



New South Wales

Justice Legislation Amendment (Miscellaneous) Act 2023 No 39

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New South Wales

Justice Legislation Amendment (Miscellaneous) Act 2023 No 39

Act No 39, 2023

An Act to amend various Acts and regulations relating to courts, crimes and other Communities and Justice portfolio matters. [Assented to 30 October 2023]

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Justice Legislation Amendment (Miscellaneous) Act 2023*.

2 Commencement

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

3 Explanatory notes

An explanatory note in a schedule of this Act does not form part of this Act.

Schedule 1 Amendment of Bail Act 2013 No 26

[1] Section 4 Definitions

Insert in alphabetical order in section 4(1)—

accompaniment requirement—see section 28A.

[2] Section 22B Limitation regarding bail during period following conviction and before sentencing for certain offences

Omit “the decision” from section 22B(1)(b).

Insert instead “a decision to grant bail or dispense with bail”.

[3] Section 28A

Insert after section 28—

28A Bail condition can impose accompaniment requirements

- (1) A bail condition imposed by a court or authorised justice on the grant of bail can require that the accused person, when released on bail, be released into the care or company of another specified person or class of persons.
- (2) A requirement of a kind referred to in subsection (1) is an *accompaniment requirement*.

[4] Section 29 Limitation on power to impose pre-release requirements

Insert after section 29(1)(d)—

- (e) an accompaniment requirement.

[5] Section 29(4A)

Insert after section 29(4)—

- (4A) An accompaniment requirement is complied with when the specified person, or a person of the specified class of persons, is present at the place from which the accused person is to be released on bail for the purpose of accompanying the accused person away from the place.

Explanatory note

Item [2] clarifies that a court must refuse bail on a detention application unless it is established that special or exceptional circumstances justify a decision to grant or dispense with bail.

Item [3] inserts a new provision into the *Bail Act 2013* to enable a bail authority to impose a bail condition that requires the accused person to only be released on bail into the care or company of a specified person or class of persons. Item [1] makes a consequential amendment. Item [4] amends the *Bail Act 2013*, section 29 to enable a bail authority to impose that type of condition as a pre-release requirement on an accused person’s bail. Item [5] amends the *Bail Act 2013*, section 29 to provide that the pre-release condition is met when the specified person, or a person of the specified class, is present at the place from which the accused person is to be released on bail.

Schedule 2 Amendment of Children's Guardian Act 2019 No 25

[1] Section 121 Vacancy in office of Children's Guardian

Omit section 121(1)(a).

[2] Section 121(1)

Renumber paragraphs (b)–(d) as paragraphs (a)–(c).

[3] Schedule 4 Savings, transitional and other provisions

Insert after Part 4—

Part 5 Provision consequent on enactment of Justice Legislation Amendment (Miscellaneous) Act 2023

22 Extension of amendment to age requirement for Children's Guardian

Section 121, as amended by the *Justice Legislation Amendment (Miscellaneous) Act 2023*, extends to the person who held office as Children's Guardian immediately before the commencement of the amendment.

Explanatory note

Item [1] removes the requirement for the Children's Guardian to be under 65 years of age. Item [2] makes a consequential amendment. Item [3] extends the amendment in item [1] to the current Children's Guardian.

Schedule 3 Amendment of Fines Act 1996 No 99

Section 23B

Insert after section 23A—

23B Completion of certain activities may be treated as payment

- (1) A person to whom a penalty notice is issued is taken to have paid the amount specified in the penalty notice if the Commissioner is satisfied that—
 - (a) the person has completed an activity, and
 - (b) the activity is prescribed by the regulations as an activity that may be completed instead of payment for an amount specified in a penalty notice belonging to a particular class, and
 - (c) the penalty notice belongs to the class, and
 - (d) any additional requirements prescribed by the regulations are satisfied, and
 - (e) a penalty notice enforcement order has not been made for the amount.
- (2) The payment is taken to be—
 - (a) for the full amount specified in the penalty notice, and
 - (b) made in accordance with the penalty notice.

