

Western Australia

LEGISLATIVE COUNCIL

Courts Legislation Amendment Bill 1999

A Bill for

An Act to amend —

- **the *District Court of Western Australia Act 1969*;**
- **the *Liquor Licensing Act 1988*;**
- **the *Local Courts Act 1904*; and**
- **the *Supreme Court Act 1935*.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Courts Legislation Amendment Act 1999*.

5 **2. Commencement**

(1) This Act, other than the provisions set out in subsection (2), comes into operation on the day on which it receives the Royal Assent.

10 (2) Sections 6, 7, and 21 to 25 come into operation on a day fixed by proclamation.

(3) Different days may be fixed under subsection (2) for different provisions.

Part 2 — Amendments to the *District Court of Western Australia Act 1969*

3. The Act amended

5 The amendments in this Part are to the *District Court of Western Australia Act 1969**.

[* Reprinted as at 1 January 1999.]

4. Section 24 amended

10 Section 24(1) is amended by deleting “any practitioner as defined by the *Legal Practitioners Act 1893*, of not less than 8 years’ standing and practice,” and inserting instead —

“

a person qualified to be appointed a District Court Judge under section 10,

”.

15 **5. Section 27A inserted**

After section 27 the following section is inserted —

“

27A. Employment of personal staff for Judges

- 20 (1) On the recommendation of the Chief Judge, the Attorney General may employ, under contracts of service, people to be associates, orderlies and other assistants to the District Court Judges.
- 25 (2) The *Public Sector Management Act 1994* does not apply to or in respect of the employment of a person under subsection (1).
- (3) An arrangement under section 66 of the *Public Sector Management Act 1994* may be entered into between an

employing authority and the Attorney General under which a public service officer performs the functions, services or duties of an associate, orderly, or other assistant to a District Court Judge.

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6. Section 88 amended

- (1) Section 88(2)(f) is deleted.
- (2) Section 88(3) is repealed.

7. Section 89A inserted

10 After section 89 the following section is inserted —

“

89A. Fees and poundage

- (1) The Governor may make regulations prescribing or providing for —
 - 15 (a) the fees payable in respect of any cause or matter in the Court;
 - (b) the fees payable in respect of the conduct of the business of any office of or connected with the Court; and
 - 20 (c) the fees and poundage payable in respect of anything done by the bailiff or officers of the bailiff in or in relation to the execution of any writ, warrant or other process.
- 25 (2) Regulations made under subsection (1) may provide for the waiver, reduction, refund or deferral of payment, with or without conditions, of fees or poundage.

- 5
- (3) If a question arises as to the fee payable or applicable in a particular case, that question is to be determined by the Principal Registrar.
 - (4) Any person affected by the determination of the Principal Registrar under subsection (3) may have it reviewed by a District Court Judge in a summary manner.

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Part 3 — Amendments to the *Liquor Licensing Act 1988*

8. The Act amended

5 The amendments in this Part are to the *Liquor Licensing Act 1988**.

[* Reprinted as at 12 June 1998.]

9. Section 3 amended

Section 3(1) is amended as follows:

- 10 (a) by deleting the definition of “Acting Judge”;
- (b) by deleting the definition of “the Judge” and inserting the following definition instead —

“

15 “**the Judge**” means a Liquor Licensing Court Judge nominated or deemed to have been nominated under this Act;

”.

10. Section 8 amended

- 20 (1) Section 8(3) is amended by deleting “an Acting Judge” and inserting instead —

“

a Liquor Licensing Court Judge nominated under section 9(4)

”.

- 25 (2) Section 8(4) is amended by deleting “an Acting Judge” and inserting instead —

“

a Liquor Licensing Court Judge nominated under section 9(4)

”.

