



New South Wales

Courts and Crimes Legislation Amendment Act 2015 No 2

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New South Wales

Courts and Crimes Legislation Amendment Act 2015 No 2

Act No 2, 2015

An Act to make miscellaneous amendments to certain legislation with respect to courts, tribunals and crimes; and for related purposes. [Assented to 15 May 2015]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Courts and Crimes Legislation Amendment Act 2015*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Explanatory notes

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

Schedule 1 Amendments concerning Civil and Administrative Tribunal

1.1 Children and Young Persons (Care and Protection) Act 1998 No 157

Section 29 Protection of persons who make reports or provide certain information

Omit section 29 (1) (d) (iv). Insert instead:

- (iv) proceedings before the Civil and Administrative Tribunal that are allocated to the Guardianship Division of the Tribunal or are commenced under the *Victims Rights and Support Act 2013*,

Explanatory note

The proposed amendment to the *Children and Young Persons (Care and Protection) Act 1998* clarifies the kinds of proceedings before the Civil and Administrative Tribunal in which a report of harm made by a person concerning a child or young person will be admissible.

1.2 Civil and Administrative Tribunal Act 2013 No 2

[1] Section 45 Representation of parties

Omit section 45 (1) (b). Insert instead:

- (b) may be represented by another person only if the Tribunal grants leave:
 - (i) for that person to represent the party, or
 - (ii) in the case of representation by an Australian legal practitioner— for a particular or any Australian legal practitioner to represent the party.

[2] Section 45 (4A)

Insert after section 45 (4):

- (4A) The Tribunal may, at its discretion, revoke any appointment or order made under subsection (4).

[3] Section 90 Regulations

Omit “Health Practitioner Division List” from section 90 (3).

Insert instead “Health Practitioner List”.

[4] Schedule 1 Savings, transitional and other provisions

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

Part Provision consequent on enactment of Courts and Crimes Legislation Amendment Act 2015

Renaming of Health Practitioner Division List

The renaming of the Health Practitioner Division List of the Occupational Division of the Tribunal by the *Courts and Crimes Legislation Amendment Act 2015* as the Health Practitioner List does not affect the continuation of any proceedings entered in the List before its renaming or the appointment of the List Manager for the List.

[5] Schedule 5 Occupational Division

Omit “*Division*” from the definition of *Health Practitioner Division List* in clause 8.

[6] Schedule 5, clause 10 Health Practitioner List

Omit clause 10 (1). Insert instead:

- (1) There is to be a Division List for the Division called the Health Practitioner List.

[7] Schedule 5, clauses 10 (2) and (3), 11, 12, 13 and 14 (2) (a)

Omit “Health Practitioner Division List” wherever occurring.

Insert instead “Health Practitioner List”.

[8] Schedule 6 Guardianship Division

Omit “general” from clause 13 (1) (c). Insert instead “senior or general”.

Explanatory note

Item [1] of the proposed amendments to the *Civil and Administrative Tribunal Act 2013* enables the Civil and Administrative Tribunal to grant leave for a person to be represented by an Australian legal practitioner without specifying a particular practitioner.

Item [2] makes it clear that the Tribunal may revoke:

- (a) an appointment it makes of a person to represent a party or act as guardian ad litem of a party, or
(b) an order it makes that a party be separately represented.

Item [6] renames the Health Practitioner Division List of the Occupational Division of the Tribunal as the Health Practitioner List. Items [3], [5] and [7] make consequential amendments. Item [4] provides that the renaming of the List does not affect any pending proceedings or the appointment of the List Manager for the List.

Item [8] enables a person who is a senior member (but not an Australian lawyer) to sit as one of the 3 members of an Appeal Panel determining an internal appeal against a decision made in the Guardianship Division of the Tribunal.

1.3 Civil and Administrative Tribunal Regulation 2013

[1] Clause 6 Circumstances where no fee or reduced fee is payable

Omit “Health Practitioner Division List” from clause 6 (1) (f).

Insert instead “Health Practitioner List”.

[2] Clause 7 Allowances and expenses of witnesses

Omit “Health Practitioner Division List” from clause 7 (2) (b).

