



New South Wales

# Justice Legislation Amendment Act (No 2) 2017 No 44

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New South Wales

# **Justice Legislation Amendment Act (No 2) 2017 No 44**

Act No 44, 2017

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An Act to amend various legislation relating to courts and crimes and other related matters.  
[Assented to 25 September 2017]

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

**1 Name of Act**

This Act is the *Justice Legislation Amendment Act (No 2) 2017*.

**2 Commencement**

- (1) This Act commences on the date of assent to this Act, except as provided by this section.
- (2) Schedules 1.2 [2] and [3], 1.3 [4]–[6], 1.6 [1] and [7]–[13], 1.10 and 1.17 [2] commence on a day or days to be appointed by proclamation.
- (3) Schedule 1.3 [1] commences 3 months after the date of assent to this Act, unless commenced sooner by proclamation.

## Schedule 1 Amendment of legislation

### 1.1 Bail Act 2013 No 26

#### [1] Section 43 Police power to make bail decision

Insert after section 43 (1A):

- (1B) A police officer of or above the rank of sergeant at a mental health facility (within the meaning of the *Mental Health Act 2007*) may, despite subsection (3), make a bail decision for an offence if the person accused of the offence is detained in the mental health facility for assessment under section 33 (1) (a) or (b) or (1D) (a) or (b) of the *Mental Health (Forensic Provisions) Act 1990* and has been found on assessment at the mental health facility not to be a mentally ill person or mentally disordered person.

#### [2] Section 47 Review of police decision by senior police officer

Insert “or a mental health facility (within the meaning of the *Mental Health Act 2007*)” after “hospital” in section 47 (7) (b).

### 1.2 Civil and Administrative Tribunal Act 2013 No 2

#### [1] Section 4 Definitions

Insert after paragraph (h) of the definition of *interlocutory decision* in section 4 (1):

- (h1) the granting of leave for a person to represent a party to proceedings,

#### [2] Section 17 Division Schedule for a Division of Tribunal

Insert “(except Part 3A)” after “this Act” in section 17 (3).

#### [3] Part 3A

Insert after Part 3:

### Part 3A Diversity proceedings

#### 34A Definitions

In this Part:

*authorised court* means any of the following:

- (a) the District Court,  
(b) the Local Court.

*federal diversity jurisdiction* means jurisdiction of the kind referred to in section 75 (iv) of the Commonwealth Constitution.

*jurisdictional limit*, in relation to an authorised court, means the jurisdictional limit of the court within the meaning of the *Civil Procedure Act 2005*.

*substituted proceedings*—see section 34C.

#### 34B Applications or appeals involving federal diversity jurisdiction may be made to authorised court

- (1) A person with standing to make an original application or external appeal may, with the leave of an authorised court, make the application or appeal to the court instead of the Tribunal.

- (2) The authorised court may grant leave for the application or appeal to be made to the court only if it is satisfied that:
  - (a) the application or appeal was first made with the Tribunal, and
  - (b) the Tribunal does not have jurisdiction to determine the application or appeal because its determination involves the exercise of federal diversity jurisdiction, and
  - (c) the Tribunal would otherwise have had original jurisdiction or external appellate jurisdiction enabling it to determine the application or appeal, and
  - (d) substituted proceedings on the application or appeal would be within the jurisdictional limit of the court.
- (3) An application for leave must be:
  - (a) filed with the authorised court along with:
    - (i) an application or appeal that has been completed in the form and manner required under this Act for the kind of application or appeal concerned, and
    - (ii) if the parties to the application or appeal have reached a settlement before leave is sought using a resolution process referred to in section 37—a copy of the terms of settlement, and
  - (b) accompanied by the applicable fee (if any) payable in the Tribunal for the application or appeal unless it has already been paid to the Tribunal.
- (4) If an appeal is made under this Act in relation to any matter in issue in the application or appeal:
  - (a) for an appeal lodged before the application for leave is made to an authorised court—the court cannot grant leave unless and until the appeal is determined, or
  - (b) for an appeal lodged on or after leave is granted by an authorised court—proceedings in the court concerning the application or appeal are stayed until the appeal made under this Act is determined.
- (5) An authorised court may remit an application or appeal to the Tribunal to determine the application or appeal if the court is satisfied that the Tribunal has jurisdiction to determine it. The court may do so instead of granting leave or after granting leave.
- (6) An authorised court that remits an application or appeal to the Tribunal may make such orders that it considers appropriate to facilitate the determination of the application or appeal by the Tribunal.
- (7) The Tribunal is to determine any application or appeal that is remitted to it in accordance with any orders made by the authorised court.
- (8) The following provisions apply if the authorised court is the District Court:
  - (a) the District Court may grant leave and then transfer the proceedings on the application or appeal to the Local Court in accordance with the provisions of Division 2 (Transfer of proceedings from higher to lower court) of Part 9 of the *Civil Procedure Act 2005*,
  - (b) if a transfer order is made under that Division, this Part applies to the proceedings as if the Local Court had granted leave for the application or appeal to be made to it instead of the Tribunal.

