Civil Law and Justice (Omnibus Amendments) Act 2015

No. 132, 2015

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

Note: An electronic version of this Act is available in ComLaw (http://www.comlaw.gov.au/)

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Civil Law and Justice (Omnibus Amendments) Act 2015

No. 132, 2015

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

[*Assented to 13 October 2015*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Civil Law and Justice (Omnibus Amendments) Act 2015*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	13 October 2015
2. Schedule 1	The day after this Act receives the Royal Assent.	14 October 2015

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Administrative Appeals Tribunal Act 1975

1 At the end of subsection 29AC(1)

Add:

; (c) any other person who is made a party to the review by the enactment that authorised the application.

2 Subsection 35(4)

Omit "another party or parties", substitute "some or all of the parties".

3 Subsection 39A(18)

Omit "a presidential member or senior member, on behalf of the Tribunal,", substitute "the President or an authorised member".

4 Subsections 42A(8) and (8A)

Repeal the subsections, substitute:

(8) If the Tribunal is taken to have dismissed an application under subsection (1B), a party to the proceeding (other than the applicant) may, within the period referred to in subsection (8B), apply to the Tribunal for reinstatement of the application.

(8A) If the Tribunal dismisses an application under subsection (2) (other than an application in respect of a proceeding in which an order has been made under subsection 41(2)), a party to the proceeding may, within the period referred to in subsection (8B), apply to the Tribunal for reinstatement of the application.

(8B) For the purposes of subsections (8) and (8A), the period is:

(a) 28 days after the party receives notification that the application has been dismissed; or

(b) if the party requests an extension—such longer period as the Tribunal, in special circumstances, allows.

5 Section 68

Repeal the section, substitute:

68 Giving documents

(1) A document or thing that is required or permitted by this Act or another enactment to be lodged with, or given to, the Tribunal must be lodged or given in accordance with:

(a) any direction under section 18B; or

(b) regulations made under this Act or the other enactment.

(2) A document that is required or permitted by this Act or another enactment to be given to a person for the purposes of a proceeding before the Tribunal must be given to the person in accordance with:

(a) any direction under section 18B; or

(b) regulations made under this Act or the other enactment.

(3) A direction given under section 18B for the purposes of paragraph (1)(a) or (2)(a) must not be inconsistent with regulations in force for the purposes of paragraph (1)(b) or (2)(b).

(4) Subsections (1) and (2) do not apply to the extent to which this Act or another enactment specifies how a document or thing is to be lodged with or given to the Tribunal, or given to a person, for the purposes of a proceeding before the Tribunal.

6 Savings provision

The amendment of section 68 of the *Administrative Appeals Tribunal Act 1975* made by this Schedule does not affect a direction or regulation in force for the purposes of section 68 immediately before the commencement of the amendment.

A New Tax System (Family Assistance) (Administration) Act 1999

7 Section 129

Repeal the section.

Bankruptcy Act 1966

8 After subsection 54(6)

Insert:

(6A) Subsection (6) does not prevent the making available of information as required by law.

9 After subsection 55(11)

Insert:

(11A) Subsection (11) does not prevent the making available of information as required by law.

10 Paragraph 139ZA(3)(a)

Omit “lodged with the Official Receiver’s office”, substitute “given to the Inspector-General”.

11 Subsection 139ZA(4)

Repeal the subsection.

12 Subsection 139ZA(5)

Omit “lodged”, substitute “received”.

13 Subsection 139ZE(1)

Omit “to the bankrupt, to the trustee and to the Official Receiver”, substitute “, to the bankrupt and the trustee”.

14 Paragraph 139ZIO(3)(a)

Omit “lodged with the Official Receiver’s office”, substitute “given to the Inspector-General”.

15 Subsection 139ZIO(4)

Repeal the subsection.

16 Subsection 139ZIO(5)

Omit “lodged”, substitute “received”.

17 Paragraph 139ZIS(1)(d)

Omit “trustee; and”, substitute “trustee;”.

