



New South Wales

Courts and Crimes Legislation Amendment Act 2008 No 53

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New South Wales

Courts and Crimes Legislation Amendment Act 2008 No 53

Act No 53, 2008

An Act to amend certain Acts with respect to courts, court procedure, jurisdiction, rights and avenues of appeal and various criminal offences; and for other purposes.
[Assented to 1 July 2008]

See also the *Children (Criminal Proceedings) Amendment Act 2008* and the *Children (Detention Centres) Amendment Act 2008*.

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *Courts and Crimes Legislation Amendment Act 2008*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsections (2)–(6).
- (2) Schedules 1 and 22 commence on a day or days to be appointed by proclamation.
- (3) Schedules 2 and 20 commence on the date of commencement of section 8 of the *Surveillance Devices Act 2007*.
- (4) Schedules 4, 5, 14, 15 [2]–[6], 16 and 18 commence on 1 September 2008.
- (5) Schedule 8 commences on 1 July 2008.
- (6) Schedule 21 commences on 13 September 2010.

3 Principal amendments

The Acts specified in Schedules 1–21 are amended as set out in those Schedules.

4 Consequential amendments

The *Births, Deaths and Marriages Registration Regulation 2006* is amended as set out in Schedule 22.

5 Repeal of Terrorism Legislation Amendment (Warrants) Act 2005 No 54

The *Terrorism Legislation Amendment (Warrants) Act 2005* is repealed.

6 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Births, Deaths and Marriages Registration Act 1995 No 62

(Section 3)

[1] Section 4 Definitions

Insert “, change of sex” after “change of name” in the definition of *registrable event* in section 4 (1).

[2] Section 32A Definitions

Insert in appropriate order:

recognised details certificate means a certificate issued under section 32DD certifying the sex of a person who has undergone a sex affirmation procedure.

[3] Section 32A

Omit the definition of *sexual reassignment surgery*. Insert instead:

sex affirmation procedure means a surgical procedure involving the alteration of a person’s reproductive organs carried out:

- (a) for the purpose of assisting a person to be considered to be a member of the opposite sex, or
- (b) to correct or eliminate ambiguities relating to the sex of the person.

[4] Sections 32B (1) and (2) and 32C

Omit “sexual reassignment surgery” wherever occurring.

Insert instead “a sex affirmation procedure”.

[5] Sections 32DA–32DD

Insert after section 32D:

32DA Application to register change of sex

- (1) A person who is 18 or above:
 - (a) who is an Australian citizen or permanent resident of Australia, and
 - (b) who lives, and has lived for at least one year, in New South Wales, and
 - (c) who has undergone a sex affirmation procedure, and
 - (d) who is not married, and

- (e) whose birth is not registered under this Act or a corresponding law,
may apply to the Registrar, in a form approved by the Registrar, for the registration of the person's sex in the Register.
- (2) The parents of a child (or a parent if the applicant is the sole parent), or the guardian of a child:
 - (a) who is an Australian citizen or permanent resident of Australia, and
 - (b) who lives, and has lived for at least one year, in New South Wales, and
 - (c) who has undergone a sex affirmation procedure, and
 - (d) who is not married, and
 - (e) whose birth is not registered under this Act or a corresponding law,
may apply to the Registrar, in a form approved by the Registrar, for the registration of the child's sex in the Register.

32DB Documents to accompany application to register change of sex

An application under section 32DA must be accompanied by:

- (a) statutory declarations by 2 doctors, or by 2 medical practitioners registered under the law of another State, verifying that the person the subject of the application has undergone a sex affirmation procedure, and
- (b) such other documents and information as may be prescribed by the regulations.

32DC Decision to register change of sex

- (1) The Registrar is to determine an application under section 32DA by registering the person's change of sex or refusing to register the person's change of sex.
- (2) Before registering a person's change of sex, the Registrar may require the applicant to provide such particulars relating to the change of sex as may be prescribed by the regulations.
- (3) A registration of a person's change of sex must not be made if the person is married.

