



New South Wales

Justice Legislation Amendment Act 2019 No 10

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New South Wales

Justice Legislation Amendment Act 2019 No 10

Act No 10, 2019

An Act to amend various Acts and regulations relating to courts, crimes and other Stronger Communities portfolio matters. [Assented to 26 September 2019]

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Justice Legislation Amendment Act 2019*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by this section.
- (2) Schedule 1.4[1] and [2], 1.15 and 1.16 commence on a day or days to be appointed by proclamation.
- (3) Schedule 1.14 commences on 7 December 2019 or the date of assent to this Act, whichever is later.

3 Explanatory notes

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

Schedule 1 Amendments

1.1 Anti-Discrimination Act 1977 No 48

[1] Section 94B Calculation of time

Omit “is taken to run from, and includes, the fourth day after the notice was posted”.

Insert instead “is, unless evidence sufficient to raise doubt is adduced to the contrary, taken to run from, and includes, the seventh working day after the notice was posted”.

[2] Section 94B(2)

Insert at the end of section 94B—

(2) In this section—

working day means a day that is not—

- (a) a Saturday or Sunday, or
- (b) a public holiday or a bank holiday in the place to which the notice was addressed.

Explanatory note

The proposed amendments provide that a notice given by post is, in the absence of contrary evidence sufficient to raise doubt, presumed to have been given 7 working days after it is sent, rather than 4 days. This maintains consistency with section 76(1)(b) of the *Interpretation Act 1987*, which was amended in 2018 as a consequence of changes to Australia Post delivery times.

1.2 Children (Criminal Proceedings) Act 1987 No 55

Section 27 Application of Criminal Procedure Act 1986 and other Acts

Insert at the end of section 27(2B)—

Note. Part 2 of Chapter 3 of the *Criminal Procedure Act 1986*, which deals with committal proceedings, applies to serious children’s indictable offences.

Explanatory note

The proposed amendment inserts a note to clarify that committal proceedings for serious children’s indictable offences are dealt with under the *Criminal Procedure Act 1986*.

1.3 Children (Detention Centres) Act 1987 No 57

[1] Section 3 Definitions

Omit the definitions of *Chief Executive, Justice and Forensic Mental Health Network* and *Justice and Forensic Mental Health Network* from section 3(1).

Insert instead, respectively—

Chief Executive, Justice Health and Forensic Mental Health Network means the person for the time being holding office or acting as the chief executive of the Justice Health and Forensic Mental Health Network under the *Health Services Act 1997*.

Justice Health and Forensic Mental Health Network means the statutory health corporation of that name specified in Schedule 2 to the *Health Services Act 1997*.

[2] Section 3(1)

Insert in alphabetical order—

Victims Register means the register kept under section 100A.

[3] Section 8A Official Visitors

Omit “2 years” from section 8A(3). Insert instead “4 years”.

[4] Sections 27(2) and (5) and 37E–37H

Insert “Health” after “Justice” wherever occurring.

[5] Sections 100A–100D

Insert after section 100—

100A Victims Register

- (1) There is to be a Victims Register.
- (2) There are to be recorded in the Victims Register the names of victims of juvenile offenders who have requested that they be given notice of the possible release of the juvenile offender concerned.
- (3) The Victims Register is to be kept by the government agency—
 - (a) prescribed by the regulations, or
 - (b) if the regulations do not prescribe an agency—designated by the Minister.
- (4) The regulations may make provision for or with respect to—
 - (a) the keeping of the Victims Register, and
 - (b) the manner in which a notice to victims may or must be given under this Act and the circumstances (if any) in which a notice need not be given, and
 - (c) the identification of a person who is a victim for the purposes of this Act, including—
 - (i) the determination of the persons who are family representatives of a victim, and
 - (ii) the provision, by a person claiming to be a victim, of evidence of the person’s identity and of the circumstances by which the person claims to be a victim.
- (5) In this section—

juvenile offender means—

 - (a) a person subject to control, or
 - (b) a person who is serving a sentence of imprisonment and who was under the age of 18 years when the person committed the offence.

victim—

- (a) means—
 - (i) in relation to a juvenile offender—a victim of an offence for which the juvenile offender has been sentenced or of any offence taken into account under Division 3 of Part 3 of the *Crimes (Sentencing Procedure) Act 1999*, or
 - (ii) if the victim referred to in subparagraph (i) is dead or under any incapacity or in such circumstances as may be prescribed by the regulations—a family representative of a victim, and
- (b) includes a person who suffers actual physical bodily harm, mental illness or nervous shock, or whose property is deliberately taken, destroyed or damaged, as a direct result of an act committed, or

apparently committed, by the juvenile offender in the course of an offence.

