

# **ACTS AMENDMENT (COURT OF APPEAL) BILL 2004**

## **EXPLANATORY MEMORANDUM**

The Acts Amendment (Court of Appeal) Bill 2004 ("the Bill") amends the *Supreme Court Act 1935* to establish the Court of Appeal. It also amends various Acts as a consequence of establishing the Court of Appeal.

### **PART 1 - PRELIMINARY**

#### **Clause 1 - Short title**

Clause 1 provides that the Act may be cited as the *Acts Amendment (Court of Appeal) Act 2004*.

#### **Clause 2 - Commencement**

Clause 2 provides that the Act comes into operation on a day, or days, fixed by proclamation.

### **PART 2 - SUPREME COURT ACT 1935 AMENDED**

#### **Clause 3 - The Act amended**

Clause 3 provides that Part 2 of the Bill amends the *Supreme Court Act 1935*.

#### **Clause 4 - Section 4 amended**

Clause 4 amends section 4 of the *Supreme Court Act 1935* by:

1. deleting the definition of "Full Court", which will become redundant upon the coming into operation of the *Acts Amendment (Court of Appeal) Act 2004*; and
2. inserting definitions of "Court of Appeal", "Court of Appeal Registrar", "judge of appeal" and "President".

"Court of Appeal" is defined to mean "the division of the Supreme Court referred to in section 7(1)(b) [of the *Supreme Court Act 1935*]".

"Court of Appeal Registrar" is defined to mean "the Court of Appeal Registrar appointed as described in section 155(1) [of the *Supreme Court Act 1935*] and includes a duly appointed acting Court of Appeal Registrar".

"Judge of appeal" is defined to mean "a judge of the Supreme Court who also holds a commission as a judge of appeal".

"President" is defined to mean "the President of the Court of Appeal".

#### **Clause 5 - Sections 6 and 7 replaced by sections 6, 7 and 7A**

Clause 5(1) repeals sections 6 and 7 of the *Supreme Court Act 1935* and inserts, in their place, proposed sections 6, 7 and 7A.

**Proposed section 6** provides for the continued existence of the previously established court called the Supreme Court of Western Australia ("the Supreme Court"). The Supreme Court, which is a superior court of record, consists of :

1. any judge holding office under an appointment made under section 7A(1) of the *Supreme Court Act 1935*;
2. any acting judge holding office under an appointment made under section 11 of the *Supreme Court Act 1935*;
3. any auxiliary judge holding office under an appointment made under section 11AA of the *Supreme Court Act 1935*;
4. any commissioner holding office under an appointment made under section 49 of the *Supreme Court Act 1935*;
5. any master holding office under an appointment made under section 11A of the *Supreme Court Act 1935*; and
6. any acting master holding office under an appointment made or deemed to have been made under section 11D of the *Supreme Court Act 1935*.

**Proposed section 7** provides that the exercise of the Supreme Court's jurisdiction is divided between the General Division and the Court of Appeal.

The General Division consists of:

1. the Chief Justice;
2. each other judge who is not either the President of the Court of Appeal or a judge of appeal;
3. any judge of appeal who under proposed section 10C of the *Supreme Court Act 1935* is approved to sit in the General Division;

4. any acting judge holding office under an appointment made under section 11 of the *Supreme Court Act 1935*;
5. any auxiliary judge holding office under an appointment made under section 11AA of the *Supreme Court Act 1935*;
6. any commissioner holding office under an appointment made under section 49 of the *Supreme Court Act 1935*;
7. any master holding office under an appointment made under section 11A of the *Supreme Court Act 1935*; and
8. any acting master holding office under an appointment made or deemed to have been made under section 11D of the *Supreme Court Act 1935*.

The General Division exercises all of the jurisdiction of the Supreme Court, other than the jurisdiction referred to in section 58(1) of the *Supreme Court Act 1935*.

The Court of Appeal consists of:

1. the Chief Justice;
2. the President of the Court of Appeal;
3. each other judge of appeal;
4. any other judge, and any acting judge or auxiliary judge who under proposed section 10B(1) or (2) of the *Supreme Court Act 1935* is authorised to act as a judge of appeal.

The Court of Appeal's jurisdiction is set out in section 58(1) of the *Supreme Court Act 1935*.

The Chief Justice is the principal officer of the Supreme Court including the Court of Appeal. Subject to the Chief Justice's directions, the President of the Court of Appeal is responsible for the administration of the Court of Appeal.

**Proposed section 7A** sets out matters relating to the appointment of judges, judges of appeal, the Chief Justice and the President of the Court of Appeal.

The Governor may appoint:

1. a duly qualified person to be a judge; and
2. a judge to be also a judge of appeal.

The Governor may appoint as many judges and judges of appeal as are needed to deal with the workload of the Supreme Court and the Court of Appeal respectively.

The Governor may appoint:

1. one of the judges to be also the Chief Justice; and

2. one of the judges of appeal (other than the Chief Justice) to be also the President of the Court of Appeal.

Clause 5(2) provides that a person who holds any of the offices of which the Supreme Court consists immediately before the coming into operation of clause 5 continues to hold the corresponding office in the General Division when clause 5 comes into operation. That is, clause 5 provides continuity of office for the Chief Justice, all other existing judges, existing acting judges, existing auxiliary judges, existing commissioners, existing masters and existing acting masters.

### **Clause 6 - Section 9 amended**

Clause 6(1) amends section 9 of the *Supreme Court Act 1935* by inserting proposed section 9(1a) and (1b).

**Proposed section 9(1a)** provides that all judges of appeal, the Chief Justice and the President of the Court of Appeal shall hold their offices while they hold office as a judge, subject to subsections 9A(2) (which allows a person to resign from the office of judge of appeal, Chief Justice or President of the Court of Appeal without resigning from the office of judge, provided that he or she has the Governor's approval to do so), 9A(3) (which allows a person to resign from the office of President of the Court of Appeal without resigning from the office of judge of appeal, provided that he or she has the Governor's approval to do so) and 9A(4) (which allows a person to resign from the office of Chief Justice without resigning from the office of judge of appeal provided that he or she has the Governor's approval to do so) of the *Supreme Court Act 1935*.

**Proposed section 9(1b)** provides that a person cannot be removed from the office of judge of appeal, Chief Justice or President of the Court of Appeal except by removing the person from the office of judge.

Clause 6(2) amends section 9(2) of the *Supreme Court Act 1935* by inserting the words "or a judge of appeal" after the word "Court". When amended, section 9(2) will provide that every person appointed to be a judge or a judge of appeal shall, when he or she enters on the execution of his or her office, take, in the presence of the Governor, the oath of allegiance, and the judicial oath as prescribed in the Second Schedule to the *Supreme Court Act 1935*.

Clause 6(2) assumes that clause 16 of the Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Bill 2004 has not been enacted or, if it has been enacted, that it has not come into operation. (Clause 16 of that Bill repeals section 9(2) of the *Supreme Court Act 1935*). Accordingly, clause 6(2) will only be proclaimed if clause 16 of the Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Bill 2004 has not been enacted or, if it has been enacted, if it has not come into operation. In other words, if clause 16 of the Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Bill 2004 has been enacted and come into operation, then clause 6(2) will never be proclaimed.