Explanatory note

The amendment provides that a person to whom a penalty notice is issued is taken to have paid the amount specified in the penalty notice in full and in accordance with the penalty notice if the Commissioner of Fines Administration is satisfied that—

- (a) the person has completed an activity prescribed by the regulations for the class of penalty notice, and
- (b) other requirements, including requirements prescribed by the regulations, are met.

Schedule 4 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Section 60A Applications for warrants by email

Omit section 60A(9).

Explanatory note

The amendment omits the repeal provision from section 60A so applications for warrants may continue to be made by email.

Schedule 5 Amendment of Terrorism (Police Powers) Act 2002 No 115

[1] Section 25D Other definitions

Insert in alphabetical order—

juvenile justice officer has the same meaning as in the *Children (Detention Centres) Act 1987*.

[2] Section 26Y Effect of interim preventative detention order to be explained to person detained

Insert “or the Ombudsman” after “Law Enforcement Conduct Commission” in section 26Y(2)(d).

[3] Section 26Y(2)(d)(ii)

Insert “, or a member of staff of Corrective Services NSW or a juvenile justice officer,” after “police officer”.

[4] Section 26Z Effect of preventative detention order (other than interim order) to be explained to person detained

Insert “or the Ombudsman” after “Law Enforcement Conduct Commission” in section 26Z(2)(d).

[5] Section 26Z(2)(d)(ii)

Insert “, or a member of staff of Corrective Services NSW or a juvenile justice officer,” after “police officer”.

[6] Section 26ZF

Omit the section. Insert instead—

26ZF Contacting Law Enforcement Conduct Commission or Ombudsman

A person being detained is entitled to contact—

- (a) if the person is being detained by a police officer, including at a police station—the Law Enforcement Conduct Commission, or
- (b) if the person is being detained at a correctional centre or detention centre under an arrangement under section 26X—the Ombudsman.

[7] Section 26ZS Sunset provision

Omit “2023” wherever occurring in section 26ZS(1) and (2). Insert instead “2026”.

Explanatory note

Item [6] provides that a person being detained at a correctional centre or detention centre under a preventative detention order is entitled to contact the Ombudsman, in addition to the Law Enforcement Conduct Commission. Items [1]–[5] make consequential amendments to require that a police officer detaining a person under a preventative detention order or interim preventative detention order must inform the person that the person has a right to complain to the Ombudsman.

Item [7] extends the operation of the Act, Part 2A for a further 3 years.

Schedule 6 Amendment of other legislation

6.1 Children (Criminal Proceedings) Act 1987 No 55

Section 51 Regulations

Insert at the end of section 51(1)(b)—

, and

- (c) the making of parole orders at the time of sentencing a person, including conditions imposed on a parole order.

Explanatory note

The amendment amends the *Children (Criminal Proceedings) Act 1987* to provide an express regulation-making power for parole orders made at the time of sentencing a person.

6.2 Children (Criminal Proceedings) Regulation 2021

[1] Section 11, heading

Insert “—the Act, s 51(1)(c)” after “parole”.

[2] Section 11

Omit “For the purposes of the Act, section 51(1), before”. Insert instead “Before”.

[3] Section 12, heading

Insert “—the Act, s 51(1)(c)” after “orders”.

[4] Section 12(1)

Omit “For the purposes of the Act, section 51(1), a”. Insert instead “A”.

Explanatory note

Items [1]–[4] are consequential on the amendments to the *Children (Criminal Proceedings) Act 1987*.

6.3 Children (Detention Centres) Act 1987 No 57

[1] Section 3 Definitions

Insert in alphabetical order in section 3(1)—

complaints guidelines means guidelines issued by the Secretary under section 32AA(1).

[2] Section 32AA

Insert after section 32A—

32AA Complaints guidelines

- (1) The Secretary may issue guidelines about—
 - (a) the procedures to be followed by persons dealing with complaints, and
 - (b) the procedures to be followed by persons dealing with applications for the review of decisions on complaints.
- (2) Copies of the complaints guidelines must be made available for inspection by detainees and visitors at—
 - (a) each detention centre, and
 - (b) offices of the Department.

