



Law and Justice Legislation Amendment Act 1999

No. 125, 1999



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**An Act to amend various Acts relating to law and
justice, and for related purposes**

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No. 125, 1999

An Act to amend various Acts relating to law and justice, and for related purposes

[Assented to 13 October 1999]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Law and Justice Legislation Amendment Act 1999*.

2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

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- (2) Item 1 of Schedule 2 is taken to have commenced on 9 October 1996, immediately after the commencement of section 2 of the *Australian Law Reform Commission (Repeal, Transitional and Miscellaneous) Act 1996*.
 - (3) Item 2 of Schedule 2 is taken to have commenced on 1 January 1998, immediately after the commencement of Schedule 1 to the *Australian Law Reform Commission (Repeal, Transitional and Miscellaneous) Act 1996*.
 - (4) Schedule 4 is taken to have commenced on 16 December 1996, immediately after the commencement of Schedule 1 to the *Bankruptcy Legislation Amendment Act 1996*.
 - (5) Schedule 5 is taken to have commenced on 23 June 1993, immediately after the commencement of section 123 of the *Corporate Law Reform Act 1992*.
 - (6) Schedule 12 is taken to have commenced on 17 April 1997, immediately after the commencement of Schedule 9 to the *Law and Justice Legislation Amendment Act 1997*.
 - (7) Item 1 of Schedule 14 is taken to have commenced on 25 May 1997, immediately after the commencement of item 28 of Schedule 16 to the *Workplace Relations and Other Legislation Amendment Act 1996*.
 - (8) Item 2 of Schedule 14 is taken to have commenced on 25 May 1997, immediately after the commencement of item 60 of Schedule 16 to the *Workplace Relations and Other Legislation Amendment Act 1996*.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Administrative Appeals Tribunal Act 1975

1 Paragraph 49(1)(d)

Repeal the paragraph, substitute:

- (d) not fewer than 3 other members or more than:
 - (i) unless subparagraph (ii) applies, 10 other members; or
 - (ii) if a higher number than 10 is prescribed by the regulations for the purposes of this subparagraph—that higher number of members.

2 Section 50

Repeal the section, substitute:

50 Qualifications for appointment

A person is not to be appointed as a member referred to in paragraph 49(1)(d) unless he or she:

- (a) has had extensive experience at a high level in industry, commerce, public administration, industrial relations, the practice of a profession or the service of a government or of an authority of a government; or
- (b) has an extensive knowledge of administrative law or public administration; or
- (c) has had direct experience, and has direct knowledge, of the needs of people, or groups of people, significantly affected by government decisions.

3 At the end of paragraphs 51(1)(a), (b), (c), (e) and (f)

Add “and”.

4 Before paragraph 51(1)(a)

Insert:

- (aa) to keep the Commonwealth administrative law system under review, monitor developments in administrative law and

recommend to the Minister improvements that might be made to the system; and

- (ab) to inquire into the adequacy of the procedures used by authorities of the Commonwealth and other persons who exercise administrative discretions or make administrative decisions, and consult with and advise them about those procedures, for the purpose of ensuring that the discretions are exercised, or the decisions are made, in a just and equitable manner; and

5 Paragraph 51(1)(d)

Repeal the paragraph, substitute:

- (d) to inquire into:
 - (i) the qualification required for membership of authorities of the Commonwealth, and the qualifications required by other persons, engaged in the review of administrative decisions; and
 - (ii) the extent of the jurisdiction to review administrative decisions that is conferred on those authorities and other persons; and
 - (iii) the adequacy of the procedures used by those authorities and other persons in the exercise of that jurisdiction; and to consult with and advise those authorities and other persons about the procedures used by them as mentioned in subparagraph (iii) and recommend to the Minister any improvements that might be made in respect of any of the matters referred to in subparagraphs (i), (ii) and (iii); and

6 Paragraph 51(1)(g)

Repeal the paragraph, substitute:

- (g) to facilitate the training of members of authorities of the Commonwealth and other persons in exercising administrative discretions or making administrative decisions; and
- (h) to promote knowledge about the Commonwealth administrative law system; and
- (i) to consider, and report to the Minister on, matters referred to the Council by the Minister.

7 At the end of section 51

Add:

- (3) If the Council holds an inquiry, or gives any advice, referred to in paragraph (1)(ab), the Council must give the Minister a copy of any findings made by the Council in the inquiry or a copy of the advice, as the case may be.

8 After section 51

Insert:

51A Minister may give directions to the Council

The Minister may, by writing given to the President of the Council, give directions to the Council in respect of the performance of its functions or the exercise of its powers and the Council must comply with any such directions.

