



New South Wales

# Stronger Communities Legislation Amendment (Courts and Civil) Act 2020 No 24

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New South Wales

# **Stronger Communities Legislation Amendment (Courts and Civil) Act 2020 No 24**

Act No 24, 2020

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An Act to amend various Acts and regulations relating to courts and to other Communities and Justice portfolio matters. [Assented to 28 September 2020]

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

**1 Name of Act**

This Act is the *Stronger Communities Legislation Amendment (Courts and Civil) Act 2020*.

**2 Commencement**

- (1) This Act commences on the date of assent to this Act except as provided for in subsection (2).
- (2) Schedule 1.1[11]–[20] commences on the expiry of Schedule 4, clause 2 to the *Children’s Guardian Act 2019*.

**3 Explanatory notes**

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

**4 Repeal**

The *Courts Legislation Amendment Act 2004* is repealed.

## Schedule 1 Amendments

### 1.1 Children's Guardian Act 2019 No 25

#### [1] Section 10 Definitions

Insert at the end of the definition of *contractor*—

, and

- (c) an employee of, or volunteer for, a third party employer.

#### [2] Section 10, definition of “third party employer”

Insert in alphabetical order—

*third party employer* means a person, other than a relevant entity, who engages another person to provide services to children on behalf of a relevant entity, including as a contractor.

#### [3] Section 16 Meaning of “employee”

Insert “employee” after “third party” wherever occurring in section 16(1)(a) and (b).

#### [4] Section 16(1)(a)(iv)

Insert at the end of the paragraph—

or

- (v) if an individual is the head of a third party employer contracted to provide services to children on behalf of a Schedule 1 entity and the individual holds, or is required to hold, a working with children check clearance—the individual,

#### [5] Section 16(1)(b)(v)

Insert after section 16(1)(b)(iv)—

- (v) if an individual is the head of a third party employer contracted to provide services to children on behalf of a public authority and the individual holds, or is required to hold, a working with children check clearance—the individual,

#### [6] Section 16(1), example

Insert at the end of section 16(1)—

**Example for paragraph (b)(iv)**— a dance teacher is employed as a contractor by a dance school. The dance school leases the dance school premises from a local council and is conducting dance classes on behalf of the council. As the dance teacher teaches children, the dance teacher is required to hold a working with children check clearance. The dance teacher is taken to be an employee of the local council for the purposes of this Part.

#### [7] Section 27 Who must give report of reportable allegation or conviction

Insert “or a third party employer,” after “employee of the relevant entity” wherever occurring in section 27(2) and (3).

#### [8] Section 63 Retribution by employer

Omit “Ombudsman” wherever occurring in section 63(3)(a) and (c).

Insert instead “Children’s Guardian”.

**[9] Section 72, heading**

Omit the heading. Insert instead—

**72 Designated agencies—general**

**[10] Section 72(3)–(6)**

Insert after section 72(2)—

- (3) Also, the regulations may make provision for the following—
  - (a) the surrender of a designated agency’s accreditation,
  - (b) the withdrawal of an application for accreditation.
- (4) The Children’s Guardian may, if in the Children’s Guardian’s opinion it is necessary to protect the safety, welfare or wellbeing of a child or class of children, decide the date on which the surrender of a designated agency’s accreditation takes effect.
- (5) The date decided by the Children’s Guardian must be no more than 6 months after the designated agency notifies the Children’s Guardian of the agency’s intention to surrender its accreditation.
- (6) The regulations may—
  - (a) treat a designated agency’s failure to renew its accreditation as the surrender of the agency’s accreditation, and
  - (b) make savings and transitional provisions to provide for the accreditation to remain in force until the surrender takes effect.

**[11] Part 5 Out-of-home care matters regulated by Children’s Guardian**

Insert after Division 2—

**Division 2A Accreditation of designated agencies**

**80A Conditions of accreditation**

A designated agency’s accreditation is subject to a condition prescribed by the regulations—

- (a) for all designated agencies, or
- (b) for a class of designated agency to which the agency belongs.

**80B Conditions imposed by Children’s Guardian on accreditation and process of accreditation**

- (1) The Children’s Guardian may impose a condition on—
  - (a) the accreditation of a designated agency, or
  - (b) the process of accreditation of a designated agency.
- (2) The Children’s Guardian may vary or revoke a condition imposed under subsection (1).
- (3) If the designated agency is a government sector agency or part of a government sector agency, the Children’s Guardian must report to the Minister on the need for a condition before imposing the condition under subsection (1)(a).
- (4) If the Children’s Guardian decides to impose, vary or revoke a condition under this section, the Children’s Guardian must give the designated agency written notice of the decision, including—

- (a) the condition to be imposed, varied or revoked, and
  - (b) the reason for the decision, and
  - (c) the way the agency may apply for a review of the decision.
- (5) The decision takes effect on—
- (a) the date stated in the notice, or
  - (b) if no date is stated in the notice—the day the notice is given to the agency.