### **34C Proceedings after leave granted**

#### **(1) Proceedings taken to be commenced if leave granted**

If an authorised court grants leave for an original application or external appeal to be made to it instead of the Tribunal:

- (a) proceedings for the determination of the application or appeal (*substituted proceedings*) are taken to have been commenced in the authorised court on the day on which the application or appeal was first made to the Tribunal, and
- (b) the court may make such orders (including in relation to the Tribunal) as it considers appropriate to facilitate its determination of the application or appeal.

- (2) Subsection (1) applies despite any limitation period under the *Limitation Act 1969* or any enabling legislation that applies to the application or appeal concerned provided it was first lodged with the Tribunal before the expiry of the period.

#### **(3) Jurisdiction and functions of authorised court**

The authorised court has, and may exercise, all of the jurisdiction and functions in relation to the substituted proceedings that the Tribunal would have had if it could exercise federal diversity jurisdiction, including jurisdiction and functions conferred or imposed on the Tribunal by or under this Act or enabling legislation.

#### **(4) Modifications to certain functions**

Despite subsections (1)–(3), the following provisions apply in relation to substituted proceedings:

- (a) the authorised court is to be constituted as provided by its relevant courts legislation instead of as provided by this Act or enabling legislation,
- (b) a party to the substituted proceedings is not required to pay any fees in relation to the commencement of the proceedings in the authorised court other than the fees referred to in section 34B (3) (b) unless the authorised court determines that additional fees are payable under its relevant courts legislation because of a substantial alteration in the nature of the claims in the proceedings,
- (c) the legislation applicable to appeals against decisions of the authorised court apply to decisions of the court in the substituted proceedings instead of Divisions 2 and 3 of Part 6,
- (d) if the authorised court is the District Court—the practice and procedure applicable in the District Court under its relevant courts legislation (and any laws applicable in relation to contempt of court) apply to the substituted proceedings instead of Parts 4 and 5, any enabling legislation, the procedural rules and practice directions,
- (e) if the authorised court is the Local Court—the practice and procedure applicable in the Local Court under its relevant courts legislation applies to the substituted proceedings instead of Part 4, any enabling legislation, the procedural rules and practice directions, except that:
  - (i) the rules of evidence are to be applied to the proceedings if they would have been required to be applied if the proceedings were before the Tribunal, but the Local Court may, if it decides that it is appropriate to do so in the circumstances, not apply the rules of