11. Section 9 replaced

Section 9 is repealed and the following section is inserted instead —

“

- 5 **9. Appointment of the Judge of the Liquor Licensing Court**
- 10 (1) Subject to subsection (2), the Liquor Licensing Court Judge shall be such District Court Judge, or Commissioner of the District Court appointed under section 24 of the *District Court of Western Australia Act 1969*, as the Chief Judge of the District Court of Western Australia shall from time to time nominate, either generally or for a specified time, to be the Liquor Licensing Court Judge.
- 15 (2) On the day on which Part 3 of the *Courts Legislation Amendment Act 1999* comes into operation, the person who, immediately before that day, held office as the Liquor Licensing Court Judge, is deemed to have been nominated as the Liquor Licensing Court Judge under subsection (1) and shall continue to hold that office as if section 9 had not been repealed until he or she dies, retires, or otherwise ceases to hold the office.
- 20 (3) In the exercise of that office, the Liquor Licensing Court Judge has the same protection and immunity as a Judge has in respect of proceedings in the Supreme Court.
- 25 (4) Where the person who is deemed under subsection (2) to have been nominated as the Liquor Licensing Court Judge —
- 30 (a) is or is expected to be absent from duty for any reason; or

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(b) declines to deal with any matter,
the Chief Judge is to nominate a District Court Judge
or a Commissioner of the District Court to be a Liquor
Licensing Court Judge for such period, or in respect of
5 such applications or matters, as may be specified in the
instrument of appointment.

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12. Sections 10 and 11 repealed

Sections 10 and 11 are repealed.

10 **13. Section 16 amended**

Section 16(7) is amended by deleting “or an Acting Judge”.

14. Transitional

15 If on the day on which sections 9, 10, 12, and 13 come into
operation an Acting Judge of the Liquor Licensing Court is
dealing with an application or matter the Acting Judge may
continue to deal with the application or matter as if those
sections had not come into operation.

Part 4 — Amendment to the *Local Courts Act 1904*

15. The Act amended

The amendment in this Part is to the *Local Courts Act 1904**.

[* *Reprinted as at 4 March 1994.*

5 *For subsequent amendments see 1998 Index to Legislation of
 Western Australia, Table 1, p. 148.]*

16. Section 91 amended

Section 91 is amended by deleting “into court” in both places
where it occurs and inserting instead —

10 “ to the plaintiff or the plaintiff’s solicitor ”.

Part 5 — Amendments to the *Supreme Court Act 1935*

17. The Act amended

The amendments in this Part are to the *Supreme Court Act 1935**.

5 [* Reprinted as at 23 July 1999.]

18. Part VI inserted

After section 68 the following Part is inserted —

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Part VI — Mediation

10 **69. Interpretation**

In this Part, unless the contrary intention appears —

“**mediation under direction**” means mediation carried out by a mediator under a direction of the Court under and subject to the Rules of Court;

15 “**mediator**” means —

- (a) a Registrar appointed by the Chief Justice to be a Mediation Registrar under the Rules of Court;
- (b) a person approved by the Chief Justice to be a mediator under the Rules of Court; or
- (c) a person agreed by the parties.

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70. Protection of mediator

A mediator carrying out mediation under direction has the same privileges and immunities as a Judge of the Court has in the performance of judicial duties as a Judge.

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71. Privilege

- (1) Subject to subsection (3), evidence of —
- (a) anything said or done;
 - (b) any communication, whether oral or in writing;
 - 5 or
 - (c) any admission made,

is in the course of or for the purposes of an attempt to settle a proceeding by mediation under direction is to be taken to be in confidence and is not admissible in any proceedings before any court, tribunal or body.

- (2) Subject to subsection (3) —
- (a) any document prepared in the course of or for the purposes of an attempt to settle a proceeding by mediation under direction;
 - 15 (b) any copy of such a document; or
 - (c) evidence of any such document,

is to be taken to be subject to a duty of confidence and is not admissible in any proceedings before any court, tribunal or body.

- (3) Subsections (1) and (2) do not affect the admissibility of any evidence or document in proceedings if —
- (a) the parties to the mediation consent to the admission of the evidence or document in the proceedings;
 - 25 (b) there is a dispute in the proceedings as to whether or not the parties to the mediation entered into a binding agreement settling all or any of their differences and the evidence or document is relevant to that issue;

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- (c) the proceedings relate to a costs application and, under the Rules of Court, the evidence or document is admissible for the purposes of determining any question of costs; or
- 5 (d) the proceedings relate to any act or omission in connection with which a disclosure has been made under section 72(2)(c).
- (4) A mediator cannot be compelled to give evidence of anything referred to in subsection (1) or (2) or to produce a document or a copy of a document referred to in subsection (2) except —
- 10 (a) in proceedings referred to in subsection (3)(d); or
- (b) in proceedings relating to a costs application where there is a dispute as to a fact stated or a conclusion reached in a mediator's report prepared under the Rules of Court on the failure of a party to cooperate in the mediation and the evidence or document is relevant to that issue.
- 15 (5) In subsections (3) and (4) —
- 20 **“costs application”** means an application for the costs of the mediation or of the proceedings to which mediation relates.

