



New South Wales

# Courts and Other Legislation Amendment Act 2009 No 37

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Explanatory notes	2
Schedule 1 Amendment of Acts	3

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New South Wales

# **Courts and Other Legislation Amendment Act 2009 No 37**

Act No 37, 2009

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An Act to amend various Acts with respect to courts, civil and criminal procedure, sentencing procedure, personal information and reports; and for other purposes.  
[Assented to 19 June 2009]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Courts and Other Legislation Amendment Act 2009*.

**2 Commencement**

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) The amendments made by Schedule 1 commence on the day or days specified in that Schedule in relation to the amendments concerned. If a commencement day is not specified, the amendments commence on the date of assent to this Act.

**3 Explanatory notes**

The matter appearing under the heading “Explanatory note” in Schedule 1 does not form part of this Act.

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## **Schedule 1      Amendment of Acts**

### **1.1    Administrative Decisions Tribunal Act 1997 No 76**

**[1]    Section 113 Right to appeal against appealable decisions of the Tribunal**

Omit “an interlocutory decision of” from section 113 (2A).

Insert instead “the exercise of an interlocutory function (within the meaning of section 24A) by”.

**[2]    Section 113 (2B)**

Omit the subsection. Insert instead:

(2B) For the purposes of determining whether to grant leave under subsection (2A), and for determining the appeal if leave is granted, the Appeal Panel may be constituted by:

- (a) one presidential judicial member—if the interlocutory function was exercised by the Tribunal constituted by a Deputy President or by one or more members other than the President, or
- (b) in accordance with section 24—if the interlocutory function was exercised by the President.

**[3]    Section 113 (2C) (b)**

Insert “or determining the appeal” after “subsection (2A)”.

**[4]    Section 113 (2D)**

Insert after section 113 (2C):

(2D) Subsection (2B) has effect despite section 24A.

**[5]    Schedule 5 Savings and transitional provisions**

Insert at the end of the Schedule:

## **Part 12    Provision consequent on enactment of              Courts and Other Legislation Amendment              Act 2009**

### **47    Appeals against interlocutory decisions**

Section 113 (2B) (as substituted by the *Courts and Other Legislation Amendment Act 2009*) does not apply to an

application for leave to appeal against an interlocutory decision made before the substitution.

**Explanatory note**

The proposed amendments to the *Administrative Decisions Tribunal Act 1997* ensure that an Appeal Panel constituted by a single presidential judicial member may deal with both an application for leave to appeal against an interlocutory function exercised by the Tribunal and the appeal if leave is granted. An interlocutory function exercised by the President alone will be dealt with by a full Appeal Panel. The amendments are made in response to the decision of the Court of Appeal in *Avilion Group Pty Ltd v Commissioner of Police* [2009] NSWCA 93.

## **1.2 Anti-Discrimination Act 1977 No 48**

### **[1] Section 119 General functions of the Board**

Omit “and” from section 119 (1) (f).

### **[2] Section 119 (1) (h)**

Insert at the end of section 119 (1) (g):

, and

- (h) liaise or collaborate with academics and other persons engaged in carrying out investigations, research or inquiries relating to discrimination when it considers it appropriate to do so and, for those purposes, to facilitate disclosure to those persons of information obtained under this Act.

**Note.** Sections 17 and 18 of the *Privacy and Personal Information Protection Act 1998* impose limits on the disclosure of personal information by the Board in exercising this function.

### **[3] Section 124A Secrecy**

Insert at the end of section 124A (1) (d):

, or

- (e) an academic or other person referred to in section 119 (1) (h).

**Explanatory note**

The proposed amendments to the *Anti-Discrimination Act 1977* enable the Board to give access to information obtained under the Act to academics and other persons for certain purposes.

## **1.3 Children (Criminal Proceedings) Act 1987 No 55**

### **[1] Section 33D Non-association and place restriction orders**

Insert “except at the times or in such circumstances (if any) as are specified” after “specified person” in section 33D (3) (a).

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**[2] Section 33D (3A)**

Insert after section 33D (3):

- (3A) An order under subsection (2) (b) is to be one of the following:
- (a) a limited place restriction order, being an order prohibiting the person from frequenting or visiting a specified place or district except at the times or in such circumstances (if any) as are specified,
  - (b) an unlimited place restriction order, being an order prohibiting the person from frequenting or visiting a specified place or district at any time or in any circumstance.

**Explanatory note**

The proposed amendments to the *Children (Criminal Proceedings) Act 1987* will make section 33D of that Act mirror section 17A of the *Crimes (Sentencing Procedure) Act 1999* (as amended by Schedule 1.5 [1] and [2]). Section 33D (6) of the 1987 Act adopts Part 8A (Non-association and place restriction orders) of the 1999 Act and accordingly the amendments made by Schedule 1.5 [3]–[7] to provisions of that Part will automatically flow through to section 33D. The proposed amendments:

- (a) enable the court to make a limited non-association order prohibiting an offender from associating with a specified person for a specified term except at specified times or in specified circumstances (item [1]), and
- (b) enable the court to make a limited place restriction order prohibiting an offender from frequenting or visiting a place except at specified times or in specified circumstances (item [2]).