100B Notification to victims of parole consideration

- (1) The government agency that keeps the Victims Register must give notice to any victim of a serious young offender, within the meaning of Part 4B, whose name is recorded in the Victims Register if—
 - (a) the serious young offender is due for consideration of whether or not the serious young offender should be released on parole, or
 - (b) the serious young offender is eligible for, or has applied for, release on parole.
- (2) The notice is to be given subject to and in accordance with the regulations.
- (3) Without limiting subsection (2), the notice must contain the following information—
 - (a) the matter being notified,
 - (b) that the victim may make a submission to the Children’s Court about the matter,
 - (c) the form that a submission may take,
 - (d) the period within which a submission must be made,
 - (e) that the Children’s Court will consider a submission made before the end of that period.
- (4) The Children’s Court must consider any submission made in accordance with this section.
- (5) The government agency that keeps the Victims Register is not required to give notice of a matter under this section if the matter required to be notified to the victim is included in any other requirement to give notice under this Act.
- (6) A failure by the government agency that keeps the Victims Register to comply with this section does not affect the validity of any decision of, or order made by, the Children’s Court.

100C Notification to victims of leave consideration

- (1) The government agency that keeps the Victims Register must give notice to any victim of a serious young offender, within the meaning of Part 4B, whose name is recorded in the Victims Register if the Review Panel has been asked to provide advice or make a recommendation about whether or not the Secretary should make an order in relation to the serious young offender under section 24(1).
- (2) The notice is to be given subject to and in accordance with the regulations.
- (3) Without limiting subsection (2), the notice must contain the following information—
 - (a) the matter being notified,
 - (b) that the victim may make a submission to the Review Panel about the matter,
 - (c) the form that a submission may take,
 - (d) the period within which a submission must be made,
 - (e) that the Review Panel will consider a submission made before the end of that period.

- (4) The Review Panel must consider any submission made in accordance with this section.
- (5) The government agency that keeps the Victims Register is not required to give notice of a matter under this section if the matter required to be notified to the victim is included in any other requirement to give notice under this Act.
- (6) A failure by the government agency that keeps the Victims Register to comply with this section does not affect the validity of any advice given or recommendation made by the Review Panel.

100D Information to be provided to victims

- (1) The Secretary may, if requested to do so by a victim of a juvenile offender whose name is recorded in the Victims Register or at the Secretary's discretion, provide the following information to the victim—
 - (a) any change to the juvenile offender's earliest possible release date,
 - (b) the discharge of the juvenile offender from detention,
 - (c) the general area of the juvenile offender's residence following the juvenile offender's discharge from detention,
 - (d) the transfer of a juvenile offender from a detention centre to a correctional centre or mental health facility,
 - (e) the death of the juvenile offender while serving a sentence or released on parole,
 - (f) the escape of the juvenile offender while serving a sentence,
 - (g) the failure of the juvenile offender to return from leave to be absent,
 - (h) the apprehension of the juvenile offender following the juvenile offender's escape while serving a sentence or failure to return from leave to be absent,
 - (i) a decision by the Secretary to grant the juvenile offender leave under section 24(1).
- (2) The government agency that keeps the Victims Register must give notice to a victim of a juvenile offender who is recorded in the Victims Register of the following matters relating to the juvenile offender—
 - (a) that the Children's Court or the Governor has made a parole order releasing the juvenile offender on parole and the date of the release,
 - (b) that the juvenile offender is eligible for release on parole in accordance with a statutory parole order and the date of the release,
 - (c) any additional conditions placed on the parole order,
 - (d) that the conditions of the parole order have been changed, and particulars of the change,
 - (e) that the juvenile offender's parole has been revoked.
- (3) The information or notice is to be given in writing to the victim.
- (4) Notice of the revocation of an order is not required to be given under this section until any review of that order has been finally determined.
- (5) The Secretary and the government agency that keeps the Victims Register are not required to provide information or give notice under this section of any matter if the matter is included in any other requirement to give notice under this Act to the victim.

(6) In this section—

juvenile offender means—

- (a) a person subject to control, or
- (b) a person who is serving a sentence of imprisonment and who was under the age of 18 years when the person committed the offence.

mental health facility has the same meaning as it has in the *Mental Health Act 2007*.

Explanatory note

Items [1] and [4] of the proposed amendments correct references to the Justice Health and Forensic Mental Health Network.