72. Confidentiality

- 25 (1) Subject to subsection (2), a mediator must not disclose any information obtained in the course of or for the purpose of carrying out mediation under direction.

- (2) Subsection (1) does not apply if —
- (a) the disclosure is made for the purpose of reporting under the Rules of Court on any failure of a party to cooperate in a mediation;
 - 5 (b) the disclosure is made with the consent of the parties;
 - 10 (c) there are reasonable grounds to believe that the disclosure is necessary to prevent or minimize the danger of injury to any person or damage to any property; or
 - 15 (d) the disclosure is authorized by law or the disclosure is required by or under a law of the State (other than a requirement imposed by a subpoena or other compulsory process) or the Commonwealth.

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19. Section 155 amended

Section 155(4) is repealed.

20. Section 155A inserted

After section 155 the following section is inserted —

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155A. Employment of personal staff for Judges and Masters

- (1) On the recommendation of the Chief Justice, the Attorney General may employ, under contracts of service, people to be associates, orderlies and other assistants to the Judges and Masters.

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(2) The *Public Sector Management Act 1994* does not apply to or in respect of the employment of a person under subsection (1).

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(3) An arrangement under section 66 of the *Public Sector Management Act 1994* may be entered into between an employing authority and the Attorney General under which a public service officer performs the functions, services or duties of an associate, orderly, or other assistant to a Judge or Master.

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21. Section 163 amended

(1) Section 163(1) is amended by deleting “may be fixed by rules made by the Judges of the Supreme Court” and inserting instead —

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“ are payable under the regulations ”.

(2) Section 163(2) is amended by deleting “prescribed fees” and inserting instead —

“ fees payable under the regulations ”.

22. Section 167 amended

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Section 167(1)(q) is deleted and the following paragraph is inserted instead —

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(q) For enabling and regulating the mediation of any of the differences between any parties to a proceeding generally and, in particular, providing for —

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(i) the reference of a proceeding or any part of a proceeding to a mediator with or without the consent of any party to the proceeding;

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- (ii) the conduct of the mediator and of the parties;
 - (iii) the terms and conditions upon which the mediation conference is to be held; and
 - (iv) the admissibility of evidence in relation to a mediation for the purpose of determining the costs of the mediation or the costs of the proceedings between the parties to the mediation.
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- ”.

23. Section 169 repealed

Section 169 is repealed.

24. Section 170 amended

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- (1) Section 170(1) is amended by deleting “and all orders fixing the fees and percentages to be taken in the Court or in any office connected with the Court, or by any officer,”.
 - (2) Section 170(2) is amended by deleting “or order” wherever occurring.

25. Section 171 inserted

20 After section 170 the following section is inserted —

“

171. Fees and poundage

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- (1) The Governor may make regulations prescribing or providing for —
 - (a) the fees payable in respect of any cause or matter in the Court;

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- (b) the fees payable in respect of the conduct of the business of any office of or connected with the Court;
 - (c) the fees and poundage payable in respect of anything done by the sheriff, officers of the sheriff or a bailiff in or in relation to the execution of any writ, warrant or other process; and
 - (d) the fees and poundage payable in respect of anything done by the Marshall in Admiralty and officers of the Marshall in or in relation to the execution of any writ, warrant or other process.
- (2) Regulations made under subsection (1) may provide for the waiver, reduction, refund or deferral of payment, with or without conditions, of fees or poundage.
- (3) If a question arises as to the fee payable or applicable in a particular case, that question is to be determined by the Principal Registrar.
- (4) Any person affected by the determination of the Principal Registrar under subsection (3) may have it reviewed by the Court in a summary manner.

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Part 6 — Validation

26. Validation

To the extent that, before the coming into operation of section 22, provisions of the *Rules of the Supreme Court 1971* related or purported to relate to mediation —

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(a) those provisions are to be regarded as having been validly and lawfully made and published under and within the authority of the *Supreme Court Act 1935* and to have always had effect according to their terms; and

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(b) anything done under or purportedly done under those provisions is to be regarded as having been validly done and, to have always been, effectual in all respects.

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