- evidence if they were not required to be applied by the Tribunal, and
- (ii) a person who is not an Australian legal practitioner can, with the leave of the Local Court, represent a party to the proceedings, but only in the circumstances that the Tribunal would have been permitted to allow it if the proceedings were before the Tribunal, and
  - (iii) a person who could have been made a party to, or intervened in, the proceedings if the proceedings were before the Tribunal can, with the leave of the Local Court, also be made a party or intervene, and
  - (iv) the Local Court may award costs in the proceedings only in the circumstances that the Tribunal would have been permitted to award them (and the costs are to be assessed in the same way as they would have been) if the proceedings were before the Tribunal,
- (f) the authorised court may make orders giving effect to any settlement reached by the parties even if that settlement was reached before the substituted proceedings commenced,
  - (g) the power of the authorised court to make orders as to costs in relation to the substituted proceedings includes a power to make orders with respect to:
    - (i) the application for, and the granting of, leave for the application or appeal to which the substituted proceedings relate to be made to the court, and
    - (ii) any step taken in the Tribunal before leave was granted,
  - (h) any other modifications (including to the provisions of this Act or other legislation) as may be prescribed by the regulations for substituted proceedings of the kind concerned.
- (5) The Minister is not to recommend the making of a regulation for the purposes of subsection (4) (h) unless the Minister certifies that:
- (a) if the proposed amendments affect the exercise of jurisdiction or functions by the Tribunal—the President has agreed to the amendments, and
  - (b) if the proposed amendments affect the exercise of jurisdiction or functions by the District Court—the Chief Judge of the District Court has agreed to the amendments, and
  - (c) if the proposed amendments affect the exercise of jurisdiction or functions by the Local Court—the Chief Magistrate of the Local Court has agreed to the amendments.
- (6) **References to Tribunal in legislation**
- To avoid doubt (but subject to the regulations):
- (a) any reference to the Tribunal in a provision of legislation that confers or imposes a function on the Tribunal is to be read as including a reference to an authorised court if the function is conferred or imposed on the court because of the operation of this section, and
  - (b) any reference to proceedings in the Tribunal in a provision of the kind referred to in paragraph (a) is to be read as including a reference to proceedings in the authorised court.

(7) **Definitions**

In this section:

**modification** includes addition, exception, omission or substitution.

**relevant courts legislation** means:

- (a) for the District Court—the *District Court Act 1973* and the rules of court under that Act, and
- (b) for the Local Court—the *Local Court Act 2007* and the rules of court under that Act,

and includes the *Civil Procedure Act 2005* and the regulations and uniform rules under that Act in their application to the Court concerned.

**34D Relationship of Part to this Act and other laws**

- (1) The provisions of this Part prevail to the extent of any inconsistency between those provisions and any other provisions of this Act or other legislation.
- (2) To avoid doubt, subsection (1) applies despite anything in a Division Schedule for a Division of the Tribunal.

**[4] Section 81 Determination of internal appeals**

Insert “confirming, affirming or” after “when” in section 81 (2).

**[5] Section 81 (2)**

Insert “and may exercise such functions on grounds other than those relied upon at first instance” after “under appeal”.

**[6] Schedule 6 Guardianship Division**

Omit clause 4 (3). Insert instead:

- (3) When the Tribunal is constituted by 2 members, each member must:
  - (a) be an Australian lawyer or have a qualification referred to in subclause (1) (b) or (c), and
  - (b) not have the same qualification (including that of an Australian lawyer) as the other member.

**1.3 Civil Procedure Act 2005 No 28**

**[1] Section 106 Judgments for payment of money**

Omit section 106 (3). Insert instead:

- (3) The power conferred on the Sheriff by subsection (2) (a) may not be exercised in relation to any property referred to in section 116 (2) of the *Bankruptcy Act 1966* of the Commonwealth. For that purpose, a reference in section 116 (2) of that Act to the property of the bankrupt is taken to be a reference to the goods of the judgment debtor.

**[2] Section 106 (4A)**

Insert after section 106 (4):

- (4A) The power conferred on the Sheriff by subsection (2) (a) may not be exercised if, in the opinion of the Sheriff, the cost of the seizure, storage or sale of the goods would likely exceed the sale price of the goods.



**[3] Section 115A**

Insert after section 115:

**115A Notice of writ**

- (1) The Sheriff is to notify the judgment debtor of any writ for the levy of property before that writ is enforced against the judgment debtor.
- (2) A failure to give notice under this section does not affect the validity of any agreement for sale or other transaction entered into under the authority of the writ.