32DD Issue of recognised details certificate

- (1) This section applies if the Registrar registers a person's change of sex under section 32DC.

- (2) The Registrar must, on application by or on behalf of the person, issue a certificate certifying the particulars contained in the entry in the Register.

[6] Section 32G Use of new birth certificate

Omit the section.

[7] Section 32H Use of old birth certificate

Omit the section.

[8] Section 32J

Insert after section 32I:

32J Effect of registration of change of sex and interstate recognised details certificates

- (1) A person the record of whose sex is registered under this Part is, for the purposes of, but subject to, any law of New South Wales, a person of the sex so registered.
- (2) A person to whom an interstate recognised details certificate relates is, for the purposes of, but subject to, any law of New South Wales, a person of the sex stated in the certificate.
- (3) An *interstate recognised details certificate* is a certificate issued under the law of another State that is prescribed by the regulations for the purposes of this section.

**Schedule 2 Amendment of Children and Young
Persons (Care and Protection) Act 1998
No 157**

(Section 3)

Section 255

Insert after section 254:

255 Use of optical surveillance devices

Section 8 (1) of the *Surveillance Devices Act 2007* does not apply to the installation, use or maintenance of an optical surveillance device:

- (a) in connection with the removal of a child or young person from a place or premises under section 43 or 48, or
- (b) in the execution of a search warrant issued under section 233 (including the use of an optical surveillance device to record any activity in connection with the execution of the warrant), or
- (c) in exercising a function under section 241 (1) (d).

Schedule 3 Amendment of Civil Procedure Act 2005 No 28

(Section 3)

[1] Schedule 2 Constitution and procedure of Uniform Rules Committee

Omit clause 3A (1). Insert instead:

- (1) An ex-officio member of the Uniform Rules Committee may nominate his or her own deputy.
- (1A) Each person referred to in section 8 (1) who is authorised to nominate or appoint some other person as a member of the Uniform Rules Committee may nominate or appoint a deputy for that member.

[2] Schedule 2, clause 3A (2)

Insert “an ex-officio member or” after “In the absence of”.

[3] Schedule 2, clause 3A (3)

Insert after clause 3A (2):

- (3) In this clause, *ex-officio member* means the Chief Justice of the Supreme Court, the President of the Court of Appeal, the Chief Judge of the Land and Environment Court, the Chief Judge of the District Court or the Chief Magistrate, but does not include any of their nominees under section 8 (1).

[4] Schedule 2, clause 6 (6)

Omit “for the member of the Uniform Rules Committee referred to in section 8 (1) (a)”.

Schedule 4 Amendment of Community Land Management Act 1989 No 202

(Section 3)

[1] Sections 87 (6), 100 (5), 105 (4) and 108 (1)

Omit “Supreme Court” wherever occurring. Insert instead “District Court”.

[2] Schedule 7 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Courts and Crimes Legislation Amendment Act 2008

[3] Schedule 7, clause 6

Insert after clause 5:

6 Pending appeals

An appeal to the Supreme Court for which a hearing date had been allocated before the commencement of Schedule 4 to the *Courts and Crimes Legislation Amendment Act 2008* is to be determined as if that Act had not been enacted.

Schedule 5 Amendment of Consumer, Trader and Tenancy Tribunal Act 2001 No 82

(Section 3)

[1] Section 67 (1)–(6)

Omit “Supreme Court” wherever occurring. Insert instead “District Court”.

[2] Section 69 Original decision to operate unless otherwise ordered

Omit “Supreme Court” from section 69 (2) (a). Insert instead “District Court”.

[3] Schedule 6 Savings, transitional and other provisions

Insert after clause 1 (1):

- (1A) The regulations may also contain provisions of a savings or transitional nature consequent on the enactment of the *Courts and Crimes Legislation Amendment Act 2008*.

[4] Schedule 6

Insert at the end of the Schedule with appropriate Part and clause numbering:

Part Provision consequent on enactment of Courts and Crimes Legislation Amendment Act 2008

Pending appeals

An appeal to the Supreme Court for which a hearing date had been allocated before the commencement of Schedule 5 to the *Courts and Crimes Legislation Amendment Act 2008* is to be determined as if that Act had not been enacted.