**Clause 7 - Sections 9A and 9B inserted**

Clause 7 inserts proposed sections 9A and 9B into the *Supreme Court Act 1935*.

**Proposed section 9A** sets out matters relating to the resignation of a person from the office of Chief Justice, President, or judge of appeal. With the Governor's approval, a person may resign from the office of:

1. Chief Justice, President of the Court of Appeal, or judge of appeal, without resigning from the office of judge;
2. Chief Justice or President of the Court of Appeal without resigning from the office of judge of appeal.

**Proposed section 9B** sets out the order of seniority of judges in the General Division, the order of seniority of judges of appeal and the order of seniority of masters.

Proposed section 9B(1) provides that judges in the General Division have seniority according to the following order:

1. the Chief Justice;
2. the other judges, excluding the judges of appeal, according to the dates of their commissions of appointment as judges.

Proposed section 9B(2) provides that judges of appeal have seniority according to the following order:

1. the Chief Justice;
2. the President of the Court of Appeal;
3. the other judges of appeal according to the dates of their commissions of appointment as judges of appeal.

Proposed section 9B(3) provides that masters have seniority according to the dates of their commissions of appointment as masters.

If 2 or more persons receive commissions dated the same day, their seniority as between them is to be determined:

1. according to the dates on which they begin in office; or
2. if they are to begin in office on the same day, by the Governor when appointing them.

Proposed section 9B(5) provides that, for the purposes of any other written law or any matter connected with the administration of the State, the seniority of judges is to be determined under section 9B(1) and (4). Thus, for example, the seniority

of judges is to be determined under section 9B(1) and (4) for the purpose of appointments under the Letters Patent, the Dormant Commission and the *Deputy Governor's Powers Act 1911*. It follows that, in the absence of the Chief Justice, a judge of appeal will not be considered to be the senior judge of the Supreme Court for the purpose of such appointments. This outcome was intended, and has the support of the Chief Justice and the senior Judges of the Supreme Court.

#### **Clause 8 - Section 10 amended**

Clause 8 amends section 10 of the *Supreme Court Act 1935* by inserting the words "in the General Division" into subsections (1) and (2).

When amended, section 10(1) will provide that, during any vacancy in the office of the Chief Justice, or when and so often as the Chief Justice is absent or temporarily unable to perform the duties of his or her office, then where no judge is specifically appointed under section 10(3) to act in the office of Chief Justice, all the duties and powers of the Chief Justice shall devolve upon the senior judge in the General Division (ie the Senior Puisne Judge). The amendment proposed to be made to section 10(1) prevents a judge of appeal from acting in the office of Chief Justice pursuant to section 10(1), even if the judge of appeal is sitting in the General Division at the relevant time (pursuant to an approval under proposed section 10C) and the date of his or her commission as a judge is earlier than the date of the commission as a judge of the Senior Puisne Judge, as proposed section 9B(1) would not afford any seniority to that judge of appeal. This outcome was intended, and has the support of the Chief Justice and the senior Judges of the Supreme Court.

When amended, section 10(2) will provide that, in the case of the absence or inability of the judge upon whom the powers and duties of the Chief Justice devolve under section 10(1) (ie the Senior Puisne Judge), such powers and duties shall during such absence or inability devolve upon the judge in the General Division who is next in seniority. The amendment proposed to be made to section 10(2) prevents a judge of appeal from acting in the office of Chief Justice pursuant to section 10(2), for the same reason as that outlined in respect of the amendment proposed to be made to section 10(1). Once again this outcome was intended, and has the support of the Chief Justice and senior Judges of the Supreme Court.

#### **Clause 9 - Section 10A inserted**

Clause 9 inserts proposed section 10A into the *Supreme Court Act 1935*.

**Proposed section 10A** provides that, during any vacancy in the office of President, or when and so often as the President is absent or temporarily unable to perform the duties of his or her office, all the duties and powers of the President shall devolve upon the most senior judge of appeal other than the Chief Justice. In the case of the absence or inability of the senior judge of appeal other than the Chief Justice, such powers and duties shall during such absence or inability devolve upon the judge of appeal who is next in seniority.

**Clause 10 - Sections 10B and 10C inserted**

Clause 10 inserts proposed sections 10B and 10C into the *Supreme Court Act 1935*.

**Proposed section 10B** sets out the circumstances in which a judge, acting judge or auxiliary judge may act as a judge of appeal. If the Chief Justice and the President of the Court of Appeal agree that the Court of Appeal needs an acting judge of appeal, the Chief Justice may authorise a judge, acting judge or auxiliary judge, who is willing to do so, to act as a judge of appeal for a period of not more than 6 months. Alternatively, if the Chief Justice and the President of the Court of Appeal agree that a particular judge, acting judge or auxiliary judge should act as a judge of appeal in a particular proceeding before the Court of Appeal and the particular judge, acting judge or auxiliary judge is willing to do so, the Chief Justice may authorise the judge, acting judge or auxiliary judge to do so.

**Proposed section 10C** provides that a judge of appeal can sit in the General Division if he has the prior approval of the Chief Justice. Before giving such approval the Chief Justice is to consult with the President of the Court of Appeal. (A judge of appeal also holds the office of judge and does not, therefore, require authorisation to act as a judge.)

**Clause 11 - Section 11A amended**

Clause 11 amends section 11A(2)(b) of the *Supreme Court Act 1935*, so that a person who is a legal practitioner, and who for a period of not less than 2 years has held office as the Court of Appeal Registrar, qualifies for appointment as a master of the Supreme Court.

Clause 11 also repeals section 11A(5) of the *Supreme Court Act 1935* (which is replaced by proposed section 9B(3)).

**Clause 12 - Section 11B amended**

Clause 12 repeals subsections 11B(4) and 11B(5) of the *Supreme Court Act 1935*, which are made redundant by the amendments proposed to be made to the *Judges' Retirement Act 1937* by clause 33 of the Bill.

**Clause 13 - Section 11C repealed**

Clause 13 repeals section 11C of the *Supreme Court Act 1935*, which is made redundant by the amendments proposed to be made to the *Judges' Retirement Act 1937* by clause 33 of the Bill.

**Clause 14 - Section 13 amended**

Clause 14 assumes that clause 16 of the Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Bill 2004 has been enacted and come into operation. (Clause 16 of that Bill inserts proposed section 13 into the *Supreme Court Act 1935*.)

Clause 14 amends section 13 of the *Supreme Court Act 1935*. When amended, section 13 will provide that, before a person who is appointed to be a judge, acting judge, auxiliary judge, commissioner, master, acting master, judge of appeal, the Chief Justice or the President of the Court of Appeal, performs any function of the office, he or she shall take before the Governor an oath or affirmation in the form set out in the Second Schedule to the *Supreme Court Act 1935*.