**80C Shortening, suspension and cancellation of accreditation**

- (1) The Children’s Guardian may, by written notice given to a designated agency—
- (a) shorten the agency’s accreditation period to a date stated in the notice, or
  - (b) suspend the agency’s accreditation—
    - (i) for a period stated in the notice, or
    - (ii) until a specified matter stated in the notice has been completed, or
  - (c) cancel the agency’s accreditation from a date stated in the notice.
- (2) The Children’s Guardian may give a notice under subsection (1) to a designated agency only if the Children’s Guardian is satisfied of one or more of the following—
- (a) the agency made a statement or gave information in connection with the administration of this Act or the *Children and Young Persons (Care and Protection) Act 1998* that the agency knew to be false or misleading in a material particular,
  - (b) the principal officer of the agency made a statement or gave information in connection with the administration of this Act or the *Children and Young Persons (Care and Protection) Act 1998* that the principal officer knew to be false or misleading in a material particular,
  - (c) the agency failed to comply with—
    - (i) a condition of accreditation prescribed by the regulations, or
    - (ii) a condition imposed by the Children’s Guardian under section 80B(1)(a),
  - (d) the agency failed to comply with a requirement or prohibition imposed on the agency under this Act or the *Children and Young Persons (Care and Protection) Act 1998*,
  - (e) the principal officer of the agency failed to comply with a requirement or prohibition imposed on the principal officer under this Act or the *Children and Young Persons (Care and Protection) Act 1998*,
  - (f) the agency failed, while the agency had been accredited for less than 12 months, to substantially satisfy the accreditation criteria that applied to the agency for its application for accreditation,
  - (g) the agency failed, after the agency had been accredited for at least 12 months, to satisfy the accreditation criteria that applied to the agency for the agency’s application for accreditation,
  - (h) any other ground prescribed by the regulations.
- (3) However, the Children’s Guardian must not take action under subsection (1) if the Children’s Guardian is satisfied the designated agency failed to comply with—

- (a) a condition of accreditation that relates solely to the provision, arrangement or supervision of voluntary out-of-home care, other than a condition prohibiting the agency from providing, arranging or supervising voluntary out-of-home care, or
  - (b) any other requirement or prohibition imposed on the agency under this Act that relates solely to the provision, arrangement or supervision of voluntary out-of-home care.
- (4) As soon as practicable after making a decision to shorten, suspend or cancel the accreditation of a designated agency, the Children's Guardian must, by written notice given to the agency, inform the agency of the following—
- (a) the decision,
  - (b) when the decision takes effect,
  - (c) the reasons for the decision,
  - (d) the way the agency may apply for a review of the decision.
- (5) For a designated agency that is a government sector agency or part of a government sector agency, the Children's Guardian must report to the Minister before giving a notice under subsection (1).
- (6) The regulations may prescribe the circumstances in which an agency's accreditation may be extended despite any shortening of the accreditation period under subsection (1).

#### **80D Reinstating accreditation**

- (1) This section applies if—
- (a) a designated agency given notice under section 80C(1) gives the Children's Guardian information in support of the withdrawal of the decision to shorten, suspend or cancel the agency's accreditation, and
  - (b) the Children's Guardian decides the designated agency's accreditation should not have been shortened, suspended or cancelled.
- (2) The Children's Guardian may, by written notice given to the designated agency, withdraw the notice given and—
- (a) if the accreditation period was shortened—
    - (i) reinstate the accreditation period of the agency, or
    - (ii) reduce the period by which the agency's accreditation period has been shortened, or
  - (b) reinstate the accreditation.
- (3) Subject to subsection (2)(b), if a designated agency's accreditation is reinstated under subsection (2), the accreditation is taken to have continued as if the notice under section 80C(1) had not been given.

#### **80E Accreditation criteria**

- (1) On the recommendation of the Children's Guardian, the Minister may, from time to time, approve standards and other criteria for use in determining—
- (a) the requirements for accreditation as a designated agency, and
  - (b) the accreditation period to be granted.
- (2) Without limiting subsection (1)—
- (a) criteria may be approved for a class of applicants, and

- (b) criteria are to be integrated, to the greatest extent possible, with the criteria for accreditation of an adoption service provider under this Act, and
- (c) the following matters must be addressed by the criteria—
  - (i) the assessment procedures for determining if a person is suitable to be an authorised carer,
  - (ii) the training to be provided to authorised carers,
  - (iii) the supervision of authorised carers,
  - (iv) how the applicant will involve a child in the making of decisions that affect the child,
  - (v) how the applicant will involve persons with parental responsibility for a child immediately before the child enters out-of-home care in the making of decisions that affect the child,
  - (vi) how the applicant will involve authorised carers in the making of decisions concerning a child in the care of the authorised carer.
- (3) The Children’s Guardian may decide an applicant satisfies a particular accreditation criterion if a body or entity, recognised by the Children’s Guardian for the purposes of this subsection, has determined that the applicant meets an equivalent standard or other criterion imposed by the body or entity.
- (4) The Children’s Guardian must do the following on the Office of the Children’s Guardian’s website—
  - (a) publish standards and criteria approved under subsection (1),
  - (b) identify the body or entity recognised for the purposes of subsection (3).
- (5) Failure to comply with subsection (4) does not affect the validity of a decision of the Children’s Guardian to accredit or not to accredit an applicant.