Insert instead “Health Practitioner List”.

Explanatory note

The proposed amendments to the *Civil and Administrative Tribunal Regulation 2013* update references to the Health Practitioner Division List of the Occupational Division of the Civil and Administrative Tribunal consequent on its renaming by the amendments made by Schedule 1.2.

1.4 Health Practitioner Regulation (Adoption of National Law) Act 2009 No 86

[1] Schedule 1 Modification of Health Practitioner Regulation National Law

Omit “Health Practitioner Division List” from the definition of *Tribunal List Manager* in section 138 (1) in Schedule 1 [13].

Insert instead “Health Practitioner List”.

[2] Schedule 1 [15]

Omit “Health Practitioner Division List” from the note to section 165B (1).

Insert instead “Health Practitioner List”.

Explanatory note

The proposed amendments to the *Health Practitioner Regulation (Adoption of National Law) Act 2009* update references in the *Health Practitioner Regulation National Law (NSW)* to the Health Practitioner Division List of the Occupational Division of the Civil and Administrative Tribunal consequent on its renaming by the amendments made by Schedule 1.2.

1.5 Water Act 1912 No 44

Section 12 Licence

Omit “Director-General or Magistrate” wherever occurring in section 12 (1) (b) and (2) (c).

Insert instead “Civil and Administrative Tribunal”.

Explanatory note

The proposed amendment to the *Water Act 1912* updates references as a consequence of the transfer of certain appellate functions to the Civil and Administrative Tribunal on its establishment.

Schedule 2 Amendments concerning guardianship

2.1 Guardianship Act 1987 No 257

[1] Section 3F Persons who are “parties” to proceedings under this Act

Insert after section 3F (2) (d):

- (d1) the enduring guardian, if any, of the person to whom the application relates,

[2] Section 3F (3) (d1)

Insert after section 3F (3) (d):

- (d1) the enduring guardian, if any, of the person the subject of the order,

[3] Section 3F (7) (d1)

Insert after section 3F (7) (d):

- (d1) the person, if any, appointed attorney by the person to whom the relevant financial management order relates under a power of attorney (whether in force or suspended),

[4] Section 5 Definitions

Omit “alternative enduring guardian” wherever occurring in the definitions of *eligible signer* and *eligible witness*.

Insert instead “substitute enduring guardian”.

[5] Section 6DA Substitute enduring guardians

Omit “an alternative enduring guardian”, “An alternative enduring guardian”, “the alternative enduring guardian” and “that alternative enduring guardian” wherever occurring.

Insert instead “a substitute enduring guardian”, “A substitute enduring guardian”, “the substitute enduring guardian” and “that substitute enduring guardian”, respectively.

[6] Section 6HB Resignation of appointment by appointee

Omit “an alternative enduring guardian” from section 6HB (5).

Insert instead “a substitute enduring guardian”.

[7] Section 6K Action on review

Omit section 6K (1) (a). Insert instead:

- (a) revoke the appointment or deal with the matter as provided by subsection (3) (or both), or

[8] Section 6K (3)

Omit the subsection. Insert instead:

- (3) The Tribunal may, if it considers that it is in the best interests of the appointor to do so, deal with a review as if any of the following applications had been made in respect of the appointor:
 - (a) an application for a guardianship order under Part 3,
 - (b) an application for a financial management order under Part 3A,
 - (c) applications for both such orders.

[9] Section 6MA Substitution of enduring guardians by Tribunal

Omit “to replace an appointee as an enduring guardian” from section 6MA (1).
Insert instead “as a substitute enduring guardian”.

[10] Section 6MA (2)

Omit “to replace an appointee”.

[11] Section 6MA (3)

Omit “an alternative enduring guardian”. Insert instead “a substitute enduring guardian”.

[12] Section 25C Action on review

Insert at the end of section 25C (1) (c):

- , or
- (d) renew, or renew and vary the order.

[13] Section 25I Application to Tribunal for a financial management order

Insert after section 25I (1) (a):

- (a1) the person who is the subject of the application, or

[14] Section 25M Tribunal may commit estate of protected person to management

Omit “section 68 (1)” from section 25M (2).