Clause 14 will only be proclaimed if and when clause 16 of the Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Bill 2004 has been enacted and come into operation.

**Clause 15 - Section 38 amended**

Clause 15 amends section 38 of the *Supreme Court Act 1935* by inserting section 38(2), which provides that two or more sittings of the Court may be conducted at the same time. Thus, two or more sittings of the General Division may be conducted at the same time. Similarly, two or more sittings of the Court of Appeal may be conducted at the same time.

**Clause 16 - Section 41 amended**

Clause 16 amends section 41(3) of the *Supreme Court Act 1935*. When amended, section 41(3) will provide that, if the *Supreme Court Act 1935*, another Act, or the Rules of the Supreme Court 1971 confer any of the Supreme Court's jurisdiction on a master, such jurisdiction may be exercised by a single master, whether sitting in court or in chambers.

**Clause 17 - Heading amended**

Clause 17 amends the heading immediately before section 57 by deleting "Full Court" and inserting instead "*Court of Appeal*".

**Clause 18 - Section 57 replaced**

Clause 18 repeals section 57 of the *Supreme Court Act 1935* (which deals with the constitution of the Full Court) and inserts, in its place, proposed section 57.

**Proposed section 57** sets out matters relating to the constitution of the Court of Appeal.

The Court of Appeal shall be constituted by 2 or more judges of appeal. However, when hearing and determining an application or appeal under Chapter LXIX of *The Criminal Code*, the Court of Appeal shall be constituted:

1. if the application or appeal relates solely to sentence, by 2 or more judges of appeal;
2. otherwise, by an uneven number of the judges of appeal being not less than 3.

If a judge of appeal's judgment or decision is the subject of an appeal to the Court of Appeal, the court shall not be constituted so as to include the judge. This accords with the recommendation of the Law Reform Commission found at paragraph 348 of its report entitled "Review of the Criminal and Civil Justice System".

When the Court of Appeal is constituted by 3 or more judges of appeal to hear and determine:

1. an appeal that is not under Chapter LXIX of *The Criminal Code*; or
2. an appeal that is under Chapter LXIX of *The Criminal Code* and relates solely to sentence;

and one of the judges become unable to continue (because, for example, he or she falls sick during a hearing), the remaining judges may continue to hear and determine the appeal if not less than 2 judges remain and all parties to the appeal consent.

Proposed section 57(5) sets out the rules for determining which judge of appeal is the presiding judge of appeal in relation to a particular sitting of the Court of Appeal.

Proposed section 57(6) sets out matters relating to delivering judgment in an appeal. For the purpose of delivering judgment in an appeal:

1. the Court of Appeal may be constituted by any one or more judges of appeal, none of whom needs to have been a member of the court when it heard the appeal; and
2. the written judgment of any of the judges of appeal before whom the appeal was heard may be made public by any judge of appeal.

#### **Clause 19 - Section 58 amended**

Clause 19 amends section 58(1) of the *Supreme Court Act 1935*.

**Clause 19(a)** replaces various references to "the Full Court" with equivalent references to "the Court of Appeal".

**Clause 19(b)** deletes paragraph (g) of section 58(1) (which refers to the Court of Criminal Appeal) and inserts proposed paragraph (f) into section 58(1) (which makes an equivalent reference to the Court of Appeal).

**Clause 19(c)** assumes that clause 129 of the Courts Legislation Amendment and Repeal Bill 2003 has been enacted and come into operation. (Clause 129 of that Bill deletes existing paragraph (h) of section 58(1) and inserts proposed paragraph (h) into section 58(1).)

Clause 19(c) deletes paragraph (h) from section 58(1) and inserts proposed paragraphs (g) and (h) into section 58(1).

Clause 19(c) will only be proclaimed if and when clause 129 of the Courts Legislation Amendment and Repeal Bill 2003 has been enacted and come into operation. In the meantime, clause 19(a) will amend existing paragraph (h) of section 58(1) by replacing "Full Court" with "Court of Appeal".

**Clause 19(d)** assumes that clause 129 of the Courts Legislation Amendment and Repeal Bill 2003 has been enacted and come into operation. (Clause 129 of that Bill deletes existing paragraph (i) of section 58 and inserts proposed paragraph (i) into section 58.)

Clause 19(d) deletes paragraph (i) from section 58(1) and inserts proposed paragraph (i) into section 58(1).

Clause 19(d) will only be proclaimed if and when clause 129 of the Courts Legislation Amendment and Repeal Bill 2003 has been enacted and come into operation. In the meantime, existing paragraph (i) will remain in section 58(1).

Clause 19(e) deletes paragraph (j) from section 58(1), which is unnecessary, as it is already encompassed by paragraph (m) of section 58(1).

#### **Clause 20 - Section 59 amended**

Clause 20 amends section 59(6) of the *Supreme Court Act 1935* by deleting the unnecessary words "relating to appeals from a Judge to a Full Court".

#### **Clause 21 - Section 60 amended**

Clause 21 amends section 60(1)(f) of the *Supreme Court Act 1935* by deleting subparagraphs (iv) and (v), which are redundant.

### **Clause 22 - Section 61 replaced**

Clause 22 repeals section 61 of the *Supreme Court Act 1935* (which sets out certain powers of a single judge) and inserts, in its place, proposed section 61.

**Proposed section 61** sets out matters relating to the powers of a single judge of appeal and a master.

Proposed section 61(1) provides that, in relation to an appeal or application before the Court of Appeal, a single judge of appeal may exercise any jurisdiction or powers of the Court of Appeal that are conferred on a single judge of appeal by the Rules of the Supreme Court 1971. Proposed section 61(2) contains an analogous provision in relation to a master.

A person who is dissatisfied with a decision or order made by a single judge of appeal or a master may apply to the Court of Appeal to set aside or vary the decision or order; and any decision or order made by a single judge of appeal or a master may be set aside or varied by the Court of Appeal.

### **Clause 23 - Section 62 replaced**

Clause 23 repeals section 62 of the *Supreme Court Act 1935* (which sets out the effect of divided decisions of the judges constituting the Full Court) and inserts, in its place, proposed section 62.

**Proposed section 62** sets out the effect of divided decisions of the judges of appeal constituting the Court of Appeal.

If the judges of appeal constituting the Court of Appeal are divided on the decision to be given on a question, the question shall be decided according to the decision of the majority (if there is a majority).

If the Court of Appeal is constituted by more than 3 judges of appeal and they are equally divided on the decision to be given on a question, the question shall be decided according to the decision of the presiding judge of appeal.

If the Court of Appeal is constituted by 2 judges of appeal and they are divided on the decision to be given on a question:

1. any party to the appeal may, within one month after the date the judgments are delivered, require the appeal to be reheard by the Court of Appeal constituted by 3 or more judges of appeal;
2. if the appeal is against a judgment or order of a court other than the Supreme Court, either or both of the judges of appeal may, of their own motion, order the appeal to be reheard by the Court of Appeal constituted by 3 or more judges of appeal.