18 Paragraph 139ZIS(1)(e)

Repeal the paragraph.

19 After subsection 139ZM(1)

Insert:

(1A) The application must be made:

(a) not later than 60 days after the day the notice under section 139ZL was given to the applicant; or

(b) if the applicant is another interested person—not later than 60 days after the day the applicant became aware that the notice has been given.

20 After subsection 139ZS(1)

Insert:

(1A) The application must be made:

(a) not later than 60 days after the day the notice under section 139ZQ was given to the applicant; or

(b) if the applicant is another interested person—not later than 60 days after the day the applicant became aware that the notice has been given.

21 Paragraph 149K(3)(a)

Omit "lodged with the Official Receiver's office", substitute "given to the Inspector-General".

22 Subsection 149K(4)

Repeal the subsection.

23 Subsection 149K(5)

Omit "lodged", substitute "received".

24 Subsection 225(4)

Omit "signed in accordance with section 203".

Child Support (Registration and Collection) Act 1988

25 Section 96B

Repeal the section, substitute:

96B Notice of application for AAT second review

The AAT Act applies in relation to an application referred to in paragraph 96A(a) as if the reference in paragraph 29AC(1)(b) of the AAT Act to the person who made the decision were a reference to the Registrar within the meaning of this Act.

Evidence Act 1995

26 Division 1A of Part 3.10 (heading)

Repeal the heading, substitute:

Division 1C—Journalist privilege

Note: There is no Division 1A or 1B in this Part. This gap is in order to maintain consistent numbering with the NSW Act, which includes Divisions 1A and 1B.

27 Section 126G (heading)

Repeal the heading, substitute:

126J Definitions

28 Section 126H (heading)

Repeal the heading, substitute:

126K Journalist privilege relating to identity of informant

29 Section 131A (heading)

Repeal the heading, substitute:

131A Extended application of Division 1C

30 Subsections 131A(1) and (1A)

Omit “section 126H”, substitute “section 126K”.

31 Subsection 131A(1A)

Omit “subsection 126H(1)”, substitute “subsection 126K(1)”.

32 Section 131B (heading)

Repeal the heading, substitute:

131B Extended application of Division 1C etc. to all proceedings for Commonwealth offences

33 Section 131B

Omit “Division 1A”, substitute “Division 1C”.

Family Law Act 1975

34 Paragraph 69ZX(4)(a)

Omit “subsection 126H(1)”, substitute “subsection 126K(1)”.

Federal Circuit Court of Australia Act 1999

35 Section 5

Insert:

> ***conveyance*** includes a vehicle, a vessel and an aircraft.
>
> ***dwelling house*** includes a conveyance, or a room in accommodation, in which people ordinarily retire for the night.
>
> ***police officer*** means a member or special member of the Australian Federal Police or a member of the police force or police service of a State or Territory.
>
> ***premises*** includes a place and a conveyance.

36 Section 31

Omit “section 19E of that Act.”, substitute “section 13F of that Act. Section 20A of this Act does not affect this section.”.

37 After section 113

Insert:

113A Making arrests under this Act or warrants

Application

(1) This section applies to any of the following persons (the ***arrester***) who is authorised by this Act, or a warrant issued under this Act or the Rules of Court, to arrest another person (the ***arrestee***):
   (a) the Sheriff of the Federal Circuit Court;
   (b) a Deputy Sheriff of the Federal Circuit Court;
   (c) the Sheriff of a court of a State or Territory;
   (d) a Deputy Sheriff of a court of a State or Territory;
   (e) a police officer.

Power to enter premises

(2) If the arrester reasonably believes the arrestee is on premises, the arrester may enter the premises, using such force as is necessary and reasonable in the circumstances, at any time of the day or night for the purpose of searching the premises for the arrestee or arresting the arrestee.

(3) However, the arrester must not enter a dwelling house between 9 pm one day and 6 am the next day unless he or she reasonably believes that it would not be practicable to arrest the arrestee there or elsewhere at another time.

