

# DISTRICT COURTS LEGISLATION AMENDMENT BILL 1996

## EXPLANATORY NOTES

### GENERAL OUTLINE

#### Objective of the Legislation

The Bill, which amends the *District Courts Act 1967* and the *Criminal Justice Act 1989*, has the following objectives:

- (i) to enhance the security of tenure of District Court judges;
- (ii) to retain existing senior judges of the District Courts, but prevent any further appointments of senior judges; and
- (iii) to enable appeals to be heard by any District Court.

#### Means of Achieving Policy Objectives

In relation to the first objective, the amendment inserts a provision that District Court judges may only be removed by the Governor on the address of the Legislative Assembly, and extends section 28 of the *Criminal Justice Act* to District Court judges.

As to the second objective, the provision allowing the appointment of senior judges has been removed, but a new provision enables existing senior judges to use the title while they continue to hold office.

The third objective is achieved by amendments to *Part 8* of the *District Courts Act* enabling appeals to be heard by any District Court, instead of just Brisbane, Townsville, Rockhampton, and other places prescribed by regulation.

**Alternative Means of Achieving Policy Objectives**

In relation to the first objective, there is no real alternative to amending the *District Courts Act 1967* and the *Criminal Justice Act 1989*.

In relation to the second objective, the provision allowing the appointment of senior judges could have been retained, but the Government could have agreed not to appoint further senior judges. Amending the *District Courts Act 1967* ensures greater certainty in achieving the policy objective.

In relation to the third objective, a regulation could simply have provided that all District Courts are prescribed places for hearing appeals. However, the more logical approach is to amend the *District Courts Act 1967*.

**Estimated Cost of Implementation for Government**

There are no additional costs to Government as a result of the amendments.

**Fundamental Legislative Principles**

The Bill does not breach any fundamental legislative principles.

**Consultation Conducted in Development of the Bill**

The Chief Justice of Queensland, the Chief Judge of the District Courts, the Bar Association of Queensland, the Queensland Law Society, the Criminal Justice Commission, and the Litigation Reform Commission have been consulted.

**NOTES ON PROVISIONS****PART 1—PRELIMINARY**

*Clause 1* provides for the short title.

## **PART 2—AMENDMENT OF DISTRICT COURTS ACT 1967**

*Clause 2* provides for the amendment to the *District Courts Act 1967*.

*Clause 3* replaces section 10, omitting the provision enabling the appointment of senior judges.

*Clause 4* inserts a new section 15, which will now enable District Court judges to only be removed by the Governor on the address of the Legislative Assembly.

*Clause 5* omits section 17(2), which is redundant in view of section 24B of the *Acts Interpretation Act 1954*.

*Clause 6* inserts a new *Part 8 (Appeals to District Courts)*, containing the following sections.

Section 111 (previously section 113) omits the definition of “prescribed place” for the hearing of appeals by District Courts. The omission of this definition is consequent on changes made to the new section 115. The definition of “court” is also removed, as it is unnecessary.

Section 112 (previously section 111(1))—has been redrafted, but the meaning is the same.

Section 113 (previously part of section 111(2))—The second part of old section 111(2) providing for the District Court’s powers, authorities and duties has been retained, although redrafted without change to its meaning. The first part of old section 111(2) has been omitted, as it has been overtaken by more recent provisions regulating appeals from Magistrates Courts to District Courts.

Section 114 (previously section 112(1))—has been redrafted, but the meaning is the same. The old section 112(2) has been omitted, as the procedure of stating a case is no longer used.

Section 115 provides that all District Courts may hear and determine appeals, subject to sections 116 and 117.

Section 116 has been redrafted, but the meaning is the same.

Section 117 has been redrafted but the meaning is the same.

*Clause 7* inserts a new section 137, which enables existing senior judges to continue to use that title while they continue to hold office as a judge. The sunset provision allows for the removal of this section once the remaining senior judges have retired.

### **PART 3—AMENDMENT OF CRIMINAL JUSTICE ACT 1989**

*Clause 8* provides for the amendment to the *Criminal Justice Act 1989*.

*Clause 9* inserts a new heading, and amends section 28 so as to extend the section to District Court judges as well as Supreme Court judges. This will mean that a report of the Criminal Justice Commission is insufficient for an address of the Legislative Assembly for removal from office of a District Court judge.