**[4] Section 118A**

Insert after section 118:

**118A Minimum account balance of judgment debtor**

- (1) The amounts attached under one or more garnishee orders must not, in total, reduce the amount of the aggregate debt that is due and accruing from the garnishee to the judgment debtor to less than \$447.70.
- (2) The amount of \$447.70 referred to in subsection (1) is taken to be an *adjustable amount* for the purposes of Division 6 of Part 3 of the *Workers Compensation Act 1987*.

**[5] Section 124A**

Insert after section 124:

**124A Variation, suspension or repayment of payments under garnishee orders**

The court may, at any time on the application by a judgment debtor, vary or suspend the making of payments by the judgment debtor under a garnishee order, or order the total amount paid by the judgment debtor under the garnishee order to be repaid, if the court is satisfied that it is appropriate to do so.

**[6] Schedule 1 Application of Act**

Insert in Column 2 after the matter relating to civil proceedings under the *Property (Relationships) Act 1984* in the Local Court:

All civil proceedings that are substituted proceedings within the meaning of Part 3A of the *Civil and Administrative Tribunal Act 2013*

**Note.** Section 34C of the *Civil and Administrative Tribunal Act 2013* modifies the application of this Act. Those modifications prevail because of section 34D of that Act.

## 1.4 Crimes Act 1900 No 40

### Section 60AA Meaning of “law enforcement officer”

Insert at the end of paragraph (p) of the definition of *law enforcement officer*:

, or

- (q) an officer of an approved charitable organisation, within the meaning of the *Prevention of Cruelty to Animals Act 1979*, who performs investigation, confiscation or other law enforcement functions.

## **1.5 Crimes (Appeal and Review) Act 2001 No 120**

### **[1] Section 4A**

Insert after section 4:

#### **4A Annulment of conviction or sentence on motion by Local Court**

Without limiting section 4, the Local Court may, on its own motion in the interest of justice, decide to annul a conviction or sentence made or imposed by the Court if the defendant was not in appearance in proceedings before the Court when the conviction or sentence was made or imposed.

### **[2] Section 9 Procedure after decision on annulment of conviction or sentence**

Insert “or of its decision under section 4A” after “annulment” in section 9 (1).

### **[3] Section 10A Part applies to findings of guilt**

Insert “, or a decision of the Local Court under section 4A,” after “under this Part” in section 10A (1).

### **[4] Section 10A (1)**

Insert “or decision” after “such application”.

## **1.6 Crimes (Domestic and Personal Violence) Act 2007 No 80**

### **[1] Section 3 Definitions**

Insert in alphabetical order in section 3 (1):

*non-local domestic violence order* means a non-local DVO within the meaning of Part 13B.

### **[2] Section 57 Time for hearing**

Insert “or at any subsequent mention of the proceedings” after “first return date” in section 57 (3).

### **[3] Section 57 (3)**

Omit “that day”.

Insert instead “the first or subsequent day on which the matter is listed for mention”.

### **[4] Section 57 (4)**

Insert after section 57 (3):

- (4) The court may not proceed to hear and determine the matter unless it is satisfied that the defendant had reasonable notice of the first return date or the date, time and place of the hearing.

### **[5] Section 75 Variation may be made on guilty plea or guilt finding for certain offences**

Omit “an offence against section 13 or a domestic violence offence” from section 75 (1).

Insert instead “a serious offence”.

**[6] Section 75 (2)**

Omit the subsection. Insert instead:

- (2) In this section:  
*court* includes the District Court.  
*serious offence* has the same meaning as in section 40.

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

Insert at the end of section 84 (2) (d):

- , or
- (e) by a party to a non-local domestic violence order against the variation or revocation of the order by the Local Court or the Children's Court or against a refusal by the Local Court or the Children's Court to vary or revoke the order.