Insert instead “section 61 of the *Civil and Administrative Tribunal Act 2013*”.

[15] Section 25P Action on review

Omit section 25P (1). Insert instead:

- (1) On reviewing a financial management order under section 25N, the Tribunal:
- (a) must vary, revoke or confirm the order, and
 - (b) if it considers it appropriate to do so—may take such action with respect to the appointment of the manager of the protected person’s estate as the Tribunal could take on a review of such an appointment under Division 3.

[16] Section 25P (3)

Insert after section 25P (2):

- (3) In this section, *vary*, in relation to a financial management order, includes to exclude (or remove an exclusion of) a specified part of the protected person’s estate from the order.

[17] Section 25S Review of appointment of manager

Insert after section 25S (1) (b) (i):

- (ia) the protected person, or

[18] Section 25S (1A)

Insert after section 25S (1):

- (1A) Without limiting subsection (1), the Tribunal may order that the appointment of a manager be reviewed within a specified time.

[19] Schedule 3 Savings and transitional provisions

Insert at the end of clause 1 (1):

any other Act that amends this Act

[20] Schedule 3

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

Part Provisions consequent on enactment of Courts and Crimes Legislation Amendment Act 2015

Definition

In this Part:

amending Act means the *Courts and Crimes Legislation Amendment Act 2015*.

Substitute enduring guardians

A person appointed as an alternative enduring guardian before the day on which the amendment of section 6DA by the amending Act commences is taken, on and from that day, to have been appointed as a substitute enduring guardian.

Application of procedural amendments

Each of the following provisions, as amended, inserted or substituted by the amending Act, extends to proceedings commenced (but not determined) before the amendment, insertion or substitution of the provision concerned:

- (a) section 6K,
- (b) section 6MA,
- (c) section 25C,
- (d) section 25I,
- (e) section 25P,
- (f) section 25S.

Explanatory note

Items [1] and [2] of the proposed amendments to the *Guardianship Act 1987* provide that the enduring guardian of a person in respect of whom a guardianship order is sought in or granted by the Civil and Administrative Tribunal is to be treated as being a party to the proceedings for the order and in proceedings for a review of the order.

Item [3] provides that an attorney under a power of attorney granted by a person who is subject to a financial management order is to be treated as a party in proceedings in the Civil and Administrative Tribunal for a review of such an order or for the review of the appointment of a manager of the person's estate.

Item [5] provides for alternative enduring guardians to be called substitute enduring guardians. Items [4], [6] and [9]–[11] make consequential amendments.

Items [7] and [8] enable the Civil and Administrative Tribunal, in proceedings for the review of the appointment of an enduring guardian, to treat the proceedings as if they were an application for a guardianship order or financial management order (or both) if it considers that it is in the best interests of the appointor to do so.

Item [12] enables the Civil and Administrative Tribunal, in certain proceedings for a review of a guardianship order, to renew and vary the order.

Item [13] enables an application for a financial management order to be made by the person who is the subject of the application.

Item [14] updates a cross-reference.

Item [15] enables the Civil and Administrative Tribunal, in proceedings for the review of a financial management order, to take such action with respect to the appointment of the manager of the protected person's estate as the Tribunal could take on a review of such an appointment.

Item [16] makes it clear that the Civil and Administrative Tribunal, in proceedings for the review of a financial management order, may vary the order to exclude (or remove an exclusion of) a specified part of the protected person's estate from the order.

Item [17] enables an application for the review of the appointment of the manager of a protected person's estate to be made by the protected person.

Item [18] enables the Civil and Administrative Tribunal to order that the appointment of the manager of a protected person's estate be reviewed within a specified period.

Item [19] enables the Governor to make regulations of a savings or transitional nature consequent on the enactment of any Act that amends the *Guardianship Act 1987* (including the proposed Act).

Item [20] makes provision for certain savings and transitional matters in connection with the *Guardianship Act 1987* consequent on the enactment of the proposed Act.

2.2 Guardianship Regulation 2010

Schedule 1 Forms

Omit "an alternative enduring guardian" from the note to Form 1.

Insert instead "a substitute enduring guardian".