Explanatory note

Items [1] and [2] insert a power in the *Children (Detention Centres) Act 1987* for the Secretary of the Department of Communities and Justice to issue guidelines about the procedures for dealing with complaints and the procedures for dealing with applications for the review of decisions on complaints.

6.4 Children (Detention Centres) Regulation 2015

[1] Clause 3 Definitions

Omit clause 3(1), definition of *complaints guidelines*.

[2] Clause 57 Complaints guidelines

Omit the clause.

Explanatory note

Items [1] and [2] are consequential on the amendments to the *Children (Detention Centres) Act 1987*.

6.5 Civil Procedure Act 2005 No 28

[1] Section 4 Application of Parts 3–10

Omit “A regulation under this section may contain provisions consequent on the amendment or substitution of Schedule 1, including” from section 4(4).

Insert instead “The regulations may contain the following”.

[2] Part 2, Division 2, heading

Omit the heading. Insert instead—

Division 2 Miscellaneous

[3] Section 18 Fees

Omit section 18(1)(e)–(g). Insert instead—

- (e) the fees payable in relation to the functions of the following persons, whether under this Act or otherwise, including attempts to exercise the functions—
 - (i) the Sheriff,
 - (ii) the Marshal in Admiralty in relation to civil proceedings in the Admiralty List in the Equity Division of the Supreme Court,
- (f) the fees payable for the following services, including attempts to provide services, whether in connection with the administration of this Act or otherwise—
 - (i) administrative services provided by a registrar or other officer of the court,
 - (ii) other services provided in connection with civil proceedings,
- (g) the payment of fees under this Act, including—
 - (i) the waiver, postponement or remission, in part or in whole, of the fees, and
 - (ii) the persons to whom the fees are payable, and
 - (iii) the time at which the fees become due, and
 - (iv) the persons liable to pay the fees.

[4] Section 18(1A) and (1B)

Insert after section 18(1)—

- (1A) A regulation made under subsection (1)(g)(i) may authorise a registrar of a court or the Sheriff to—
 - (a) waive, postpone or remit fees payable to the court or the Sheriff, as relevant, and
 - (b) impose conditions on the waiver, postponement or remission of the fees.
- (1B) A reference in subsection (1A) to a registrar is, in relation to the Supreme Court, a reference to—
 - (a) the Principal Registrar of the Court, or
 - (b) another registrar of the Court nominated by the Principal Registrar.

[5] Section 18A

Insert after section 18—

18A Interest and dividends on money paid into court

- (1) A registrar of a court must—
 - (a) deduct 2.5% from an amount received as interest or a dividend on funds paid into court, including a fund constituted by the Supreme Court under section 178 for the distribution of money to group members in representative proceedings, and
 - (b) pay the deducted amount into the Consolidated Fund.
- (2) A reference in subsection (1) to a registrar is, in relation to the Supreme Court, a reference to—
 - (a) the Principal Registrar of the Court, or
 - (b) another registrar of the Court nominated by the Principal Registrar.

[6] Section 178 Constitution etc of fund

Insert after section 178(1)(c)—

Note— The Principal Registrar of the Court, or another registrar of the Court nominated by the Principal Registrar, must deduct 2.5% from an amount received as interest or a dividend on the fund and pay the deducted amount into the Consolidated Fund—see section 18A.

[7] Schedule 1 Application of Act

Omit “*Civil Procedure Regulation 2012* excludes” from the note to the matter relating to all civil proceedings for which the Local Court has jurisdiction under the *Crimes (Domestic and Personal Violence) Act 2007*, section 91.

Insert instead “regulations exclude”.

Explanatory note

Item [1] removes the requirement for a regulation excluding a class of civil proceedings from the operation of all or any of the provisions of Parts 3–10 of the Act, or modifying the application of a specified provision to a class of civil proceedings, to be consequential on the amendment of the Act, Schedule 1. Item [7] makes a consequential amendment.