**[8] Section 89B**

Insert after section 89A:

**89B Detention of defendant where recognised domestic violence order may be in force**

- (1) A police officer who has grounds to make an application for a provisional order against a person may, for the purposes of ascertaining whether there is already a non-local domestic violence order in force against the person or obtaining a copy of any such order (or both), give any of the following directions to the person:
- (a) that the person remain at the scene where the relevant incident occurred,
  - (b) in a case where the person has left the scene of that incident—that the person remain at another place where the police officer locates the person,
  - (c) that the person go to and remain at another place that has been agreed to by the person,
  - (d) that the person go to and remain at a specified police station,
  - (e) that the person accompany a police officer to a police station and remain at the police station,
  - (f) that the person accompany a police officer to another place that has been agreed to by the person, or to another place (whether or not agreed to by the person) for the purpose of receiving medical attention, and remain at that other place.
- (2) If a person refuses or fails to comply with a direction under this section, the police officer who gave the direction or another police officer may detain the person at the scene of the relevant incident or other place, or detain the person and take the person to a police station.
- (3) If a direction is given under subsection (1) (e) or (f), the police officer may detain the person in the vehicle in which the person accompanies the police officer to the police station or other place for so long as is necessary to transport the person to the police station or other place.
- (4) In considering whether to detain a person under subsection (3), a police officer may have regard to the following matters:

- (a) the need to ensure the safety of the person who would be protected by the provisional order, including the need to:
  - (i) remove the defendant from the scene of the relevant incident, and
  - (ii) prevent substantial damage to property,
- (b) the circumstances of the defendant,
- (c) any other relevant matter.

**[9] Section 90 Detention of defendant for service of order or variation**

Insert after section 90 (1):

- (1A) A police officer who reasonably suspects that a person is a defendant under a non-local domestic violence order may direct the person to remain where the person is for the purpose only of serving on the person a copy of the order, or a variation of the order, if the law of the jurisdiction in which the order or variation was made requires the order or variation to be served personally.

**[10] Section 90A Period for which person may be directed to remain or be detained**

Insert after section 90A (1) (a):

- (a1) in the case of a direction under section 89B—a police officer to ascertain whether a non-local domestic violence order is in force against the person or to obtain a copy of any such order (or both), or

**[11] Section 90A (1) (b)**

Insert “(or the non-local domestic violence order)” after “apprehended violence order”.

**[12] Section 90A (2) (a) (ia)**

Insert after section 90A (2) (a) (i):

- (ia) in the case of detention under section 89B—a police officer to ascertain whether a non-local domestic violence order is in force against the person or to obtain a copy of any such order (or both), or

**[13] Section 90A (2) (a) (ii)**

Insert “(or the non-local domestic violence order)” after “apprehended violence order”.

**1.7 Crimes (Domestic and Personal Violence) Amendment (National Domestic Violence Orders Recognition) Act 2016 No 9**

**[1] Schedule 1 Amendment of Crimes (Domestic and Personal Violence) Act 2007 No 80**

Omit Schedule 1 [1] and [2].

**[2] Schedule 1 [9], proposed section 98S, definition of “interim DVO”**

Omit paragraph (b).

**[3] Schedule 1 [9], proposed section 98U (1) (a)**

Omit the paragraph. Insert instead:

- (a) a family violence order under the *Family Violence Act 2016* of the Australian Capital Territory,

- [4] Schedule 1 [9], proposed section 98U (1) (c)**  
Omit “or police protection notice”.  
Insert instead “, police protection notice or release conditions”.
- [5] Schedule 1 [9], proposed section 98U (1) (g) (i)**  
Insert “made before 1 July 2017” after “violence restraining order”.
- [6] Schedule 1 [9], proposed section 98U (1) (g) (ii)**  
Omit the subparagraph. Insert instead:  
(ii) a family violence restraining order,
- [7] Schedule 1 [9], proposed section 98V (b)**  
Omit the paragraph. Insert instead:  
(b) a registered foreign order under Part 9 of the *Family Violence Act 2016* of the Australian Capital Territory, or
- [8] Schedule 1 [9], proposed section 98V (d)**  
Omit “interstate”. Insert instead “foreign”.
- [9] Schedule 1 [9], proposed section 98V (e)**  
Insert “(other than an order declared under the regulations made under that Act not to be a foreign intervention order)” after “South Australia”.
- [10] Schedule 1 [9], proposed section 98W (1)**  
Omit “it is reasonable to suspect that the defendant will, without intervention, commit”.  
Insert instead “the defendant has committed, or because it is feared the defendant will commit,”.
- [11] Schedule 1 [9], proposed section 98ZB (7A)**  
Insert after proposed section 98ZB (7):  
(7A) A provisional order made under this Act by an authorised officer does not supersede a comparable DVO made by a court (of any jurisdiction).
- [12] Schedule 1 [9], proposed section 98ZC (2)**  
Omit the subsection.
- [13] Schedule 1 [9], proposed section 98ZTA**  
Insert after proposed section 98ZT:
- 98ZTA Protection from liability where local DVO varied or revoked outside NSW**
- (1) Anything done or omitted to be done by a police officer in relation to the enforcement of a local DVO that has been revoked or varied as a result of action in another jurisdiction is taken to be lawfully done or omitted if:
- (a) the police officer was not aware at the time the thing was done or omitted that the local DVO had been revoked or varied as a result of action in another jurisdiction, and
- (b) the police officer acted in good faith on the basis of the information available to the police officer at the time the thing was done or omitted, and