#### **80F Transfer policies**

- (1) The Children’s Guardian may issue policies in relation to the Children’s Guardian’s function of transferring an accreditation from a designated agency (the *transferor*) to another organisation that is not a designated agency (the *transferee*).
- (2) Without limiting subsection (1), the policies may be issued for—
  - (a) the granting of approvals to transfer an accreditation, and
  - (b) the imposition of conditions on the process of transferring an accreditation and on transferred accreditations.
- (3) The Children’s Guardian must publish the policies on the Office of the Children’s Guardian’s website.
- (4) The Children’s Guardian must refuse an application to transfer an accreditation if the transferor and the transferee are in contravention of published policies that apply to the application.

### **Division 2B Registration of registered agencies**

#### **80G Conditions of registration**

A registered agency’s registration is subject to the conditions prescribed by the regulations for registered agencies.



**80H Conditions imposed by Children's Guardian on registration as registered agency**

- (1) The Children's Guardian may impose a condition on the registration of a registered agency.
- (2) The Children's Guardian may vary or revoke a condition imposed under subsection (1).
- (3) If the Children's Guardian decides to impose, vary or revoke a condition under this section, the Children's Guardian must give the registered agency written notice of the decision, including—
  - (a) the condition to be imposed, varied or revoked, and
  - (b) the reason for the decision, and
  - (c) the way the agency may apply for a review of the decision.
- (4) The decision takes effect on the date stated in the notice.

**80I Cancellation of registration**

- (1) The Children's Guardian may cancel a registered agency's registration if the Children's Guardian is satisfied of one or more of the following—
  - (a) the agency made a statement or gave information in connection with the application for registration that the agency knew to be false or misleading in a material particular,
  - (b) the agency failed to comply with a condition imposed by the regulations or a condition imposed by the Children's Guardian under section 80H(1),
  - (c) the agency failed to comply with a prohibition or requirement imposed on the agency under this Act,
  - (d) the agency failed to satisfy the registration criteria that applied to the agency in respect of the agency's application for registration,
  - (e) the agency failed to comply with any other ground prescribed by the regulations.
- (2) As soon as practicable after making a decision to cancel the registration of a registered agency, the Children's Guardian must, by written notice given to the agency, inform the agency of the following—
  - (a) the decision,
  - (b) when the decision takes effect,
  - (c) the reasons for the decision,
  - (d) the way the agency may apply for a review of the decision.

**80J Registration criteria**

- (1) On the recommendation of the Children's Guardian, the Minister may, from time to time, approve criteria for use in deciding whether to grant an application for registration as a registered agency.
- (2) The Minister may approve different criteria for deciding applications relating to different types of voluntary out-of-home care.
- (3) The Children's Guardian must publish criteria approved under this section on the Office of the Children's Guardian's website.

**[12] Section 85 Registers to be kept**

Omit section 85(1)(a) and (b). Insert instead—

- (a) a register (the *authorised carer's register*) for the following—
  - (i) authorised carers,
  - (ii) applicants for authorisation as authorised carers,
  - (iii) persons who, under section 10 of the *Child Protection (Working with Children) Act 2012*, are required to hold a working with children check clearance because the person resides on the same property as an authorised carer for 3 weeks or more,
- (b) a register for—
  - (i) residential care workers, and
  - (ii) applicants for employment as residential care workers,

**[13] Section 85(1)(d)**

Insert after section 85(1)(c)—

- (d) a register for children in voluntary out-of-home care (the *voluntary out-of-home care register*).

**[14] Section 93 Exemptions from requirement to hold employer's authority**

Insert at the end of the section—

- (2) The regulations may prescribe conditions of an exemption from the requirement to hold an employer's authority for the employment.

**[15] Section 97 Conditions of authority**

Insert after section 97(1)—

- (1A) Without limiting subsection (1), the regulations, or the Children's Guardian, may impose a condition making an employer's authority subject to the Code of Practice.
- (1B) The Code of Practice is—
  - (a) the Code of Practice prescribed by the regulations, or
  - (b) the Code of Practice, prescribed by the regulations and modified in the way prescribed by the regulations for a class of employers' authority to which the authority belongs, or
  - (c) if the holder of an employer's authority has applied to the Children's Guardian to modify the Code of Practice prescribed by the regulations—the modified Code of Practice, as approved by the Children's Guardian.

**[16] Section 98 Change in conditions**

Insert after section 98(1)—

- (1A) Also, the Children's Guardian may, on the Children's Guardian's own initiative, change the conditions for a class of employers' authority by—
  - (a) revoking or varying a condition for the class of authority, or
  - (b) imposing a further condition on the class of authority.