Item [3] extends the maximum term of appointment of an Official Visitor from 2 to 4 years.

Item [5] establishes a Victims Register for victims of young offenders and enables those victims to be provided with certain information about the parole and movement of young offenders, consistent with the Charter of Victims Rights in the *Victims Rights and Support Act 2013*. Item [2] makes consequential amendment.

1.4 Coroners Act 2009 No 41

[1] Section 6 Meaning of “reportable death”

Omit section 6(1)(d) and (2).

[2] Section 88A

Insert after section 88—

88A Preliminary examination of remains of deceased person

- (1) A pathologist may carry out (or arrange for another person to carry out) a preliminary examination in relation to the remains of a deceased person even if a post mortem investigation direction has not been given authorising the examination.
- (2) A preliminary examination in relation to the remains of a deceased person may only involve any one or more of the following—
 - (a) a visual examination of the remains (including a dental examination),
 - (b) the collection and review of information, including personal and health information relating to the deceased person or the death of the person,
 - (c) the taking of samples of bodily fluid, including blood, urine, saliva, vitreous humour and mucus samples from the remains (which may require an incision to be made) and the testing of those samples,
 - (d) the imaging of the remains, including the use of computed tomography (CT scan), magnetic resonance imaging (MRI scan), x-rays, ultrasound and photography,
 - (e) the taking of samples from the surface of the remains (including swabs from wounds and inner cheek, hair samples and samples from under fingernails and from the skin) and the testing of those samples,
 - (f) the fingerprinting of the remains,
 - (g) any other procedure that is not a dissection, the removal of tissue or invasive in any other way.

[3] Section 101E Members of Team

Insert after section 101E(3)(f)—

- (g) the Legal Aid Commission of New South Wales.

[4] Schedule 2 Savings, transitional and other provisions

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

Part Provisions consequent on enactment of Justice Legislation Amendment Act 2019

Definitions

In this Part—

amending Act means the *Justice Legislation Amendment Act 2019*.

repeal day means the day on which section 6(1)(d) is repealed by the amending Act.

Application of amendment to section 6

- (1) A death of a kind referred to in section 6(1)(d) occurring before the repeal day continues to be a reportable death for the purposes of this Act despite the repeal of that paragraph by the amending Act.
- (2) Accordingly—
 - (a) any obligations under this Act immediately before the repeal day to report those deaths continue on and after that day, and
 - (b) section 38(2) continues to apply in relation to those deaths.

Application of section 88A

Section 88A (as inserted by the amending Act) applies only in relation to deceased persons who died on or after the day the section commenced.

Explanatory note

Item [1] of the proposed amendments removes a requirement to treat as a reportable death any death occurring in circumstances where the deceased person had not been attended by a medical practitioner during the period of 6 months immediately before the person's death.

Item [2] enables pathologists to conduct certain non-invasive preliminary examinations of the remains of deceased persons without having to obtain authority from a post mortem investigation direction.

Item [3] provides that the Domestic Violence Death Review Team is to include representatives of the Legal Aid Commission of New South Wales.

Item [4] inserts provisions of a savings or transitional nature as a consequence of proposed amendments to the *Coroners Act 2009* in items [1] and [2].

1.5 Court Security Act 2005 No 1

Section 4 Definitions

Insert after paragraph (c) of the definition of *recording device* in section 4(1)—

- (d) a portable document scanner.

Explanatory note

The proposed amendment includes a portable document scanner as a type of recording device that is prohibited from use to record images or sound (or both) in court premises and that may be confiscated by security officers.

1.6 Crimes Act 1900 No 40

[1] Section 80AF Uncertainty about time when sexual offence against child occurred

Omit section 80AF(2). Insert instead—

- (2) In such a case, a person may be prosecuted in respect of the conduct under any of those sexual offences (except one that has a higher maximum penalty than

any one or more of the other offences) regardless of when during that period the conduct actually occurred.

- (2A) In prosecuting an offence referred to in subsection (2)—
- (a) any requirement to establish that the offence charged was in force is satisfied if the prosecution can establish that the offence was in force at some time during that period, and
 - (b) any requirement to establish that the victim was of a particular age is satisfied if the prosecution can establish that the victim was of that age at some time during that period.

[2] Part 6B

Insert after Part 6A—

Part 6B Terrorism

310I Definitions

In this Part:

Commonwealth Criminal Code means the Criminal Code set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth.

terrorist organisation and *member of a terrorist organisation* have the meaning they are given by section 102.1 of the Commonwealth Criminal Code.