- (c) the thing would have been lawfully done or omitted if the local DVO had not been revoked or varied as a result of action in another jurisdiction.
- (2) For the purposes of this section, a local DVO is revoked or varied as a result of action in another jurisdiction if:
  - (a) the local DVO is superseded under this Part by an interstate DVO made in another jurisdiction or a foreign order that is a registered foreign order in another jurisdiction, or
  - (b) the local DVO is revoked by a court of another jurisdiction and that revocation is recognised in New South Wales under this Part, or
  - (c) a variation to the local DVO is done in another jurisdiction and that variation is a recognised variation in New South Wales under this Part.

## **1.8 Crimes (Sentencing Procedure) Act 1999 No 92**

### **[1] Section 35A Consultation with victim and police in relation to charge negotiations**

Omit “the offence or offences with which the offender has been charged or committed for trial” from the definition of *charge negotiations* in section 35A (1).

Insert instead “the principal offence concerned”.

### **[2] Section 35A (2)**

Omit “specified in a list of additional charges under section 32 in relation to an offence”.

Insert instead “other than the principal offence”.

## **1.9 Criminal Procedure Act 1986 No 209**

### **[1] Section 3 Definitions**

Omit “86,” from paragraph (a) of the definition of *prescribed sexual offence* in section 3 (1).

### **[2] Section 3 (1), paragraph (c) of definition of “prescribed sexual offence”**

Insert “(including an offence under section 86 of the *Crimes Act 1900*)” after “an offence” where firstly occurring.

### **[3] Section 182 Written pleas**

Insert after section 182 (2):

- (2A) Despite subsection (2), a notice in writing under this section is not required to be in the form prescribed by the rules if the written notice is accepted by the Local Court.

## **1.10 District Court Act 1973 No 9**

### **Section 44 Actions**

Insert after section 44 (1) (d1):

- (d2) any substituted proceedings within the meaning of Part 3A of the *Civil and Administrative Tribunal Act 2013*, so long as the amount (if any) claimed does not exceed the Court’s jurisdictional limit,

## **1.11 Drug Misuse and Trafficking Act 1985 No 226**

### **[1] Schedule 1**

Omit “Cannabis oil”.

Insert instead “Cannabis oil (excluding any exception listed under the matter relating to Tetrahydrocannabinol and its alkyl homologues)”.

### **[2] Schedule 1**

Insert at the end of paragraph (c) of the matter relating to Tetrahydrocannabinol and its alkyl homologues:

, or

- (d) hemp seeds for human consumption containing 5mg/kg or less of tetrahydrocannabinols where the seeds have had their hulls removed and are non-viable, or
- (e) hemp seed oil for human consumption containing 10mg/kg or less of tetrahydrocannabinols, or
- (f) beverages made from hemp seeds if the beverage contains 0.2mg/kg or less of tetrahydrocannabinols

### **[3] Schedule 3 Savings and transitional provisions**

Insert after clause 2:

#### **3 Validation of amendments to Schedule 1**

Any amendment made or purporting to have been made to Schedule 1 by a regulation made before the commencement of this clause is taken to be, and always to have been, validly made.