**[17] Section 102 Exemption by Children's Guardian**

Insert after section 102(4)—

- (5) The regulations may prescribe conditions of an exemption granted by the Children's Guardian.

**[18] Section 112 Accreditation and review of adoption service providers**

Insert after section 112(2)—

- (2A) An accredited adoption service provider's accreditation is subject to a condition prescribed by the regulations—
- (a) for all accredited adoption service providers, or
  - (b) for a class of accredited adoption service providers to which the provider belongs.

**[19] Section 113 Accreditation criteria**

Insert after section 113(2)—

- (2A) The Children's Guardian may decide an applicant for accreditation as an accredited adoption service provider satisfies a particular accreditation criterion if a body or entity, recognised by the Children's Guardian for the purposes of this subsection, has determined that the applicant meets an equivalent standard or other criterion imposed by the body or entity.
- (2B) The Children's Guardian must identify the body or entity recognised for the purposes of subsection (2A) on the Office of the Children's Guardian's website.

**[20] Sections 113A–113C**

Insert after section 113—

**113A Conditions imposed by Children's Guardian on accreditation and process of accreditation as accredited adoption service provider**

- (1) The Children's Guardian may impose a condition on—
- (a) the accreditation of an accredited adoption service provider, or
  - (b) the process of accreditation of an accredited adoption service provider.
- (2) The Children's Guardian may vary or revoke a condition imposed under subsection (1).
- (3) The Children's Guardian must give written notice to the accredited adoption service provider of—
- (a) the condition to be imposed, varied or revoked, and
  - (b) the reason for the decision to impose, vary or revoke the condition, and
  - (c) the way the provider may apply for a review of the decision.
- (4) The condition, or variation or revocation of a condition, takes effect on the date stated in the notice.

**113B Shortening, suspension and cancellation of accreditation**

- (1) The Children's Guardian may, by written notice given to an accredited adoption service provider—
- (a) shorten the provider's accreditation period to a date stated in the notice, or
  - (b) suspend the provider's accreditation—
    - (i) for a period stated in the notice, or

- (ii) until a specified matter stated in the notice has been completed, or
  - (c) cancel the provider's accreditation from a date stated in the notice.
- (2) The Children's Guardian may give a notice under subsection (1) to an accredited adoption service provider if the Children's Guardian is satisfied of one or more of the following—
  - (a) the provider made a statement or gave information in connection with the administration of this Act that the provider knew to be false or misleading in a material particular,
  - (b) the provider failed to comply with—
    - (i) a condition of accreditation prescribed by the regulations, or
    - (ii) a condition imposed by the Children's Guardian under section 113A(1)(a),
  - (c) the provider failed to comply with a requirement or prohibition imposed on the provider under this Act,
  - (d) the principal officer of the provider failed to comply with standards or criteria approved by the Minister under section 113,
  - (e) the provider failed, while the provider had been accredited for less than 12 months, to substantially satisfy the accreditation criteria that applied to the provider for its application for accreditation,
  - (f) the provider failed, after the provider had been accredited for at least 12 months, to satisfy the accreditation criteria that applied to the provider for the agency's accreditation,
  - (g) any other ground prescribed by the regulations.
- (3) As soon as practicable after making a decision to shorten, suspend or cancel the accreditation of an accredited adoption service provider, the Children's Guardian must, by written notice given to the provider, inform the provider of the following—
  - (a) the decision,
  - (b) when the decision takes effect,
  - (c) the reasons for the decision,
  - (d) the way the provider may apply for a review of the decision.
- (4) The Children's Guardian may, by further written notice given to the provider—
  - (a) withdraw the notice given under subsection (1) and reinstate the accreditation, or
  - (b) if the accreditation period has been shortened under subsection (1)(a)—
    - (i) reinstate the accreditation period of the accredited adoption service provider, or
    - (ii) reduce the period by which the provider's accreditation period has been shortened.
- (5) Subject to subsection (4)(b), the accreditation is taken to have continued as if the notice under subsection (1) had not been given.
- (6) The regulations may prescribe the circumstances in which an accreditation may be extended despite any shortening of the accreditation period under subsection (1).

### 113C Transfer of accreditation policies

- (1) The Children’s Guardian may issue policies in relation to the Children’s Guardian’s function of transferring an accreditation from an accredited adoption service provider (the *transferor*) to another organisation that is not an accredited adoption service provider (the *transferee*).
- (2) Without limiting subsection (1), the policies may be issued for—
  - (a) the granting of approvals to transfer an accreditation, and
  - (b) the imposition of conditions on the process of transferring an accreditation and on transferred accreditations.
- (3) The Children’s Guardian must publish the policies on the Office of the Children’s Guardian’s website.
- (4) The Children’s Guardian must refuse an application to transfer accreditation if the transferor and the transferee are in contravention of published policies that apply to the application.

### [21] Schedule 6 Dictionary

Omit “section 72” from the definition of *designated agency*. Insert instead “section 72(1)”.