310J Membership of terrorist organisation

- (1) A person commits an offence if—
- (a) the person intentionally is a member of a terrorist organisation, and
 - (b) the organisation is a terrorist organisation, and
 - (c) the person knows the organisation is a terrorist organisation.

Maximum penalty: Imprisonment for 10 years.

- (2) Subsection (1) does not apply if the person proves that he or she took all reasonable steps to cease to be a member of the organisation as soon as practicable after the person knew that the organisation was a terrorist organisation.

310K Multiplicity of offences

If—

- (a) an act or omission is an offence against both this Part and the Commonwealth Criminal Code, and
- (b) the offender has been punished for that offence under the Commonwealth Criminal Code,

the offender is not liable to be punished for the offence under this Part.

[3] Schedule 11 Savings, transitional and other provisions

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

Part Justice Legislation Amendment Act 2019

Re-enactment of Part 6B

- (1) Part 6B, as inserted by the amending Act, is taken to have commenced on 13 September 2019.
- (2) Accordingly, anything that would have constituted an offence against section 310J, as inserted by the amending Act, during the relevant period had that section been in force is taken to constitute an offence against the section.
- (3) In this clause—
amending Act means the *Justice Legislation Amendment Act 2019*.
relevant period means the period—
 - (a) commencing on 13 September 2019, and
 - (b) ending immediately before the day on which Part 6B is inserted by the amending Act.

Explanatory note

Item [1] of the proposed amendments clarifies that the prosecution of a sexual offence against a child in circumstances where the exact date on which the alleged conduct occurred is uncertain may be brought where the potentially applicable sexual offences have the same maximum penalty (and is not limited to circumstances where those offences have different maximum penalties). In this case, the prosecution may be brought under any of those sexual offences.

Item [2] re-enacts Part 6B (Terrorism) of the *Crimes Act 1900*, which was repealed on 13 September 2019. Item [3] provides for the re-enacted Part to be taken to have commenced on the day of that repeal.

1.7 Crimes (Administration of Sentences) Act 1999 No 93

[1] Section 4 Application of Part

Insert at the end of section 4(1)(f)—

, and

- (g) any person whose release from custody has been delayed in accordance with section 8(2)(b) or (2A).

[2] Section 257 Disclosure of information

Insert “, or to which the person otherwise has or had access,” after “information obtained” in section 257(1).

[3] Section 257A Authority to disclose and exchange certain information

Insert “, or to which the Commissioner otherwise has or had access,” after “by the Commissioner” in section 257A(1).

[4] Schedule 4 Official Visitors

Omit “2 years” from clause 2. Insert instead “4 years”.

Explanatory note

Item [1] of the proposed amendments clarifies that a person whose release from custody has been delayed with the person’s consent continues to be held in custody as an inmate until the day of the person’s release.

Items [2] and [3] clarify that the provisions limiting or authorising the disclosure of information apply in relation to information to which a person or the Commissioner of Corrective Services has or had access in connection with the administration or execution of the *Crimes (Administration of Sentences) Act 1999*.

Item [4] extends the maximum term of appointment of an Official Visitor from 2 to 4 years.

1.8 Crimes (Sentencing Procedure) Act 1999 No 92

[1] Part 4, Division 1A, Table

Omit “5 years” from item 15B. Insert instead “9 years”.

[2] Schedule 2 Savings, transitional and other provisions

Insert after clause 76—

76A Action for breaches of expired suspended sentence orders

- (1) This clause applies to an order (*the suspended sentence order*) made under section 12 before its repeal by the amending Act suspending execution of a sentence of imprisonment and directing that the offender enter into a good behaviour bond, if—
 - (a) the bond was breached before the commencement day for the repeal of section 100, and
 - (b) the bond had expired before that day, and
 - (c) action in respect of the breach had not been commenced or completed before that day.
- (2) The breach of the bond may be dealt with or continue to be dealt with on or after that day under this Act and the regulations as if the amending Act had not been enacted.
- (3) If a court (under section 98 as previously in force but continuing to apply under subclause (2)) revokes the bond—
 - (a) the suspended sentence order ceases to have effect in relation to the sentence of imprisonment suspended by the order, and
 - (b) the court must either—
 - (i) order that the offender be sentenced or re-sentenced to imprisonment to be served in full-time detention, or
 - (ii) make an intensive correction order under this Act, as amended by the amending Act, in respect of the offence concerned, and
 - (c) this Act (including Part 4), as amended by the amending Act, applies to the sentencing or re-sentencing of the offender under this clause in the same way as it applies to the sentencing of an offender on a conviction, and
 - (d) section 24 applies to the sentencing or re-sentencing of the offender under this clause in the same way as it applies to the sentencing of an offender on a conviction, but taking into account—
 - (i) the fact that the offender has been the subject of the good behaviour bond, and
 - (ii) anything done by the offender in compliance with the offender’s obligations under the good behaviour bond, and
 - (e) the offender who under this clause is sentenced or re-sentenced by a court for an offence has the same rights of appeal as the offender would have had if the offender had been sentenced by that court on being convicted of the offence.

