by one or more of the parties, in such manner as the order may specify.

**[4] Schedule 3 Savings and transitional provisions consequent on amendments to this Act**

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

**Part Provisions consequent on enactment of  
Courts Legislation Further Amendment  
Act 2001**

**Application of amendments**

- (1) Section 63A and Part 3A, as amended by the *Courts Legislation Further Amendment Act 2001*, extend to and in respect of proceedings instituted before the amendments took effect, except as provided by subclause (2).
- (2) The amendments made by that Act to Part 3A have no effect in relation to a matter that, at the time the amendments took effect, had already been referred for mediation or neutral evaluation under that Part.

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**Schedule 2 Amendment of Evidence on Commission  
Act 1995 No 26**

(Section 3)

**Section 4 Definitions**

Insert the following at the end of paragraph (e) of the definition of *superior court*:

- and
- (f) the District Court,

Courts Legislation Further Amendment Act 2001 No 108

Schedule 3      Amendment of Judicial Officers Act 1986 No 100

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**Schedule 3      Amendment of Judicial Officers Act 1986  
No 100**

(Section 3)

**Section 44 Retirement of judicial officers**

Omit “65 years” from section 44 (3). Insert instead “72 years”.

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**Schedule 4 Amendment of Local Courts (Civil Claims)  
Act 1970 No 11**

(Section 3)

**[1] Section 21H Arbitration under Arbitration (Civil Actions) Act 1983**

Omit section 21H (3) (b) and (c).

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

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

**Part Provision consequent on enactment of Courts  
Legislation Further Amendment Act 2001**

**Application of amendment**

Section 21H, as amended by the *Courts Legislation Further Amendment Act 2001*, extends to and in respect of proceedings instituted before the amendment took effect.

## **Schedule 5 Amendment of Supreme Court Act 1970 No 52**

(Section 3)

**[1] Section 26: Appointment and qualifications: Chief Justice and other Judges**

Omit “is a” from section 26 (2) (a) and (b) and (3) (a).  
Insert instead “is or has been a”.

**[2] Section 26 (2) (d)**

Insert at the end of section 26 (2) (c):

- , or
- (d) is or has been a judge of the High Court or Federal Court of Australia or of the Supreme Court of another State or Territory.

**[3] Section 26 (3) (c)**

Insert at the end of section 26 (2) (b):

- , or
- (c) is or has been a judge of the High Court or Federal Court of Australia or of the Supreme Court of another State or Territory.

[Minister's second reading speech made in—  
Legislative Assembly on 4 December 2001  
Legislative Council on 11 December 2001]

BY AUTHORITY