



New South Wales

Courts and Crimes Legislation Further Amendment Act 2008 No 107

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New South Wales

Courts and Crimes Legislation Further Amendment Act 2008 No 107

Act No 107, 2008

An Act to amend various Acts in relation to courts, crimes and civil and criminal procedure. [Assented to 8 December 2008]

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

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

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by this section.
- (2) Section 4, and Schedules 4, 14 [1]–[8] and [10]–[15], 16, 17, 19, 22, 24 and 29, commence on a day or days to be appointed by proclamation.
- (3) Schedule 7 [11] commences on:
 - (a) the date of assent to this Act, or
 - (b) the date of commencement of Schedule 1.11 [21] to the *Crimes and Courts Legislation Amendment Act 2006*,
whichever is the later.
- (4) Schedule 11 commences on:
 - (a) the date of assent to this Act, or
 - (b) the date of commencement of Schedule 1 [81] to the *Evidence Amendment Act 2007*,
whichever is the later.

3 Amendments

The Acts specified in Schedules 1–29 are amended as set out in those Schedules.

4 Repeal of Wardens' Courts Rules 1992

The *Wardens' Courts Rules 1992* are repealed.

5 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- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.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 Administrative Decisions
Tribunal Act 1997 No 76**

(Section 3)

Section 14 Judicial officers acting as members of Tribunal

Insert in alphabetical order in section 14 (5):

judicial officer includes a retired judicial officer.

Schedule 2 Amendment of Bail Act 1978 No 161

(Section 3)

[1] Section 9D Repeat offenders—serious personal violence offences

Omit “35 (2)” from paragraph (a) of the definition of *serious personal violence offence* in section 9D (4).

Insert instead “35 (1) or (3)”.

[2] Section 22A Power to refuse to hear bail application

Omit “by a court” from section 22A (1). Insert instead “by the court”.

[3] Section 22A (5)

Omit “to a court”. Insert instead “to the court”.

[4] Section 22A (7)

Insert after section 22A (6):

- (7) In this section, a reference to a court, in relation to a Local Court, includes a reference to any other Local Court.

[5] Section 45

Omit the section. Insert instead:

45 Review of bail decisions

- (1) Subject to this Division:
- (a) the Supreme Court may review any decision in relation to bail of any authorised officer, magistrate or authorised justice, and
 - (b) the Court of Criminal Appeal may review any decision in relation to bail of the District Court, Land and Environment Court, Industrial Relations Commission in Court Session or Supreme Court (however constituted).
- (2) The power to review a decision pursuant to this section may be exercised whether or not any power to do so pursuant to section 44 has been, or has been sought to be, exercised.
- (3) Notwithstanding subsection (1), a Judge of the Court of Criminal Appeal sitting alone may not, under that subsection, review a decision of the Supreme Court (however constituted), unless the rules made under the *Supreme Court Act 1970* so provide.

[6] Section 46 Power of Court of Criminal Appeal to review

Omit the section.

[7] Schedule 1 Savings and transitional provisions

Insert after Part 20:

Part 21 Courts and Crimes Legislation Further Amendment Act 2008

39 Section 9D: serious personal violence offences—offences relating to grievous bodily harm or wounding in company

- (1) Section 9D, as amended by the *Courts and Crimes Legislation Further Amendment Act 2008*, extends to an offence against section 35 (1) or (3) of the *Crimes Act 1900* committed on or after the commencement of Schedule 1 [7] to the *Crimes Amendment Act 2007*.
- (2) Section 9D, as in force immediately before it was amended by the *Courts and Crimes Legislation Further Amendment Act 2008*, continues to apply to an offence against section 35 (2) of the *Crimes Act 1900* committed before the commencement of Schedule 1 [7] to the *Crimes Amendment Act 2007*.

40 Pending appeals

A review under section 45 or 46 of a decision in relation to bail that was commenced before the date of commencement of Schedule 2 to the *Courts and Crimes Legislation Further Amendment Act 2008*, but not determined before that date, is to be determined as if that Act had not been enacted.

Schedule 3 Amendment of Births, Deaths and Marriages Registration Act 1995 No 62

(Section 3)

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

birth certificate means a certificate issued under section 49 as to the particulars contained in an entry in the Register in relation to a person's birth.

[2] Section 19 Orders for registration of birth or inclusion of registrable information

Insert after section 19 (1):

- (1A) Such an order may only be made in respect of a birth:
- (a) in the case of an order under subsection (1) (a), if the birth occurred in the State, in an aircraft during a flight to an airport in the State or on a ship during a voyage to a port in the State, and
 - (b) in the case of an order under subsection (1) (b), if the birth has been registered under this Act.

[3] Section 25A

Insert after section 25:

25A Issuing birth certificates to adopted persons

- (1) After a person's adoption is registered under this Part, a birth certificate issued by the Registrar for the person must contain the relevant information recorded in the Register pursuant to section 24 (2) in place of the corresponding information recorded in the Register pursuant to section 17 (1).
- (2) In particular, a birth certificate for an adopted person must not include any information that indicates that he or she has been adopted.
- (3) This section applies whether or not the person's birth has been registered under this Act.

[4] Section 32A Definitions

Omit the definition of *birth certificate*.

[5] Section 49 Issue of certificate

Insert “and authorised to do so under the *Adoption Act 2000*,” after “applicant,” in section 49 (4).

[6] Section 49 (5)

Omit the subsection and the note to the subsection.

[7] Schedule 3 Savings, transitional and other provisions

Insert after Part 4:

**Part 5 Provisions consequent on enactment of
Courts and Crimes Legislation Further
Amendment Act 2008**

18 Orders for registration under section 19

The Registrar is not obliged to comply with an order under section 19 (1) (a) made before the commencement of section 19 (1A), as inserted by the *Courts and Crimes Legislation Further Amendment Act 2008*, if such an order could not have lawfully been made after that commencement.

19 Validation of previously issued birth certificates

Anything that has been done or omitted to be done by the Registrar at any time before the commencement of section 25A (as inserted by the *Courts and Crimes Legislation Further Amendment Act 2008*), and that would have been validly done or omitted had section 25A then been in force, is taken to have been validly done or omitted.

Schedule 4 Amendment of Confiscation of Proceeds of Crime Act 1989 No 90

(Section 3)

[1] Section 45A Contravention of restraining orders

Omit “Supreme Court” from section 45A (1).

Insert instead “court that is dealing with the offence”.

[2] Section 74 Proceedings for offences

Omit “\$10,000” wherever occurring in section 74 (2) and (3).

Insert instead “the jurisdictional limit of the Local Court”.

[3] Section 74 (5)

Insert after section 74 (4):

- (5) In this section, the *jurisdictional limit of the Local Court* means the jurisdictional limit of a Local Court sitting in its General Division, within the meaning of the *Local Courts Act 1982*.

[4] Schedule 1 Savings, transitional and other provisions

Insert after Part 2:

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

7 Proceedings for offences

Section 74, as amended by Schedule 4 to the *Courts and Crimes Legislation Further Amendment Act 2008*, extends to proceedings commenced before the commencement of that Schedule.

Schedule 5 Amendment of Crimes Act 1900 No 40

(Section 3)

[1] Section 154A Taking a conveyance without consent of owner

Insert “tank or other military vehicle,” after “bicycle,” in section 154A (2).

[2] Section 195 Destroying or damaging property

Insert after section 195 (1):

- (1A) A person who, in the company of another person or persons, intentionally or recklessly destroys or damages property belonging to another or to that person and another is liable:
 - (a) to imprisonment for 6 years, or
 - (b) if the destruction or damage is caused by means of fire or explosives, to imprisonment for 11 years.

Schedule 6 Amendment of Criminal Appeal Act 1912 No 16

(Section 3)

[1] Section 5AF Appeals by offenders against sentences imposed by the Drug Court

Omit section 5AF (1). Insert instead:

- (1) Section 5AA applies to and in respect of a person sentenced by the Drug Court in relation to a sentence imposed by the Drug Court:
 - (a) in the exercise of its jurisdiction under section 7D, 7E or 12 of the *Drug Court Act 1998*, or
 - (b) in the exercise under section 24 (1) (a) of the *Drug Court Act 1998* of the criminal jurisdiction of the District Court, or
 - (c) in the exercise under section 24 (1) (b) of the *Drug Court Act 1998* of the criminal jurisdiction of a Local Court, in the same way as it applies to a person referred to in section 5AA (1).

[2] Section 5AF (3) (a)

Omit “in relation to an appeal under subsection (1) (a)”.

Insert instead “in relation to an appeal against a sentence for an indictable offence”.

[3] Section 5AF (3) (b)

Omit “in relation to an appeal under subsection (1) (b)”.

Insert instead “in relation to an appeal against a sentence for a summary offence”.

[4] Section 5DC Appeals by Crown against sentences imposed by Drug Court

Omit section 5DC (1). Insert instead:

- (1) The Attorney General or the Director of Public Prosecutions may appeal to the Court of Criminal Appeal against a sentence imposed by the Drug Court:
 - (a) in the exercise of its jurisdiction under section 7D, 7E or 12 of the *Drug Court Act 1998*, or

-
- (b) in the exercise under section 24 (1) (a) of the *Drug Court Act 1998* of the criminal jurisdiction of the District Court,
or
 - (c) in the exercise under section 24 (1) (b) of the *Drug Court Act 1998* of the criminal jurisdiction of a Local Court.

[5] Section 5DC (2) (a)

Omit “in relation to an appeal under subsection (1) (a)”.

Insert instead “in relation to an appeal against a sentence for an indictable offence”.

[6] Section 5DC (2) (b)

Omit “in relation to an appeal under subsection (1) (b)”.

Insert instead “in relation to an appeal against a sentence for a summary offence”.

[7] Schedule 1 Savings and transitional provisions

Insert after clause 13:

14 Courts and Crimes Legislation Further Amendment Act 2008

An amendment made to this Act by Schedule 6 to the *Courts and Crimes Legislation Further Amendment Act 2008* extends to a sentence imposed before the commencement of the amendment but does not apply to any appeal proceedings commenced before the commencement of the amendment.