## **1.12 Evidence (Audio and Audio Visual Links) Act 1998 No 105**

### **Section 5BA Accused detainee to appear physically in physical appearance proceedings**

Insert after section 5BA (2) (c):

- (c1) occur during any other vacation or holiday period of the court that is specified in the rules of court, or

## **1.13 Gaming and Liquor Administration Act 2007 No 91**

### **Section 13A Review by NCAT of certain decisions of Authority**

Omit section 13A (2).

## **1.14 Law Enforcement Conduct Commission Act 2016 No 61**

### **[1] Section 128A**

Insert after section 128:

#### **128A Delegation**

Subject to any other Act, the Inspector may delegate to a member of staff of the Inspector any of the Inspector’s functions under this or any other Act other than:

- (a) this power of delegation, and
- (b) the Inspector's reporting functions.

**[2] Schedule 2 Provisions relating to Inspector and Assistant Inspectors**

Insert after clause 9 (1):

- (1A) Subclause (1) (f) and (g) do not apply if the Inspector holds office on a part-time basis.

**1.15 Law Enforcement Conduct Commission Regulation 2017**

**Clause 14 Identity cards**

Insert at the end of the clause:

- (2) The Inspector may issue identity cards, in the form approved by the Inspector, to any member of staff of the Inspector.

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

**[1] Section 215 Definitions**

Insert at the end of the section:

- (2) A reference in this Division to property that is in the custody of a police officer or member of the NSW Police Force, or that is in police custody, includes a reference to any property that is held by a person on behalf of a police officer or member of the NSW Police Force.

**[2] Schedule 2 Search warrants under other Acts**

Omit "section 27" from the matter relating to the *Prevention of Cruelty to Animals Act 1979*.

Insert instead "section 24F".

**1.17 Local Court Act 2007 No 93**

**[1] Section 26 Rules generally**

Insert after section 26 (2) (d):

- (e) the vacations and holidays of the Court and the hearing and disposal of proceedings during any such vacations or holidays.

**[2] Section 30 Conferral of jurisdiction**

Insert after section 30 (1) (b1):

- (b2) substituted proceedings within the meaning of Part 3A of the *Civil and Administrative Tribunal Act 2013*, so long as the amount of any money claim, or the value of any goods or property, to which the proceedings relate does not exceed the jurisdictional limit of the Court when sitting in that Division, and



## **1.18 Members of Parliament Staff Act 2013 No 41**

### **[1] Section 20 Termination of employment**

Insert after section 20 (1):

- (1A) The employment of a person under this Part by a member of Parliament may also be terminated by the relevant Presiding Officer under section 20A.

### **[2] Section 20A**

Insert after section 20:

#### **20A Termination by relevant Presiding Officer of employment for misconduct**

- (1) The employment of a person under this Part by a member of Parliament may be terminated by the relevant Presiding Officer after consulting the member of Parliament if the relevant Presiding Officer is satisfied that the staff member has engaged in misconduct.
- (2) The relevant Presiding Officer may not terminate the employment of a staff member unless:
  - (a) the staff member is notified in writing of the proposed termination and the reasons for taking that action, and
  - (b) the staff member is given a reasonable opportunity to make submissions in relation to the proposed termination, and
  - (c) if any such submissions are made, the relevant Presiding Officer has taken those submissions into consideration.
- (3) If:
  - (a) any matter relating to the misconduct by a staff member is being dealt with by the relevant Presiding Officer, or
  - (b) a staff member is charged with a serious offence,the relevant Presiding Officer may, after consulting the member of Parliament who employed the staff member, suspend the staff member from duty until the matter or the criminal charge has been dealt with and any subsequent action has been taken by the relevant Presiding Officer. Any such suspension may be removed by the relevant Presiding Officer at any time.
- (4) The relevant Presiding Officer may direct that any remuneration payable to a staff member while the staff member is suspended from duty under this section is to be withheld.
- (5) If, in the case of a staff member whose employment is suspended:
  - (a) the relevant Presiding Officer terminates the employment of the staff member for misconduct, or
  - (b) the staff member is convicted of the offence concerned,any remuneration so withheld is forfeited to the State unless the relevant Presiding Officer otherwise directs or that remuneration was due to the staff member in respect of a period before the suspension was imposed.
- (6) Action may be taken or continued under this section in respect of a staff member despite the staff member resigning or otherwise ceasing to be employed by the member of Parliament concerned.
- (7) A member of Parliament may not, except with the approval of the relevant Presiding Officer, employ a person under this Part if the person's employment has been terminated at any time under this section.