[3] Schedule 2

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

Part Provision consequent on enactment of Justice Legislation Amendment Act 2019

Standard non-parole periods

The Table to Division 1A of Part 4 of this Act, as in force immediately before its amendment by the *Justice Legislation Amendment Act 2019*, continues to apply in respect of an offence against section 203E of the *Crimes Act 1900* committed before that amendment.

Explanatory note

Item [1] of the proposed amendments increases the standard non-parole period for the bushfire arson offence under section 203E of the *Crimes Act 1900* from 5 to 9 years, consequent on the amendment made by the *Community Protection Legislation Amendment Act 2018* that increased the maximum penalty for the offence from imprisonment for 14 to 21 years. Item [3] inserts a transitional provision. Item [2] inserts a savings and transitional provision that allows the court to call up breaches of good behaviour bonds entered into in connection with suspended sentence orders that expired before the *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017* commenced, which repealed provisions for the making of suspended sentence orders.

1.9 Criminal Procedure Act 1986 No 209

[1] Section 66 Charge certificates

Insert “or an offence prosecuted by a Commonwealth prosecutor” after “Commonwealth” in section 66(2)(b).

[2] Section 66(2A)

Insert after section 66(2)—

- (2A) In subsection (2), *Commonwealth prosecutor* means a person referred to in section 65(b) or a legal representative of a person referred to in that paragraph.

[3] Section 72 Obligations of legal representative of accused

Insert after section 72(2)—

- (3) Subsection (2) applies only in respect of an offence to which Division 1A of Part 3 of the *Crimes (Sentencing Procedure) Act 1999* applies.

[4] Section 74 Case conference certificate must be completed and filed

Insert after section 74(4)—

- (5) A prosecutor or legal representative of an accused person is not required to comply with this section if all the offences to which the proceedings relate—
- (a) are to be dealt with summarily, or
 - (b) are, for any other reason, not proceeding for committal by the Magistrate of the accused person for trial or sentence.

[5] Section 76 Failure to complete case conference obligations

Insert after section 76(4)—

- (5) This section does not apply if the case conference certificate has not been filed in the circumstances set out in section 74(5).

[6] Schedule 1 Indictable offences triable summarily

Insert after clause 20 under Part 4 of Table 1—

20AA Health Practitioner Regulation National Law (NSW)

An offence under section 113, 115, 116, 117, 118, 119, 121, 122 or 123 of the *Health Practitioner Regulation National Law (NSW)*.

[7] Schedule 1, Table 1

Renumber and transfer clause 25 as clause 21C.

[8] Schedule 1, Table 1

Insert after clause 23—

23A Point to Point Transport (Taxis and Hire Vehicles) Act 2016

An offence under section 16 of the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016*.

[9] Schedule 1, Table 1

Renumber clauses 23A (*Police Powers (Drug Premises) Act 2001*), 23AAA, 23AA, 23AB and 23B as clauses 23B, 23C, 23D, 23E and 23F, respectively.

[10] Schedule 2 Savings, transitional and other provisions

Omit “who was a child when an order was made under this clause” from clause 84(7).

Insert instead “to whom an order under subclause (2) applies”.

[11] Schedule 2, clause 84(7)

Omit “before the conclusion of the proceeding concerned”.

Explanatory note

Item [1] of the proposed amendments clarifies that, in the case of an offence prosecuted by the Commonwealth Director of Public Prosecutions, the prosecutor is not required to certify in the charge certificate that a certificate under section 15A of the *Director of Public Prosecutions Act 1986* has been received and considered. That section requires New South Wales law enforcement officers to disclose to the New South Wales Director of Public Prosecutions all relevant information, documents and other things obtained during an investigation of an offence and does not apply to Commonwealth law enforcement officers or the Commonwealth Director of Public Prosecutions. Item [2] makes a consequential amendment.

Item [3] clarifies that the obligation on a legal representative of an accused person to explain the penalties for the offence and the sentencing discount for a guilty plea under the *Crimes (Sentencing Procedure) Act 1999* does not extend to offences to which the sentencing discount does not apply. Under the *Crimes (Sentencing Procedure) Act 1999*, the sentencing discount does not apply to summary offences, Commonwealth indictable offences or certain indictable offences committed by a child.