Schedule 7 Amendment of Criminal Procedure Act 1986 No 209

(Section 3)

[1] Section 170 Application

Omit “2–4” from section 170 (2). Insert instead “2 and 3”.

[2] Section 170 (2A)

Insert after section 170 (2):

(2A) Part 4 applies to the following proceedings:

- (a) proceedings before a Local Court,
- (b) proceedings before the District Court,
- (c) proceedings before the Supreme Court,
- (d) proceedings before an Industrial Magistrate,
- (e) proceedings before a Warden’s Court,
- (f) any other proceedings prescribed by the regulations.

[3] Section 222 Issue of subpoenas

Insert “and served” after “filed” in section 222 (2).

[4] Section 236 Form of arrest warrant

Insert “Judge,” before “Magistrate” in section 236 (2) (c).

[5] Section 236 (4)

Insert “Judge or” before “Magistrate”.

[6] Section 239 Procedure after arrest

Insert “a Judge,” before “a Magistrate”.

[7] Section 240 Revocation of warrants

Insert “Judge,” before “Magistrate” wherever occurring in section 240 (1).

[8] Section 240 (2)

Omit the subsection. Insert instead:

- (2) A Judge, Magistrate or authorised officer may revoke a warrant even though it was issued by another Judge, Magistrate or authorised officer. A Magistrate may not revoke a warrant issued by a Judge. An authorised officer may not revoke a warrant issued by a Judge or Magistrate.

[9] Section 242 Forms of warrant of commitment

Insert “Judge or” before “Magistrate” in section 242 (4).

[10] Schedule 1 Indictable offences triable summarily

Insert after Item 16B in Part 3 of Table 1 to Schedule 1:

16C False imprisonment

The common law offence of false imprisonment.

[11] Schedule 2 Savings, transitional and other provisions

Insert “and any such warrant expires at the end of 20 years from the date of issue” after “provisions” in clause 53.

[12] Schedule 2, Part 18

Insert after Part 17:

**Part 18 Provisions consequent on enactment of
Courts and Crimes Legislation Further
Amendment Act 2008**

61 Proceedings for offences

Section 170, as amended by Schedule 7 to the *Courts and Crimes Legislation Further Amendment Act 2008*, does not apply to proceedings commenced before the commencement of that Schedule.

Schedule 8 Amendment of Crown Prosecutors Act 1986 No 208

(Section 3)

[1] Section 9

Omit the section. Insert instead:

9 Vacation of office

- (1) A Crown Prosecutor vacates office if he or she:
 - (a) dies, or
 - (b) resigns the office by instrument in writing addressed to the Governor, or
 - (c) reaches the age of 65 years, or
 - (d) ceases to be an Australian lawyer, or
 - (e) is removed from office by the Governor under subsection (2), (3) or (4).
- (2) A Crown Prosecutor who fails, without reasonable excuse, to comply with section 10 is to be removed from office by the Governor.
- (3) The Governor may remove a Crown Prosecutor from office for incapacity, incompetence, misbehaviour or unsatisfactory performance.
- (4) The Governor may also remove a Crown Prosecutor from office if the Crown Prosecutor:
 - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (b) becomes a mentally incapacitated person, or
 - (c) absents himself or herself from duty for 14 days (whether or not wholly or partly consecutive) in any period of 12 months, except on leave granted by the Attorney General or unless the absence is occasioned by illness or other unavoidable cause, or
 - (d) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more, or
 - (e) is convicted elsewhere than in New South Wales of an offence that if committed in New South Wales would be an offence so punishable.

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- (5) Anything done or purporting to have been done by a Crown Prosecutor after he or she reaches the age of 65 years is nevertheless as valid as if he or she had not reached that age.
 - (6) In this section, *Crown Prosecutor* includes the Senior Crown Prosecutor and a Deputy Senior Crown Prosecutor.

[2] Section 9A

Insert before section 10:

9A Suspension from duty pending decision in relation to misconduct

- (1) If of the opinion that there may be grounds for a Crown Prosecutor's removal from office, the Director of Public Prosecutions may suspend the Crown Prosecutor from duty pending a decision being made as to whether or not he or she should be so removed.
- (2) If the Director of Public Prosecutions so directs, any salary payable to the Crown Prosecutor in relation to the period during which he or she is under suspension is to be withheld.
- (3) If the Crown Prosecutor is removed from office, any salary so withheld is forfeited to the State unless the Director of Public Prosecutions otherwise directs.
- (4) A suspension imposed under this section may be removed by the Director of Public Prosecutions at any time.
- (5) In this section, *Crown Prosecutor* includes the Senior Crown Prosecutor and a Deputy Senior Crown Prosecutor.

Schedule 9 Amendment of Drug Court Act 1998 No 150

(Section 3)

Section 20

Omit the section. Insert instead:

20 Judges

- (1) The Governor may, by commission under the public seal of the State, appoint as a Drug Court Judge any person who is a Judge of a New South Wales court.
- (2) A person ceases to be a Drug Court Judge on ceasing to be a Judge of a New South Wales court.
- (3) In this section:

Judge includes an acting Judge.

New South Wales court means the Supreme Court or District Court or a Court that is of equivalent status (for the purposes of Part 9 of the *Constitution Act 1902*) to the Supreme Court or District Court.

Schedule 10 Amendment of Dust Diseases Tribunal Act 1989 No 63

(Section 3)

[1] Section 7 Members of the Tribunal

Omit section 7 (2). Insert instead:

- (2) A person is qualified to be a member of the Tribunal if the person is a Judge or acting Judge of the Supreme Court or District Court, or of a Court that is of equivalent status (for the purposes of Part 9 of the *Constitution Act 1902*) to the Supreme Court or District Court.

[2] Schedule 2 Provisions applicable to a member of the Tribunal

Insert before clause 1:

1A Interpretation

In this Schedule:

Judge includes an acting Judge.

New South Wales court means the Supreme Court or District Court, or a Court that is of equivalent status (for the purposes of Part 9 of the *Constitution Act 1902*) to the Supreme Court or District Court.

[3] Schedule 2

Omit “the District Court” wherever occurring.

Insert instead “a New South Wales court”.

Schedule 11 Amendment of Evidence Act 1995 No 25

(Section 3)

Section 190 Waiver of rules of evidence

Omit “his or her lawyer” from section 190 (2) (a).

Insert instead “an Australian legal practitioner or legal counsel”.

Schedule 12 Amendment of Evidence Amendment Act 2007 No 46

(Section 3)

[1] Schedule 1 Amendments to Evidence Act 1995

Insert “evidence of” before “any information” in proposed section 128 (7) (b) in Schedule 1 [61].

[2] Schedule 1 [62]

Insert “or before any person or body authorised by a law of this State, or by consent of parties, to hear, receive and examine evidence” after “NSW court” in proposed section 128A (8).

[3] Schedule 2 Amendment of other Acts

Insert “evidence of” before “any information” in proposed section 33AA (7) (b) in Schedule 2.2 [3].

Schedule 13 Amendment of Industrial Relations Act 1996 No 17

(Section 3)

[1] Section 398 Time for instituting proceedings

Insert “(other than an offence under section 180)” after “regulations”.

[2] Section 398, note

Insert at the end of section 398:

Note. Proceedings for an offence under section 180 must be commenced not later than 6 months after the offence was alleged to have been committed (see section 179 of the *Criminal Procedure Act 1986*).

Schedule 14 Amendment of Land and Environment Court Act 1979 No 204

(Section 3)

[1] Section 12 Commissioners

Omit “In appointing Commissioners, the Minister should ensure, as far as practicable, that the Court is comprised of persons who hold qualifications across the range of areas specified in this subsection.” from section 12 (2).

[2] Section 12 (2AA)–(2AC)

Insert after section 12 (2):

(2AA) A person is also qualified to be appointed as a Commissioner if the person is an Australian lawyer.

(2AB) In appointing Commissioners, the Minister should ensure, as far as practicable, that the Court is comprised of persons who hold qualifications across the range of areas specified in subsections (2) and (2AA).

(2AC) While exercising the jurisdiction of the Court or any other function under this Act in relation to proceedings in Class 8 of the Court’s jurisdiction, a Commissioner may be called a “Commissioner for Mining”.

[3] Section 16 Jurisdiction of the Court generally

Omit “7” from section 16 (2). Insert instead “8”.

[4] Section 21A Class 6—appeals from convictions relating to environmental offences

Omit “, other than appeals under Division 3A of that Part”.

[5] Section 21C

Insert after section 21B:

21C Class 8—mining matters

(1) The Court has jurisdiction (referred to in this Act as “Class 8” of its jurisdiction) to hear and dispose of proceedings arising under the *Mining Act 1992* or the *Petroleum (Onshore) Act 1991*.

(2) This section does not apply to proceedings for an offence under either of those Acts.

[6] Section 30 Arrangement of business of the Court

Omit “subsections (2A) and (2B)” from section 30 (2).

Insert instead “subsections (2A), (2B) and (2C)”.

[7] Section 30 (2C)

Insert after section 30 (2B):

- (2C) A Commissioner shall not exercise the jurisdiction of the Court or any other function under this Act in relation to proceedings in Class 8 of the Court’s jurisdiction unless the Commissioner is an Australian lawyer.

[8] Section 33 Exercise of jurisdiction generally

Insert after section 33 (2):

- (2A) Class 8 of the Court’s jurisdiction shall, in accordance with this Act, be exercised by a Judge or by a Commissioner who is an Australian lawyer.

[9] Section 40 Additional powers of Court—provision of easements

Omit section 40 (1). Insert instead:

- (1) This section applies if:
- (a) the Court has determined to grant or modify a development consent pursuant to proceedings on an appeal under the *Environmental Planning and Assessment Act 1979*, or
 - (b) proceedings on an appeal under the *Environmental Planning and Assessment Act 1979* with respect to the granting or modification of a development consent are pending before the Court (whether constituted by a Judge or by one or more Commissioners).