Explanatory note

The proposed amendment to the *Guardianship Regulation 2010* updates a reference to alternative enduring guardians as a consequence of their renaming as substitute enduring guardians by Schedule 2.1.

Schedule 3 Amendments concerning acting judicial officers

3.1 Children's Court Act 1987 No 53

Section 6B Acting President of Children's Court

Insert after section 6B (1):

- (1A) Unless the Governor has made an appointment under subsection (1) (and without limiting subsection (1)), the Attorney General may, by instrument in writing, appoint a Children's Magistrate to be Acting President:
- (a) during any vacancy in the office of the President, or
 - (b) during any period for which the President is absent from duty.
- (1B) An appointment under this section may be made for a particular vacancy or absence or for any vacancy or absence that occurs from time to time.

Explanatory note

The proposed amendment to the *Children's Court Act 1987* enables the Attorney General to appoint a Children's Magistrate of the Children's Court of New South Wales to be Acting President during a vacancy or absence from duty of the President. It also enables the Attorney General or the Governor to appoint a Children's Magistrate for a particular vacancy or absence from duty of the President or any such vacancy or absence that occurs from time to time.

3.2 District Court Act 1973 No 9

[1] Section 17 Acting Chief Judge

Insert after section 17 (1):

- (1A) Unless the Governor has made an appointment under subsection (1) (and without limiting subsection (1)), the Attorney General may, by instrument in writing, appoint a Judge to be Acting Chief Judge during such period as the Chief Judge may be absent from duty.
- (1B) An appointment under this section may be made for a particular absence or for any absence that occurs from time to time.

[2] Section 17 (3)

Insert after section 17 (2):

- (3) In this section, *absent from duty* includes a vacancy in the office of Chief Judge.

[3] Section 18 Acting Judges

Omit "not exceeding 12 months" from section 18 (1).

Insert instead "not exceeding 5 years".

[4] Section 18 (4)–(4B)

Omit "75 years" wherever occurring. Insert instead "77 years".

[5] Section 18 (4A)

Insert "or Family Court of Australia" after "Federal Court of Australia".

Explanatory note

Item [1] of the proposed amendments to the *District Court Act 1973* enables the Attorney General to appoint a judge of the District Court of New South Wales to be Acting Chief Judge during a vacancy or absence from duty of the Chief Judge. It also enables the Attorney General or the Governor to

appoint a judge for a particular vacancy or absence from duty of the Chief Judge or any such vacancy or absence that occurs from time to time. Item [2] makes a consequential amendment.

Item [3] enables acting judges to be appointed for a period of up to 5 years. Currently, acting judges are appointed for a period of up to 12 months.

Item [4] enables acting judges to be appointed up to the age of 77 years. Currently, acting judges are appointed up to the age of 75 years.

Item [5] enables former Family Court judges to be appointed as acting judges.

3.3 Drug Court Act 1998 No 150

Section 22 Acting Senior Judge

Insert after section 22 (1):

- (1A) The Minister may make any such appointment for a particular absence or vacancy or for any absence or vacancy that occurs from time to time.

Explanatory note

The proposed amendment to the *Drug Court Act 1998* enables the Attorney General to appoint a judge of the Drug Court of New South Wales to be Acting Senior Judge for a particular vacancy or absence from duty of the Senior Judge or any such vacancy or absence that occurs from time to time.

3.4 Dust Diseases Tribunal Act 1989 No 63

[1] Section 7B Acting President

Insert after section 7B (1):

- (1A) Unless the Governor has made an appointment under subsection (1) (and without limiting subsection (1)), the Attorney General may, by instrument in writing, appoint a member to be Acting President during such period as the President may be absent from his or her duties.
- (1B) An appointment under this section may be made for a particular absence or for any absence that occurs from time to time.

[2] Section 7B (3)

Insert after section 7B (2):

- (3) In this section, *absent from duty* includes a vacancy in the office of President.

Explanatory note

Item [1] of the proposed amendments to the *Dust Diseases Tribunal Act 1989* enables the Attorney General to appoint a member of the Dust Diseases Tribunal of New South Wales to be Acting President during a vacancy or absence from duty of the President. It also enables the Attorney General or the Governor to appoint a member for a particular vacancy or absence from duty of the President or any such vacancy or absence that occurs from time to time. Item [2] makes a consequential amendment.