Where:

1. the Court of Appeal is constituted by 2 judges of appeal and they are divided on the decision to be given on a question; and
2. no party requires the appeal to be reheard and neither of the judges of appeal orders that the appeal be reheard,

the appeal is not reheard and the judgment or order against which the appeal was taken remains unaltered.

#### **Clause 24 - Section 155 amended**

Clause 24 amends section 155(1) of the *Supreme Court Act 1935*, in order to provide for the appointment of a Court of Appeal Registrar.

Clause 24 also repeals section 155(3) of the *Supreme Court Act 1935* (which was omitted from the current reprint of the *Supreme Court Act 1935* on the basis that it is a "saving, transitional or validation provision which can conveniently be omitted by reason of its having application only to a time or events which have passed") and inserts, in its place, proposed section 155(3), which sets out matters relating to the duties of the Court of Appeal Registrar.

#### **Clause 25 - Section 167 amended**

Clause 25 amends section 167(1) of the *Supreme Court Act 1935* by inserting proposed paragraphs (ba), (bb) and (ia), which provide that Rules of Court may be made under the *Supreme Court Act 1935*, by the Judges of the Supreme Court, for:

1. conferring on a single judge of appeal such of the jurisdiction and powers of the Court of Appeal as the rules specify;
2. conferring of the Court of Appeal Registrar such of the jurisdiction and powers of the Court of Appeal as the rules specify; and
3. allowing the Court of Appeal to review any decision mad by a single judge of appeal or the Court of Appeal Registrar.

Clause 25 also amends paragraph (j) of section 167(1) of the *Supreme Court Act 1935* be deleting the words "from inferior courts".

#### **Clause 26 - References to "Full Court" changed to "Court of Appeal"**

Clause 26 amends sections 41, 43, 58, 59 and 60 of the *Supreme Court Act 1935*, by replacing "Full Court" with "Court of Appeal".

### **PART 3 - VARIOUS OTHER ACTS AMENDED**

#### **Clause 27 - *Bail Act 1982* amended**

Clause 27 amends the *Bail Act 1982*.

**Clause 27(2)** amends section 52(2) of the *Bail Act 1982* by deleting paragraph (a) and inserting, in its place, proposed paragraphs (a) and (ab). When amended, section 52(2)(a) and (ab) will provide that, for the purpose of bringing proceedings for an offence against section 51(1), (2) or (2a) of the *Bail Act 1982* (ie an offence relating to failure by a defendant to comply with a requirement or condition of his or her bail undertaking), the defendant shall be dealt with summarily for the offence and shall be dealt with by:

1. a judge of the Supreme Court in any case where the defendant was bound (under the bail undertaking) to appear before the General Division of the Supreme Court;
2. by a judge of appeal in any case where the defendant was bound (under the bail undertaking) to appear before the Court of Appeal.

**Clause 27(3)** assumes that the Courts Legislation Amendment and Repeal Bill 2003 has been enacted and come into operation.

Clause 27(3) repeals section 53 of the *Bail Act 1982* and inserts, in its place, proposed section 53. Proposed section 53 provides that a person who is dissatisfied with a decision under section 52 of the *Bail Act 1892* (ie a decision in relation to proceedings for an offence relating to failure by a defendant to comply with a requirement or condition of his or her bail undertaking) may, with the leave of the Court of Appeal, appeal against the decision. The appeal is to be dealt with the Court of Appeal.

Clause 27(3) will only be proclaimed if and when the Courts Legislation Amendment and Repeal Bill 2003 has been enacted and come into operation. In the meantime, the references to "Full Court" in existing section 53 of the *Bail Act 1982* will be taken to be references to the "Court of Appeal" by reason of the operation of clause 38 of the Bill.

**Clause 27(4)** amends sections 3(1), 7A(1), 15(1)(b), 52(1) and 52(3)(a) of the *Bail Act 1982* by replacing references to "the Full Court " and "the Court of Criminal Appeal" with equivalent references to "the Court of Appeal". For example, paragraphs (f) and (g) of the definition of "court" in section 3(1) of the *Bail Act 1982*, which refer to "the Full Court of the Supreme Court" and "the Court of Criminal Appeal" respectively, are deleted and replaced with proposed paragraph (f), which refers to "the Court of Appeal".

The amendments proposed to be made to section 7A(1) of the *Bail Act 1982* by clause 27(4) assume that the Courts Legislation Amendment and Repeal Bill 2003 has been enacted and come into operation. Those amendments will only be proclaimed if and when the Courts Legislation Amendment and Repeal Bill 2003 has come into

operation. In the meantime, the reference to "Full Court" in existing section 7A(1) of the *Bail Act 1982* will be taken to be a reference to the "Court of Appeal" by reason of the operation of clause 38 of the Bill.

**Clause 27(4)** also amends clause 4 of Part A of Schedule 1 to the *Bail Act 1982*, so as to replace various references to "the Full Court" and "the Court of Criminal Appeal" with equivalent references to "the Court of Appeal". (Part A of Schedule 1 vests jurisdiction to grant bail in specified judicial officers or authorized officers.)

When amended, clause 4(a) of Part A of Schedule 1 will provide that a person appearing in court for the determination under section 199 of the *Justices Act 1902* of an appeal under Part VIII of that Act may be granted bail by:

1. a single judge, if the appeal is being determined by a single judge; or
2. the Court of Appeal or a single judge of appeal, if the appeal is being determined by the Court of Appeal.

When amended, clause 4(b) of Part A of Schedule 1 will provide that a person appearing in court for the determination under section 206A of the *Justices Act 1902* of an application for leave to appeal or an appeal under that section may be granted bail by the Court of Appeal or a single judge of appeal.

When amended clause 4(d) of Part A of Schedule 1 will provide that a person appearing in court for the determination of an appeal under section 688 of *The Criminal Code* may be granted bail by the Court of Appeal or a single judge of appeal.

When amended clause 4(e)(i) of Part A of Schedule 1 will provide that a person appearing in court (after the hearing of an appeal) for the initial appearance in court required by an order pursuant to section 199 of the *Justices Act 1902* may be granted bail by:

1. a single judge, if the appeal was determined by a single judge; or
2. the Court of Appeal or a single judge of appeal, if the appeal was determined by the Court of Appeal.

When amended clause 4(e)(ii) of Part A of Schedule 1 will provide that a person appearing in court (after the hearing of an appeal) for the initial appearance in court required by an order pursuant to section 691 or 692 of *The Criminal Code* may be granted bail by the Court of Appeal or a single judge of appeal.

#### **Clause 28 - *Children's Court of Western Australia Act 1988* amended**

Clause 28 amends the *Children's Court of Western Australia Act 1988* by:

1. deleting the redundant definitions of "Court of Criminal Appeal" and "Full Court" in section 3; and

2. replacing "Full Court " with "Court of Appeal" in sections 40(8) and 43(1), (3) and (4);
3. replacing "Full Court" with "Court of Appeal" in the first place it occurs in section 43(2); and
4. deleting the redundant words "and for the purposes of such appeals, the Full Court has the powers of the Court of Criminal Appeal" from section 43(2).