Item [4] clarifies that there is no requirement for a case conference certificate to be filed in committal proceedings for an indictable offence if the offences to which the proceedings relate are to be dealt with summarily or if, for any other reason, they are not proceeding to the stage of committal for trial or sentence. Item [5] makes a consequential amendment.

Item [6] provides that certain indictable offences relating to a person’s misuse of health practitioner titles and practice restrictions under the *Health Practitioner Regulation National Law (NSW)* may be tried summarily unless the prosecutor or the accused person elects to have the matter dealt with on indictment.

Item [8] provides that the indictable offence of engaging in unsafe conduct as a provider or driver of passenger services under the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* may be tried summarily unless the prosecutor or the accused person elects to have the matter dealt with on indictment.

Items [7] and [9] make consequential changes to numbering.

Items [10] and [11] relate to the scheme that enables a child complainant or prosecution witness in child sexual assault proceedings to give evidence by means of a pre-recorded hearing. The amendments clarify that a complainant or witness who is aged 16 or 17 years at the time the accused person was committed for trial or sentence is able to give evidence by means of a pre-recorded hearing in accordance with a court order, even if the child reaches the age of 18 years.

1.10 Criminal Procedure Regulation 2017

Schedule 1 Forms

Insert “*or an offence prosecuted by the Commonwealth Director of Public Prosecutions*” after “*Commonwealth*” in Form 1A.

Explanatory note

The proposed amendment updates a form as a consequence of the proposed amendment to section 66 of the *Criminal Procedure Act 1986* in this Schedule.

1.11 Defamation Act 2005 No 77

[1] Schedule 1 Additional publications to which absolute privilege applies

Insert at the end of clause 18(d)—

, or

- (e) in a report of a compliance audit under section 256 of the *Legal Profession Uniform Law (NSW)*—
 - (i) by a person or body referred to in paragraph (a) to a person or body referred to in that paragraph, pursuant to section 256 of that Law, or
 - (ii) by a person appointed under section 256 of that Law to conduct the compliance audit the subject of the report, to a person or body referred to in paragraph (a), pursuant to that section.

[2] Schedule 1

Insert at the end of the Schedule, with appropriate clause numbering—

Matters relating to Independent Planning Commission and former Planning Assessment Commission

- (1) Without limiting section 27(2)(a)–(c), matter that is published by the Independent Planning Commission or the former Planning Assessment Commission in a report or other document (including an audio/video record, an audio record or a transcription record)—
 - (a) under the *Environmental Planning and Assessment Act 1979*, or
 - (b) under section 10, 21 or 26 of the *Greater Sydney Commission Act 2015* or section 34, 36, 71 or 78 of the *Heritage Act 1977*.
- (2) In this clause—
 - former Planning Assessment Commission*** means the Planning Assessment Commission of New South Wales constituted under section 23B of the *Environmental Planning and Assessment Act 1979*, as in force before its repeal by the *Environmental Planning and Assessment Amendment Act 2017*.
 - Independent Planning Commission*** means the Independent Planning Commission of New South Wales constituted under section 2.7 of the *Environmental Planning and Assessment Act 1979*.

Explanatory note

Item [1] of the proposed amendments extends the defence of absolute privilege afforded to certain publications under the *Legal Profession Uniform Law (NSW)* to matter that is published in a report of a compliance audit of a law practice under that Law—

- (a) by or to the Bar Council or the Law Society Council, any members, committees or subcommittees of those Councils, the Bar Association, the Law Society or the Legal Services Commissioner, or any members of staff of any of those persons or bodies, or
- (b) by a person appointed under that Law to conduct the compliance audit the subject of the report, to a body or person referred to in paragraph (a).

Item [2] confers a defence of absolute privilege to the publication of defamatory matter, for matter published by the Independent Planning Commission or its predecessor, the Planning Assessment Commission, in a report or other document (including an audio/video record, an audio record or a transcription record) under the *Environmental Planning and Assessment Act 1979* or certain provisions of the *Greater Sydney Commission Act 2015* or the *Heritage Act 1977*.

1.12 Drug Misuse and Trafficking Act 1985 No 226

[1] Schedule 1

Omit “except where Schedule Four of the Poisons List applies” wherever occurring in the matter relating to “Amylobarbitone”, “Dextropropoxyphene”, “Difenoxin”, “Pentobarbitone” and “Phenylpropanolamine”.