3.5 Industrial Relations Act 1996 No 17

[1] Schedule 2 Provisions relating to members of Commission

Omit “75 years” from clause 3 (2). Insert instead “77 years”.

[2] Schedule 2, clause 3 (3)

Omit “not exceeding 12 months”. Insert instead “not exceeding 5 years”.

Explanatory note

Item [1] of the proposed amendments to the *Industrial Relations Act 1996* enables an acting member of the Industrial Relations Commission of New South Wales in Court Session to be appointed up to the age of 77 years. Currently, acting members are appointed up to the age of 75 years.

Item [2] enables acting members to be appointed for a period of up to 5 years. Currently, acting members are appointed for a period of up to 12 months.

3.6 Land and Environment Court Act 1979 No 204

[1] Section 11 Acting Judges

Omit “not exceeding 12 months” from section 11 (1).

Insert instead “not exceeding 5 years”.

[2] Section 11 (4)

Omit “75 years”. Insert instead “77 years”.

[3] Section 13 Acting Commissioners

Omit “not exceeding 12 months” from section 13 (1).

Insert instead “not exceeding 5 years”.

Explanatory note

Item [1] of the proposed amendments to the *Land and Environment Court Act 1979* enables acting judges of the Land and Environment Court of New South Wales to be appointed for a period of up to 5 years. Currently, acting judges are appointed for a period of up to 12 months.

Item [2] enables acting judges to be appointed up to the age of 77 years. Currently, acting judges are appointed up to the age of 75 years.

Item [3] enables acting commissioners to be appointed for a period of up to 5 years. Currently, acting commissioners are appointed for a period of up to 12 months.

3.7 Local Court Act 2007 No 93

[1] Section 16 Acting Magistrates

Omit “not exceeding 12 months” from section 16 (1).

Insert instead “not exceeding 5 years”.

[2] Section 16 (2)

Omit “75 years”. Insert instead “77 years”.

[3] Schedule 1 Provisions relating to Magistrates

Omit “Minister” from clause 11 (3). Insert instead “Attorney General”.

[4] Schedule 1, clause 11 (3A)

Insert after clause 11 (3):

- (3A) The Attorney General may make any such nomination for a particular vacancy or absence or for any vacancy or absence that occurs from time to time.

Explanatory note

Item [1] of the proposed amendments to the *Local Court Act 2007* enables acting magistrates of the Local Court of New South Wales to be appointed for a period of up to 5 years. Currently, acting magistrates are appointed for a period of up to 12 months.

Item [2] enables acting magistrates to be appointed up to the age of 77 years. Currently, acting magistrates are appointed up to the age of 75 years.

Item [4] enables the Attorney General to nominate a Deputy Chief Magistrate for a particular vacancy or absence from duty of the Chief Magistrate or any such vacancy or absence that occurs from time to time. Item [3] makes a consequential amendment.

3.8 Supreme Court Act 1970 No 52

[1] Section 37 Acting Judges

Omit “not exceeding 12 months” from section 37 (1).

Insert instead “not exceeding 5 years”.

[2] Section 37 (4) and (4A)

Omit the subsections. 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 even though the retired Judge has reached the age of 72 years (or will have reached that age before the appointment expires), but may not be so appointed for any period that extends beyond the day on which he or she reaches the age of 77 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 even though the retired Judge has reached the age of 70 years (or will have reached that age before the appointment expires), but may not be so appointed for any period that extends beyond the day on which he or she reaches the age of 77 years.

[3] Section 111 Appointment of associate Judges and acting associate Judges

Omit “75 years” from section 111 (6). Insert instead “77 years”.

Explanatory note

Item [1] of the proposed amendments to the *Supreme Court Act 1970* enables acting judges of the Supreme Court of New South Wales to be appointed for a period of up to 5 years. Currently, acting judges are appointed for a period of up to 12 months.

Item [2] enables acting judges to be appointed up to the age of 77 years. Currently, acting judges are appointed up to the age of 75 years.