[10] Part 4, Division 6

Insert after Division 5 of Part 4:

Division 6 Special provisions respecting Class 8 proceedings (mining matters)

42 Delegation to Commissioners

- (1) Where proceedings are pending in Class 8 of the Court’s jurisdiction, the Chief Judge may, of the Chief Judge’s own motion or on the request of a party, direct that the proceedings be heard and disposed of by one or more Commissioners.

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- (2) Subject to this Act and the rules, the Commissioner or Commissioners hearing and disposing of the proceedings pursuant to this section shall have and may exercise the functions of the Court (other than its functions under this section).
 - (3) The decision of the Commissioner or Commissioners shall be deemed to be the decision of the Court.
 - (4) Where proceedings are directed to be heard and disposed of by 2 or more Commissioners:
 - (a) if the Senior Commissioner is one of the Commissioners hearing and disposing of the proceedings—the Senior Commissioner shall preside at the hearing of the proceedings, and
 - (b) if the Senior Commissioner is not one of those Commissioners—one of those Commissioners directed to do so by the Chief Judge shall preside at the hearing, and
 - (c) if the Commissioners are divided in opinion as to the decision to be made on any question:
 - (i) if there is a majority of the one opinion—the question shall be decided according to the opinion of the majority, or
 - (ii) in any other case—the question shall be decided according to the opinion of the Commissioner presiding.
 - (5) Proceedings that are before a Commissioner under this section may be referred or removed for hearing and determination by a Judge in the same way as proceedings before an associate Judge may be referred or removed for hearing and determination by a Judge in the Supreme Court.
 - (6) The power of a Commissioner to refer proceedings pursuant to subsection (5) is subject to any contrary order of the Chief Judge.

43 Commissioners sitting with a Judge

- (1) Where proceedings are pending in Class 8 of the Court's jurisdiction before a Judge, the Court may, in hearing the proceedings, or any part of the proceedings, be assisted by one or more Commissioners.

- (2) A Commissioner assisting the Court as referred to in subsection (1) may assist and advise the Court, but shall not adjudicate on any matter before the Court.
- (3) A Judge before whom proceedings referred to in subsection (1) are pending may commence or continue the hearing of the proceedings, or any part of the proceedings:
 - (a) without the assistance of a Commissioner who is not available or has ceased to be available to assist in the hearing of the proceedings or part of the proceedings, and
 - (b) without the assistance of Commissioners generally if, in the opinion of the Judge, the proceedings or part of the proceedings concern or concerns a question of law only.

[11] Section 56 Nature of decision of the Court

Omit “3 or 4” from section 56 (a). Insert instead “3, 4 or 8”.

[12] Section 56A Class 1, 2, 3 and 8 proceedings—appeals to the Court against decisions of Commissioners

Omit “2 or 3” from section 56A (1). Insert instead “2, 3 or 8”.

[13] Section 57 Class 1, 2, 3 and 8 proceedings—appeals

Omit “2 or 3” from section 57 (1). Insert instead “2, 3 or 8”.

[14] Section 63 Right of appearance

Insert at the end of the section:

- (2) Despite subsection (1), a person may not appear before the Court by an agent in proceedings in Class 8 of the Court’s jurisdiction except with the leave of the Court.

[15] Section 72 Transfer of proceedings from Supreme Court

Omit “3 or 4” from section 72 (2). Insert instead “3, 4 or 8”.

[16] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1A (1):

Courts and Crimes Legislation Further Amendment Act 2008,
but only in relation to the amendments made to this Act

[17] Schedule 3

Insert after clause 8:

**9 Provisions consequent on enactment of Courts and Crimes
Legislation Further Amendment Act 2008**

Any application or order that purports to have been made under section 40 before the commencement of Schedule 14 [9] to the *Courts and Crimes Legislation Further Amendment Act 2008* is taken to have been validly made if it could have been validly made had that section, as amended, then been in force.

Schedule 15 Amendment of Local Courts Act 1982 No 164

(Section 3)

Section 20A

Insert after section 20:

20A Continuation of proceedings after vacation of office

- (1) A person who vacates office as a Magistrate otherwise than by having been removed from office may, despite vacating his or her office, continue to hear and determine, and otherwise deal with, any proceedings that have been heard, or partly heard, by the person before vacating his or her office.
- (2) While a person continues to deal with, under subsection (1), any proceedings that have been heard or partly heard by the person before vacating office, the person has all the entitlements and functions of a Magistrate and, for the purpose of those proceedings, is taken to continue to be a Magistrate.

Schedule 16 Amendment of Mental Health Act 2007 No 8

(Section 3)

[1] Section 4 Definitions

Omit “by a Magistrate after a mental health inquiry or” from the definition of *involuntary patient* in section 4 (1).

Insert instead “after a mental health inquiry or otherwise”.

[2] Section 4 (1), definition of “mental health inquiry”

Omit “a Magistrate”. Insert instead “the Tribunal”.

**[3] Section 27 Steps for medical examination requirements for ongoing
detention in mental health facility**

Omit “bring the person before a Magistrate” from section 27 (d).

Insert instead “notify the Tribunal and bring the person before the Tribunal”.

[4] Section 27 (d)

Omit:

The person must be brought before a Magistrate as soon as practicable after the authorised medical officer is notified of the relevant finding of the second or third examiner.

Insert instead:

The person must be brought before the Tribunal as soon as practicable after admission (subject to meeting the requirements set out above).

**[5] Section 33 Actions may be delayed because of other illnesses or
conditions**

Omit “a Magistrate” from section 33 (b). Insert instead “the Tribunal”.

[6] Section 34

Omit the section. Insert instead:

34 Mental health inquiries to be held

- (1) The Tribunal must hold an inquiry about an assessable person under step 4 in section 27 (d).

Note. Section 27 sets out the events that result in a mental health inquiry. Notice of the inquiry is to be given to the person concerned, and

all reasonably practicable steps are to be taken to notify primary carers in accordance with section 76.

- (2) An authorised medical officer of the mental health facility in which an assessable person is detained:
- (a) must ensure that, as far as practicable, the person is brought before the Tribunal dressed in street clothes, and
 - (b) must make all necessary arrangements to ensure that all appropriate medical witnesses appear before the Tribunal and other relevant medical evidence concerning the person is placed before the Tribunal at or before the inquiry, and
 - (c) as soon as practicable after notifying the Tribunal under section 27 (d), and at or before the inquiry, must provide the Tribunal with all relevant medical reports of the examinations in step 1 or step 2, as referred to in section 27 (d), and any additional information required by the Tribunal for the purposes of the inquiry.

An assessable person, or any other person, may, with the approval of the Tribunal and subject to the regulations (if any), be brought or appear before the Tribunal by way of audio visual link.

The primary carer of an assessable person may, with the approval of the Tribunal, appear at an inquiry.

Note. The Tribunal must be constituted by at least one member who is the President or a Deputy President for the purposes of a mental health inquiry (see section 150 (2A)). Other provisions relating to the Tribunal's procedures generally, that apply to mental health inquiries and other proceedings, are set out in Part 2 of Chapter 6.

[7] Section 35 Purpose and findings of mental health inquiries

Omit "A Magistrate" from section 35 (1). Insert instead "The Tribunal when".

[8] Section 35 (2)

Omit "the Magistrate" wherever occurring. Insert instead "the Tribunal".

[9] Section 35 (2A) and (2B)

Insert after section 35 (2):

- (2A) As soon as practicable after the beginning of a mental health inquiry, the Tribunal must ask the assessable person whether the person:
- (a) has been given a written statement, in the prescribed form, of the person's legal rights and other entitlements, as required by section 74, and

(b) has been informed of the duty imposed under section 76 on the authorised medical officer relating to the giving of the notice specified in that section.

(2B) As soon as practicable after the beginning of a mental health inquiry, the Tribunal must ascertain from the authorised medical officer whether the written statement and notice referred to in subsection (2A) have been given or all such things as are reasonably practicable have been done to give that statement or notice, as the case requires.

[10] Section 35 (3)

Omit the subsection. Insert instead:

(3) If the Tribunal is not satisfied, on the balance of probabilities, that an assessable person is a mentally ill person, the Tribunal must order that the person be discharged from the mental health facility.

[11] Section 35 (4) and (5) (c)

Omit “Magistrate” wherever occurring. Insert instead “Tribunal”.

[12] Section 35 (5)

Omit “A Magistrate who is satisfied, on the balance of probabilities, that an assessable person is a mentally ill person”.

Insert instead “If the Tribunal is satisfied, on the balance of probabilities, that an assessable person is a mentally ill person, the Tribunal”.

[13] Section 36

Omit the section. Insert instead:

36 Adjournments

- (1) The Tribunal may, from time to time, adjourn a mental health inquiry for a period not exceeding 14 days.
- (2) Without limiting subsection (1), the Tribunal may adjourn the inquiry if it is not satisfied:
 - (a) that the assessable person has been informed of the duty imposed under section 76 on the authorised medical officer relating to the giving of the notice specified in that section, or
 - (b) that the notice specified in the section has been given or all such things as are reasonably practicable have been done to give that notice.

- (3) The Tribunal may adjourn an inquiry under this section only if:
 - (a) the Tribunal is of the opinion that it is in the best interests of the assessable person to do so, and
 - (b) the Tribunal has considered any certificates given under this Act available to the Tribunal.
- (4) If an inquiry is adjourned, the assessable person is to continue to be detained in the mental health facility unless the person is discharged or allowed to be absent from the facility under another provision of this Act.

[14] Section 51 Community treatment orders

Omit “or a Magistrate” from section 51 (1).

[15] Section 53 Determination of applications for community treatment orders

Omit “A Magistrate or the” from section 53 (1). Insert instead “The”.

[16] Section 53 (2) and (3)

Omit “Magistrate or” wherever occurring.

[17] Section 53 (4)

Omit the subsection. Insert instead:

- (4) The Tribunal may not make a community treatment order at a mental health inquiry unless the Tribunal is of the opinion that the person is a mentally ill person.

[18] Section 53 (6) and (7)

Omit “or Magistrate” wherever occurring.

[19] Section 55 Community treatment order may be made in absence of affected person

Omit “A Magistrate or the”. Insert instead “The”.