Use of force

(4) In the course of arresting the arrestee, the arrester:
   (a) must not use more force, or subject the arrestee to greater indignity, than is necessary and reasonable to make the arrest or to prevent the arrestee's escape after the arrest; and
   (b) must not do anything that is likely to cause the death of, or grievous bodily harm to, the arrestee unless the arrester reasonably believes that doing that thing is necessary to protect life or prevent serious injury to another person (including the arrester); and
   (c) if the arrestee is attempting to escape arrest by fleeing—must not do a thing described in paragraph (b) unless:

(i) the arrester reasonably believes that doing that thing is necessary to protect life or prevent serious injury to another person (including the arrester); and

(ii) the arrestee has, if practicable, been called on to surrender and the arrester reasonably believes that the arrestee cannot be arrested in any other way.

Informing the arrestee of grounds for arrest

(5) When arresting the arrestee, the arrester must inform the arrestee of the grounds for the arrest.

(6) It is sufficient if the arrestee is informed of the substance of those grounds, not necessarily in precise or technical language.

(7) Subsection (5) does not apply if:

(a) the arrestee should, in the circumstances, know the substance of the grounds for the arrest; or

(b) the arrestee's actions make it impracticable for the arrester to inform the arrestee of those grounds.

38 Application provision

Section 113A of the *Federal Circuit Court of Australia Act 1999* applies in relation to arrests:

(a) authorised by that Act after the commencement of that section; or

(b) authorised by warrants issued under that Act after that commencement.

Federal Court of Australia Act 1976

39 Section 4

Insert:

Roll has the same meaning as in the *Commonwealth Electoral Act 1918*.

40 Subsections 23BH(1) and (2)

Repeal the subsections, substitute:

(1) The prosecutor may, in accordance with the Rules of Court, amend or replace an indictment in relation to an accused at any time when:
  (a) no date has been set for the start of the trial of the accused on the indictment; or
  (b) the 90 day period ending on the date set for the start of the trial of the accused on the indictment has not started.

Note: A trial starts when the accused is arraigned before a jury (see subsection 23FA(2)).

(2) If the 90 day period ending on the date set for the start of the trial has started, or the trial has started, the prosecutor may only amend or replace the indictment with the leave of the Court.

41 Subsection 23BH(3) (heading)

Repeal the heading.

42 Section 23CA

Repeal the section, substitute:

23CA Pre-trial hearings

If the Court notifies the prosecutor and the accused in writing of a pre-trial hearing in relation to an indictment filed in the Court:
  (a) the prosecutor and the accused must attend the pre-trial hearing; and
  (b) the accused must enter a plea to each count in the indictment that relates to the accused (unless the accused has already done so in a previous pre-trial hearing).

Note: The Court may also order pre-trial disclosure (see subsection 23CD(1)).

43 Subparagraph 23CE(b)(ii)

Before “a written summary”, insert “if the prosecutor cannot obtain such a signed statement—”.

44 Subsection 23DG(1)

Repeal the subsection, substitute:

(1) The Sheriff may prepare a written jury roll for a jury district composed of the Rolls (as on the day the Sheriff begins the

preparation) for each electoral Division that forms part of the jury district.

45 Subsection 23DV(2)

Repeal the subsection, substitute:

(2) A potential juror who is not empanelled as one of the jurors for the trial under section 23DU is taken to be excused by the Court from serving on the jury at the earlier of:

(a) the closing of the session of court at which the jury delivers its verdict on all counts or a judgment of acquittal under subsection 23FH(2) is delivered; or

(b) the day after the end of the 3 month period starting on the day on which a jury is first empanelled as the jury for the trial.

46 Subsection 23EL(1)

Repeal the subsection.