#### Explanatory note

Item [1] of the proposed amendments extends the definition of contractor for the purposes of Part 4 of the *Children’s Guardian Act 2019* (the **Act**) to include an employee of, or volunteer for, a third party employer. Item [2] defines third party employer. Item [3] makes a consequential amendment.

Items [4] and [5] extend the definition of employee for the purposes of Part 4 of the Act to an individual who is the head of a third party employer contracted to provide services on behalf of a Schedule 1 entity or public authority and if the individual is required to hold a working with children check clearance. Item [6] provides an example of the definition of employee in section 16(1)(b)(iv) of the Act.

Item [7] extends reporting requirements to third party employers.

Item [8] updates references to the Children’s Guardian as a consequence of the transfer of the reportable conduct scheme from the Ombudsman to the Children’s Guardian.

Item [10] provides for the surrender of a designated agency’s accreditation and the withdrawal of an application for accreditation as a designated agency. Items [9] and [21] make consequential amendments.

Item [11] provides for the accreditation of designated agencies and the registration of registered agencies by the Children’s Guardian.

Item [12] provides for certain information to be kept on the authorised carer’s register and the register for residential care workers. Item [13] enables the Children’s Guardian to keep a register for children in voluntary out-of-home care.

Item [14] provides for the regulations to prescribe conditions of an exemption from the requirement to hold an employer’s authority for the employment.

Item [15] provides for the regulations, or the Children’s Guardian, to impose a condition to comply with a Code of Practice on an employer’s authority to employ children.

Item [16] enables the Children’s Guardian to change the conditions for a class of employers’ authority by revoking or varying a condition for the class of authority or imposing a further condition on the class.

Item [17] provides that the regulations may prescribe conditions of an exemption from the requirement to hold an employer’s authority granted by the Children’s Guardian.

Items [18]–[20] provide for the accreditation of accredited adoption service providers.

## 1.2 Court Security Act 2005 No 1

### Section 9B

Insert after section 9A—

## **9B Prohibition on unauthorised distribution of court recording**

- (1) A person must not transmit or distribute a recording of sounds or images (or both) of court proceedings, including part of a recording, by any means.  
Maximum penalty—200 penalty units or imprisonment for 12 months, or both.
- (2) Subsection (1) does not apply unless the person knows or suspects, or ought reasonably to know or suspect, that none of the following apply—
  - (a) the transmission or distribution of the recording has been expressly approved by a judicial officer,
  - (b) the transmission or distribution of the recording is for the purpose of transcribing court proceedings for the court,
  - (c) the transmission or distribution of the recording occurred in any other circumstances prescribed by the regulations.

### **Explanatory note**

The proposed amendment creates an offence of transmitting or distributing a recording of court proceedings unless it is done for the purpose of transcribing court proceedings for the court or is otherwise permitted by a judicial officer or the regulations.

## **1.3 Criminal Records Act 1991 No 8**

### **Section 15 Employment in certain occupations**

Insert “or the Office of the Sheriff, Department of Communities and Justice,” after “1999),” in section 15(1).

### **Explanatory note**

The amendment to the *Criminal Records Act 1991* provides that the right of an applicant for appointment or employment to withhold information concerning the applicant’s spent convictions does not apply in relation to employment as a member of staff of the Office of the Sheriff of NSW.

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

### **[1] Section 152 Unclaimed money**

Omit “and placed to the credit of the Special Deposits Account in the Treasury” from section 152(1).

Insert instead “for payment to the Consolidated Fund”.

### **[2] Section 152(2)**

Omit the subsection.

### **Explanatory note**

The proposed amendments require unclaimed money in the District Court to be treated in the same manner as fees and fines by being paid into the Consolidated Fund.

## **1.5 Electronic Transactions Act 2000 No 8**

### **Part 2B**

Insert after Part 2A—

## Part 2B Remote witnessing pilot scheme

### Division 1 Witnessing and attestation

#### 14F Definitions

In this Division—

**audio visual link** means technology that enables continuous and contemporaneous audio and visual communication between persons at different places, including video conferencing.

**document** includes the following—

- (a) a will,
- (b) a power of attorney or an enduring power of attorney,
- (c) a deed or agreement,
- (d) an enduring guardianship appointment,
- (e) an affidavit, including an annexure or exhibit to the affidavit,
- (f) a statutory declaration.

#### 14G Witnessing and attestation of documents by audio visual link

- (1) Despite any other Act or law—
  - (a) if the signature of a document is required under an Act or another law to be witnessed, the signature may be witnessed by audio visual link, and
  - (b) arrangements in relation to witnessing signatures and the attestation of documents may be performed by audio visual link.
- (2) A person witnessing the signing of a document by audio visual link (the **witness**) must—
  - (a) observe the person signing the document (the **signatory**) sign the document in real time, and
  - (b) attest or otherwise confirm the signature was witnessed by signing the document or a copy of the document, and
  - (c) be reasonably satisfied the document the witness signs is the same document, or a copy of the document signed by the signatory, and
  - (d) endorse the document, or the copy of the document, with a statement—
    - (i) specifying the method used to witness the signature of the signatory, and
    - (ii) that the document was witnessed in accordance with this section.