**1.4 Civil Procedure Act 2005 No 28**

**Section 122 Maximum total payment under all garnishee orders**

Omit “80 per cent of” from section 122 (1).

**Explanatory note**

Section 122 of the *Civil Procedure Act 2005* prohibits the amounts attached under one or more garnishee orders from reducing the net weekly wage or salary paid to a judgment debtor to below 80% of the standard workers compensation weekly benefit (currently \$381.40). The proposed amendment to the Act will increase the limit to the full amount of the benefit. The increase will apply only in respect of garnishee orders entered on or after the commencement of the amendment.

**1.5 Crimes (Sentencing Procedure) Act 1999 No 92**

**[1] Section 17A Non-association and place restriction orders**

Insert “except at the times or in such circumstances (if any) as are specified” after “specified person” in section 17A (3) (a).

**[2] Section 17A (3A)**

Insert after section 17A (3):

- (3A) An order under subsection (2) (b) is to be one of the following:
- (a) a limited place restriction order, being an order prohibiting the offender from frequenting or visiting a specified place or district except at the times or in such circumstances (if any) as are specified,
  - (b) an unlimited place restriction order, being an order prohibiting the offender from frequenting or visiting a specified place or district at any time or in any circumstance.

**[3] Section 100A Non-association and place restriction orders not to restrict certain associations or activities**

Insert after section 100A (1):

- (1A) Despite subsection (1), a member of the offender's close family may be specified in a non-association order if, and only if, the court considers that exceptional circumstances exist because there is reasonable cause to believe, having regard to the ongoing nature and pattern of criminal activity in which the member and the offender have both participated, that there is risk that the offender may be involved in conduct that could involve the commission of a further offence of the kind to which section 17A applies if the offender associates with that member.

**[4] Section 100A (2) (e) and (f)**

Insert at the end of section 100A (2) (d):

or

- (e) any place at which the offender regularly receives a health service or a welfare service, or
- (f) any place at which the offender is provided with legal services by an Australian legal practitioner or by an organisation employing or otherwise using at least one Australian legal practitioner to provide such services,

**[5] Section 100A (2A)–(2C)**

Insert after section 100A (2):

- (2A) Despite subsection (2), a place or district referred to in that subsection may be specified in a place restriction order if, and only if, the court considers that exceptional circumstances exist because there is reasonable cause to believe, having regard to the

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ongoing nature and pattern of participation of the offender in criminal activity occurring at that place or district, that there is risk that the offender may be involved in conduct that could involve the commission of a further offence of the kind to which section 17A applies if the offender frequents or visits that place or district.

- (2B) The court must make a record of its reasons for making an order under subsection (1A) or (2A).
- (2C) The failure of a court to comply with subsection (2B) does not invalidate the order.

**[6] Section 100A (3) (f)**

Insert at the end of section 100A (3) (e):

, and

- (f) in the case of an offender who is an Aboriginal person or a Torres Strait Islander—persons who are or have been part of the extended family or kin of the offender according to the indigenous kinship system of the offender’s culture.

**[7] Section 100A (4)**

Insert after section 100A (3):

- (4) In this section:

**health service** means any medical, hospital, ambulance, paramedical, dental, community health or environmental health service or any other service (including any service of a class or description prescribed by the regulations) relating to the maintenance or improvement of the health, or the restoration to health, of persons or the prevention of disease in, or injury to, persons and whether provided as a public or private service.

**welfare service** means services (whether provided as public or private services) relating to the provision of housing, employment benefits, rental assistance or other financial assistance, family support and other community welfare services necessary for the promotion, protection, development and maintenance of the well-being of persons.

**Explanatory note**

Section 17A of the *Crimes (Sentencing Procedure) Act 1999* enables “non-association” and “place restriction” orders to be imposed on persons who are sentenced for offences carrying a maximum of 6 months imprisonment or more. Section 100A of the Act prevents a non-association order from imposing certain restrictions on an offender associating with persons who are members of the offender’s close family and prevents a place restriction order from imposing certain restrictions on the places or districts that the offender may frequent or visit. The proposed amendments to the Act:



- (a) include within the definition of “close family” persons who are, or have been, part of the extended family or kin of an offender who is an Aboriginal person or Torres Strait Islander (item [6]), and
- (b) expand the list of places that may not be included in place restriction orders to include places the offender regularly attends to receive certain health, legal and welfare services (items [4] and [7]), and
- (c) enable the court to make a non-association order prohibiting an offender from associating with a specified person for a specified term except at specified times or in specified circumstances (item [1]), and
- (d) enable the court to make a place restriction order prohibiting an offender from frequenting or visiting a place except at specified times or in specified circumstances (item [2]), and
- (e) enable the court to impose orders despite the restrictions relating to close family members and places and districts and require the court to give reasons for making such an order in specified exceptional circumstances (items [3] and [5]).