[2] Schedule 1

Omit “except where Schedule Two, Three or Four of the Poisons List applies” wherever occurring in the matter relating to “Codeine” and “Dihydrocodeine”.

[3] Schedule 1

Omit “except where Schedule Three or Four of the Poisons List applies” wherever occurring in the matter relating to “Diphenoxylate” and “Pseudoephedrine”.

[4] Schedule 1

Omit “except where Schedule Two or Four of the Poisons List applies” wherever occurring in the matter relating to “Ethylmorphine” and “Pholcodine”.

[5] Schedule 1

Omit “except the alkaloids noscapine where Schedule Two of the Poisons List applies and papaverine where Schedule Two or Four of the Poisons List applies” from the matter relating to “Opium”.

[6] Schedule 1

Omit the matter relating to “Opium, prepared”.

Explanatory note

Section 8 of the *Drug Misuse and Trafficking Act 1985* (the **Drug Act**) provides that nothing in the Drug Act renders unlawful anything done in accordance with the *Poisons and Therapeutic Goods Act 1966* (the **Poisons Act**). The proposed amendments remove references in the Drug Act to the Poisons List, which is made under the Poisons Act and are therefore unnecessary.

1.13 Justices of the Peace Act 2002 No 27

[1] Section 3 Definitions

Insert in alphabetical order—

Secretary means the Secretary of the Department of Communities and Justice.

[2] Sections 4(3)(b) and 11(4)

Omit “Director-General of the Attorney General’s Department” wherever occurring.

Insert instead “Secretary”.

[3] Section 4 Appointment of justices of the peace

Omit section 4(5).

[4] Section 12A

Insert after section 12—

12A Delegation

The Secretary may delegate the exercise of any function of the Secretary under this Act or the regulations (other than this power of delegation) to—

- (a) a Public Service senior executive, within the meaning of the *Government Sector Employment Act 2013*, assigned to a role in the Department of Communities and Justice, or
- (b) another employee of the Department of Communities and Justice who the Secretary considers a sufficiently senior member of the Department's staff to exercise the function.

[5] Section 13A

Insert after section 13—

13A Use of retirement title

- (1) A person may apply to the Secretary in writing for an authority to use the title "JP (Retired)" after the person's name if the person—
 - (a) has ceased to hold office as a justice of the peace (whether before or after the commencement of this section), and
 - (b) was 65 years or older when the person ceased to hold that office, and
 - (c) held office as a justice of the peace for at least 10 consecutive years before ceasing to hold that office.
- (2) The Secretary must not grant an authority unless satisfied that the person is of good character.
- (3) The Secretary may cancel an authority by notice in writing to the person if—
 - (a) the Secretary is satisfied that the person is not of good character, or
 - (b) the person notifies the Secretary in writing that the person no longer wishes to use the title.
- (4) The granting of an authority does not authorise the person to exercise any of the functions of a justice of the peace.
- (5) The regulations may make provision for or with respect to the use of retirement titles.

Explanatory note

Items [1] and [2] of the proposed amendments update references to the Secretary of the Department of Communities and Justice.

Item [4] enables the Secretary of the Department of Communities and Justice to delegate the exercise of the Secretary's functions under the *Justices of the Peace Act 2002* or its regulations to a senior member of staff of the Department. Item [3] makes a consequential amendment.

Item [5] enables the Secretary of the Department of Communities and Justice to authorise former justices of the peace who ceased to hold that office at the age of 65 years or older, and who had held that office for at least 10 consecutive years before ceasing to hold that office, to use the title "JP (Retired)" after their names.

1.14 Land and Environment Court Act 1979 No 204

Section 18 Class 2—local government and miscellaneous appeals and applications

Insert after section 18(i)—

- (j) despite any other provision of this Division—appeals under any Act to the Court against building product rectification orders made under the *Building Products (Safety) Act 2017*.

Explanatory note

The proposed amendment clarifies that appeals under Acts against building product rectification orders fall within Class 2 of the jurisdiction of the Land and Environment Court (ie similar to local government appeals), only. Currently, these appeals fall within other classes under other environment and local government legislation.

1.15 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

[1] Section 59 Application of Division

Insert “(other than section 61A)” after “Division” where firstly occurring in section 59(1).

[2] Section 59(3)

Insert “61A,” after “sections” where firstly occurring.