**Clause 29 - *The Criminal Code* amended**

Clause 29 amends *The Criminal Code*.

**Clause 29(2)** amends section 687(1) of *The Criminal Code* by:

1. replacing "Full Court (as defined in section 57 of the *Supreme Court Act 1935*)" with "Court of Appeal"; and
2. deleting the redundant words ",and the expression Court of Criminal Appeal in this Code shall mean the said Full Court".

**Clause 29(3)** repeals subsections 687(2), (4), (5), (6) and (7) of *The Criminal Code*, which are rendered redundant by provisions proposed to be inserted into the *Supreme Court Act 1935*. (For example, subsection 687(7) is replaced by proposed section 57 of the *Supreme Court Act 1935*.)

**Clause 29(4)** repeals section 702 of *The Criminal Code*, which is rendered redundant proposed section 61 of the *Supreme Court Act 1935*.

**Clause 29(5)** amends section 703 of *The Criminal Code* by inserting a paragraph which provides that the expression "Registrar" means "the Court of Appeal Registrar appointed under the *Supreme Court Act 1935*".

**Clause 29(6)** amends sections 655, 687, 688, 689, 691, 693, 693A, 694, 695, 696, 697, 699, 703 and 747 of *The Criminal Code* by replacing references to "Court of Criminal Appeal" with references to "Court of Appeal".

**Clause 30 - *Criminal Procedure (Summary) Act 1902* amended**

Clause 30 assumes that Part 6 of the Courts Legislation Amendment and Repeal Bill 2003 has been enacted and come into operation.

Clause 30 amends the *Criminal Procedure (Summary) Act 1902*.

Clause 30 will only be proclaimed if and when Part 6 of the Courts Legislation Amendment and Repeal Bill 2003 has been enacted and come into operation.

**Clause 30(2)** amends section 183 of the *Criminal Procedure (Summary) Act 1902* by deleting the redundant definition of "Full Court".

**Clause 30(3)** amends section 195A(1) of the *Criminal Procedure (Summary) Act 1902* by inserting after "Judge" the words "sitting in the General Division of the Supreme Court". When amended, section 195A(1) will provide that the Court constituted by one Judge sitting in the General Division of the Supreme Court shall hear and determine an appeal unless an order has been made under section 195A(2). (Section 195A(2) allows the Court, on its own initiative, or on the application of a party made before or during the hearing of the appeal, to order that the appeal be heard and determined by the Court of Appeal).

**Clause 30(4)** amends section 206A of the *Criminal Procedure (Summary) Act 1902*, which deals with appeals from a decision under section 199, 205 or 206C of that Act. When amended, section 206A will provide that an application for leave to appeal from a decision under section 199, 205 or 206C of the *Criminal Procedure (Summary) Act 1902* must be made to a single judge of appeal and, if a single judge of appeal refuses such an application, the applicant may apply to the Court of Appeal to set aside the refusal and determine the application afresh.

**Clause 30(5)** amends sections 195A(2), 199(1)(e) and 206A(1) of the *Criminal Procedure (Summary) Act 1902* by replacing references to "Full Court" with equivalent references to "Court of Appeal".

### **Clause 31 - *District Court of Western Australia Act 1969* amended**

Clause 31 amends the *District Court of Western Australia Act 1969*.

**Clause 31(2)** repeals section 79(1a) of the *District Court of Western Australia Act 1969* (which provides that an appeal to the Full Court in respect of a judgment, order or determination in proceedings in the District Court under the *Commercial Arbitration Act 1985* may be made only by leave of the Supreme Court or a single judge of the Supreme Court) and inserts, in its place, proposed section 79(1a). Proposed section 79(1a) provides that appeals of the type referred to in section 79(1a) are to be made to the Court of Appeal and may be made only by leave of the Court of Appeal.

**Clause 31(3)** repeals section 79(2) of the *District Court of Western Australia Act 1969* (which sets out matters relevant to the practice and procedure of the Full Court when dealing with an appeal under section 79 of the *District Court of Western Australia Act 1979*) and inserts, in its place, proposed section 79(2). Proposed section 79(2) sets out matters relevant to the practice and procedure of the Court of Appeal when dealing with an appeal under section 79 of the *District Court of Western Australia Act 1979*.

**Clause 31(4)** amends sections 49 and 79 of the *District Court of Western Australia Act 1969* by replacing references to "the Full Court " and "the Court of Criminal Appeal" with equivalent references to "the Court of Appeal".

**Clause 32 - *Interpretation Act 1984* amended**

Clause 32 amends section 5 of the *Interpretation Act 1984* by inserting a definition of "Court of Appeal".

**Clause 33 - *Judges' Retirement Act 1937* amended**

Clause 33 amends the *Judges' Retirement Act 1937*.

**Clause 33(2)** amends the definition of "Judge" in section 2 of the *Judges' Retirement Act 1937* by including within that definition "President of the Court of Appeal" and "Master or acting Master of the Supreme Court of Western Australia". As a result of the amendment, the provisions of the *Judges' Retirement Act 1937* apply to any person appointed to and holding any of the following offices:

1. Chief Justice of Western Australia;
2. President of the Court of Appeal;
3. Judge of the Supreme Court of Western Australia;
4. Acting Judge or Auxiliary Judge of the Supreme Court of Western Australia;
5. Master or acting Master of the Supreme Court of Western Australia;
6. a Commissioner of the Supreme Court of Western Australia appointed under section 49 of the *Supreme Court Act 1935*.

(The provisions of the *Judges' Retirement Act 1937* also apply to a Judge of the District Court, an acting Judge of the District Court and an auxiliary District Court Judge, by virtue of section 16 of the *District Court of Western Australia Act 1969* and the definition of "District Court Judge" in section 6(1) of that Act.)

**Clause 33(3)** amends section 3 of the *Judges' Retirement Act 1937* by:

1. deleting the words ", save for the purpose of completing the trial of any action as next hereinafter provided, and such office may, notwithstanding the pendency of any such trial, be filled by the appointment of any qualified person", which are unnecessary; and
2. replacing, in the first proviso, the words "the trial of any action which he had entered upon and had not completed before" with the words "the hearing and determination of any action, cause, matter, trial or proceeding that was pending before him immediately before".

The later of those amendments broadens the ambit of the first proviso to section 3. As a result, a Judge (which is defined to include the Chief Justice, the President, Judges, Acting Judges, Auxiliary Judges, Masters, Acting Masters and Commissioners) who

retires on attaining the compulsory retirement age of 70 years may complete the hearing and determination of any action, cause, matter, trial or proceeding that was pending before him or her immediately before retiring.

**Clause 33(4)** amends the *Judges' Retirement Act 1937* by inserting proposed section 3, which sets out matters relating to the resignation of Judges. In particular, proposed section 3(3) provides that a Judge (which is defined to include the Chief Justice, the President, Judges, Acting Judges, Auxiliary Judges, Masters, Acting Masters and Commissioners) who resigns may complete the hearing and determination of any action, cause, matter, trial or proceeding that was pending before him or her immediately before his or her resignation took effect.

