

Passed by both Houses



New South Wales

Courts and Other Justice Portfolio Legislation Amendment Bill 2015

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2015



New South Wales

Courts and Other Justice Portfolio Legislation Amendment Bill 2015

Act No , 2015

An Act to amend various Acts relating to courts and other Justice portfolio matters.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Courts and Other Justice Portfolio Legislation Amendment Act 2015*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Schedule 1.6 commences on 1 January 2016.

Schedule 1 Amendments

1.1 Civil and Administrative Tribunal Regulation 2013

[1] Clause 5 Fees generally

Omit clause 5 (2).

[2] Schedule 2 Fees

Insert “, unless otherwise prescribed by this Schedule” after “strata proceedings” in Item 2 of the table.

[3] Schedule 2

Insert at the end of the table:

13	Lodgment of an application under section 62 of the <i>Community Land Management Act 1989</i> for an order under Division 3 or Division 4 of Part 4 of the Act for settlement of a dispute or complaint:		
(a)	if the application includes an application for an interim order under section 72 of that Act	\$163	—
(b)	if the application does not include an application referred to in paragraph (a)	\$81	—
14	Lodgment of an application under section 124 of the <i>Strata Schemes Management Act 1996</i> for order by an Adjudicator	\$81	—
15	Lodgment of an application under section 124 of the <i>Strata Schemes Management Act 1996</i> requesting an interim order by an Adjudicator	\$81	—

1.2 Civil Procedure Act 2005 No 28

[1] Section 76 Settlement of proceedings commenced by or on behalf of, or against, person under legal incapacity

Insert after section 76 (3):

- (3A) However, the approval of the court is not required in relation to any agreement for the compromise or settlement of any matter in dispute in proceedings commenced by, or on behalf of, or against, a person under legal incapacity if, on the day the agreement for the compromise or settlement is made, that person has attained the age of 18 years and is not otherwise a person referred to in subsection (1). Accordingly, subsections (4)–(6) do not apply in relation to any such agreement.

[2] Section 101 Interest after judgment

Omit section 101 (4) and (5). Insert instead:

- (4) Unless the court orders otherwise, interest is payable on an amount payable under an order for the payment of costs.
- (5) Interest on an amount payable under an order for the payment of costs is to be calculated, at the prescribed rate or at any other rate that the court orders, as from the date the order was made or any other date that the court orders.

[3] Section 121 Maximum payment under one of several concurrent garnishee orders

Omit section 121 (1) and (2). Insert instead:

- (1) This section applies to a garnishee in respect of a wage or salary that is attached by one or more garnishee orders of which one or more (but not all) are limited garnishee orders.
- (2) Unless the court orders otherwise, a garnishee to whom this section applies is not required to pay an amount under any garnishee order that exceeds the greatest amount payable by the garnishee under any limited garnishee order attached to the relevant wage or salary.

Note. Section 122 specifies the maximum total payment payable under one or more garnishee orders in respect of a wage or salary.

[4] Section 123 Payments by garnishee

Omit section 123 (2). Insert instead:

- (2) The garnishee may, after the payment of each amount attached under the garnishee order, retain up to the amount prescribed by the uniform rules to cover the garnishee's expenses in complying with the garnishee order. The amount retained by the garnishee is in addition to the amount attached under the order.
- (2A) If sufficient funds are not available to cover the prescribed amount referred to in subsection (2), the garnishee may retain that amount as soon as sufficient funds become available.

[5] Section 126 Operation of charging order in relation to specified security interests

Insert at the end of the section:

Note. Section 106 (1) (c) provides that a judgment debt may be enforced by a charging order only in the case of a judgment of the Supreme Court or the District Court.

[6] Schedule 6 Savings, transitional and other provisions

Insert at the end of the Schedule:

Part 8 Provisions consequent on enactment of Courts and Other Justice Portfolio Legislation Amendment Act 2015

21 Pending proceedings

The amendments made to this Act by Schedule 1.2 to the *Courts and Other Justice Portfolio Legislation Amendment Act 2015* do not extend to proceedings commenced before the commencement of that Subschedule and those proceedings may continue as if those amendments had not been enacted.