[20] Section 77 Notification to new involuntary patients of appeal rights

Omit “a Magistrate” from section 77 (1). Insert instead “the Tribunal”.

[21] Section 141 Membership of Tribunal

Omit “Australian legal practitioners” from section 141 (2) (a).

Insert instead “Australian lawyers”.

[22] Section 150 Composition of the Tribunal

Insert “in relation to mental health inquiries or” after “other than” in section 150 (2).

[23] Section 150 (2A)

Insert after section 150 (2):

(2A) For the purpose of conducting a mental health inquiry, the Tribunal must consist of at least 1 member who is to be the President or a Deputy President or a member qualified to be appointed as a Deputy President.

[24] Section 150 (3) (b)

Omit “Australian legal practitioner”. Insert instead “Australian lawyer”.

[25] Section 154 Rights of appearance and representation

Insert after section 154 (2):

(2A) An assessable person who is before the Tribunal for a mental health inquiry must, unless the person decides that he or she does not want to be represented, be represented by an Australian legal practitioner or, with the approval of the Tribunal, by another person of his or her choice.

[26] Section 160 Tribunal procedure generally

Insert after section 160 (2) (e):

(e1) conditions for the use of audio or audio visual links and other matters relating to the use of audio or audio visual links in Tribunal proceedings,

[27] Section 188 Restrictions on holding of certain offices

Omit section 188 (1) (d).

[28] Section 188 (3)

Omit “or Magistrate”.

[29] Schedule 2 Mental health inquiries

Omit the Schedule.

[30] Schedule 3

Omit “see a Magistrate”.

Insert instead “see the Mental Health Review Tribunal”.

[31] Schedule 3

Omit “Magistrates’ mental health inquiries”.
Insert instead “mental health inquiries”.

[32] Schedule 3

Omit “**Magistrate’s**” wherever occurring.

[33] Schedule 3

Omit “A Magistrate’s”. Insert instead “A”.

[34] Schedule 3

Omit “The Magistrate” and “the Magistrate” wherever occurring.
Insert instead “Mental Health Review Tribunal”.

[35] Schedule 3

Omit “he or she” where secondly occurring. Insert instead “it”.

[36] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Courts and Crimes Legislation Further Amendment Act 2008

[37] Schedule 6

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

**Part Provisions consequent on enactment of
Courts and Crimes Legislation Further
Amendment Act 2008**

Existing mental health inquiries

A mental health inquiry that was commenced, but not determined, before the substitution of section 34 by the *Courts and Crimes Legislation Further Amendment Act 2008* may be determined in accordance with this Act as in force immediately before that substitution.

Schedule 17 Amendment of Mental Health (Criminal Procedure) Act 1990 No 10

(Section 3)

[1] Section 33 Mentally ill persons

Omit “by a Magistrate” from section 33 (1A).

Insert instead “at a mental health inquiry”.

[2] Section 33 (1B)

Omit “a Magistrate”. Insert instead “the Tribunal”.

Courts and Crimes Legislation Further Amendment Act 2008 No 107

Schedule 18 Amendment of Mental Health Legislation Amendment (Forensic Provisions)
Act 2008 No 79

**Schedule 18 Amendment of Mental Health Legislation
Amendment (Forensic Provisions) Act
2008 No 79**

(Section 3)

Schedule 2 [12] Section 53 (3A)

Omit “Magistrate or” from proposed section 53 (3A).

Schedule 19 Amendment of Mining Act 1992 No 29

(Section 3)

[1] Section 20 Land on which private mining operations being carried on

Omit section 20 (3). Insert instead:

- (3) If a dispute arises as to whether or not this section applies in a particular case, any party to the dispute may apply to the Land and Environment Court for a determination of the matter.

[2] Section 31 Dwelling-houses, gardens and significant improvements

Omit section 31 (5). Insert instead:

- (5) If a dispute arises as to whether or not subsection (1) applies in a particular case, any party to the dispute may apply to the Land and Environment Court for a determination of the matter.

[3] Section 38 Land subject to exploration licence

Omit section 38 (3). Insert instead:

- (3) Any such objection is to be taken into consideration by the Minister when determining the application.

[4] Section 39 Land on which private mining operations being carried on

Omit section 39 (3). Insert instead:

- (3) If a dispute arises as to whether or not this section applies in a particular case, any party to the dispute may apply to the Land and Environment Court for a determination of the matter.

[5] Section 49 Dwelling-houses, gardens and significant improvements

Omit section 49 (5). Insert instead:

- (5) If a dispute arises as to whether or not subsection (1) applies in a particular case, any party to the dispute may apply to the Land and Environment Court for a determination of the matter.

[6] Section 59 Land subject to exploration licence

Omit section 59 (3). Insert instead:

- (3) Any such objection is to be taken into consideration by the Minister when determining the application.

[7] Section 60 Land on which private mining operations being carried on

Omit section 60 (3). Insert instead:

- (3) If a dispute arises as to whether or not this section applies in a particular case, any party to the dispute may apply to the Land and Environment Court for a determination of the matter.

[8] Section 62 Dwelling-houses, gardens and significant improvements

Omit section 62 (6A). Insert instead:

- (6A) If a dispute arises as to whether or not subsection (1) (a) or (b) applies in a particular case, any party to the dispute may apply to the Land and Environment Court for a determination of the matter.

Note. A dispute in relation to subsection (1) (c) is to be dealt with under clause 23B of Schedule 1.

[9] Section 92 Resolution of objections

Omit section 92 (3).

[10] Section 109 Saving of interest in existing leases

Omit section 109 (2).

[11] Section 128 Appeals against decisions concerning cancellation or suspension of operations

Omit “District Court” wherever occurring.

Insert instead “Land and Environment Court”.

[12] Section 141 Matters for which access arrangement to provide

Omit section 141 (1) (e).

[13] Sections 155, 165, 170, 189, 203, 206, 212, 217, 233, 236C, 266, 267, 273 and 278

Omit “a Warden’s Court” wherever occurring in sections 155 (1), (2) (b) and (5)–(7), 165 (2), 170, 189 (1), 203 (1) (g), 206 (1) and (2), 212 (2), 217, 233 (1) (e), 236C (b), 266 (4) (b) (ii) and (c), 267 (4) (b) (ii) and (c), 273 and 278 (1).

Insert instead “the Land and Environment Court”.

[14] Section 164 Rights of way

Omit section 164 (6)–(8). Insert instead:

- (6) Subject to any determination by the Land and Environment Court, a right of way is subject to such conditions as to its exercise, and to such exceptions as to the land over which it may be exercised, as may be prescribed by the regulations.
- (7) If a dispute arises as to the exercise of a right of way, any party to the dispute may apply to the Land and Environment Court for a determination of the matter.

[15] Section 166 Use of water, timber and pasturage etc

Omit “with the approval of a warden” from section 166 (1).

Insert instead “in accordance with a determination of the Land and Environment Court”.

[16] Section 175C Appeals against, and suspensions and annulments of, exclusion orders

Omit section 175C (1). Insert instead:

- (1) An appeal against an exclusion order made by a Local Court may be made to the Land and Environment Court under Part 4 of the *Crimes (Appeal and Review) Act 2001* as if that order were a sentence arising from a court attendance notice dealt with under Part 2 of Chapter 4 of the *Criminal Procedure Act 1986*.

[17] Section 175C (2)

Omit “Warden’s Court or a”.

[18] Section 184 Land subject to exploration licence

Omit section 184 (3). Insert instead:

- (3) Any such objection is to be taken into consideration by the Minister when determining the application.

[19] Section 185 Land on which private mining operations being carried on

Omit section 185 (3). Insert instead:

- (3) If a dispute arises as to whether or not this section applies in a particular case, any party to the dispute may apply to the Land and Environment Court for a determination of the matter.

[20] Section 188 Dwelling-houses, gardens and significant improvements

Omit section 188 (5). Insert instead:

- (5) If a dispute arises as to whether or not subsection (1) or (2A) applies in a particular case, any party to the dispute may apply to the Land and Environment Court for a determination of the matter.

[21] Section 189 Mineral claim not to be re-granted to former holder

Omit “Warden’s Court by which the original order was made” from section 189 (2).

Insert instead “Land and Environment Court”.

[22] Section 206 Review of decisions concerning cancellation or suspension of operations

Omit “Warden’s Court” wherever occurring in section 206 (3) and (4).

Insert instead “Land and Environment Court”.

[23] Section 211 Rights of way

Omit section 211 (6)–(9). Insert instead:

- (6) Subject to any determination by the Land and Environment Court, a right of way is subject to such conditions as to its exercise, and to such exceptions as to the land over which it may be exercised:
 - (a) as may be prescribed by the regulations, or
 - (b) in the case of land within a mineral claims district, as may be specified in any registered access management plan applying to the land.
- (7) If a dispute arises as to the exercise of a right of way, any party to the dispute may apply to the Land and Environment Court for a determination of the matter.
- (8) In the case of land within a mineral claims district, the conditions imposed by the Land and Environment Court under subsection (7) must not be inconsistent with the conditions specified in any registered access management plan applying to the land.

[24] Section 213 Use of water, timber and pasturage etc

Omit “with the approval of a warden” from section 213 (1).

Insert instead “in accordance with a determination of the Land and Environment Court”.

[25] Section 222 Objections

Omit section 222 (4) and (5). Insert instead:

- (4) Unless it is earlier withdrawn, the Director-General must refer any objection made on the ground referred to in subsection (1) (b) for inquiry and report by a person having such qualifications or experience as may be prescribed by the regulations.
- (5) At the conclusion of the inquiry into the objection, the person to whom the objection has been referred must furnish the Minister with a report as to his or her findings.
- (6) An objection made on the ground referred to in subsection (1) (b) is to be determined by the Minister on the basis of the report so furnished.