**Note.** A document may be endorsed under paragraph (d) with a statement, for example, that the document was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000*.
- (3) Without limiting the ways a witness may confirm the signature was witnessed, the witness may—
  - (a) sign a counterpart of the document as soon as practicable after witnessing the signing of the document, or
  - (b) if the signatory scans and sends a copy of the signed document electronically—countersign the document as soon as practicable after witnessing the signing of the document.
- (4) Without limiting subclause (1)(b)—

- (a) arrangements in relation to witnessing signatures by audio visual link include the following—
  - (i) certification of matters required by an Act or another law,
  - (ii) confirming or verifying the identity of the signatory to a document,
  - (iii) attestation of a signature,
  - (iv) swearing or affirming the contents of an affidavit,
  - (v) seeing the face of the signatory, and
- (b) a requirement in an Act or another law for the presence of a witness, signatory or other person is taken to be satisfied if the witness, signatory or other person is present by audio visual link.

## **Division 2 Oaths and declarations**

### **14H Affidavits and declarations made under Oaths Act 1900**

A document that is an oath, declaration or affidavit required for a purpose specified in section 26 of the *Oaths Act 1900* may be taken or made before an Australian legal practitioner as if the practitioner were a justice of the peace.

### **14I Certain persons before whom statutory declarations may be made**

A statutory declaration may be made before a person before whom a statutory declaration under the *Statutory Declarations Act 1959* of the Commonwealth may be made.

## **Division 3 Savings and repeal**

### **14J Savings**

An endorsement that would have been satisfactory for the purposes of clause 2(2)(d)(ii) of Schedule 1 to the *Electronic Transactions Regulation 2017* had that paragraph not been repealed is taken to be satisfactory for the purposes of section 14G(2)(d)(ii).

### **14K Repeal of Part**

This Part is repealed on 1 January 2022.

#### **Explanatory note**

The proposed amendment transfers the provisions of Schedule 1 to the *Electronic Transactions Regulation 2017* as a pilot scheme under the *Electronic Transactions Act 2000*. The pilot scheme will have effect until the end of 2021.

## **1.6 Electronic Transactions Regulation 2017**

### **[1] Clause 8A COVID-19 response**

Omit the clause.

### **[2] Schedule 1 Response to COVID-19 pandemic**

Omit the Schedule.

#### **Explanatory note**

The proposed amendments omit provisions from the *Electronic Transactions Regulation 2017* that are being transferred to the *Electronic Transactions Act 2000* by Schedule 1.6. The transferred provisions will continue to have effect until the end of 2021.



## **1.7 Imperial Acts Application Act 1969 No 30**

### **Part 3, Division 1 Administration of Estates**

Omit the Division.

#### **Explanatory note**

The proposed amendment repeals a Division of the *Imperial Acts Application Act 1969* that contains an obsolete provision and provisions proposed to be re-enacted in the *Probate and Administration Act 1898* elsewhere in this Schedule.

## **1.8 Judicial Officers Act 1986 No 100**

### **[1] Section 13 The Conduct Division**

Omit “The” from section 13(3). Insert instead “Subject to subsection (3A), the”.

### **[2] Section 13(3A)**

Insert after section 13(3)—

- (3A) The following functions of the Conduct Division under Part 6 may be exercised by the Chairperson alone—
- (a) giving directions,
  - (b) making determinations as to procedural matters.

### **[3] Section 40 Suspension of judicial officers**

Omit “offence,” from section 40(1)(b)(ii). Insert instead—  
offence, or

- (c) a formal request, within the meaning of Part 6A, has been made in respect of a judicial officer,

### **[4] Schedule 3 Provisions relating to the procedure of the Conduct Division**

Omit “All” from clause 2. Insert instead “Subject to subclause (2), all”.

### **[5] Schedule 3, clause 2**

Insert at the end of the clause—

- (2) This clause applies if the Conduct Division must be constituted by all 3 members.

### **[6] Schedule 3, clause 3**

Omit “The”.

Insert instead “If the Conduct Division must be constituted by all 3 members, the”.

### **[7] Schedule 3, clause 3**

Omit “a meeting of the Conduct Division”. Insert instead “the meeting of the Division”.

### **[8] Schedule 3, clause 7**

Insert after clause 6—

#### **7 Use of audio and audio visual links**

The following functions of the Conduct Division under Part 6 may be exercised by way of audio or audio visual link—

- (a) giving directions,

- (b) making determinations as to procedural matters.

**Explanatory note**

Item [2] of the proposed amendments enables the Chairperson of the Conduct Division of the Judicial Commission of NSW to exercise certain procedural functions alone. Currently, all functions of the Conduct Division must be exercised by the 3 members of the Division.

Items [1] and [4]–[7] make consequential amendments.

Item [3] enables the head of jurisdiction of a court to suspend a judicial officer of the court if of the opinion that a judicial officer may have an impairment that affects the officer's performance of judicial or official duties.