### **Clause 34 - *Judges' Salaries and Pensions Act 1950* amended**

Clause 34 amends the *Judges' Salaries and Pensions Act 1950*.

**Clause 34(2)** amends section 2 of the *Judges' Salaries and Pensions Act 1950* by inserting a definition of "Senior Puisne Judge" which refers to "the senior Judge of the Supreme Court who is neither the Chief Justice of Western Australia, the President of the Court of Appeal nor a judge of appeal".

**Clause 34(3)** amends section 3 of the *Judges' Salaries and Pensions Act 1950*, so that the Act applies to:

1. the Chief Justice of Western Australia;
2. the President of the Court of Appeal; and
3. all other Judges of the Supreme Court of Western Australia appointed or to be appointed under proposed section 7A of the *Supreme Court Act 1935*.

(The provisions of the *Judges' Salaries and Pensions Act 1950* that relate to pensions also apply to District Court Judges and other specified persons, by virtue of section 14 of the *District Court of Western Australia Act 1969*.)

**Clause 34(4)** amends section 5 of the *Judges' Salaries and Pensions Act 1950*, so that it provides, among other things, that:

1. the rate of the annual salary payable to the President of the Court of Appeal shall not exceed that payable to the Chief Justice;
2. the rate of the annual salary payable to the senior judge of appeal (other than the Chief Justice and the President of the Court of Appeal) shall not exceed that payable to the Senior Puisne Judge;
3. a person who holds more than one office under the *Supreme Court Act 1935* (for example, the Chief Justice, who will hold the offices of Judge, Chief Justice and judge of appeal) is entitled to the rate of salary of only one of those offices; and

4. if a Judge is appointed to be also a judge of appeal and as a result ceases to be the Senior Puisne Judge, he or she is entitled to retain the rate of annual salary of the Senior Puisne Judge if that rate is higher than his rate of annual salary as a judge of appeal.

**Clause 35 - *Justices Act 1902* amended**

Clause 35 assumes that Part 6 of the Courts Legislation Amendment and Repeal Bill 2003 has not been enacted or, if it has been enacted, that it has not come into operation.

Clause 35 amends the *Justices Act 1902*.

Clause 35 will only be proclaimed if Part 6 of the Courts Legislation Amendment and Repeal Bill 2003 has not been enacted or, if it has been enacted, if it has not come into operation. In other words, if Part 6 of the Courts Legislation Amendment and Repeal Bill 2003 has been enacted and come into operation, then clause 35 will never be proclaimed.

**Clause 35(2)** amends section 183 of the *Justices Act 1902* by deleting the redundant definition of "Full Court".

**Clause 35(3)** amends section 187(3)(a) of the *Justices Act 1902* by inserting after "Judge" the words "sitting in the General Division of the Supreme Court". Section 187(3)(b) is amended by **clause 35(4)**. When amended by clause 35(3) and (4), section 187(3) will provide that an order granting leave to appeal shall specify that the appeal is to be heard by either:

1. the Court constituted by one Judge sitting in the General Division of the Supreme Court; or
2. the Court of Appeal.

**Clause 35(4)** amends section 206A of the *Justices Act 1902*, which deals with appeals from a decision under section 199, 205 or 206C of that Act. When amended, section 206A will provide that an application for leave to appeal from a decision under section 199, 205 or 206C of the *Justices Act 1902* must be made to a single judge of appeal and, if a single judge of appeal refuses such an application, the applicant may apply to the Court of Appeal to set aside the refusal and determine the application afresh.

**Clause 35(5)** amends sections 183, 187, 189, 190, 199 and 206A of the *Justices Act 1902*, together with the heading before section 206A of that Act, by replacing references to "Full Court" with equivalent references to "Court of Appeal".

## **PART 4 - MINOR AMENDMENTS TO VARIOUS ACTS**

### **Clause 36 - Various Acts amended**

Clause 35 provides that each Act listed in Schedule 1 is amended as set out in that Schedule.

## **PART 5 - TRANSITIONAL PROVISIONS**

### **Clause 37 - Appeals pending before Full Court or Court of Criminal Appeal**

Clause 36 provides that an appeal or an application for leave which is pending before the Full Court or the Court of Criminal Appeal on the commencement of the *Acts Amendment (Court of Appeal) Act 2004* is taken to have been commenced or made or to be pending before the Court of Appeal. That is, it provides for continuity of pending applications and appeals to the Full Court or the Court of Criminal Appeal.

### **Clause 38 - References to "Full Court" or "Court of Criminal Appeal" to be read as references to "Court of Appeal"**

Clause 37 provides that a reference in a written law or book, document or writing to the Full Court or the Court of Criminal Appeal is, unless contrary intention appears, to be construed as if it had been amended to be a reference to the Court of Appeal.

## **SCHEDULE 1 - MINOR AMENDMENTS TO VARIOUS ACTS**

### **Division 1 - Amendments not affected by impending legislation**

#### **Schedule 1 Clause 1 - *Adoption Act 1994***

Clause 1 of Schedule 1 amends the Heading to Part 5 Division 4 of the *Adoption Act 1994* by replacing "Full Court" with "Court of Appeal".

This clause also amends sections 118(1) and 119 of the *Adoption Act 1994* by replacing "Full Court of the Supreme Court" with "Court of Appeal".

**Schedule 1 Clause 2 - *Constitution Acts Amendment Act 1899***

Clause 2 of Schedule 1 amends section 41(1), (2) and (3) of the *Constitution Acts Amendment Act 1899* by replacing "Supreme Court" with "Court of Appeal". Those amendments render section 41(4) of the *Constitution Acts Amendment Act 1899* obsolete. It is therefore repealed.

**Schedule 1 Clause 3 - *Corporations (Western Australia) Act 1990***

Clause 3 of Schedule 1 amends section 3(1) of the *Corporations (Western Australia) Act 1990* by deleting the definition of "Full Court". That term is no longer used in the *Corporations (Western Australia) Act 1990*.

**Schedule 1 Clause 4 - *Criminal Injuries Compensation Act 2003***

Clause 4 of Schedule 1 amends sections 56(2)(e) and 58 of the *Criminal Injuries Compensation Act 2003* by replacing "Full Court of the Supreme Court" with "Court of Appeal".

**Schedule 1 Clause 5 - *Family Court of Western Australia Act 1997***

Clause 5 of Schedule 1 amends section 211(3) and (5) of the *Family Court of Western Australia Act 1997* by replacing "Full Court of the Supreme Court" (in each place it occurs) with "Court of Appeal".

Clause 5 of Schedule 1 also amends section 211(3) of the *Family Court of Western Australia Act 1997* by replacing "Full Court" (in the third place it occurs) with "Court of Appeal".

**Schedule 1 Clause 6 - *Federal Courts (State Jurisdiction) Act 1999***

Clause 6 of Schedule 1 amends section 6(c) of the *Federal Courts (State Jurisdiction) Act 1999* by replacing "Full Court of the Supreme Court" with "Court of Appeal".