Item [3] enables acting associate judges to be appointed up to the age of 77 years. Currently, acting associate judges are appointed up to the age of 75 years.

Schedule 4 Other amendments

4.1 Crimes (Administration of Sentences) Act 1999 No 93

[1] Section 257A

Insert after section 257:

257A Exchange of certain information

- (1) The Commissioner may enter into an arrangement (an *information sharing arrangement*) with the Commissioner of Fines Administration for the purposes of sharing or exchanging any information that is held by Corrective Services NSW or the Commissioner of Fines Administration.
- (2) The information to which an information sharing arrangement may relate is limited to information that assists in the exercise of:
 - (a) the functions of the Commissioner under this Act or the regulations, or
 - (b) the functions of the Commissioner of Fines Administration under the *Fines Act 1996* or the regulations under that Act.
- (3) Under an information sharing arrangement:
 - (a) the Commissioner is, despite any other Act or law of the State, authorised to request and receive information from the Commissioner of Fines Administration comprising the name, address and date of birth of a person who is an inmate and a fine defaulter (within the meaning of the *Fines Act 1996*), and details of the fine, and
 - (b) the Commissioner of Fines Administration is authorised to disclose that information to the Commissioner, and
 - (c) the Commissioner of Fines Administration is, despite any other Act or law of the State, authorised to request and receive from Corrective Services NSW the following information about a person who is an inmate:
 - (i) the inmate's name and date of birth,
 - (ii) the date the inmate was taken into custody,
 - (iii) the address of the inmate's usual place of residence (as recorded by Corrective Services NSW under this Act),
 - (iv) the unique identifying number assigned to the inmate by Corrective Services NSW,
 - (v) whether or not the inmate is serving a sentence,
 - (vi) if the inmate is serving a sentence, the date on which the inmate's non-parole period and full sentence are due to expire,
 - (vii) if the inmate is not serving a sentence, the date on which the inmate is due for release, and
 - (d) the Commissioner is authorised to disclose that information to the Commissioner of Fines Administration.

[2] Schedule 5 Savings, transitional and other provisions

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

Part Provision consequent on enactment of Courts and Crimes Legislation Amendment Act 2015

Exchange of information

Section 257A as inserted by the *Courts and Crimes Legislation Amendment Act 2015* extends to information obtained before the commencement of that section.

Explanatory note

Item [1] of the proposed amendments to the *Crimes (Administration of Sentences) Act 1999* inserts a provision (similar to that in the *Children (Detention Centres) Act 1987*) to enable the Commissioner of Corrective Services to share information with the Commissioner of Fines Administration about inmates, so as to identify any outstanding fines of such inmates and to facilitate their participation in work and development orders under the *Fines Act 1996* as a way of satisfying all or part of those fines. Item [2] provides that the provision inserted by item [1] extends to information obtained before the commencement of that provision.

4.2 Jury Act 1977 No 18

Section 75A Information to be supplied to sheriff

Insert after section 75A (2B) (c):

- (d) the customer identification number (if any) allocated to the person by Roads and Maritime Services.

Explanatory note

The proposed amendment to the *Jury Act 1977* enables the sheriff to obtain a customer identification number allocated to a person by Roads and Maritime Services for the purpose of determining whether the person should be excluded from jury service.

4.3 Land and Environment Court Act 1979 No 204

[1] Section 18 Class 2—local government and miscellaneous appeals and applications

Omit section 18 (b).

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

Omit section 19 (f).

[3] Section 20 Class 4—environmental planning and protection and development contract civil enforcement

Omit “Part 5 of the *Olympic Co-ordination Authority Act 1995*,” from section 20 (3) (a).

[4] Section 37 Commissioners sitting with a Judge

Omit “or 3” from section 37 (1). Insert instead “, 3 or 4”.

Explanatory note

Items [1]–[3] of the proposed amendments to the *Land and Environment Court Act 1979* make changes of a statute law revision nature by removing references to repealed Acts.

Item [4] extends the classes of proceedings in which judges of the Land and Environment Court of New South Wales may be assisted by commissioners to include Class 4 proceedings (Class 4 proceedings relate to environmental planning and protection and development contract civil enforcement).