Item [8] provides for the use of audio or audio visual link by the Conduct Division for the purpose of exercising certain procedural functions.

## 1.9 Legal Profession Uniform Law Application Act 2014 No 16

### [1] Section 28 Delegation of functions of NSW Commissioner

Omit section 28(2) but not the note. Insert instead—

- (2) The NSW Commissioner may delegate the following functions to the Bar Council or the Law Society Council—
- (a) any function of the NSW Commissioner under section 137 or 144 of this Act,
- (b) any of the NSW Commissioner's Chapter 5 functions.

### [2] Schedule 9 Savings, transitional and other provisions

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

## Part Provision consequent on enactment of Stronger Communities Legislation Amendment (Courts and Civil) Act 2020

### Manager, Costs Assessment

- (1) This clause applies to a Senior Deputy Registrar who assumed the role of Manager, Costs Assessment on and from 20 June 2016 until appointed to the position of Manager, Costs Assessment on 18 February 2020.
- (2) To avoid doubt, for the purposes of the definition of *Manager, Costs Assessment* in section 3(1) of this Act, the Senior Deputy Registrar is taken to have acted as the Manager, Costs Assessment on and from 20 June 2016 until 18 February 2020.

**Explanatory note**

Item [1] of the proposed amendments enables the Legal Services Commissioner to delegate the Commissioner's power to apply to the Tribunal for an extension of time for making a disciplinary application, or to agree with a respondent lawyer on the terms of an instrument of consent, to the Bar Council or Law Society Council.

Item [2] puts beyond doubt the status of the person the subject of the amendment as the Manager, Costs Assessment, within the meaning of the *Legal Profession Uniform Law Application Act 2014*, from the date on which the person assumed that role until the date on which the person was appointed to that position.

## 1.10 NSW Trustee and Guardian Act 2009 No 49

### [1] Section 120, heading

Omit the heading. Insert instead—

#### 120 Payment of liabilities

**[2] Section 120(1)**

Omit the subsection. Insert instead—

- (1) If the NSW Trustee is required to pay an amount to discharge a liability that the NSW Trustee would be personally liable to discharge if it were a private trustee, the NSW Trustee may elect to make the payment from—
  - (a) the Reserve Fund, or
  - (b) the Consolidated Fund.
- (1A) If the NSW Trustee elects to make the payment from the Consolidated Fund, the Consolidated Fund is appropriated for that purpose.

**Explanatory note**

Item [2] of the proposed amendments enables the NSW Trustee to discharge certain liabilities by payment from the Reserve Fund established under section 109 of the *NSW Trustee and Guardian Act 2009* or the Consolidated Fund. Item [1] makes a consequential amendment.

## 1.11 Oaths Act 1900 No 20

**[1] Section 21 Declarations in cases not specifically provided for**

Insert “a federal judicial officer,” after “affidavit,” in section 21(1).

**[2] Section 21(3)**

Insert after section 21(2)—

- (3) In this section—

*federal judicial officer* means—

  - (a) a Judge of the Federal Court of Australia, or
  - (b) a Judge of the Federal Circuit Court of Australia, or
  - (c) a Judge of the Family Court of Australia.

**Explanatory note**

Item [1] of the proposed amendments authorises federal judicial officers to take and receive the statutory declaration of any person voluntarily making the same before the officer.

Item [2] inserts a definition of *federal judicial officer* as a consequence.

## 1.12 Probate and Administration Act 1898 No 13

**[1] Section 44A**

Insert after section 44—

**44A Executor of executor represents original testator**

- (1) An executor of a sole or last surviving executor of a testator is the executor by representation of that testator.
- (2) So long as the chain of executorial representation is unbroken, the last executor in the chain is the executor of every preceding testator.
- (3) The chain of executorial representation is broken by—
  - (a) an intestacy, or
  - (b) the failure of a testator to appoint an executor, or
  - (c) the failure to obtain probate of a will.
- (4) The chain of executorial representation is not broken by a temporary grant of administration if probate is subsequently granted.

- (5) This section does not apply to an executor who does not prove the will of his or her testator.
- (6) In the case of an executor who, on his or her death, leaves surviving some other executor of his or her testator who afterwards proves the will of that testator, this section ceases to apply on that probate being granted.
- (7) Every person in the chain of representation to a testator—
  - (a) has the same rights in respect of the estate of that testator as the original executor would have had if living, and
  - (b) is, to the extent to which the estate of that testator has come into his or her hands, answerable as if he or she were an original executor.
- (8) The provisions of this Act that apply to executors are modified to the extent necessary to give effect to this section.

**[2] Section 74A**

Insert after section 74—

**74A Rights and liabilities of administrators**

- (1) A person who is granted administration of the estate of a deceased person has the same rights and liabilities, and is accountable in the same way, as if the person were the executor of the deceased person.
- (2) Subsection (1) is subject to the limitations, if any, contained in the grant of administration.