[3] Section 61A

Insert after section 61—

61A Application for notice to produce documents

- (1) Despite sections 60 and 61, a person may apply for a notice to produce documents by email and any other method authorised by the regulations and in the form prescribed by the regulations.
- (2) An eligible issuing officer must not issue the notice unless the information given by the applicant in or in connection with the application is verified by affidavit.
- (3) An application for a notice to produce documents may also be made under section 60 or 61, if applicable.

Explanatory note

The proposed amendments provide for applications for notices to produce documents to be able to be made by email and any other method authorised by the regulations at all times. Currently, these applications must be made in person or, if the notice is required urgently and cannot be applied for in person, may be made by telephone.

1.16 Law Enforcement (Powers and Responsibilities) Regulation 2016

[1] Clause 4 Form of application for warrant or notice to produce

Omit “and” from clause 4(1)(g).

[2] Clause 4(1)(h)

Omit the paragraph.

[3] Clause 4(1A)

Insert after clause 4(1)—

- (1A) An application for a notice to produce documents issued under Division 3 of Part 5 of the Act is to be made in the form of Part 1 of Form 8.

[4] Schedule 1 Forms

Omit “4(1)(h)” from Form 8. Insert instead “4(1A)”.

[5] Schedule 1, Form 8

Omit “*not made in person*” from Part 2. Insert instead “*made by telephone*”.

Explanatory note

The proposed amendments are consequential on certain proposed amendments to the *Law Enforcement (Powers and Responsibilities) Act 2002* in this Schedule.

1.17 Legal Aid Commission Act 1979 No 78

Schedule 3 Procedure of Board

Omit “within 14 days after the date on which” from clause 9(2).

Insert instead “with reasonable promptness after”.

Explanatory note

The proposed amendment replaces the 14 day time frame within which the minutes of a meeting of the Board of the Legal Aid Commission of New South Wales are currently required to be submitted to the Minister, with the requirement that the minutes be submitted with reasonable promptness after the meeting.

1.18 Oaths Act 1900 No 20

Section 26A Witnessing of documents for other jurisdictions

Insert “, or witness the execution of a document,” after “statutory declaration”.

Explanatory note

The proposed amendment enables justices of the peace to witness the execution of documents for use in any other State or Territory or the Commonwealth if permitted by the jurisdiction concerned.

1.19 Point to Point Transport (Taxis and Hire Vehicles) Act 2016 No 34

Section 136 Nature of proceedings for offences

Omit “are to be taken on indictment” from section 136(2).

Insert instead “may be taken on indictment”.

Explanatory note

The proposed amendment provides that the indictable offence of engaging in unsafe conduct as a provider or driver of passenger services may be dealt with summarily or on indictment.

1.20 Sheriff Act 2005 No 6

[1] Section 4 Sheriff’s functions

Insert at the end of the section—

- (2) The Sheriff also has and may exercise functions conferred or imposed on the Sheriff by or under an Act or law of the Commonwealth, another State or a Territory (including functions conferred by way of delegation).

[2] Section 5 Delegation of Sheriff’s functions

Insert at the end of the section—

- (2) Despite subsection (1), the Sheriff may delegate a function conferred or imposed on, or delegated to, the Sheriff by or under an Act or law of the Commonwealth, another State or a Territory, only if—
 - (a) the Act or law conferring or imposing the function on the Sheriff allows the Sheriff to delegate the function, or
 - (b) in relation to a function that is delegated—the delegation conferring the function on the Sheriff allows the Sheriff to subdelegate the function.

Explanatory note

Item [1] of the proposed amendments clarifies that the Sheriff's functions include functions conferred or imposed on the Sheriff under an Act or law of the Commonwealth, another State or a Territory (including functions conferred by way of delegation). Item [2] makes a consequential amendment.

1.21 Young Offenders Act 1997 No 54

[1] Section 8 Offences covered by Act

Insert "61KC, 61KD, 61KE, 61KF," after "61E," in section 8(2)(d).

[2] Section 8(2)(d)

Insert "66DA, 66DB, 66DC, 66DD, 66DE," after "66D,".

Explanatory note

Clause 13A of the *Young Offenders Regulation 2016* currently excludes certain sexual offences under the *Crimes Act 1900* from the offences covered by the *Young Offenders Act 1997*.

The proposed amendments relocate these exclusions to the *Young Offenders Act 1997*.

1.22 Young Offenders Regulation 2016

Clause 13A Offences not covered by Act

Omit the clause.

Explanatory note

The proposed amendment is consequential on proposed amendments to section 8 of the *Young Offenders Act 1997* in this Schedule.

[Second reading speech made in—

Legislative Assembly on 21 August 2019

Legislative Council on 25 September 2019]