[26] Section 235C Rights of way

Omit section 235C (6)–(9). Insert instead:

- (6) Subject to any determination by the Land and Environment Court, a right of way is subject to such conditions as to its exercise, and to such exceptions as to the land over which it may be exercised:
 - (a) as may be prescribed by the regulations, or
 - (b) as may be specified in any registered access management plan applying to the land.
- (7) If a dispute arises as to the exercise of a right of way, any party to the dispute may apply to the Land and Environment Court for a determination of the matter.
- (8) The conditions imposed by the Land and Environment Court under subsection (7) must not be inconsistent with the conditions specified in any registered access management plan applying to the land.

[27] Sections 236G and 236H

Omit the sections. Insert instead:

236G Determination of access management plan by Land and Environment Court

- (1) If the Director-General has declined to make a determination under section 236F, either generally or in relation to a particular matter, either the landholder or the miners' representative:

- (a) may apply to the Land and Environment Court for a determination under this section, either generally or in relation to that matter, as the case may be, and
 - (b) in that event, must cause copies of the application to be served on the landholder or miner's representative, as the case requires, and on the Director-General.
- (2) On receiving such an application, the Land and Environment Court is to determine an access management plan for the land concerned, as required by the application.
- (3) The Director-General is not a party to the proceedings before the Land and Environment Court, but may nevertheless make written submissions to the Court in relation to the proposed determination.
- (4) In making a decision under this section, the Land and Environment Court must give consideration to any submissions made by the Director-General under subsection (3).
- (5) On making a determination under this section, the Land and Environment Court is to cause copies of the determination to be served on the landholder and the miners' representative.
- (6) Each party to proceedings under this section is to bear his or her own costs in relation to the proceedings.

236H Review of Director-General's determination

- (1) An application for the review of an access management plan determined under section 236F may be made to the Land and Environment Court by either the landholder or the miners' representative (the *parties to the determination*).
- (2) An application:
 - (a) must be accompanied by a copy of the determination to which it relates, together with a copy of any access management plan forming part of the determination, and
 - (b) must be filed in the Land and Environment Court within 14 days after a copy of the determination was served on the applicant.
- (3) The applicant must cause a copy of the application to be served on the Director-General and on each of the other parties to the determination.

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- (4) The Director-General is not a party to the proceedings before the Land and Environment Court, but may nevertheless make written submissions to the Court in relation to the determination under review.
 - (5) In making a decision under this section, the Land and Environment Court must give consideration to any submissions made by the Director-General under subsection (4).
 - (6) The decision of the Land and Environment Court on a review of a determination is final and is to be given effect to as if it were the determination of the Director-General under section 236F.
 - (7) Each party to proceedings under this section is to bear his or her own costs in relation to the proceedings.

[28] Section 236I Registration of access management plans

Omit section 236I (2) (b). Insert instead:

- (b) if an application for a review of the determination is made to the Land and Environment Court within that period, as soon as practicable after the Court makes its decision on the application.

[29] Section 236L Replacement of access management plans

Omit “the Warden’s Court” from section 236L (2).

Insert instead “the Land and Environment Court”.

[30] Section 252 Environmental assessment

Omit “A warden” from section 252 (1). Insert instead “The Minister”.

[31] Section 252 (2), (4) and (5)

Omit the subsections.

[32] Section 252 (6) and (7)

Omit the subsections. Insert instead:

- (6) A permit under this section may not be granted in respect of land within a national park, state conservation area, regional park, historic site, nature reserve, karst conservation reserve, Aboriginal area, wildlife refuge or Aboriginal place within the meaning of the *National Parks and Wildlife Act 1974* except with the concurrence of the Minister administering that Act.
- (7) A permit under this section may not be granted in respect of land within a marine park within the meaning of the *Marine Parks Act*

1997 except with the concurrence of the relevant Ministers within the meaning of that Act.

- [33] Section 253 Encroachments by mining works**
Omit “A warden” wherever occurring in section 253 (1) and (2).
Insert instead “The Minister”.
- [34] Section 261 Cancellation of permit**
Omit section 261 (2).
- [35] Sections 265, 266, 267, 270, 272, 274, 278 and 281**
Omit “a warden” wherever occurring in sections 265 (4), 266 (2) (b) and (3), 267 (2) (b) and (3), 270 (2), 272 (1) (b) (ii), 274 (3), 278 (1) and 281 (1) (c).
Insert instead “the Land and Environment Court”.
- [36] Section 265 Compensation arising under mining lease**
Omit “a warden” where firstly and secondly occurring in section 265 (3).
Insert instead “the Land and Environment Court” and “the Court”, respectively.
- [37] Sections 266 and 267**
Omit “the warden” wherever occurring in sections 266 (6) (a) and 267 (6) (a).
Insert instead “the Land and Environment Court”.
- [38] Section 274 Payment out of court**
Omit section 274 (1). Insert instead:
 - (1) As compensable loss occurs, money held in the Land and Environment Court by way of compensation is to be paid out of court, on the application of any person entitled to the compensation, in accordance with the agreement or order under which it is payable.
- [39] Section 274 (2)**
Omit “a warden” where firstly and secondly occurring.
Insert instead “the Land and Environment Court” and “the Court”, respectively.

[40] Sections 275 and 276

Omit the sections. Insert instead:

275 Procedure for making assessment

In making an assessment of compensation under this Division, the Land and Environment Court:

- (a) may make the assessment at any time and at any place, and
- (b) may make the assessment in the absence of any person who appears to be interested in the assessment, if the Court is satisfied that the person has been served with a notice in accordance with this Part, and
- (c) may adjourn the hearing of the matter to any time and any place, subject to such terms as to costs or otherwise as the Court thinks fit.

276 Additional assessment

- (1) If, after an assessment of compensation has been made, it is proved to the satisfaction of the Land and Environment Court:
 - (a) that the whole of the amount paid into court under this Part has been duly paid out, and
 - (b) that further compensable loss has been caused, or is likely to be caused, in respect of the land to which the assessment relates, or to other land,the Court must, on the application of any of the parties concerned, assess that loss and order that the amount so assessed be paid by the holder of the authorisation to which the assessment relates, within the time and to the persons specified in the order.
- (2) If it is proved to the satisfaction of the Land and Environment Court:
 - (a) that an access arrangement does not make provision for or with respect to compensation, and
 - (b) that compensable loss has been caused, or is likely to be caused, in respect of the land to which the arrangement relates,the Court must, on the application of any of the parties concerned, assess that loss and order that the amount so assessed be paid by the holder of the authorisation to which the assessment relates, within the time and to the persons specified in the order.
- (3) If it is proved to the satisfaction of the Land and Environment Court:

- (a) that the whole of the amount assessed by or in accordance with an access arrangement determined by an arbitrator as referred to in section 140 (b) has been paid in accordance with the arrangement, and
 - (b) that further compensable loss has been caused, or is likely to be caused, in respect of the land to which the assessment relates or to other land,
- the Court must, on the application of any of the parties concerned, assess that loss and order that the amount so assessed be paid by the holder of the authorisation to which the assessment relates, within the time and to the persons specified in the order.
- (4) The Land and Environment Court's decision on such an application has effect as an assessment of compensation under this Division.
 - (5) In making an assessment of compensation, the Land and Environment Court must have regard to:
 - (a) any previous compensation agreement between the parties under this Division, and
 - (b) any current or previous access arrangement between the parties that was determined, or taken to have been determined, by an arbitrator under Part 8, and
 - (c) any previous assessment under this Division of compensation payable to the landholder,with respect to the land to which the current assessment relates.

[41] Section 277 Directions to furnish names and addresses

Omit section 277 (1). Insert instead:

- (1) If the Land and Environment Court considers that a landholder of any land may be entitled to compensation under this Part, the Court may, by instrument in writing served on the holder of the authorisation concerned, direct the holder to notify the Court of the name and address of the landholder.

[42] Section 281 Compensation for further loss

Omit "a warden" where secondly occurring in section 281 (1).

Insert instead "the Court".

[43] Part 15

Omit the Part. Insert instead:

Part 15 Land and Environment Court proceedings

293 Jurisdiction of Land and Environment Court

- (1) The Land and Environment Court has jurisdiction to hear and determine proceedings relating to any of the following matters:
- (a) the area, dimensions or boundaries of land subject to an authority or mineral claim,
 - (b) the right to the possession or occupation of any land by virtue of an authority or mineral claim,
 - (c) any question or dispute arising as to:
 - (i) a right of way, right of access to water or right of entry conferred by or under this Act, or
 - (ii) any condition imposed by or under this Act (including any condition imposed pursuant to a registered access management plan) on a person's exercise of any such right of way, right of access to water or right of entry,
 - (d) the right to the use and enjoyment of water for prospecting or mining and any dispute or question relating to such a right,
 - (e) trespass or encroachment on, or injury to, land subject to an authority or mineral claim, or interference with, or injury to, any mining improvement,
 - (f) any demand for debt or damages arising out of prospecting or mining,
 - (g) any demand for specific performance of any contract relating to any authority or mineral claim,
 - (h) the right to any mineral in, or to be recovered from, any land subject to an authority or mineral claim, and the rights under, or arising out of, any contract relating to any such mineral,
 - (i) any transfer or disposition of, or charge on, land subject to an authority or mineral claim,
 - (j) matters concerning:
 - (i) any partnership relating to an authority or mineral claim, or to prospecting or mining, or

- (ii) the existence, formation and dissolution of any such partnership, or
 - (iii) the taking of accounts in connection with any such partnership, or
 - (iv) the contributions of the partners as between themselves, or
 - (v) the determination of questions arising between the partners,
- (k) contributions by or between persons holding joint or several interests in an authority or mineral claim towards rent or other expenses in relation to the authority or claim,
 - (l) trespass or encroachment on, or injury to, land as a result of prospecting or mining,
 - (m) trespass or encroachment on, injury to or any matter affecting, roads, railways or other property of whatever kind constructed, held or occupied under this Act,
 - (n) the partition, sale, disposal or division of any mining improvements, or the proceeds of the sale of any mining improvements, held by 2 or more persons,
 - (o) any question or dispute arising as to the working or management of land subject to an authority or mineral claim,
 - (p) all rights claimed in, under or in relation to an authority or mineral claim or purported authority or mineral claim,
 - (q) any question or dispute as to:
 - (i) the validity of an authority, mineral claim or opal prospecting licence, or
 - (ii) the decision of the Minister or a mining registrar in relation to an application for the granting, renewal or transfer of an authority, a mineral claim or opal prospecting licence, or
 - (iii) the decision of the Minister or a mining registrar to cancel an authority, a mineral claim or opal prospecting licence,
 - (r) any question or dispute in connection with a consolidated mining lease arising under section 109, including any question or dispute concerning the rights and obligations conferred or imposed by an interest referred to in that section or the priority of any such interest,

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- (s) any question or dispute in connection with an interest (whether legal or equitable) in, or affecting, an authority or mineral claim,
 - (t) any question or dispute in connection with an assessment or agreement in respect of compensation under Part 13, arising because of the transfer of an authority or mineral claim or of part of such an authority or claim,
 - (u) the review of an arbitrator's determination under Division 2 of Part 8 or of a mining registrar's decision referred to in section 206,
 - (v) any question or dispute as to the provisions of an access arrangement or as to any matter arising as a consequence of such an arrangement,
 - (w) any question or dispute as to whether section 20 (1), 31 (1), 39 (1), 49 (1), 60 (1), 62 (1), 185 (1) or 188 (1) applies in a particular case,
 - (x) any other matter in respect of which jurisdiction is conferred on the Court by this Act.
- (2) Nothing in this section limits or restricts the jurisdiction conferred on any other court by any other Act or law.