Schedule 6 Amendment of Crimes Act 1900 No 40

(Section 3)

[1] Part 6B Terrorism

Omit the introductory note to the Part.

[2] Section 310L

Insert after section 310K:

310L Repeal of Part

This Part is repealed on 13 September 2010.

Schedule 7 Amendment of Crimes (Administration of Sentences) Act 1999 No 93

(Section 3)

[1] Part 2, Division 4

Omit the Division. Insert instead:

Division 4 Full-time detainees received from Australian Capital Territory

42 Definitions

In this Division:

Australian Capital Territory Act means the *Crimes (Sentence Administration) Act 2005* of the Australian Capital Territory.

Australian Capital Territory direction means a direction issued under section 26 of the Australian Capital Territory Act.

chief executive, escort officer and *full-time detainee* have the same meanings as they have in the Australian Capital Territory Act.

43 Application of Division

This Division does not apply to a full-time detainee who is in custody in a correctional centre in New South Wales pursuant to a transfer effected under the *Prisoners (Interstate Transfer) Act 1982*.

44 Conveyance and detention of full-time detainees from ACT

- (1) If an escort officer has a full-time detainee in custody in accordance with the terms of an Australian Capital Territory direction, it is lawful for the escort officer to hold and deal with the detainee in accordance with those terms.
- (2) It is the duty of the general manager of a correctional centre or any other officer doing duty at a correctional centre to accept custody of any full-time detainee the subject of an Australian Capital Territory direction.
- (3) The full-time detainee is to be held in custody in a correctional centre for so long as is necessary for the detainee's sentence referred to in the Australian Capital Territory direction to be executed in accordance with that direction.

- (4) Nothing in this section prevents the early release of a full-time detainee by reason of the operation of any law of the Commonwealth, or of the Australian Capital Territory, relating to the release of full-time detainees.
- (5) Until released from custody or delivered into the custody of an escort officer under an Australian Capital Territory direction, a full-time detainee may be dealt with as if the detainee's sentence were a sentence passed under a law of New South Wales.
- (6) Subsection (5) is subject to the provisions of the Australian Capital Territory Act.

45 Return of full-time detainees to ACT

- (1) If an escort officer presents to a general manager of a correctional centre an Australian Capital Territory direction in respect of a full-time detainee held in custody in the correctional centre under this Division:
 - (a) for the delivery of the full-time detainee into the custody of the escort officer, and
 - (b) for the conveyance of the full-time detainee to the Australian Capital Territory,the general manager of the correctional centre must deliver the full-time detainee into the custody of the escort officer.
- (2) The direction is sufficient authority for the escort officer to convey the full-time detainee in custody to the Australian Capital Territory.

46 Evidentiary provision

A document purporting to be an Australian Capital Territory direction and to be under the hand of the chief executive is admissible in any proceedings and is in all courts exercising jurisdiction in New South Wales and on all occasions evidence of the particulars stated in the document.

[2] Section 257 Disclosure of information

Insert after section 257 (b):

- (b1) in connection with the administration or execution of a law of some other State or Territory in its application to an inmate who has been, or is to be, transferred to that State or Territory pursuant to:
 - (i) a direction referred to in section 45, or

- (ii) a warrant referred to in section 49, or
- (iii) an order of transfer under the *Prisoners (Interstate Transfer) Act 1982*, or

[3] Section 257 (2)

Insert at the end of section 257:

- (2) Information may be disclosed as referred to in subsection (1) (b1) despite anything to the contrary in the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*.

Schedule 8 Amendment of Crimes (Domestic and Personal Violence) Act 2007 No 80

(Section 3)

[1] Section 3 Definitions

Omit “or” from paragraph (b) of the definition of *court* in section 3 (1).

[2] Section 3 (1)

Omit paragraph (c) of the definition of *court*.