51B Minister may refer matters to the Council

The Minister may, by writing given to the President of the Council, refer matters to the Council for inquiry and report.

51C Reports by the Council

- (1) When the Council concludes its consideration of:
 - (a) a matter relating to a project in respect of which the Council has determined that a report is to be prepared; or
 - (b) a matter referred by the Minister to the Council for inquiry and report;the Council is to prepare a report on the matter and give the report to the Minister.
- (2) The Minister must cause a copy of a report so given to be laid before each House of the Parliament within 15 sitting days of that House after the report is received by the Minister.

9 Section 52

Omit "An appointed member", substitute "Subject to this section, an appointed member".

10 At the end of section 52

Add:

- (2) An instrument of appointment of a person as an appointed member may state that the person is appointed for the purposes of a particular project specified in the instrument that is being, or is to be, undertaken by the Council.
- (3) If an instrument of appointment of a person contains a statement as mentioned in subsection (2), subsection (1) does not apply to the appointment but:
 - (a) the person is to be appointed for such period, not exceeding 3 years, as is specified in the instrument of appointment; and
 - (b) the person is to take part in the project and has the rights of a member only for the purposes of taking part in the project; and
 - (c) the Governor-General may at any time, by writing, terminate the appointment; and
 - (d) if the appointment has not previously ended under paragraph (a) or under section 54 or 55 or been terminated under paragraph (c), it ends when the President of the Council certifies in writing that the Council has finished the project; and
 - (e) when the appointment ends or is terminated, the person is eligible for reappointment, whether for the purpose of taking part in the same project or another project or otherwise.

Schedule 2—Amendment of the Australian Law Reform Commission (Repeal, Transitional and Miscellaneous) Act 1996

1 Subsections 2(2) and (3)

Repeal the subsections, substitute:

- (2) Schedule 1 commences immediately after the *Commonwealth Authorities and Companies Act 1997* commences.

2 Items 1, 2, 3, 5, 6 and 11 of Schedule 1

Omit “1996”, substitute “1997”.

Schedule 3—Amendment of the Australian Protective Service Act 1987

1 After section 25

Insert:

25A Director may charge for certain services

- (1) If services are provided by the Protective Service at the request of a person other than:
 - (a) a person holding office under the Commonwealth; or
 - (b) an authority (as defined by subsection 6(5)) of the Commonwealth or a member or officer of such an authority;the Director may charge for the services.
- (2) A charge made under subsection (1) must be an amount reasonably related to the cost of providing the relevant services.

Schedule 4—Amendment of the Bankruptcy Legislation Amendment Act 1996

1 Item 86 of Schedule 1

Repeal the item, substitute:

86 Subsection 20J(2)

After “prescribed” (last occurring), insert “by the regulations”.

Schedule 5—Amendment of the Corporate Law Reform Act 1992

1 Schedule 1

Omit:

Paragraph 1318(5)(c):

substitute:

Paragraph 1318(5)(c)

Repeal the paragraph, substitute:

Schedule 6—Amendment of the Evidence Act 1995

1 Section 5 (table)

After:

Section 155 Official records

insert:

Section 155A Commonwealth documents

2 Section 5 (table)

Omit “Commonwealth records”, substitute “Commonwealth records, postal articles sent by Commonwealth agencies and certain Commonwealth documents”.

3 At the end of section 47

Add:

Note: Section 182 gives this section a wider application in relation to Commonwealth records and certain Commonwealth documents.

4 Paragraph 48(4)(b)

Omit “adducing oral evidence”, substitute “adducing from a witness evidence”.

5 Section 48 (note)

Omit “Note”, substitute “Note 1”.

6 At the end of section 48

Add:

Note 2: Section 182 gives this section a wider application in relation to Commonwealth records and certain Commonwealth documents.

7 At the end of section 49

Add:

Note: Section 182 gives this section a wider application in relation to Commonwealth records and certain Commonwealth documents.

8 Paragraph 50(1)(b)

Omit “volume and complexity”, substitute “volume or complexity”.

9 Section 51 (at the end of the note)

Add “and certain Commonwealth documents”.

10 At the end of subsection 59(2) (before the note)

Add:

- (3) Subsection (1) does not apply to evidence of a representation contained in a certificate or other document given or made under regulations made under an Act other than this Act to the extent to which the regulations provide that the certificate or other document has evidentiary effect.

11 Paragraph 63(2)(a)

Omit “oral”.

12 Paragraph 64(2)(a)

Omit “oral”.

13 Paragraph 65(8)(a)

Omit “oral”.