294 Land and Environment Court may order deposit of mineral etc

- (1) On application by any party to proceedings in the Land and Environment Court, the Court may order any other party to the proceedings to deposit, pending its decision, any earth, mineral, money or chattels:
- (a) the right to which will, in the opinion of the Court, be put in issue in the course of those proceedings, and
 - (b) which may then be in, or at any time before the termination of the proceedings may come into, the possession or control of that other party.
- (2) Such an order must specify the thing to be so deposited and must direct the deposit to be made, at or before a time specified in the order, with a person or at a place so specified.

295 Land and Environment Court may grant injunction

- (1) If an application is made to the Land and Environment Court by a person claiming to hold a legal or equitable interest in any land subject to an authority or mineral claim, or in any property, the Court may, on such terms as to costs or otherwise as it may consider just, grant an injunction restraining any specified person:

- (a) from encroaching on, occupying, using or working the land or property, or
 - (b) from seeking, washing out, extracting or removing any earth or minerals from the land, or
 - (c) from selling or disposing of or otherwise interfering with the property, or
 - (d) from doing any act that may affect the interest concerned in the whole, or any part, of the land or property.
- (2) An injunction remains in force for the period specified in the injunction, unless it is sooner discharged.

296 Granting of injunctions in cases of urgency

- (1) If an applicant for an injunction satisfies the Land and Environment Court that there are urgent reasons for granting the injunction, the Court may, in any case in which the Court might otherwise grant an injunction, grant an injunction to have effect for a period of not more than 2 months (including the day on which the injunction is made) without notice of the application having been served on any other party.
- (2) The Land and Environment Court may not grant a continuance of an injunction granted under this section, and may not grant a further injunction under this section, but application for a further injunction may be made under section 295, either during or after the period of the injunction granted under this section.

297 Orders protecting adjacent authorities and mineral claims

- (1) The holder of an authority or mineral claim over land which is adjacent to:
- (a) land that is the subject of an injunction, or
 - (b) land on which is located property that is the subject of an injunction,
- may apply to the Land and Environment Court for an order permitting the land or property under injunction to be worked so as to prevent or minimise damage to or depreciation of the land over which the authority or mineral claim is held.
- (2) The Land and Environment Court:
- (a) may order, on such terms as the Court thinks fit, such working of that land or property as in the Court's opinion will be sufficient to prevent that damage or depreciation, and

-
- (b) may make such further order as to the cost of that working as the Court considers just.
 - (3) An order may not be made under this section unless the applicant shows to the satisfaction of the Land and Environment Court that the authority or mineral claim concerned will sustain damage or be materially depreciated in value by reason of the non-working of the land or property under injunction.

298 Court may order payment of money or delivery of mineral

- (1) If any money or mineral is claimed in the Land and Environment Court, the Court may order the payment of such money or the delivery of such mineral as it may find to be due or deliverable by one party to another.
- (2) If such a claim arises out of a mining partnership, adventure or interest, the Land and Environment Court may take accounts in respect of that partnership, adventure or interest, to the extent to which it may be necessary to ascertain what money or mineral (if any) is so due by one party to the other, and may make such further order as it considers just.
- (3) If the Land and Environment Court orders payment of money in respect of any debt, damages, costs or otherwise, the Court may make a further order:
 - (a) that any mineral in the possession, and being the property, of the party directed to make the payment must (to the extent in value of the payment as estimated by the Court) be delivered up to the party entitled to the payment, and
 - (b) that the mineral to that extent be seized and delivered accordingly.
- (4) If such a further order is made, the order for payment of money may only be enforced in respect of any balance remaining due after deducting the value of the mineral so delivered to the party entitled to payment.

[44] Section 365 Disclosure of information

Omit section 365 (1) (d).

[45] Section 372 Obstruction of officers

Omit “a warden,”.

[46] Section 375 Proceedings for offences

Omit “before a Warden’s Court or” from section 375 (1).

[47] Section 375 (3)

Omit the subsection.

[48] Schedule 1 Public consultation with respect to the granting of assessment leases and mining leases

Omit clauses 3 (3) and 10 (3).

[49] Schedule 1, clause 23B

Omit the clause. Insert instead:

23B Consideration of objections to claims concerning significant improvements

- (1) Unless it is earlier withdrawn, the Director-General must refer any objection made under clause 23A for inquiry and report by a person having such qualifications or experience as may be prescribed by the regulations.
- (2) At the conclusion of the inquiry into the objection, the person to whom the objection has been referred must furnish the Minister with a report as to his or her findings.
- (3) Anything in respect of which an objection has been made under clause 23A and which the report declares not to be a significant improvement is taken not to be a significant improvement for the purposes of section 62.

[50] Schedule 1, clause 27

Omit the clause. Insert instead:

27 Consideration of objections

In deciding whether or not to invite tenders for a mining lease, or to grant a mining lease, the Minister must take into account any objection made under this Division.

[51] Schedule 4 Regulation making powers

Omit “wardens,” from clause 4 of Schedule 4.

[52] Schedule 4, clause 7

Omit the clause.

[53] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Courts and Crimes Legislation Further Amendment Act 2008, but only in relation to the amendments made to this Act

[54] Schedule 6

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

**Part Provisions consequent on enactment of
Courts and Crimes Legislation Further
Amendment Act 2008**

Definitions

In this Part:

2008 amending Act means the *Courts and Crimes Legislation Further Amendment Act 2008*.

abolition date means the date on which Part 15 is substituted by the 2008 amending Act.

Abolition of Warden's Courts

Each Warden's Court is abolished.

Wardens

- (1) The offices of chief warden and warden are abolished.
- (2) A person who was a warden immediately before the abolition date does not cease to hold office as a Magistrate merely because of the abolition of the office of warden.

Pending proceedings

- (1) Proceedings commenced before a warden that have not been disposed of before the abolition date are to be dealt with by that person as if the 2008 amending Act had not been enacted and as if that person were still a warden.
- (2) Proceedings commenced before a Warden's Court that have not been disposed of before the abolition date are to be dealt with by a Local Court as if the 2008 amending Act had not been enacted and as if that Court were a Warden's Court.

Orders, directions and injunctions

Any order, direction or injunction that was made, given or issued by a warden or Warden's Court before the abolition date is taken to have been made, given or issued by the Land and Environment Court and may be enforced accordingly.

References to wardens and Wardens' Courts

Subject to the regulations, a reference in any Act or instrument to a warden or Warden's Court within the meaning of this Act is to be read as a reference to the Land and Environment Court.

[55] Dictionary

Omit the definitions of *chief warden*, *warden* and *Warden's Court*.

Schedule 20 Amendment of Mining Amendment Act 2008 No 19

(Section 3)

[1] Schedule 1 [213], [228] and [240]

Omit “a Warden’s Court” wherever occurring in proposed sections 246 (3) (a), 246C (1), 267 (1) and 281D.

Insert instead “the Land and Environment Court”.

[2] Schedule 1 [218]

Omit the item.

[3] Schedule 1 [226], [227] and [228]

Omit “a warden” wherever occurring in proposed sections 264 (6), 265 (6), 266 (2) (b), 266A (2), 266B (1) and (3) and 267 (3).

Insert instead “the Land and Environment Court”.

[4] Schedule 1 [228]

Omit “a warden’s” from proposed section 266A (1).

Insert instead “the Land and Environment Court’s”.

[5] Schedule 1 [228]

Omit “the warden” wherever occurring in proposed section 266B (2) and (4).

Insert instead “the Land and Environment Court”.

[6] Schedule 1 [233]

Omit “Warden’s Court”. Insert instead “Land and Environment Court”.

[7] Schedule 1 [235]

Omit “a warden”. Insert instead “the Land and Environment Court”.

[8] Schedule 1 [246A]–[246C]

Insert after Schedule 1 [246]:

[246A] Section 293 Jurisdiction of Land and Environment Court

Omit “the Minister or a mining registrar” wherever occurring in section 293 (1) (q) (ii) and (iii).

Insert instead “a decision-maker”.

[246B] Section 293 (1) (u)

Omit “a mining registrar’s”. Insert instead “the Director-General’s”.

[246C] Section 293 (1) (v1) and (v2)

Insert after section 293 (1) (v):

(v1) the review of an order issued under section 246 (Forfeiture of mining plant),

(v2) the review of payments out of the Mineral Claims Districts Compensation Fund in accordance with any regulations under section 281D,

[9] Schedule 1 [248] and [250]

Omit the items.

[10] Schedule 1 [251]

Omit “Omit ‘, royalty officers’.”. Insert instead “Omit the section.”.

[11] Schedule 1 [258]

Omit proposed section 378A. Insert instead:

378A Obstruction

A person must not, without reasonable excuse, obstruct, hinder or resist any person in the exercise of a function under this Act.