**Schedule 1 Clause 7 - *Guardianship and Administration Act 1990***

Clause 7 of Schedule 1 amends the definition of "Court" in section 18(1) of the *Guardianship and Administration Act 1990* by replacing "Full Court of the Supreme Court" with "Court of Appeal".

Clause 7 of Schedule 1 also amends sections 19(b) and 37A of the *Guardianship and Administration Act 1990* by replacing "Full Court of the Supreme Court" with "Court of Appeal".

Clause 7 of Schedule 1 also amends the Heading to Part 3 Division 4 of the *Guardianship and Administration Act 1990* by replacing "Full Court" with "**Court of Appeal**".

**Schedule 1 Clause 8 - *Income Tax Assessment Act 1937***

Clause 8 of Schedule 1 amends section 173(5) of the *Income Tax Assessment Act 1937* by replacing "Full Court of the Supreme Court" with "Court of Appeal".

**Schedule 1 Clause 9 - *Jurisdiction of Courts (Cross-vesting) Act 1987***

Clause 9 of Schedule 1 amends sections 6(9) and 7(1), (3), (7)(a) and (8) of the *Jurisdiction of Courts (Cross-vesting) Act 1987* by replacing "Full Court of the Supreme Court" with "Court of Appeal".

**Schedule 1 Clause 10 - *Katanning Electricity Supply Undertaking Acquisition Act 1961***

Clause 10 of Schedule 1 amends section 7(2) of the *Katanning Electricity Supply Undertaking Acquisition Act 1961* by replacing "Full Court of the Supreme Court of Western Australia" with "Court of Appeal".

**Schedule 1 Clause 11 - *Legal Aid Commission Act 1976***

Clause 11 of Schedule 1 amends section 40(6a) of the *Legal Aid Commission Act 1976* by replacing "Full Court of the Supreme Court" with "Court of Appeal".

**Schedule 1 Clause 12 - *Legal Practice Act 2003***

Clause 12 of Schedule 1 amends section 3 of the *Legal Practice Act 2003* by:

1. deleting the redundant definition of "Full Court"; and
2. inserting a definition of "Supreme Court (full bench)" which refers to "the Supreme Court constituted by at least three judges".

The definition of "Supreme Court (full bench)" is intended to include a judge of appeal who is sitting in the General Division (pursuant to an approval under proposed section 10C of the *Supreme Court Act 1935*).

Clause 12 of Schedule 1 also amends sections 28, 30, 34, 185, 190, 194 and 204 of the *Legal Practice Act 2003* by replacing "Full Court" with "Supreme Court (full bench)". The effect of the amendments is best illustrated by an example. For instance, section 30(1) of the *Legal Practice Act 2003* currently provides that "No person is to be admitted as a legal practitioner except by the Full Court". When amended, section 30(1) will provide "No person is to be admitted as a legal practitioner except by the Supreme Court (full bench)".

#### **Schedule 1 Clause 13 - *Liquor Licensing Act 1988***

Clause 13 of Schedule 1 amends sections 27(2) and 28(4)(a) of the *Liquor Licensing Act 1988* by replacing "Full Court" with "Court of Appeal".

#### **Schedule 1 Clause 14 - *Mining Act 1978***

Clause 15 of Schedule 1 amends section 146(5), (6) and (7) of the *Mining Act 1978* by replacing references to "Full Court of the Supreme Court" and "Full Court" with "Court of Appeal".

#### **Schedule 1 Clause 15 - *Newspaper Libel and Registration Act 1884 Amendment Act 1888***

Clause 16 of Schedule 1 amends section 3 of the *Newspaper Libel and Registration Act 1884 Amendment Act 1888* by replacing "full Court" with "Court of Appeal".

#### **Schedule 1 Clause 16 - *Prisons Act 1981***

Clause 17 of Schedule 1 amends section 23 of the *Prisons Act 1981* by:

1. replacing "Court of Criminal Appeal or a Judge of that Court" with "Court of Appeal or a judge of appeal"; and
2. replacing "a Registrar of the Supreme Court" with "the Court of Appeal Registrar".

#### **Schedule 1 Clause 17 - *Prostitution Act 2000***

Clause 18 of Schedule 1 amends section 47(4), (65) and (6) of the *Prostitution Act 2000* by replacing references to "Full Court" with "Court of Appeal". The amendments render section 47(7) of the *Prostitution Act 2000* redundant. It is therefore repealed by clause 18 of Schedule 1.

### **Schedule 1 Clause 18 - *Public Notaries Act 1979***

Clause 19 of Schedule 1 amends section 3 of the *Public Notaries Act 1979* by inserting a definition of "Supreme Court (full bench)" which refers to "the Supreme Court constituted by at least 3 judges". The definition of "Supreme Court (full bench)" is intended to include a judge of appeal who is sitting in the General Division (pursuant to an approval under proposed section 10C of the *Supreme Court Act 1935*).

Clause 19 of Schedule 1 also amends:

1. sections 6(2), 9(10)(ii), 12 and 16(1) of the *Public Notaries Act 1979* by replacing references to "Full Court" with references to "Supreme Court (full bench)"; and
2. section 11 of the *Public Notaries Act 1979* by replacing "Court" in the first place it occurs with "Supreme Court (full bench)".

The effect of the amendments is best illustrated by an example. For instance, section 6(2) of the *Public Notaries Act 1979* currently provides that "Appointments as Public Notaries may only be made by order of the Full Court". When amended, section 6(2) will provide "Appointments as Public Notaries may be made only by order of the Supreme Court (full bench)".

### **Schedule 1 Clause 19 - *Restraining Orders Act 1997***

Clause 20 of Schedule 1 amends section 64(4), (5), (6) and (6a)(b) of the *Restraining Orders Act 1997* by replacing "Full Court" with "Court of Appeal". Those amendments render section 64(7) of the *Restraining Orders Act 1997* obsolete. It is therefore repealed by clause 20 of Schedule 1.

### **Schedule 1 Clause 20 - *Salaries and Allowances Act 1975***

Clause 21 of Schedule 1 amends section 7(1) of the *Salaries and Allowances Act 1975* by replacing "section 5(1b)" with "section 5(1) and (1)(b)". This amendment is consequential upon the amendments made to section 5 of the *Judges' Salaries and Pensions Act 1950* by clause 34(4) of the Bill.

### **Schedule 1 Clause 21 - *Sentencing Act 1995***

Clause 22 of Schedule 1 amends section 140(1) and (2) of the *Sentencing Act 1995* by replacing references to "Court of Criminal Appeal" with references to "Court of Appeal".

Clause 22 of Schedule 1 also amends section 143(1) of the *Sentencing Act 1995* by replacing "Full Court of Supreme Court or the Court of Criminal Appeal" with "Court of Appeal".

## **Division 2 - Amendments that may be affected by impending legislation**

### **Schedule 1 Clause 22 - *Land Administration Act 1997***

Clause 22 of Schedule 1 amends section 237(2) of the *Land Administration Act 1997* by replacing "Full Court" with "Court of Appeal".