[3] Section 84 Review and appeal provisions concerning making etc of apprehended violence orders

Insert after section 84 (2) (a):

- (a1) by the applicant for an apprehended violence order (or, if the applicant was a police officer, either the applicant or the person for whose protection the order would have been made) against the dismissal of the application by the Local Court or the Children’s Court, or

[4] Section 84 (5A)

Insert after section 84 (5):

- (5A) Part 6 (Interim court orders) applies to proceedings with respect to an appeal to the District Court under subsection (2) in the same way as it applies to an application to a Local Court or the Children’s Court under Part 4 or 5.

[5] Section 91 Courts authorised to make orders and determine applications

Omit section 91 (1) (c).

[6] Section 92 Jurisdiction of District Court to issue AVO following dismissal of application by Local Court or Children’s Court

Omit the section.

[7] Section 99 Costs

Omit section 99 (6).

Schedule 9 Amendment of Crimes (Serious Sex Offenders) Act 2006 No 7

(Section 3)

[1] Section 5 Definitions of “serious sex offence” and “offence of a sexual nature”

Insert after section 5 (1) (a):

- (a1) an offence under section 61K or 66EA of the *Crimes Act 1900*,

[2] Section 7 Pre-trial procedures

Omit section 7 (4) (a). Insert instead:

- (a) appointing:
 - (i) 2 qualified psychiatrists, or
 - (ii) 2 registered psychologists, or
 - (iii) 1 qualified psychiatrist and 1 registered psychologist, or
 - (iv) 2 qualified psychiatrists and 2 registered psychologists,to conduct separate psychiatric or psychological examinations (as the case requires) of the offender and to furnish reports to the Supreme Court on the results of those examinations, and

[3] Section 9 Determination of application for extended supervision order

Omit section 9 (3) (b). Insert instead:

- (b) the reports received from the persons appointed under section 7 (4) to conduct examinations of the offender, and the level of the offender’s participation in any such examination,

[4] Section 15 Pre-trial procedures

Omit section 15 (4) (a). Insert instead:

- (a) appointing:
 - (i) 2 qualified psychiatrists, or
 - (ii) 2 registered psychologists, or
 - (iii) 1 qualified psychiatrist and 1 registered psychologist, or

- (iv) 2 qualified psychiatrists and 2 registered psychologists,
to conduct separate psychiatric or psychological examinations (as the case requires) of the offender and to furnish reports to the Supreme Court on the results of those examinations, and

[5] Section 17 Determination of application for continuing detention order

Omit section 17 (4) (b). Insert instead:

- (b) the reports received from the persons appointed under section 15 (4) to conduct examinations of the offender, and the level of the offender's participation in any such examination,

[6] Schedule 2 Savings, transitional and other provisions

Insert after Part 3:

**Part 4 Provision consequent on enactment of
Courts and Crimes Legislation
Amendment Act 2008**

6 Application of amendment

Section 5 (1) (a1), as inserted by Schedule 9 [1] to the *Courts and Crimes Legislation Amendment Act 2008*, applies to and in respect of offences committed before the commencement of that amendment in the same way as it applies to and in respect of offences committed after that commencement.

Schedule 10 Amendment of Criminal Appeal Act 1912 No 16

(Section 3)

Section 3 Constitution of court

Insert after section 3 (1):

- (1A) Without limiting subsection (1), the Chief Justice may (with the consent of the Chief Judge concerned) also direct that the Chief Judge of the Land and Environment Court or the Chief Judge of the District Court (or both) act as Judges of the Court of Criminal Appeal in relation to proceedings of that Court.
- (1B) The following provisions apply to and in respect of a Chief Judge who acts as a Judge of the Court of Criminal Appeal in relation to proceedings pursuant to a direction given by the Chief Justice under subsection (1A):
 - (a) the Chief Judge is taken to be a Judge of the Supreme Court for the purposes of subsection (1),
 - (b) the Chief Judge has, while acting as a Judge of the Court of Criminal Appeal, all the powers, authorities, privileges and immunities of a Judge of the Supreme Court,
 - (c) the Chief Judge may attend the sittings of the Court of Criminal Appeal for the purpose of giving judgment in, or otherwise completing, any proceedings which have been heard by the Court while the Chief Judge was acting as a Judge of the Court even if the Chief Judge is no longer acting as a Judge of the Court,
 - (d) the Chief Judge is not, while receiving remuneration as a Chief Judge, entitled to remuneration for acting as a Judge of the Court of Criminal Appeal,
 - (e) any service of the Chief Judge while acting as a Judge of the Court of Criminal Appeal is, for the purposes of the Act under which the Chief Judge was appointed and the *Judges' Pensions Act 1953*, taken to be service as the Chief Judge of the court concerned,
 - (f) nothing in this Act or any other law requires the Chief Judge to devote the whole of his or her time to the duties of acting as a Judge of the Court of Criminal Appeal.

