

Courts and Tribunals Legislation (Further Amendment) Bill

Circulation Print

EXPLANATORY MEMORANDUM

PART 1—PRELIMINARY

- Clause 1 sets out the purpose of the Bill.
- Clause 2 sets out that the Act will commence on Royal Assent with the exception of clauses 5 and 6 which will come into operation on a day or days to be proclaimed. This allows time for rules of court to be prepared. However, the Bill provides for a forced commencement for these two clauses of 1 January 2001 if they are not proclaimed on an earlier date.

PART 2—LEGAL PRACTICE ACT 1996

- Clause 3 provides that applicants for admission as barristers and solicitors of the Supreme Court will be required to take an oath of office or affirmation of office. They are no longer required to take an oath of allegiance to the Queen.

PART 3—MAGISTRATES' COURT ACT 1989

- Clause 4 inserts a new section 16(1)(fb) to provide that rules of court may be made with respect to the referral of any civil proceeding, or any part of a civil proceeding, for a pre-hearing conference and with respect to the conduct of pre-hearing conferences.
- Clause 5 inserts a new section 19A to provide that the principal registrar must ensure that all proceedings in the Court are recorded in accordance with the rules.
- Clause 6 substitutes a new section 107(1) to provide that a magistrate or registrar may refer a civil proceeding or part of a civil proceeding for a pre-hearing conference in accordance with the

rules. This clause also makes consequential amendments to section 107(2) to reflect the new section 107(1).

- Clause 7 amends section 140(1) to provide the Governor in Council with power to make regulations to prescribe fees and charges payable for the supply by the Court of any recording or any part of a recording of a proceeding.
- Clause 8 inserts a new section 143 to provide that rules of court may be made in relation to the recording of proceedings in the Court.
- Clause 9 omits a reference in section 120(1) of the **Children's Court Act 1973** because that Act has been repealed.

PART 4—SUPREME COURT ACT 1986

- Clause 10 inserts new sub-section (3A) in section 17A to require that an appeal to the Court of Appeal from an order made by the Trial Division constituted by a judge on an appeal under section 148(1)(b) of the **Victorian Civil and Administrative Tribunal Act 1998** or under section 92 or 109 of the **Magistrates' Court Act 1989** can only be made with leave of the Court of Appeal or by leave of the Judge constituting the Trial Division. The clause also inserts a new sub-section (3B) providing that sub-section (3A) only applies to orders made after the commencement of this clause.
- Clause 11 makes some statute law revision amendments to substitute a reference to the now outdated General Rules of Procedure in Civil Proceedings 1986 to Chapter I of the Rules of the Supreme Court. It also corrects some spelling errors in the Act as well as inserting a new Part heading. A number of spent provisions in the Act and Schedule are repealed.

PART 5—VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL ACT 1998

- Clause 12 inserts a definition of "reserve judge" in section 3. It also amends the definition of "Vice President" to include reserve judges who have been appointed under section 11A.
- Clause 13 inserts a new section 11A to provide that the President of VCAT may request the Minister to appoint a reserve judge of the County Court as a Vice President of VCAT on a short term

basis. The Minister may, following consultation with the Chief Judge of the County Court, appoint a reserve judge as a Vice President for a period not exceeding 3 months. The appointment does not affect the appointee's tenure of office or status as a reserve judge.

Clause 14 contains some amendments consequential to those contained in clause 13. Clause 14 amends section 16(1) because a reserve judge of the County Court is not appointed to VCAT by the Governor in Council. Clause 14 also amends section 21(1) to provide that a reserve judge's office as a Vice President of VCAT becomes vacant if he or she ceases to hold office as a reserve judge.

Clause 15 deals with the suspension of non-judicial members. At present, section 22(1) provides that the Minister, with the approval of the President, may suspend a non-judicial member from office, if the Minister believes that there are grounds for removal of the member from office. This clause amends section 22(1) to provide that the President, with the approval of the Minister, may suspend a non-judicial member if the President believes that there may be grounds for removal from office. Clause 15 also makes a consequential amendment to section 23(1) to reflect the amendments to section 22(1). This clause also substitutes section 23(8) to provide that if the Minister decides not to recommend removal of a suspended member, the Minister must inform the President as soon as practicable after receiving the report of the investigation and the President must lift the suspension.

Clause 16 deals with the validity of proceedings and is related to clause 17, which inserts a new section 25A. This clause amends section 25 to provide that a decision of the Tribunal is not invalid only because a member or former member represents a party in a proceeding in contravention of section 25A.

Clause 17 inserts a new section 25A. This new section provides that a member or a former member of VCAT cannot represent a party in a proceeding in any of the lists in which the member sits or has sat. A member is disqualified from appearing before the relevant list or lists during the term of their appointment and for a further two years following the cessation of their appointment.

- Clause 18 amends section 68(3) to provide that if an application fee is not paid at the time of lodgment the Tribunal is to take no further action in respect of the application. The section currently provides that the application is deemed not to have been lodged when the fee is not paid at the time of lodging. This clause also substitutes a new section 68(4) which provides that if the fee is not paid within 30 days after the day on which the application is lodged the Tribunal may make an order striking out the proceeding unless the fee has been waived, or the fee has been reduced and the reduced fee paid, or the applicant has made a request for a waiver or reduction of the fee and the request is still under consideration.
- Clause 19 amends section 75(3) to add senior members who are legal practitioners to the class of members who may summarily dismiss or strike out proceedings that are an abuse of process.
- Clause 20 amends section 78(1) to allow the Tribunal to dismiss or strike out a proceeding if a party fails to attend a mediation or the hearing of the proceeding.
- Clause 21 amends section 89 to provide that the mediator may require a party to attend the mediation either personally or by representative who has authority to settle the proceeding on behalf of the party. Currently only the member or principal registrar who refers a proceeding for mediation has this power.
- Clause 22 amends section 90 to provide that where mediation is successful the mediator must notify the principal registrar, rather than the Tribunal, that the parties have agreed to settle.
- Clause 23 amends section 101(5) to restrict the power under section 101(2) (to direct that a hearing be held in private) to the presiding member.
- Clause 24 inserts a new section 111(3) to provide that if a party fails to attend an assessment of costs causing an adjournment and another party incurs additional costs due to the adjournment, the principal registrar may order that the party who failed to attend pay the other party's additional costs. The clause also inserts a new section 111(4) which provides that an order made under this section can be enforced under section 121 as if it were a monetary order of the Tribunal. The clause also provides that if

the principal registrar makes an order for costs the party subject to the order may require the principal registrar to refer the order to the Tribunal for review. The right to seek review must be exercised within 14 days after the day on which the order is made. The principal registrar must inform the party of the right to have the order referred to the Tribunal for review and may stay the operation of the order pending review. No fee is payable for a referral of the order. On review the Tribunal may, by order, confirm, vary or set aside the order of the principal registrar.

- Clause 25 amends section 124(2) to expand the class of members who may make a declaration from judicial members (President and Vice Presidents) to presidential members (President, Vice Presidents and Deputy Presidents).
- Clause 26 amends section 137(10) to allow any judicial member to make an order for contempt. At present the power is only exercisable by the President. This clause also repeals section 137(11). That provision refers to section 46 of the **Public Prosecutions Act 1994**, which has been repealed.
- Clause 27 is a statute law revision provision. It substitutes a reference to "presiding member" in clause 23 of Schedule 1 with "person presiding", as the person presiding at a compulsory conference may be a registrar rather than a member of the Tribunal.