Maximum penalty: 1,000 penalty units.

[12] Schedule 1 [258]

Omit “a Warden’s Court or” wherever occurring in proposed section 378H (1) (b) and (2).

[13] Schedule 1 [258]

Omit proposed section 378H (4).

[14] Schedule 1 [258]

Omit “or a Warden’s Court” wherever occurring in proposed sections 378ZA (3) and (5) and 378ZC (3), 378ZD (4) and 378ZE (1).

[15] Schedule 1 [258]

Omit “a warden,” from proposed section 378ZG (2) (h).

[16] Schedule 1 [258]

Omit “warden,” from proposed section 378ZG (3).

[17] Schedule 1 [281A]

Insert after Schedule 1 [281]:

[281A] Dictionary, definition of “mining registrar”

Omit the definition.

[18] Schedule 2.4A

Insert after Schedule 2.4:

2.4A Land and Environment Court Act 1979 No 204

**Section 21 Class 5—environmental planning and protection
summary enforcement**

Insert after section 21 (hc):

- (hd) proceedings referred to in section 378H (1) (a) of the *Mining Act 1992* in relation to offences arising under that Act,

Schedule 21 Amendment of Miscellaneous Acts (Local Court) Amendment Act 2007 No 94

(Section 3)

[1] Schedule 1.3 Bail Act 1978 No 161

Insert after Schedule 1.3 [2]:

[2A] Section 22A Power to refuse to hear bail application

Omit section 22A (7).

[2] Schedule 2 Amendments replacing “a Local Court” with “the Local Court”

Insert in alphabetical order, in Columns 1 and 2 respectively:

Confiscation of Proceeds of Crime Act 1989 No 90 Section 74 (5)

Criminal Appeal Act 1912 No 16 Sections 5AF (1) (c) and 5DC (1) (c)

Mining Act 1992 No 29 Section 175C (1)

[3] Schedule 2

Insert “and (2A) (a)” after “170 (2) (a)” in Column 2 of the matter relating to the *Criminal Procedure Act 1986* No 209.

[4] Schedule 7 Amendments replacing “Local Courts Act 1982” with “Local Court Act 2007”

Insert in alphabetical order, in Columns 1 and 2 respectively:

Confiscation of Proceeds of Crime Act 1989 No 90 Section 74 (5)

Schedule 22 Amendment of Petroleum (Onshore) Act 1991 No 84

(Section 3)

[1] Section 3 Definitions

Omit the definition of *warden* from section 3 (1).

[2] Section 52 Resolution of objections

Omit section 52 (3).

[3] Section 69R Review of determination

Omit “a Warden’s Court” wherever occurring in section 69R (1), (2) (b), (5), (6) and (7).

Insert instead “the Land and Environment Court”.

[4] Section 71 Restrictions on rights of holders of leases over cultivated land

Omit “Before any such operations are commenced or works are erected, however, the warden is to assess the amount to be paid as compensation for any loss of or damage to any crop on the land concerned.” from section 71 (2).

[5] Section 71 (2A) and (2B)

Insert after section 71 (2):

(2A) Before any such operations are commenced or works are erected, an assessment is to be made as to the amount to be paid as compensation for any loss of or damage to any crop on the land concerned.

(2B) The assessment is to be made as agreed between the landholder and the holder of the production lease or, failing agreement, by the Land and Environment Court on the application of either or both of them.

[6] Section 72 Restrictions on rights of holders of titles over other land

Insert after section 72 (3):

(4) If a dispute arises as to whether or not this section applies in a particular case, any party to the dispute may apply to the Land and Environment Court for a determination of the matter.

[7] Section 73 Disputes between holders of petroleum titles and other persons carrying on operations on the land

Omit section 73 (2)–(4). Insert instead:

- (2) In the circumstances referred to in subsection (1), any party to the dispute may apply to the Land and Environment Court for a determination of the matter.

[8] Section 102

Omit the section. Insert instead:

102 Compensation for damage

The Minister must pay compensation for any loss or damage caused by any person in the exercise under this Part of any power to enter premises, but not if the loss or damage is caused because the occupier obstructed, hindered or restricted the person in the exercise of that power.

[9] Section 108 Parties to agree as to compensation

Omit “warden” and “warden’s” from section 108 (2).

Insert instead “Land and Environment Court” and “Court’s”, respectively.

[10] Section 109 Measure of compensation

Omit “warden” wherever occurring in section 109 (1), (2) (b) and (3).

Insert instead “Land and Environment Court”.

[11] Section 110

Omit the section. Insert instead:

110 Manner of assessment

- (1) If compensation is assessed under this Act by the Land and Environment Court, the assessment is to be made in the manner prescribed by the regulations and after notice to the persons who appear to the Court to be interested in the assessment.
- (2) In making any such assessment, the Land and Environment Court:
 - (a) may deal with the matter at any time and place fixed by the Court, and
 - (b) may make the assessment in the absence of any persons interested who appear to the Court to have been duly notified, and

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- (c) may adjourn the hearing to any time and place, subject to such terms as to costs or otherwise as the Court thinks fit.
- (3) The amount so assessed is to be paid, by the person adjudged liable to pay it, into the Land and Environment Court within the time specified by the Court and is from time to time, as may be thought necessary by the Court, to be paid out of court on the application of any person entitled to it.
- (4) If the amount so assessed is not paid into court within the time specified by the Land and Environment Court, the petroleum title of the holder, or the easement or right of way granted to the person, liable to make the payment may be cancelled or revoked, as the case may be.
- (5) If, after 6 months and before 12 months from the determination of a petroleum title, or the revocation of an easement or right of way, under this section, the whole or any part of an amount so paid into court:
- (a) has not been paid out under this section, and
- (b) has not been ordered to be paid out,
- any person who has paid the amount into court may apply to the Land and Environment Court for the payment out to him or her of that amount or part.
- (6) The Land and Environment Court may order the amount or part to be paid accordingly.
- (7) After the expiration of the 12-month period the Land and Environment Court may cause the amount or part to be paid into the Treasury and carried to the Consolidated Fund.

[12] Section 111 Additional assessment

Omit “warden” where firstly and secondly occurring.

Insert instead “Land and Environment Court” and “Court”, respectively.

[13] Section 112 Appeals from assessments

Omit “warden” where firstly and secondly occurring.

Insert instead “Land and Environment Court” and “Court”, respectively.

[14] Part 12, heading

Omit the heading. Insert instead:

Part 12 Administration

[15] Section 113 Officers

Omit “wardens,” wherever occurring in section 113 (1).

[16] Section 114 Wardens’ Courts

Omit the section.

[17] Section 115 Jurisdiction of Land and Environment Court

Omit the section. Insert instead:

115 Jurisdiction of Land and Environment Court

- (1) The Land and Environment Court has jurisdiction to hear and determine proceedings relating to any of the following matters:
 - (a) any demand concerning the ascertainment and adjustment of boundaries of land held under a petroleum title, or occupied by virtue of an easement or right of way granted under this Act, where such boundaries are in dispute or doubtful—in which case the Court is to ascertain and determine such boundaries by such means as may be found convenient, and may make and give all such orders and directions as may be necessary for the purpose of carrying out or giving effect to its determination,
 - (b) the right to the occupation of areas of land comprised in a petroleum title and the right to or ownership of petroleum and other materials obtained from them,
 - (c) the right to the use of areas of land comprised in an easement or right of way granted under this Act,
 - (d) any encroachments on, infringements of or damage to any land comprised in a petroleum title,
 - (e) any encroachments on, infringements of or damage to an easement or right of way granted under this Act,
 - (f) any demand for debt or damages or both arising out of or made in respect of any contract whatever relating to the search for or mining of petroleum,

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- (g) the right to any petroleum in or to be taken out of any land comprised in a petroleum title or in respect of any matter concerning or arising out of any contract relating to any such petroleum,
 - (h) any demand concerning or arising out of any partnership or joint venture for or in relation to the search for or mining of petroleum in any land comprised in or held under any petroleum title, easement or right of way granted under this Act, or any partnership or joint venture in any such land, or in any works, machinery or petroleum, or concerning or arising out of any contract for or in connection with any such search or mining, or for the dissolution wholly or in part of any such partnership or joint venture,
 - (i) any demand concerning contributions to calls or to the expense of working or using any such land or works or any share or interest in any such contributions,
 - (j) any demand concerning or arising out of any mortgage or assignment by way of security of or charge on any such land, works, machinery, petroleum or any share or interest in any such mortgage or assignment,
 - (k) any demand concerning the cancellation and delivery up of instruments relating to:
 - (i) mortgages, charges or encumbrances of or on any such land, works, machinery or petroleum, or any share or interest in them, or
 - (ii) any assignment of such mortgages, charges and encumbrances, or
 - (iii) any contract respecting the working or use of any such land, works or machinery or any partnership or joint venture for or in relation to the search for or mining of petroleum or the total or partial dissolution of any such partnership or joint venture,
 - (l) any money claimed to be due on any account relating to a partnership or joint venture for or in relation to the search for or mining of petroleum or in any way accruing to the complainant from any such partnership or joint venture, or any adventure or interest,
 - (m) any question or dispute as to:
 - (i) the validity of a petroleum title, or
 - (ii) the decision of the Minister in relation to an application for the granting, renewal or transfer of a petroleum title, or

- (iii) the decision of the Minister to cancel a petroleum title,
 - (n) the recovery of any money which any person is liable to pay under this Act or the regulations and for which no other mode of recovery is provided under this Act or the regulations,
 - (o) all questions and disputes which may arise:
 - (i) between holders of petroleum titles, or
 - (ii) between holders of petroleum titles and landholders,
 - (p) all questions or disputes which may arise as to operations on or the working or management of the land comprised in a petroleum title,
 - (q) any other matter in respect of which jurisdiction is conferred on the Court by this Act.
- (2) Nothing in this section limits or restricts the jurisdiction conferred on any other court by any other Act or law.

[18] Section 116 Inquiry may be directed

Omit the section.