Schedule 11 Amendment of Director of Public Prosecutions Act 1986 No 207

(Section 3)

[1] Section 9A

Insert after section 9:

9A Handing back of matters to original prosecutor

- (1) If a prosecution or proceeding that has been taken over by the Director under section 9 is remitted to the Local Court, the Director may hand the matter back to the prosecutor from whom it was taken over (the *original prosecutor*) or, if the original prosecutor (being a holder of a position in the Government Service or a member of the NSW Police Force) no longer holds that position, to the person now holding that position (the *original prosecutor's successor*).
- (2) If a matter is handed back under this section, the original prosecutor or the original prosecutor's successor, as the case may be, shall, as from the time when the Director complies with section 10 (1A) in relation to the matter, be deemed to be the prosecutor in connection with the matter.

[2] Section 10 Director to inform court etc when taking over, or handing back, proceedings

Insert after section 10 (1):

- (1A) If the Director hands a matter back in accordance with section 9A, the Director shall, as soon as practicable:
 - (a) by notice in writing, inform the original prosecutor (or the original prosecutor's successor) referred to in section 9A, and
 - (b) by notice in writing, inform the registrar or other proper officer of the Local Court in which the prosecution or proceeding concerned is to be heard,that the Director has handed the matter back to the original prosecutor (or the original prosecutor's successor).

Schedule 12 Amendment of District Court Act 1973 No 9

(Section 3)

[1] Section 126 Order of the Court for new trial

Insert after section 126 (2):

- (3) This section does not limit the operation of section 127A.

[2] Section 127A

Insert after section 127:

127A Appeal after jury trial

- (1) Where, in any proceedings in the Court, there is a trial of the proceedings or of any issue in the proceedings with a jury, an application for:
- (a) the setting aside of a verdict or judgment, or
 - (b) a new trial, or
 - (c) the alteration of a verdict by increasing or reducing any amount of debt, damages or other money,
- shall be by appeal to the Supreme Court.
- (2) An appeal under this section lies as of right.

Schedule 13 Amendment of Land and Environment Court Act 1979 No 204

(Section 3)

[1] Section 10 Acting Chief Judge

Insert after section 10 (1):

- (1A) While the Chief Judge is absent from Australia and an Acting Chief Judge has not been appointed under subsection (1), the senior Judge present in Australia is taken to be the Acting Chief Judge.
- (1B) For the purposes only of subsection (1A):
 - (a) the Judges shall have seniority between themselves according to the dates of their commissions as Judges under this Act, a Judge whose commission is dated earlier than that of another Judge being senior to that other Judge, and
 - (b) if the commissions of two or more Judges bear the same date, those Judges shall have seniority between themselves according to the seniority assigned to them by their commission or, failing any such assignment, according to the order of their being sworn.

[2] Section 19 Class 3—land tenure, valuation, rating and compensation matters

Insert at the end of section 19 (g4):

- (g5) applications under section 40 (2) of this Act,

[3] Section 34 Conciliation conferences

Insert after section 34 (1):

- (1A) It is the duty of each party to proceedings where a conciliation conference has been arranged under subsection (1) to participate, in good faith, in the conciliation conference.

[4] Section 34B Arrangements for dealing with on-site hearing matters

Omit “presided over by a single Commissioner” from section 34B (1).