Item [3] inserts a power to make regulations in relation to fees payable for functions exercised by the Marshal in Admiralty in relation to civil proceedings in the Admiralty List in the Equity Division of the Supreme Court. The regulation-making power extends to the imposition of fees for each attempt to exercise the Sheriff or Marshal in Admiralty’s functions. Item [3] also extends the power to make regulations in relation to fees for administrative services provided by a registrar or other officer of the court to fees payable for other services provided in connection with civil proceedings. The regulations may prescribe fees for attempts to provide these services. Item [3] also extends the power to make regulations in relation to fees to include the making of regulations about the persons to whom the fees are payable, the time at which the fees become due and the persons liable to pay the fees.

Item [4] makes it clear that a regulation may authorise a registrar of a court or the Sheriff to waive, postpone or remit fees payable to the court or the Sheriff, as relevant, and to impose conditions on the waiver, postponement or remission of the fees. In relation to fees payable to the Supreme Court, the regulations may only authorise the Principal Registrar of the Supreme Court, or another registrar of the Court nominated by the Principal Registrar, to exercise these functions.

Item [5] transfers, from the regulations to the Act, a requirement for a registrar of a court to deduct 2.5% from an amount received as interest or a dividend on funds paid into court and pay the deducted amount into the Consolidated Fund. The requirement also applies to an amount received as interest on a fund constituted by the Supreme Court for the distribution of money to group members in a representative proceeding. The Principal Registrar of the Supreme Court, or another registrar of the Court nominated by the Principal Registrar, must carry out this function in relation to amounts received as interest or a dividend on funds paid into that Court. Items [2] and [6] make consequential amendments.

6.6 Civil Procedure Regulation 2017

Clause 14 Percentage of income from deposited funds payable to Consolidated Fund

Omit the clause.

Explanatory note

The amendment is consequential on the amendments to the *Civil Procedure Act 2005*.

6.7 Crimes (Forensic Procedures) Act 2000 No 59

[1] Section 3 Interpretation

Omit the definition of *appropriately qualified* from section 3(1). Insert instead—

appropriately qualified, in relation to a person carrying out a forensic procedure—see section 4A.

[2] Section 4A

Insert after section 4—

4A Appropriately qualified persons

- (1) A person is *appropriately qualified* to carry out a forensic procedure if—
 - (a) the person has suitable professional qualifications or experience to carry out the forensic procedure, or
 - (b) the Commissioner of Police authorises the person in writing to carry out the forensic procedure, or
 - (c) the person is qualified under the regulations to carry out the forensic procedure.
- (2) An authorisation under subsection (1)(b) may be given in relation to—
 - (a) a specified procedure or class of procedures, or
 - (b) a specified person or class of persons.

[3] Section 50 Persons who may carry out forensic procedures

Omit “section 3” from the note to the table. Insert instead “section 4A”.

Explanatory note

Item [2] relocates a provision from the *Crimes (Forensic Procedures) Regulation 2014* into the *Crimes (Forensic Procedures) Act 2000*. The relocated provision clarifies that a person is appropriately qualified to carry out a forensic procedure if the person has suitable professional qualifications or experience to carry out the forensic procedure, if the Commissioner of Police has authorised the person in writing to carry out the forensic procedure or if the person is qualified under the regulations to carry out the forensic procedure. Items [1] and [3] make a consequential amendment.

6.8 Crimes (Forensic Procedures) Regulation 2014

Clause 5 Appropriately qualified persons

Omit the clause.

Explanatory note

The amendment is consequential on the amendments to the *Crimes (Forensic Procedures) Act 2000*.

6.9 Crimes (High Risk Offenders) Act 2006 No 7

[1] Section 24AD Sub-committees of Assessment Committee

Omit section 24AD(1A).

[2] Section 24AD(1B)

Re-number section 24AD(1B) as section 24AD(3) and transfer it accordingly.

[3] Section 24AD(2)

Omit “The procedure”. Insert instead “Subject to the regulations, the procedure”.