1.3 Classification (Publications, Films and Computer Games) Enforcement Act 1995 No 63

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

subject to a conditional cultural exemption has the same meaning as in the Commonwealth Act.

[2] Section 4A Application of Act

Insert at the end of section 4A (b):

, or

- (c) a publication, film or computer game that is subject to a conditional cultural exemption.

Note. A publication, film or computer game is subject to a conditional cultural exemption only in relation to the relevant demonstration, exhibition or screening (see sections 6C and 6E of the Commonwealth Act).

[3] Section 46 Calling in submittable publications for classification

Insert at the end of section 46 (1) (b):

and

- (c) the publication is not subject to a conditional cultural exemption,

[4] Section 46A Calling in films for classification

Insert at the end of section 46A (1) (b):

and

- (c) the film is not subject to a conditional cultural exemption,

[5] Section 47 Calling in computer games for classification

Insert at the end of section 47 (1) (b):

and

- (c) the computer game is not subject to a conditional cultural exemption,

[6] Section 51 Exemptions

Omit the section.

[7] Schedule 1 Savings and transitional provisions

Insert at the end of the Schedule:

Part 7 Provisions consequent on Courts and Other Justice Portfolio Legislation Amendment Act 2015

14 Exemptions

- (1) An exemption under section 51 that was in force immediately before the repeal of that section by the *Courts and Other Justice Portfolio Legislation Amendment Act 2015* remains in force according to its terms and section 51, as in force immediately before its repeal, continues to apply in respect of that exemption.
- (2) If an application made under section 51 has not been decided before the repeal of that section, the application is taken never to have been made.

1.4 Community Land Management Act 1989 No 202

Section 63 Application for order to be made to principal registrar

Omit “prescribed by the regulations” from section 63 (1) (c).

Insert instead “prescribed under the *Civil and Administrative Tribunal Act 2013*”.

1.5 Community Land Management Regulation 2007

Schedule 2 Fees

Omit the matter relating to Item 3.

1.6 Community Services (Complaints, Reviews and Monitoring) Act 1993 No 2

Section 34G Biennial child death review report

Omit section 34G (1). Insert instead:

- (1) The Team is required to prepare and to provide to the Presiding Officer of each House of Parliament:
 - (a) as soon as practicable after 30 June 2016, a report consisting of data collected and analysed in relation to child deaths that occurred during 2015, and
 - (b) as soon as practicable after 30 June 2018 (and as soon as practicable after 30 June every 2 years after that), a report consisting of data collected and analysed in relation to child deaths that occurred during the previous 2 calendar years.

1.7 Crimes (Sentencing Procedure) Act 1999 No 92

[1] Section 71

Omit the section. Insert instead:

71 Commencement of ICOs

An intensive correction order commences on the date on which it is made.

[2] Section 86 Suitability of offender for community service work

Insert “, or in another State or Territory (but only if the offender is able and willing to travel to that State or Territory),” after “intends to reside” in section 86 (1) (c).

1.8 Criminal Procedure Act 1986 No 209

[1] Section 3 Definitions

Insert “(including a common law offence)” after “State” in the definition of *offence* in section 3 (1).

[2] Section 14A

Insert after section 14:

14A Proceedings for offences commenced by officers of ICAC or PIC

- (1) An officer of ICAC does not have the power to commence proceedings for an offence unless the Director of Public Prosecutions has advised the Independent Commission Against Corruption in writing that the proceedings may be commenced by an officer of ICAC.
- (2) For that purpose, the Director of Public Prosecutions may liaise with the Independent Commission Against Corruption, but is to act independently in deciding to advise that proceedings for the offence may be commenced.

- (3) The Commissioner, an Assistant Commissioner and an officer of the Police Integrity Commission do not have the power to commence proceedings for an offence.
- (4) In this section:
officer of ICAC means a person acting in the capacity of the Commissioner, an Assistant Commissioner or officer of the Independent Commission Against Corruption.