Insert instead “to be heard and disposed of by one or more Commissioners”.

[5] Section 34B (5)

Omit the subsection. Insert instead:

- (5) The provisions of section 36 (2)–(6) apply to the hearing and disposal of proceedings under this section.

[6] Section 34B (6)

Insert after section 34B (5):

- (6) In this section, *Commissioner* means the Commissioner or Commissioners hearing the on-site hearing matter.

[7] Section 34D

Omit the section. Insert instead:

34D Site inspections in court hearing matters

Before disposing of a court hearing matter, the Court (or the persons exercising the functions of the Court) must make an inspection of the site of the proposed development, unless:

- (a) all the parties agree to dispense with an inspection, or
(b) the Court (or the persons exercising the functions of the Court) considers that the matter can be properly determined without the need for an inspection.

[8] Section 36 Delegation to Commissioners

Insert “or 40” after “section 34A” in section 36 (1).

[9] Section 40

Omit the section. Insert instead:

40 Additional powers of Court—provision of easements

- (1) This section applies if an appeal involving the grant or modification of a development consent under the *Environmental Planning and Assessment Act 1979* is pending before the Court.
- (2) The appellant may make an application to the Court for an order imposing an easement over land.
- (3) The parties to an application under this section include the owner of the land to be burdened by the easement, and each other person having an estate or interest in the land, as evidenced by an instrument registered in the General Register of Deeds or the Register kept under the *Real Property Act 1900*.

- (4) In dealing with an application under this section, the Court may exercise the jurisdiction of the Supreme Court under section 88K of the *Conveyancing Act 1919* and, in that event, section 88K of the *Conveyancing Act 1919* applies to the Court's exercise of that jurisdiction in the same way as it applies to the exercise of that jurisdiction by the Supreme Court.

Schedule 14 Amendment of Legal Profession Act 2004 No 112

(Section 3)

[1] Section 384 Appeal against decision of costs assessor as to matter of law

Omit “Supreme Court” wherever occurring in section 384 (1) and (2).

Insert instead “District Court”.

[2] Section 385 Appeal against decision of costs assessor by leave

Omit “Supreme Court” wherever occurring in section 385 (1), (3) and (5).

Insert instead “District Court”.

[3] Section 387 Assessor can be party to appeal

Omit “only by the Supreme Court”. Insert instead “by the District Court”.

[4] Schedule 9 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Courts and Crimes Legislation Amendment Act 2008

[5] Schedule 9, Part 4

Insert after clause 33:

Part 4 Provision consequent on enactment of Courts and Crimes Legislation Amendment Act 2008

34 Pending appeals

An appeal to the Supreme Court for which a hearing date had been allocated before the commencement of Schedule 14 to the *Courts and Crimes Legislation Amendment Act 2008* is to be determined as if that Act had not been enacted.

Schedule 15 Amendment of Local Court Act 2007 No 93

(Section 3)

[1] Section 19 Registrar's functions generally

Insert after section 19 (2):

- (3) A person employed as a deputy registrar has, under the registrar, all of the functions of the registrar and may exercise those functions in respect of any place in the State.

[2] Section 39 Appeals as of right

Omit "Supreme Court" from section 39 (2).

Insert instead "District Court".

[3] Section 41 Determination of appeals

Omit "this Division". Insert instead "section 39 (1) or 40".

[4] Section 41 (2)

Insert at the end of section 41:

- (2) The District Court may determine an appeal made under section 39 (2):
- (a) by varying the terms of the judgment or order, or
 - (b) by setting aside the judgment or order, or
 - (c) by setting aside the judgment or order and remitting the matter to the Local Court for determination in accordance with the District Court's directions, or
 - (d) by dismissing the appeal.

[5] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Courts and Crimes Legislation Amendment Act 2008

[6] Schedule 4, Part 3

Insert after Part 2:

**Part 3 Provision consequent on enactment of
Courts and Crimes Legislation
Amendment Act 2008**

12 Pending appeals

An appeal to the Supreme Court for which a hearing date had been allocated before the commencement of Schedule 15 [2]–[6] to the *Courts and Crimes Legislation Amendment Act 2008* is to be determined as if that Act had not been enacted.