14 At the end of section 76 (before the note)

Add:

- (2) Subsection (1) does not apply to evidence of an opinion contained in a certificate or other document given or made under regulations made under an Act other than this Act to the extent to which the regulations provide that the certificate or other document has evidentiary effect.

15 Paragraph 82(a)

Omit “orally”.

16 Section 147 (at the end of the note)

Add “and certain Commonwealth documents”.

17 Section 149 (at the end of the note)

Add “and certain Commonwealth documents”.

18 Section 152 (at the end of the note)

Add “and certain Commonwealth documents”.

19 After section 155

Insert:

155A Evidence of Commonwealth documents

- (1) Evidence of a Commonwealth document may be adduced by producing a document that purports to be, or to be a copy of or extract from, the Commonwealth document that is certified to be the Commonwealth document, or to be a true copy or extract, as the case may be, by:
 - (a) a Minister; or
 - (b) a person who might reasonably be supposed to have custody of the Commonwealth document.
- (2) If such a document is produced, it is presumed, unless evidence that is sufficient to raise doubt about the presumption is adduced, that:
 - (a) the document is the Commonwealth document, or the copy of or extract from the Commonwealth document, that it purports to be; and
 - (b) the Minister or person certified the document as being the Commonwealth document or a true copy or extract, as the case requires.

Note 1: The NSW Act has no equivalent provision for section 155A.

Note 2: Section 5 extends the application of this section to proceedings in all Australian courts.

20 Section 160 (at the end of the note)

Omit “Commonwealth records”, substitute “postal articles sent by a Commonwealth agency”.

21 Subsection 163(2) (definition of *Commonwealth agency*)

Repeal the definition.

22 Division 1 of Part 4.6 (at the end of the note to the heading)

Add “and certain Commonwealth documents”.

23 Division 2 of Part 4.6 (at the end of the note to the heading)

Add “and certain Commonwealth documents”.

24 After subsection 182(4)

Insert:

- (4A) Section 160 applies in relation to postal articles sent by a Commonwealth agency as if that section applied to the extent provided for in section 5.
- (4B) Sections 47, 48, 49, 51, 147, 149 and 152, Divisions 1 and 2 of Part 4.6 and section 183 apply in relation to a Commonwealth document that:
 - (a) is in the possession of a Commonwealth entity; or
 - (b) has been destroyed but was, immediately before its destruction, in the possession of a Commonwealth entity or someone else to whom it had been given by a Commonwealth entity for destruction;as if the section or Division applied to the extent provided for in section 5.

25 Subsection 182(1) (table)

Omit “160,”.

26 Subsection 182(1) (table)

Omit “Postal articles, telexes”, substitute “Telexes”.

Note: The heading to section 182 is altered by adding at the end “, postal articles sent by Commonwealth agencies and certain Commonwealth documents”.

27 Section 183 (at the end of the note)

Add “and certain Commonwealth documents”.

28 Part 1 of the Dictionary at the end of the Act

Insert:

Commonwealth agency means:

- (a) a Department within the meaning of the *Public Service Act 1922*; or
- (b) a House of the Parliament; or
- (c) a person or body holding office, or exercising power, under or because of the Constitution or a law of the Commonwealth; or
- (d) a body or organisation, whether incorporated or unincorporated, established for a public purpose:
 - (i) by or under a law of the Commonwealth or of a Territory (other than the Australian Capital Territory, the Northern Territory or Norfolk Island); or
 - (ii) by the Governor-General; or
 - (iii) by a Minister.

29 Part 1 of the Dictionary at the end of the Act

Insert:

Commonwealth document means:

- (a) a document in the nature of a form, application, claim or return, or any document of a similar kind, that has, in accordance with a Commonwealth law, or in connection with the provision of money or any other benefit or advantage by the Commonwealth, been filed or lodged with a Commonwealth entity or given or sent (including sent by a form of electronic transmission) to a Commonwealth entity; and
- (b) any of the following documents:
 - (i) a report of the crew and passengers on a ship or aircraft that has been communicated to the Australian Customs Service under section 64AC of the *Customs Act 1901*;
 - (ii) a ship's inward cargo adjustment report delivered to an officer under subregulation 46(3) of the Customs Regulations;

- (iii) an entry made under the *Customs Act 1901* or *Excise Act 1901* in relation to goods;
- (iv) a form or statement given to a Collector under regulation 41 of the Customs Regulations;
- (v) a passenger card given to an officer under subregulation 3.01(3) of the Migration Regulations;
- (vi) a report referred to in section 46 of the *Ozone Protection Act 1989* that has been given under that section to the Minister administering that Act;
- (vii) any other document prescribed by the regulations for the purposes of this paragraph.