1.9 Evidence (Audio and Audio Visual Links) Act 1998 No 105

Section 5B Taking evidence and submissions from outside courtroom or place where court is sitting—proceedings generally

Omit “the party” from section 5B (2) (c). Insert instead “any party to the proceeding”.

1.10 Fines Act 1996 No 99

Section 4 Meaning of “fine”

Insert after section 4 (1) (a):

- (a1) any monetary penalty imposed by a court for contempt of court, or

1.11 Government Information (Public Access) Act 2009 No 52

Schedule 1 Information for which there is conclusive presumption of overriding public interest against disclosure

Insert “section 194 (Security of certain information) and” after “*Crimes (Administration of Sentences) Act 1999—*” in clause 1 (1).

1.12 Legal Aid Commission Act 1979 No 78

[1] Section 34 Determination of application

Omit section 34 (4) and (5). Insert instead:

- (4) If there is a right of appeal to a Legal Aid Review Committee against a determination or redetermination of an application:
 - (a) the notice required under subsection (2) must inform the applicant of that right, and
 - (b) the reasons for the determination or redetermination are to be recorded.

[2] Section 56 Appeals

Insert “(including the determination or redetermination of an online application)” after “application” in section 56 (1) (a).

1.13 Legal Profession Uniform Law Application Act 2014 No 16

[1] Section 69 Consideration of applications

Insert after section 69 (1):

- (1A) A costs assessor may hold an oral hearing for the purposes of an application in accordance with the costs assessment rules.

[2] Section 83 Application by party for review

Omit section 83 (1). Insert instead:

- (1) A party to a costs assessment may, within 30 days after the issue of a certificate of determination by a costs assessor, apply for a review of the determination.
- (1A) The Manager, Costs Assessment may extend the period for lodging an application.

[3] Section 89 Appeals on matters of law and fact

Omit section 89 (1)–(3). Insert instead:

- (1) A party to a costs assessment that has been the subject of a review under this Part may appeal against a decision of the review panel concerned to:
 - (a) the District Court, in accordance with the rules of the District Court, but only with the leave of the Court if the amount of costs in dispute is less than \$25,000, or
 - (b) the Supreme Court, in accordance with the rules of the Supreme Court, but only with the leave of the Court if the amount of costs in dispute is less than \$100,000.
- (2) The District Court or the Supreme Court (as the case requires) has all the functions of the review panel.
- (3) The Supreme Court may, on the hearing of an appeal or application for leave to appeal under this section, remit the matter to the District Court for determination by that Court in accordance with any decision of the Supreme Court and may make such other order in relation to the appeal as the Supreme Court thinks fit.
- (3A) The Supreme Court may, before the conclusion of any appeal or application for leave to appeal under this section in the District Court, order that the proceedings be removed into the Supreme Court.

[4] Section 93 Costs assessment rules

Insert after section 93 (1) (b) (i):

- (ia) conferring power on costs assessors to take evidence orally or in writing and to examine witnesses and administer oaths, and

[5] Schedule 3 Legal Profession Admission Board

Insert after clause 1 (2):

- (3) A reference in this clause to a Judge of the Supreme Court includes a reference to the following:
 - (a) an acting Judge appointed under section 37 of the *Supreme Court Act 1970*,
 - (b) a retired Judge (within the meaning of the *Judges' Pensions Act 1953*) of the Supreme Court.

1.14 Legal Profession Uniform Law Application Regulation 2015

Clause 45 Application for review of determination

Omit clause 45 (2) and (3).

1.15 Strata Schemes Management Act 1996 No 138

Section 124 Applications for order to be made to principal registrar

Omit “prescribed fee” from section 124 (c).

Insert instead “fee prescribed under the *Civil and Administrative Tribunal Act 2013*”.

1.16 Strata Schemes Management Regulation 2010

Schedule 1 Fees

Omit the matter relating to Items 1 and 2.