47 Paragraph 23EM(2)(a)

Repeal the paragraph, substitute:

(a) the jury is discharged under subsection 23EL(3) or (5) during the 3 month period starting on the day on which a jury is first empanelled for the trial under section 23DU; and

48 Subsection 23EM(3)

Repeal the subsection, substitute:

(3) If the jury is discharged under subsection 23EL(3) or (5) during the 3 month period starting on the day on which a jury is first empanelled for the trial under section 23DU, the Court may:

(a) direct an officer of the Court to start the process for empanelling a new jury under section 23DU from the same jury panel; and

(b) give any other direction the Court thinks convenient to give in relation to that process.

Note: For example, the Court may direct the officer to make further enquiries as mentioned in section 23DN of persons on the panel or of the Commissioner of the Australian Federal Police.

49 Paragraph 23EM(5)(a)

Repeal the paragraph, substitute:

(a) the following persons cannot be empanelled on the new jury and remain discharged:

(i) any person previously empanelled as one of the jurors for the trial (including any person discharged otherwise than under subsection 23EJ(1) before the direction under paragraph (3)(a) was given);

(ii) any potential juror in the trial discharged before the direction under paragraph (3)(a) was given; and

50 Paragraph 23GB(2)(b)

Omit "paragraph 23CA(1)(b)", substitute "paragraph 23CA(b)".

51 Paragraph 30AE(4)(a)

Repeal the paragraph.

52 Paragraph 30AL(a)

Omit "indictable".

53 Paragraphs 30BF(2)(b) and (5)(b)

Omit "Judge" (wherever occurring), substitute "Judge or magistrate".

54 Application provision

The amendments of section 30BF of the *Federal Court of Australia Act 1976* made by this Schedule apply in relation to an appeal allowed on or after the day the amendments commence, regardless of when the appeal was brought.

Freedom of Information Act 1982

55 Subsection 61A(1) (table item 1)

Repeal the item.

International Arbitration Act 1974

56 Part II (heading)

Repeal the heading, substitute:

Part II—Enforcement of foreign arbitration agreements and awards

57 Subsection 8(4)

Repeal the subsection.

58 Application provision

The repeal of subsection 8(4) of the *International Arbitration Act 1974* by this Schedule applies in relation to the enforcement of a foreign award on or after the day the amendment commences, regardless of when the award was made.

59 Paragraph 8(5)(a)

Omit "that party, being a party to the arbitration agreement in pursuance of which the award was made,", substitute "a party to the arbitration agreement in pursuance of which the award was made".

60 Subsection 22(2) (heading)

Repeal the heading, substitute:

Application of sections other than section 23H and 24

61 After paragraph 22(2)(c)

Insert:

(ca) section 23C;
(cb) section 23D;
(cc) section 23E;
(cd) section 23F;
(ce) section 23G;

62 Subsection 22(3)

Repeal the subsection.

63 Application provision

The amendments of Division 3 of Part III of the *International Arbitration Act 1974* made by this Schedule apply to arbitral proceedings commenced in reliance on an arbitration agreement made on or after the day the amendments commence.

64 Section 30

Repeal the section.

James Hardie (Investigations and Proceedings) Act 2004

65 Subsection 3(1) (definition of *professional confidential relationship privilege*)

Repeal the definition, substitute:

> ***professional confidential relationship privilege*** means privilege under Division 1A of Part 3.10 of the *Evidence Act 1995* (NSW) or a similar law of a State or Territory.

Paid Parental Leave Act 2010

66 Section 239

Repeal the section.

Proceeds of Crime Act 2002

67 Section 338 (definition of *professional confidential relationship privilege*)

Repeal the definition, substitute:

> ***professional confidential relationship privilege*** means privilege under Division 1A of Part 3.10 of the *Evidence Act 1995* (NSW) or a similar law of a State or Territory.

Public Interest Disclosure Act 2013

68 Subsection 23(2)

Omit “section 126H”, substitute “section 126K”.

Social Security (Administration) Act 1999

69 Section 180 (table item 1)

Repeal the item.

Student Assistance Act 1973

70 Section 321

Repeal the section.

[*Minister's second reading speech made in—*
Senate on 25 June 2015
House of Representatives on 15 September 2015]

(111/15)