- (8) This section does not limit the power of a member of Parliament to dispense with the services of a staff member under section 20.
- (9) This section has effect despite anything in the written agreement of employment of the staff member concerned.
- (10) In this section:  
**misconduct** in relation to a staff member includes the following:
- (a) taking any detrimental action (within the meaning of the *Public Interest Disclosures Act 1994*) against a person that is substantially in reprisal for the person making a public interest disclosure within the meaning of that Act,
  - (b) taking any action against another person employed under this Part that is substantially in reprisal for a disclosure made by that person of the alleged misconduct of the staff member taking that action,
  - (c) a conviction or finding of guilt for a serious offence.

The subject matter of any misconduct by a staff member may relate to an incident or conduct that happened while the staff member was not on duty, before his or her employment or before the commencement of this section.

**serious offence** means an offence punishable by imprisonment for life or for 12 months or more (including an offence committed outside New South Wales that would be an offence so punishable if committed in New South Wales).

**staff member** means a person who is employed under this Part by a member of Parliament.

## 1.19 Mental Health Act 2007 No 8

### Section 32 Detention on order of Magistrate or bail officer

Insert “or (1D) (b)” after “section 33 (1) (b)” in section 32 (5).

## 1.20 Mental Health (Forensic Provisions) Act 1990 No 10

### [1] Section 33 Mentally ill persons

Omit “the person be brought back before a Magistrate or an authorised officer” from section 33 (1) (b).

Insert instead “the defendant be brought back before a Magistrate or an authorised officer unless granted bail by a police officer at that facility”.

### [2] Section 33 (1D) (b)

Insert “unless granted bail by a police officer at that facility” after “an authorised officer”.

### [3] Section 33 (5B)

Insert after section 33 (5A):

- (5B) An order by a Magistrate or authorised officer under subsection (1) (a) or (b) or (1D) (a) or (b) in relation to an offence is, for the purposes of the *Bail Act 2013*, taken to be a decision to dispense with bail for the offence.

## 1.21 Oaths Act 1900 No 20

### Section 34A

Insert after section 34:

#### **34A Certain oaths or affirmations to be administered or made before Governor**

Despite any other provision of this Act, if the appointment of a person by the Governor requires the person to take an oath or make a solemn affirmation, the oath or affirmation may be administered by, or made before, the Governor.

## 1.22 Police Act 1990 No 47

### Section 13 Oath to be taken by persons exercising police functions

Insert after section 13 (2):

- (3) An oath or affirmation under this section is to be administered by or made before the Commissioner or any other person authorised to administer an official oath under the *Oaths Act 1900*.

## 1.23 Strata Schemes Development Act 2015 No 51

### Section 181 Hearing of application

Insert after section 181 (3):

- (3A) Subsection (3) has effect despite section 34 (3) (a) of the *Land and Environment Court Act 1979*.

## 1.24 Terrorism (Police Powers) Act 2002 No 115

### [1] Sections 16 (1), (2) and (3) and 26T

Omit “may request”, “requested”, “the request” and “such request” wherever occurring.

Insert instead “may require”, “required”, “the requirement” and “such requirement” respectively.

### [2] Section 16 (4)

Omit “may request a person who is requested”.

Insert instead “may request a person who is required”.

### [3] Section 16

Insert at the end of the section:

**Note.** Part 15 of the *Law Enforcement (Powers and Responsibilities) Act 2002* sets out safeguards relating to the exercise of power under this section.

[Second reading speech made in—

Legislative Assembly on 14 September 2017

Legislative Council on 20 September 2017]