[19] Section 127 Minister or officer not to be interested in petroleum title

Omit “warden,” from section 127 (1).

[20] Section 136 Other offences

Omit “the warden or” and “or by the warden” from section 136 (1) (a).

[21] Section 137 Proceedings for offences

Omit “before a Warden’s Court or” from section 137 (1).

[22] Section 137 (3)

Omit the subsection.

[23] Schedule 1 Savings and transitional provisions

Insert at the end of clause 2 (1) (b):

Courts and Crimes Legislation Further Amendment Act 2008,
but only in relation to the amendments made to this Act

**Schedule 23 Amendment of Pharmacy Practice Act
2006 No 59**

(Section 3)

Section 113 Chairperson and Deputy Chairpersons of Tribunal

Omit “Australian legal practitioner” and “Australian legal practitioners” from section 113 (1).

Insert instead “Australian lawyer” and “Australian lawyers”, respectively.

Schedule 24 Amendment of Protected Estates Act 1983 No 179

(Section 3)

- [1] **Section 15 Notice that person's capability to manage affairs will be considered**
Omit "a Magistrate". Insert instead "the MHRT".
- [2] **Section 15 (b)**
Omit "Magistrate". Insert instead "MHRT".
- [3] **Section 16 Consideration of capability of patients to manage affairs**
Omit "a Magistrate" from section 16 (1). Insert instead "the MHRT".
- [4] **Section 16 (1)**
Omit "the Magistrate". Insert instead "the MHRT".
- [5] **Section 16 (2)**
Omit the subsection. Insert instead:
(2) For the purposes of determining whether or not to make an order under subsection (1), the MHRT may defer the question of a person's capability to manage their own affairs pending the provision to the MHRT of information about the detained person or the detained person's affairs.
- [6] **Section 17 Consideration by MHRT of capability of patients to manage affairs**
Omit the section.
- [7] **Section 19 Subsequent applications**
Omit "a Magistrate or" from section 19 (2).
- [8] **Section 20 Interim orders**
Omit "A Magistrate or the MHRT may, if it appears to the Magistrate or MHRT" from section 20 (1).
Insert instead "The MHRT may, if it appears to the MHRT".
- [9] **Section 21 Appeals to Court against management orders**
Omit "a Magistrate or" from section 21 (1).

[10] Section 21A Appeals to ADT against estate management orders made by MHRT

Omit “a Magistrate or” from section 21A (1).

[11] Section 21B Notice of reasons for orders and appeal rights

Omit “a Magistrate or” from section 21B (1).

[12] Section 21B

Omit “the Magistrate or” wherever occurring. Insert instead “the”.

[13] Section 23 Management of estates of persons who are protected persons

Omit “a Magistrate”. Insert instead “the MHRT”.

Schedule 25 Amendment of Public Defenders Act 1995 No 28

(Section 3)

[1] Schedule 1 Provisions relating to Public Defenders

Omit clause 5. Insert instead:

5 Vacation of office

- (1) An Officer vacates office if the person:
 - (a) dies, or
 - (b) resigns the office by instrument in writing addressed to the Governor, or
 - (c) reaches the age of 65 years, or
 - (d) ceases to be an Australian lawyer, or
 - (e) is removed from office by the Governor under subclause (2), (3) or (4).
- (2) An Officer who fails, without reasonable excuse, to comply with clause 6 is to be removed from office by the Governor.
- (3) The Governor may remove an Officer from office for incapacity, incompetence, misbehaviour or unsatisfactory performance.
- (4) The Governor may also remove an Officer from office if the Officer:
 - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (b) becomes a mentally incapacitated person, or
 - (c) absents himself or herself from duty for 14 days (whether or not wholly or partly consecutive) in any period of 12 months, except on leave granted by the Attorney General or unless the absence is occasioned by illness or other unavoidable cause, or
 - (d) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more, or
 - (e) is convicted elsewhere than in New South Wales of an offence that if committed in New South Wales would be an offence so punishable.

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- (5) Anything done or purporting to have been done by the Officer after the Officer reaches the age of 65 years is nevertheless as valid as if the Officer had not reached that age.

[2] Schedule 1, clause 5A

Insert before clause 6:

5A Suspension from duty pending decision in relation to misconduct

- (1) If of the opinion that there may be grounds for an Officer's removal from office, the Senior Public Defender may suspend the Officer from duty pending a decision being made as to whether or not he or she should be so removed.
- (2) If the Senior Public Defender so directs, any salary payable to the Officer in relation to the period during which he or she is under suspension is to be withheld.
- (3) If the Officer is removed from office, any salary so withheld is forfeited to the State unless the Senior Public Defender otherwise directs.
- (4) A suspension imposed under this clause may be removed by the Senior Public Defender at any time.

Schedule 26 Amendment of Supreme Court Act 1970 No 52

(Section 3)

Section 37 Acting Judges

Omit section 37 (4) and (4A). Insert instead:

- (4) A retired Judge of the Court or of another court in New South Wales (including a retired judicial member of the Industrial Commission or of the Industrial Relations Commission) may be so appointed if:
 - (a) in the case of a Judge who retired as a Judge on reaching the age of 72 years, the appointment does not extend beyond the day on which he or she reaches the age of 77 years, or
 - (b) in the case of a Judge who retired as a Judge before reaching the age of 72 years, the appointment does not extend beyond the day on which he or she reaches the age of 75 years.
- (4A) A retired Judge of the Federal Court of Australia or of the Supreme Court of another State or Territory may be so appointed if:
 - (a) in the case of a Judge who retired as a Judge on reaching the age of 70 years, the appointment does not extend beyond the day on which he or she reaches the age of 77 years, or
 - (b) in the case of a Judge who retired as a Judge before reaching the age of 70 years, the appointment does not extend beyond the day on which he or she reaches the age of 75 years.

Schedule 27 Amendment of Surveillance Devices Act 2007 No 64

(Section 3)

[1] Section 7 Prohibition on installation, use and maintenance of listening devices

Insert after section 7 (2) (e):

- (f) the use of a listening device, being a device integrated into a Taser issued to a member of the NSW Police Force, to record the operation of the Taser and the circumstances surrounding its operation.

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

Insert after section 8 (2) (d):

- (e) the use of an optical surveillance device, being a device integrated into a Taser issued to a member of the NSW Police Force, to record the operation of the Taser and the circumstances surrounding its operation.

[3] Section 21 What a surveillance device warrant authorises

Insert “or the vehicle” after “access to the premises” in section 21 (2) (a) (ii).

[4] Section 21 (2) (b) (ii) and (c) (ii)

Insert “or the vehicle” after “access to those premises” wherever occurring.

[5] Section 29 What a retrieval warrant authorises

Insert “or the vehicle” after “access to those premises” in section 29 (1) (b).

**Schedule 28 Amendment of Young Offenders Act
1997 No 54**

(Section 3)

[1] Section 22 Explanations to children

Omit “16 years” from section 22 (2) (c). Insert instead “14 years”.

[2] Section 39 Explanations to children

Omit “16 years” from section 39 (2) (c). Insert instead “14 years”.

Schedule 29 Amendment of other Acts and instruments consequent on abolition of Wardens' Courts

(Section 3)

29.1 Civil Procedure Act 2005 No 28

Schedule 1 Application of Act

Omit "3 or 4" from the matter in Column 2 relating to the Land and Environment Court.

Insert instead "3, 4 or 8".

29.2 Court Security Act 2005 No 1

Section 4 Definitions

Omit paragraph (i) of the definition of *court* in section 4 (1).

29.3 Crimes (Appeal and Review) Act 2001 No 120

Section 3 Definitions

Omit paragraph (b) of the definition of *Local Court* in section 3 (1).

29.4 Criminal Procedure Act 1986 No 209

[1] Section 3 Definitions

Omit the definition of *Warden's Court* in section 3 (1).

[2] Section 28 Application of Part and definition

Omit "a warden of a Warden's Court," from the definition of *Judge* in section 28 (2).

[3] Section 45 Application of Chapter and definitions

Omit ", a warden of a Warden's Court" from the definition of *Magistrate* in section 45 (2).

[4] Section 170 Application

Omit section 170 (2) (d).

[5] Section 170 (2A) (e)

Omit the paragraph.

[6] Section 171 Definitions

Omit “a Mining Warden,” from the definition of *Magistrate*.

[7] Section 171, definition of “registrar”

Omit paragraph (d) of the definition.

[8] Section 275 Definitions

Omit “a warden of a Warden’s Court,” from the definition of *Judge*.

[9] Section 312 Persons arrested under bench warrants

Omit section 312 (3). Insert instead:

(3) In this section:

Judge includes a Magistrate, a Children’s Court Magistrate, the President or a judicial member of the Industrial Relations Commission and an Industrial Magistrate and any other person of a class prescribed for the purposes of this definition.

29.5 Freedom of Information Regulation 2005

Schedule 3 Public authorities

Omit the matter relating to Mining Warden in Part 3.

**29.6 Independent Commission Against Corruption Act 1988
No 35**

Section 18 Court proceedings

Omit “warden,” from section 18 (1).

29.7 Police Integrity Commission Act 1996 No 28

Section 21 Court proceedings

Omit “warden,” from section 21 (1).

29.8 Public Trustee Act 1913 No 19

Section 36G Investment in common fund of money paid into court

Insert after section 36G (4) (a):

(a1) the Land and Environment Court,

29.9 Royal Commission (Police Service) Act 1994 No 60

Section 38 Effect of pending proceedings

Omit "warden," from section 38 (1).

29.10 Very Fast Train (Route Investigation) Act 1989 No 44

[1] Section 19 Determination of claim for compensation

Omit "a Warden's Court" from section 19 (1).

Insert instead "the Land and Environment Court".

[2] Section 19 (2)

Omit "A Warden's Court". Insert instead "The Land and Environment Court".

[3] Section 19 (7)

Omit the subsection.

[4] Section 20 Delegation

Omit section 20 (b).

[Second reading speech made in Legislative Council on 27 November 2008
Agreement in principle speech made in Legislative Assembly on 4 December 2008]

BY AUTHORITY