4.4 NSW Trustee and Guardian Act 2009 No 49

[1] Section 88

Omit the section. Insert instead:

88 Revocation of order by MHRT

- (1) The MHRT, on application by a protected person who is (or who was, but has ceased to be) a patient, may revoke the order that the estate of the person be subject to management under this Act, if it is satisfied that:
 - (a) the protected person is capable of managing his or her affairs, or
 - (b) the revocation is in the best interests of the protected person.
- (2) In this section, *patient* includes a forensic patient within the meaning of the *Mental Health (Forensic Provisions) Act 1990*.

[2] Schedule 1 Savings, transitional and other provisions

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

Part Provision consequent on enactment of Courts and Crimes Legislation Amendment Act 2015

Revocation of order by MHRT

Section 88, as substituted by the *Courts and Crimes Legislation Amendment Act 2015*, extends to:

- (a) orders that the estate of any person be subject to management under this Act made before the substitution, and
- (b) applications made under that section (but not finally determined) before the substitution.

Explanatory note

Item [1] of the proposed amendments to the *NSW Trustee and Guardian Act 2009* enables the Mental Health Review Tribunal to revoke financial management orders made under that Act in respect of certain persons who are or were patients admitted to a mental health facility (including forensic patients within the meaning of the *Mental Health (Forensic Provisions) Act 1990*) if it is satisfied that those persons are capable of managing their affairs or that the revocation is in their best interests.

Item [2] makes provision for a transitional matter consequent on the amendment made by item [1].

4.5 Oaths Act 1900 No 20

[1] Section 26 Before whom oaths and affidavits may be taken

Insert “or tribunal” after “court” in section 26 (1).

[2] Section 26 (1)

Insert “in this or any other State or Territory or the Commonwealth” after “arbitration”.

[3] Section 26A

Insert after section 26:

26A Witnessing of statutory declarations for other jurisdictions

If it is permitted by another State, a Territory or the Commonwealth, a justice of the peace may take, receive or witness a statutory declaration within New South Wales for use in relation to the other State, Territory or the Commonwealth.

[4] Tenth Schedule

Insert after the Ninth Schedule:

Tenth Schedule Savings, transitional and other provisions

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provision consequent on enactment of Courts and Crimes Legislation Amendment Act 2015

2 Application of amendments

Any oath, declaration or affidavit taken, made or witnessed before the commencement of the amendments to this Act made by the *Courts and Crimes Legislation Amendment Act 2015* that would have been validly taken, made or witnessed had the amendments been in force when it was taken, made or witnessed is (to the extent of any invalidity) taken to be, and always to have been, valid.

Explanatory note

Item [1] of the proposed amendments to the *Oaths Act 1900* enables justices of the peace to witness oaths or affidavits for use in tribunals in New South Wales, any other State or Territory or the Commonwealth (as well as oaths or affidavits for use in courts).

Item [2] clarifies that justices of the peace may witness oaths or affidavits for use in arbitrations in any other State or Territory or the Commonwealth (as well as arbitrations in New South Wales).

Item [3] enables justices of the peace to witness statutory declarations for use in any other State or Territory or the Commonwealth.

Item [4] enables the Governor to make regulations of a savings or transitional nature consequent on the enactment of any Act that amends the *Oaths Act 1900* (including the proposed Act). The item also provides for the proposed amendments to apply (and to be taken always to have applied) in respect of oaths, declarations and affidavits that were taken, made or witnessed before the commencement of the amendments.

4.6 Trees (Disputes Between Neighbours) Act 2006 No 126

Section 14A Application of Part

Omit section 14A (2). Insert instead:

(2) Despite section 4, this Part does not apply to trees situated on Crown land.

Explanatory note

The proposed amendment to the *Trees (Disputes Between Neighbours) Act 2006* extends the application of certain provisions relating to court orders in respect of high hedges that obstruct sunlight or views to any land within a zone designated “rural-residential” under an environmental planning instrument or having the substantial character of that zone.

[Second reading speech made in—
Legislative Assembly on 6 May 2015
Legislative Council on 12 May 2015]