**Explanatory note**

The proposed amendments re-enact, with minor modifications, certain provisions in the *Imperial Acts Application Act 1969* relating to the administration of estates. Proposed section 44A provides for the process by which the executor of a deceased executor's estate becomes the executor of the estates of which the deceased executor was executor at his or her death (known as the 'chain of representation'). Proposed section 74A confers on an administrator of the estate of a deceased person the same rights, liabilities and accountabilities as an executor of the deceased person would have, subject to any limitations contained in the grant of administration.

### 1.13 Supreme Court Act 1970 No 52

**[1] Section 48 Assignment to the Court of Appeal**

Insert "a person who is or has been" after "means" in the definition of *judge or member* in section 48(1)(b).

**[2] Section 48(1)(b)(iii)**

Insert at the end of section 48(1)(b)(ii)—

, or

- (iii) a Justice of the High Court or a Judge of the Federal Court of Australia or a Supreme Court of another State or Territory.

**Explanatory note**

Item [2] of the proposed amendments provides for the assignment to the Court of Appeal of certain proceedings involving a Justice of the High Court or a Judge of the Federal Court of Australia or a Supreme Court of another State or Territory. Item [1] provides for the assignment to the Court of Appeal of certain proceedings involving former Justices or Judges of those courts, as well as former judges or members of the Supreme Court, Land and Environment Court, Dust Diseases Tribunal of New South Wales or District Court and former associate Judges of the Supreme Court. At present, these proceedings are assigned to the Common Law Division or the Equity Division of the Supreme Court rather than the Court of Appeal.

## 1.14 Trustee Act 1925 No 14

### [1] Section 42A

Insert after section 42—

#### 42A Maintenance for adult beneficiaries

- (1) If property is held in trust for an adult beneficiary for any kind of interest, whether vested or contingent or absolute or liable to be divested, the trustee may pay the beneficiary, or otherwise apply the whole or any part of the income of the property for or towards the maintenance, education or benefit of the beneficiary.
- (2) This section—
  - (a) applies only if and to the extent a contrary intention is not expressed in the instrument, if any, creating the trust, and
  - (b) has effect subject to the terms and provisions of the instrument.
- (3) This section extends to trusts created before the commencement of this section.
- (4) In this section—

*adult beneficiary* means a beneficiary who is not an infant.

**Note.** Sections 43 and 43A make provision for the payment or application of trust income for or towards the maintenance or education of infant beneficiaries based on when the instrument creating the trust came into operation.

### [2] Sections 43 and 43A, headings

Insert “**for infant beneficiaries**” after “**maintenance**” wherever occurring.

### [3] Section 44 Advancement

Omit section 44(1A).

### [4] Part 3, Division 3A

Insert after section 86—

#### Division 3A Power of Court to vary trusts

##### 86A Court order to approve arrangement

- (1) If property is held in trust under any instrument creating the trust, the Court may, if it thinks fit, by order approve any arrangement to—
  - (a) vary or revoke all or any of the trust, or
  - (b) enlarge the powers of the trustees for the purpose of managing or administering any of the property subject to the purpose of the trust.
- (2) An order under this section may be made by the Court only on behalf of—
  - (a) any person under the trust having an interest directly or indirectly, or vested or contingent, who by reason of being a minor or other incapacity is incapable of assenting, or
  - (b) any person who may become entitled, directly or indirectly, to an interest under the trust, and the entitlement is contingent on a future date or event that has not occurred at the time of application for an order under this section, or
  - (c) any unborn person, or

- (d) any person in respect of any discretionary interest of the person under protective trusts where the interest of the principal beneficiary has not failed or determined.
- (3) This section—
  - (a) extends to a trust created before the commencement of this section, and
  - (b) does not apply to trusts affecting property created by another Act, and
  - (c) does not limit the operation of section 81.
- (4) In this section—
  - discretionary interest*, in relation to protective trusts, means an interest arising under section 45(6).
  - principal beneficiary* has the same meaning as in section 45.
  - protective trusts* has the same meaning as in section 45.

**86B Court order to benefit person subject to application**

- (1) The Court must not approve an arrangement on behalf of any person under section 86A unless the carrying out of the order would be for the benefit of that person.
- (2) Subsection (1) does not apply to an approval of an arrangement under 86A(2)(d).

**86C Court may direct notice of application to certain persons**

Notice of an application to the Court for an order under section 86A must be given to any persons as the Court may direct.

**Explanatory note**

Item [1] of the proposed amendments allows a trustee to pay or apply income from trust property for or towards an adult beneficiary's maintenance, education or benefit. Currently, this is permitted only for infant beneficiaries. Item [2] makes consequential amendments to certain headings.

Item [3] removes a limitation on the use of trust capital money paid to an infant for the purposes of maintenance or education where the infant's share of the trust property exceeds \$4,000.

Item [4] aims to bring the State in line with other jurisdictions by allowing the Supreme Court to approve an arrangement varying or revoking a trust where this is beneficial to the interests of the beneficiaries or to the fulfilment of the trust purpose.

[Second reading speech made in—

Legislative Assembly on 16 September 2020

Legislative Council on 22 September 2020]