

# Courts Amendment Bill

## EXPLANATORY MEMORANDUM

### Part 1—Preliminary

*Clause 1* states the purpose of the Act.

*Clause 2* states that the Act comes into operation as proclaimed.

### Part 2—Supreme Court

*Clause 3* refers to the Constitution Act as the Principal Act in this Part.

*Clause 4* reduces the retiring age of Supreme Court Judges from 72 to 70.

*Clause 5* permits a Supreme Court Judge to retire from full-time duty, but to be recalled to duty from time to time by the Attorney-General upon the certificate of the Chief Justice.

*Clause 6* makes miscellaneous amendments to the Supreme Court Act:

*Sub-clause (2)* replaces section 28 with a more concise section which establishes the Council of Judges.

*Sub-clause (3)* reduces the retiring age of Masters from 72 to 70.

### Part 3—County Court

*Clause 7* refers to the County Court as the Principal Act in this Part.

*Clause 8* reduces the retiring age of County Court Judges and Masters from 72 to 70.

*Clause 9* permits a County Court Judge to retire from full-time duty and to be recalled to duty from time to time by the Attorney-General upon the certificate of the Chief Judge.

*Clause 10* allows the appointment of an acting Chief Judge.

*Clause 11* deals with the constitution and jurisdiction of the Court.

*Sub-clause (3)* formally constitutes the Court as consisting of the Judges, Masters and Registrar of the Court of Melbourne.

*Sub-clause (4)* confers a general jurisdiction upon the County Court to hear any matter which is not specifically excluded by an Act and is within the jurisdictional limit, which is retained at the existing levels of \$100 000 in personal injury matters and \$50 000 in all other matters.

*Clause 12* increases the jurisdictional limit in all matters to \$100 000.

*Clause 13* confers upon the County Court the same jurisdiction in relation to contempt as the Supreme Court.

*Clause 14* provides that the Court may determine by whom and to what extent any costs of proceedings are to be paid, including the power to make an order requiring a legal practitioner to pay those costs.

*Clause 15* establishes a Council of County Court Judges.

*Clause 16* makes miscellaneous amendments to the Act.

*Sub-paragraph (a)* deals with removal of a Judge only upon the address of both Houses of the Legislature.

*Sub-paragraph (b)* removes the power of a Judge to order a new trial in civil proceedings in which a jury has given a verdict.

*Sub-paragraphs (c) and (d)* ensure that an appeal to the Full Court of the Supreme Court is available in all matters.

*Sub-paragraph (e)* removes the requirement for approval of the Attorney-General to rules made by the Judges of the County Court.

*Clause 17* confers jurisdiction under Parts IV. and V. of the *Administration and Probate Act 1958* upon the County Court.

*Clause 18* amends the retirement and removal provisions under the *Administrative Appeals Tribunal Act 1984*.

*Clause 19* confers jurisdiction upon the County Court to the extent of its jurisdictional limit under the *Property Law Act 1958*.

*Clause 20* confers jurisdiction upon the County Court to the extent of its jurisdictional limit under the *Settled Land Act 1958*.

*Clause 21* confers jurisdiction upon the County Court to the extent of its jurisdictional limit under the *Strata Titles Act 1967*.

*Clause 22* confers jurisdiction upon the County Court to the extent of its jurisdictional limit under the *Transfer of Land Act 1958*.

*Clause 23* confers jurisdiction upon the County Court to the extent of its jurisdictional limit under the *Cluster Titles Act 1974*.

*Clause 24* confers jurisdiction upon the County Court to the extent of its jurisdictional limit under the *Trustee Act 1958*.

#### **Part 4—Magistrates' Court**

*Clause 25* refers to the *Magistrates' Court Act 1971* as the Principal Act.

*Clause 26* establishes a Council of Magistrates.

*Clause 27* confers certain powers on the Magistrates' Court.

*Sub-clause (1)* gives the Chief Magistrate power to assign duties to Magistrates.

*Sub-clause (2)* confers general rule making powers upon the Magistrates, subject to the retention of a regulation making power in certain matters for the Governor in Council.

*Sub-clause (3)* enables the County Court to transfer a matter to the Magistrates' Court upon application of the parties.

*Clause 28* confers rule making power upon the Magistrates under the *Magistrates (Summary Proceedings) Act 1975*.

*Clause 29* changes the title of "Stipendiary Magistrate" to "Magistrate" in the Acts set out in the Schedule.

## **Part 5—General Amendment of Acts**

*Clause 30* makes certain amendments to the Charities Act which increase the value of the estates for which the Attorney-General may grant a *cy-pres* application from \$25 000 to \$50 000 and allows for further increases by regulation.

*Clause 31* replaces section 5 of the *Instruments Act 1958* and clarifies the requirements for the Court to give leave to enter an appearance to a writ in the circumstances set out.

*Clause 32* makes certain amendments to the *Auction Sales Act 1958* which are designed to increase administrative efficiency.

*Clause 33* amends the Public Trustee Act to give the Chief Administrator of the Law Department power to authorize the purchase of certain furniture, fittings and equipment out of the common fund.