30 Part 1 of the Dictionary at the end of the Act

Insert:

Commonwealth entity means:

- (a) a Department within the meaning of the *Public Service Act 1922*; or
- (b) the Parliament, a House of the Parliament, a committee of a House of the Parliament or a committee of the Parliament; or
- (c) a person or body other than a Legislative Assembly holding office, or exercising power, under or because of the Constitution or a law of the Commonwealth; or
- (d) a body or organisation other than a Legislative Assembly, whether incorporated or unincorporated, established for a public purpose:
 - (i) by or under a law of the Commonwealth or of a Territory (other than the Australian Capital Territory, the Northern Territory or Norfolk Island); or
 - (ii) by the Governor-General; or
 - (iii) by a Minister; or
- (e) any other body or organisation that is a Commonwealth owned body corporate.

Schedule 7—Amendment of the Federal Court of Australia Act 1976

1 Subsection 25(3)

Omit “, other than an additional Judge,”.

2 At the end of section 44

Add:

- (2) The Registrar may, by writing signed by him or her, authorise:
 - (a) a Deputy Registrar, a District Registrar or a Deputy District Registrar of the Court; or
 - (b) a member of the Staff of a Registry of the Court;to administer oaths and affirmations for the purposes of the Court.

3 Subsection 45(1)

Repeal the subsection, substitute:

- (1) An affidavit to be used in a proceeding in the Court may be sworn within the Commonwealth or a Territory before:
 - (a) a Judge of the Court, the Registrar, a Deputy Registrar, a District Registrar, a justice of the peace, a commissioner for affidavits or a commissioner for declarations; or
 - (b) a person not mentioned in paragraph (a) who is authorised to administer oaths for the purposes of the Court or for the purposes of the High Court or the Supreme Court of a State or Territory.

4 Subsection 60(1)

Repeal the subsection, substitute:

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;

and, in particular, prescribing the fees to be paid in respect of proceedings in the Court or the service or execution of the process of the Court by officers of the Court.

Schedule 8—Amendment of the High Court of Australia Act 1979

1 After section 48

Insert:

49 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Schedule 9—Amendment of the Judges' Pensions Act 1968

1 Subsection 4(1) (after paragraph (ab) of the definition of *prior judicial service*)

Insert:

- (ac) service as a Judge or acting Judge of the Supreme Court of the Australian Capital Territory;

Schedule 10—Amendment of the Judiciary Act 1903

1 At the end of paragraph 39B(1A)(c)

Add “, other than a matter in respect of which a criminal prosecution is instituted or any other criminal matter”.

2 Subsection 55B(10) (definition of *federal-type jurisdiction*)

Omit all the words from and including “include:”, substitute “include jurisdiction conferred on the court under an Act providing for the acceptance, administration or government of that Territory.”.

3 Subsection 68(3)

After “except by”, insert “a Judge,”.

4 Application

The amendment made by item 3 applies in respect of proceedings pending at the commencement of that item as well as proceedings instituted after that commencement.

Schedule 11—Amendment of the Jury Exemption Act 1965

1 Schedule

Omit:

Members of the Tariff Board

Commonwealth Police Officers and special Commonwealth Police
Officers

substitute:

Members and special members of the Australian Federal Police

Schedule 12—Amendment of the Law and Justice Legislation Amendment Act 1997

1 Item 2 of Schedule 9

Omit “on the second”, substitute “the second”.

Schedule 13—Amendment of the Marriage Act 1961

1 Subsection 51(2A)

Omit “part”, substitute “Part”.

Schedule 14—Amendment of the Workplace Relations and Other Legislation Amendment Act 1996

1 Item 28 of Schedule 16

Repeal the item, substitute:

28 Section 4 (definition of *judge*), subsection 6(5), sections 7, 8 and 9, subsection 15(1), sections 16, 18A, 18B, 18C, 18D, 18F, 18G, 18J, 18L, 18M, 18N, 18S, 18T, 18U, 18W, 18Y, 20, 25, 32ZF, 35, 36, 37E, 37L, 53AA and 53AB and the Schedule

Omit “Chief Judge” (wherever occurring), substitute “Chief Justice”.

Note: The headings to sections 7 and 18W are altered by omitting “**Chief Judge**” and substituting “**Chief Justice**”.

2 Item 60 of Schedule 16

Omit “or of a”, substitute “or a”.

*[Minister’s second reading speech made in—
House of Representatives on 3 December 1998
Senate on 9 August 1999]*

(225/98)