Clause 22 of Schedule 1 assumes that clause 561 of the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003 has not been enacted or, if it has been enacted, that it has not come into operation. (Clause 561 of that Bill repeals section 237 of the *Land Administration Act 1997*.) Accordingly, clause 22 of Schedule 1 will only be proclaimed if clause 561 of the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003 has not been enacted or, if it has been enacted, that it has not come into operation. In other words, if clause 561 of the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003 has been enacted and come into operation, then clause 22 of Schedule 1 will never be proclaimed.

### **Schedule 1 Clause 23 - *Legal Practice Act 2003***

Clause 23 of Schedule 1 amends section 202(2) of the *Legal Practice Act 2003* by replacing "Full Court" with "Supreme Court (Full Bench)". When amended section 202(2) will provide that an appeal lies to the Supreme Court (Full Bench) against any finding or order made by the Disciplinary Tribunal under Part 12 of the *Legal Practice Act 2003*. (Clause 12 of Schedule 1 inserts a definition of "Supreme Court (Full Bench)" into section 3 of the *Legal Practice Act 2003*.)

Clause 23 of Schedule 1 assumes that clause 624 of the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003 has not been enacted or, if it has been enacted, that it has not come into operation. (Clause 624 of that Bill repeals section 202 of the *Legal Practice Act 2003*.) Accordingly, clause 23 of Schedule 1 will only be proclaimed if clause 624 of the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003 has not been enacted or, if it has been enacted, that it has not come into operation. In other words, if clause 624 of the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003 has been enacted and come into operation, then clause 23 of Schedule 1 will never be proclaimed.

### **Schedule 1 Clause 24 - *Local Courts Act 1904***

Clause 24 of Schedule 1 amends section 107 of the *Local Courts Act 1904* by replacing references to "Full Court" and "Full Court of the Supreme Court" with references to "Court of Appeal".

Clause 24 of Schedule 1 assumes that Part 2 of the Courts Legislation Amendment and Repeal Bill 2003 has not been enacted or, if it has been enacted, that it has not come into operation. (Part 2 of that Bill repeals the *Local Courts Act 1904*.) Accordingly, clause 24 of Schedule 1 will only be proclaimed if Part 2 of the Courts Legislation Amendment and Repeal Bill 2003 has not been enacted or, if it has been enacted, that it has not come into operation. In other words, if Part 2 of the Courts Legislation Amendment and Repeal Bill 2003 has been enacted and come into operation, then clause 24 of Schedule 1 will never be proclaimed.

### **Schedule 1 Clause 25 - *Magistrates Court (Civil Proceedings) Act 2004***

Clause 25 of Schedule 1 assumes that Part 6 of the Courts Legislation Amendment and Repeal Bill 2003 has been enacted and come into operation. (Part 6 of that Bill amends section 1 of the *Justices Act 1902*, so that the short title for that Act becomes the *Magistrates Court (Civil Proceedings) Act 2004*.)

Clause 25 of Schedule 1 amends sections 41(1), (3) and (4), 42(1), (3), (5) and (7)(e) of the *Magistrates Court (Civil Proceedings) Act 2004* by replacing references to "Supreme Court", "Full Court" and "Full Court of the Supreme Court" with "Court of Appeal".

Clause 25 of Schedule 1 will only be proclaimed if and when Part 6 of the Courts Legislation Amendment and Repeal Bill 2003 has been enacted and come into operation.

### **Schedule 1 Clause 26 - *Royal Commissions Act 1968***

Clause 26 of Schedule 1 amends section 16(2) and 17 of the *Royal Commissions Act 1968* by replacing "Full Court of the Supreme Court" with "Court of Appeal".

Clause 26 of Schedule 1 assumes that clauses 9 and 10 of the Royal Commissions (Powers) Amendment Bill 2004 have not been enacted or, if they have been enacted, that they have not come into operation. (Clauses 9 and 10 of that Bill repeal section 16(2) and 17 of the *Royal Commissions Act 1968* respectively.) Accordingly, clause 26 of Schedule 1 will only be proclaimed if clauses 9 and 10 of the Royal Commissions (Powers) Amendment Bill 2004 have not been enacted or, if they have been enacted, that they have not come into operation. In other words, if clauses 9 and 10 of the Royal Commissions (Powers) Amendment Bill 2004 have been enacted and come into operation, then clause 26 of Schedule 1 will never be proclaimed.

### **Schedule 1 Clause 27 - *State Administrative Tribunal Act 2004***

Clause 27 of Schedule 1 assumes that the State Administrative Tribunal Bill 2003 has been enacted and come into operation.

Clause 27 of Schedule 1 amends section 104(3)(a) of the *State Administrative Tribunal Act 2004* by replacing "Full Court" with "Court of Appeal". This amendment renders section 104(4) of the *State Administrative Tribunal Act 2004* redundant. It is therefore repealed by clause 23 of Schedule 1.

Clause 27 of Schedule 1 will only be proclaimed if and when the State Administrative Tribunal Bill 2003 has been enacted and come into operation.

### **Schedule 1 Clause 28 - *Workers' Compensation and Rehabilitation Act 1981***

Clause 28 of Schedule 1 amends sections 84ZX and 84ZY of the *Workers' Compensation and Rehabilitation Act 1981* by replacing references to "Full Court of the Supreme Court" and "Full Court" with references to "Court of Appeal".

Clause 28 of Schedule 1 assumes that the Workers' Compensation Reform Bill 2004 has not been enacted and come into operation. (Clause 5 of that Bill amends section 1 of the *Workers' Compensation and Rehabilitation Act 1981*, so that the short title for that Act becomes the *Workers' Compensation and Injury Management Act 1981*.) Accordingly, clause 28 of Schedule 1 will only be proclaimed if clause 5 of the Workers' Compensation Reform Bill 2004 has not been enacted or, if it has been enacted, that it has not come into operation. In other words, if clause 5 of the Workers' Compensation Reform Bill 2004 has been enacted and come into operation, then clause 28 of Schedule 1 will never be proclaimed.

### **Schedule 1 Clause 29 - *Workers' Compensation and Injury Management Act 1981***

Clause 29 of Schedule 1 assumes that the Workers' Compensation Reform Bill 2004 has been enacted and come into operation.

Clause 29 of Schedule 1 amends sections 251(1) and 252(1) of the *Workers' Compensation and Injury Management Act 1981* by replacing references to "Full Court of the Supreme Court" with references to "Court of Appeal".

Clause 29 of Schedule 1 also amends section 254(1) of the *Workers' Compensation and Injury Management Act 1981* by replacing "Supreme Court appeal to the Supreme Court" with "Court of Appeal appeal to the Court of Appeal". This amendment renders section 254(2) of the *Workers' Compensation and Injury Management Act 1981* redundant. It is therefore repealed by clause 24 of Schedule 1.

Clause 29 of Schedule 1 will only be proclaimed if and when the Workers' Compensation Reform Bill 2004 has been enacted and come into operation.