Schedule 16 Amendment of Local Courts Act 1982 No 164

(Section 3)

[1] Section 73 Appeals as of right

Omit “Supreme Court” from section 73 (2).

Insert instead “District Court”.

[2] Section 75 Determination of appeals

Omit “this Division”. Insert instead “section 73 (1) or 74”.

[3] Section 75 (2)

Insert at the end of section 75:

(2) The District Court may determine an appeal made under section 73 (2):

- (a) by varying the terms of the judgment or order, or
- (b) by setting aside the judgment or order, or
- (c) by setting aside the judgment or order and remitting the matter to the Court for determination in accordance with the District Court’s directions, or
- (d) by dismissing the appeal.

[4] Schedule 1 Savings and transitional provisions

Insert at the end of clause 8 (1):

Courts and Crimes Legislation Amendment Act 2008

[5] Schedule 1, clause 19

Insert after clause 18:

19 Pending appeals

An appeal to the Supreme Court for which a hearing date had been allocated before the commencement of Schedule 16 to the *Courts and Crimes Legislation Amendment Act 2008* is to be determined as if that Act had not been enacted.

Schedule 17 Amendment of Medical Practice Act 1992 No 94

(Section 3)

[1] Section 148 Chairperson and Deputy Chairpersons of Tribunal

Omit section 148 (1). Insert instead:

- (1) The Governor may appoint a qualified person as Chairperson of the Tribunal and may appoint one or more qualified persons as Deputy Chairpersons of the Tribunal.

[2] Section 148 (7)

Omit “Judge of the District Court”. Insert instead “qualified person”.

[3] Section 148 (8) and (9)

Insert after section 148 (7):

- (8) The amendment of this section by Schedule 17 to the *Courts and Crimes Legislation Amendment Act 2008* does not affect the validity of any appointment in force immediately before the commencement of the amendment.
- (9) In this section, *qualified person* means a Judge of the Supreme Court (or a Judge or other person having the same status as a Judge of the Supreme Court) or a Judge of the District Court.

Schedule 18 Amendment of Strata Schemes Management Act 1996 No 138

(Section 3)

[1] Chapter 5 Disputes and orders of Adjudicators and Tribunal

Omit “This Part” from the introductory note to the Chapter.

Insert instead “This Chapter”.

[2] Chapter 5, introductory note, and section 200 (1)

Omit “Supreme Court” wherever occurring. Insert instead “District Court”.

[3] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Courts and Crimes Legislation Amendment Act 2008

[4] Schedule 4

Insert at the end of the Schedule with appropriate Part and clause numbering:

Part Provision consequent on enactment of Courts and Crimes Legislation Amendment Act 2008

Pending appeals

An appeal to the Supreme Court for which a hearing date had been allocated before the commencement of Schedule 18 to the *Courts and Crimes Legislation Amendment Act 2008* is to be determined as if that Act had not been enacted.

[5] Dictionary

Insert in alphabetical order in Part 1 of the Dictionary:

District Court means the District Court of New South Wales.

Schedule 19 Amendment of Supreme Court Act 1970 No 52

(Section 3)

Section 37A

Insert after section 37:

37A Certain Chief Judges of other courts may act as additional Judges of Appeal

- (1) This section applies to each of the following Chief Judges (a *designated Chief Judge*):
 - (a) the Chief Judge of the Land and Environment Court,
 - (b) the Chief Judge of the District Court.
- (2) A designated Chief Judge may act as an additional Judge of Appeal in relation to proceedings in the Court of Appeal if:
 - (a) the Chief Justice certifies that it is expedient that the Chief Judge should act as an additional Judge of Appeal in the proceedings, and
 - (b) the Chief Judge consents to act as an additional Judge of Appeal in the proceedings.
- (3) The following provisions apply to and in respect of a designated Chief Judge who acts as an additional Judge of Appeal pursuant to the provisions of this section:
 - (a) the Chief Judge has, while acting as an additional Judge of Appeal, all the powers, authorities, privileges and immunities of a Judge of Appeal (including the powers, authorities, privileges and immunities of a Judge of the Supreme Court),
 - (b) the Chief Judge may attend the sittings of the Court of Appeal for the purpose of giving judgment in, or otherwise completing, any proceedings which have been heard by the Court while the Chief Judge was acting as an additional Judge of Appeal even if the Chief Judge is no longer acting as an additional Judge of Appeal,
 - (c) the Chief Judge is not, while receiving remuneration as a Chief Judge, entitled to remuneration for acting as an additional Judge of Appeal,

- (d) any service of the Chief Judge while acting as an additional Judge of Appeal is, for the purposes of the Act under which the Chief Judge was appointed and the *Judges' Pensions Act 1953*, taken to be service as the Chief Judge of the court concerned,
- (e) nothing in this Act or any other law requires the Chief Judge to devote the whole of his or her time to the duties of acting as an additional Judge of Appeal.

Schedule 20 Amendment of Surveillance Devices Act 2007 No 64

(Section 3)

[1] **Section 8 Installation, use and maintenance of optical surveillance devices without consent**

Insert after section 8 (2) (c):

- (d) the installation, use or maintenance of an optical surveillance device by a law enforcement officer in the execution of a search warrant or crime scene warrant (including the use of an optical surveillance device to record any activity in connection with the execution of the warrant).

Note. See also section 255 of the *Children and Young Persons (Care and Protection) Act 1998*.

[2] **Section 8 (3)**

Insert after section 8 (2):

- (3) In this section:

crime scene warrant has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

search warrant means a search warrant issued under:

- (a) any of the following provisions of the *Law Enforcement (Powers and Responsibilities) Act 2002*:
- (i) Division 2 (Police powers relating to warrants) of Part 5,
 - (ii) Part 6 (Search, entry and seizure powers relating to domestic violence offences),
 - (iii) Division 1 (Drug premises) of Part 11, or
- (b) section 40 of the *Independent Commission Against Corruption Act 1988*, or
- (c) section 11 of the *New South Wales Crime Commission Act 1985*, or
- (d) Division 2 or 3 of Part 4 of the *Criminal Assets Recovery Act 1990*,
- (e) section 45 of the *Police Integrity Commission Act 1996*.

Courts and Crimes Legislation Amendment Act 2008 No 53

Schedule 21 Amendment of Terrorism (Police Powers) Act 2002 No 115

Schedule 21 Amendment of Terrorism (Police Powers) Act 2002 No 115

(Section 3)

Section 27A Definitions

Omit section 27A (2).

Schedule 22 Amendment of Births, Deaths and Marriages Registration Regulation 2006

(Section 4)

[1] Clause 9A

Insert after clause 9:

9A Application to register change of sex

For the purposes of section 32DB (b) of the Act, the following documents are prescribed as documents that must accompany an application under section 32DA of the Act:

- (a) a signed statement by each of the 2 doctors (or 2 medical practitioners) referred to in section 32DB (a) of the Act declaring that the doctor or practitioner concerned sighted proof of the identity of the person the subject of the application when making the statutory declaration referred to in that section, and
- (b) documentary proof to the Registrar's satisfaction:
 - (i) that the person is an Australian citizen or permanent resident of Australia, and
 - (ii) that the person lives, and has lived for at least one year, in New South Wales.

[2] Clause 10 Persons who may apply for old birth certificate

Omit "sexual reassignment surgery" from clause 10 (2) (a).

Insert instead "a sex affirmation procedure".

[3] Clause 11 Prescribed interstate laws

Insert at the end of clause 11:

- (2) For the purposes of section 32J (Effect of registration of change of sex and interstate recognised details certificates) of the Act the *Gender Reassignment Act 2000* of Western Australia is prescribed.

[Agreement in principle speech made in Legislative Assembly on 6 June 2008
Second reading speech made in Legislative Council on 24 June 2008]

BY AUTHORITY