The amendments flow from certain recommendations made in the NSW Ombudsman’s Final Report of the Review of the *Justice Legislation Amendment (Non-association and Place Restriction) Act 2001*.

## **1.6 Law Enforcement (Powers and Responsibilities) Act 2002 No 103**

### **[1] Section 62 Information in, and consideration of, application for warrant**

Omit “those premises” from section 62 (2) (a) (i).

Insert instead “the subject premises”.

### **[2] Section 66 Form of warrant**

Omit “those premises” from section 66 (2) (b) (i).

Insert instead “the subject premises”.

#### **Commencement**

The amendments to the *Law Enforcement (Powers and Responsibilities) Act 2002* are taken to have commenced on 29 May 2009 (the commencement of the *Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Act 2009*).

#### **Explanatory note**

The proposed amendments to the *Law Enforcement (Powers and Responsibilities) Act 2002* remove an ambiguity in the language of provisions inserted by the *Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Act 2009*. The amendments make it clear that an application for a covert search warrant, and any covert search warrant, must include the name of the occupier of the premises the subject of the warrant.

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## 1.7 Law Reform Commission Act 1967 No 39

### Section 13 Reports

Insert after section 13 (5):

- (5A) If a House of Parliament is not sitting when the Minister seeks to lay a report before it, the Minister may present copies of the report to the Clerk of the House concerned.
- (5B) The report:
  - (a) is, on presentation and for all purposes, taken to have been laid before the House, and
  - (b) may be printed by authority of the Clerk of the House, and
  - (c) if so printed, is for all purposes taken to be a document published by or under the authority of the House, and
  - (d) is to be recorded:
    - (i) in the case of the Legislative Council, in the Minutes of Proceedings of the Legislative Council, and
    - (ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the report by the Clerk.

#### Explanatory note

The proposed amendment to the *Law Reform Commission Act 1967* enables interim and final reports on the Law Reform Commission's work under a reference to be tabled when Parliament is not sitting.

## 1.8 Local Court Act 2007 No 93

### [1] Section 18 Registrars and deputy registrars

Omit "a designated place" from section 18 (2).

Insert instead "one or more designated places".

### [2] Section 19 Registrar's functions generally

Omit section 19 (2). Insert instead:

- (2) Subject to any direction of the Director-General of the Attorney General's Department, a registrar (including a registrar for a designated place or places) may exercise such functions as are

conferred on the registrar under subsection (1) in respect of any place, or any particular designated place or places, in the State.

**[3] Section 19 (3)**

Insert “at which the registrar may exercise the functions” after “State”.

**[4] Section 19 (4)**

Insert after section 19 (3):

- (4) The Director-General may delegate the exercise of the Director-General’s function under subsection (2) to:
  - (a) any member of staff employed in the administration of the business of the Court, or
  - (b) any other person (or person belonging to a class of persons) prescribed by the regulations.

**[5] Section 21 References to registrars**

Omit “the registrar for that place” from section 21 (a).

Insert instead “a registrar authorised to exercise functions at or in relation to that place”.

**[6] Section 23 Arrangement of business of the Court**

Omit section 23 (1) (b). Insert instead:

- (b) the Magistrates or Assessors who are to sit at places (including one or more designated places) in the State or exercise certain functions at those places, and

**[7] Section 23 (1) (c)**

Omit “designated”. Insert instead “those”.

**Explanatory note**

The proposed amendments to the *Local Court Act 2007* make it clear that (subject to any directions of the Director-General of the Attorney General’s Department or his or her delegate) functions generally or in particular may be conferred on a registrar that are exercisable by the registrar in respect of one or more designated places in the State or any place in the State by or under the Act, the rules or any other Act or law.

## **1.9 Mining Act 1992 No 29**

### **Section 293 Jurisdiction of Land and Environment Court**

Omit “62 (1)” from section 293 (1) (w). Insert instead “62 (1) (a) or (b)”.

#### **Explanatory note**

The proposed amendment to the *Mining Act 1992* updates a reference to section 62 of the Act to more accurately reflect section 62 (6A) of the Act (which enables a party to a dispute under section 62 (1) (a) or (b) of the Act concerning mining leases over land on which there are certain dwelling-houses or gardens to apply to the Land and Environment Court for determination of a dispute about those matters).

[Agreement in principle speech made in Legislative Assembly on 5 June 2009  
Second reading speech made in Legislative Council on 17 June 2009]

BY AUTHORITY