[4] Section 24AD(4)–(7)

Insert at the end of the section—

- (4) A sub-committee of the Assessment Committee is constituted to exercise functions conferred or imposed on the Assessment Committee by or under the *Terrorism (High Risk Offenders) Act 2017* (the **terrorism sub-committee**).
- (5) The membership of the terrorism sub-committee is to be in accordance with the regulations.
- (6) The functions conferred or imposed on the Assessment Committee by or under the *Terrorism (High Risk Offenders) Act 2017* may only be exercised by the terrorism sub-committee.
- (7) A reference to the Assessment Committee in this Act, other than this section and section 24AB, or another Act includes a reference to the terrorism sub-committee.

Explanatory note

Item [2] renumbers and transfers a provision.

Item [3] clarifies that, subject to the regulations, the procedure of a sub-committee is to be determined by the Assessment Committee.

Item [4] establishes a sub-committee of the Assessment Committee to exercise functions conferred by or under the *Terrorism (High Risk Offenders) Act 2017*. The proposed amendment also provides that the membership of this sub-committee is to be in accordance with the regulations and makes clear that a reference to the Assessment Committee in the *Crimes (High Risk Offenders) Act 2006*, with one exception, or another Act includes the terrorism sub-committee. Item [1] makes a consequential amendment.

6.10 Crimes (High Risk Offenders) Regulation 2018

[1] Section 4, heading

Omit the heading. Insert instead—

4 Membership of terrorism sub-committee—the Act, s 24AD

[2] Section 4

Omit “The Assessment Committee is to be constituted by only the following members when exercising a function that is conferred or imposed on the Assessment Committee by or under the *Terrorism (High Risk Offenders) Act 2017*”.

Insert instead “The terrorism sub-committee under the Act, section 24AD(4) consists of the following members”.

Explanatory note

Items [1] and [2] are consequential on amendments to the *Crimes (High Risk Offenders) Act 2006*.

6.11 Criminal Procedure Act 1986 No 209

[1] Section 4A Fees

Omit section 4A(1)(d). Insert instead—

- (d) the payment of fees under this Act, including—
 - (i) the waiver, postponement or remission, in part or in whole, of the fees, and
 - (ii) the persons to whom the fees are payable, and
 - (iii) the time at which the fees become due, and
 - (iv) the persons liable to pay the fees.

[2] Section 4A(1A) and (1B)

Insert after section 4A(1)—

- (1A) A regulation made under subsection (1)(d)(i) may authorise a registrar of a court or the Sheriff to—
 - (a) waive, postpone or remit fees payable to the court or the Sheriff, as relevant, and
 - (b) impose conditions on the waiver, postponement or remission of the fees.
- (1B) A reference in subsection (1A) to a registrar is, in relation to the Supreme Court, a reference to—
 - (a) the Principal Registrar of the Court, or
 - (b) another registrar of the Court nominated by the Principal Registrar.

[3] Section 347 Declaration and regulation of intervention programs

Omit section 347(4). Insert instead—

- (4) The operation of an intervention program may be limited to the following—
 - (a) a part of New South Wales specified by—
 - (i) the regulations, or
 - (ii) the Minister, by order published in the Gazette,
 - (b) a period of time specified by the regulations.

Explanatory note

Item [1] extends the power to make regulations in relation to fees to include the making of regulations about the persons to whom the fees are payable, the time at which the fees become due and the persons liable to pay the fees.

Item [2] makes it clear that a regulation may authorise a registrar of a court or the Sheriff to waive, postpone or remit fees payable to the court or the Sheriff, as relevant, and to impose conditions on the waiver, postponement or remittance of the fees. In relation to fees payable to the Supreme Court, the regulations may only authorise the Principal Registrar of the Supreme Court, or another registrar of the Court nominated by the Principal Registrar, to exercise these functions.

Item [3] transfers, from the regulations to the Act, a power of the Minister to limit the operation of an intervention program to a specified part of the State.

6.12 Criminal Procedure Regulation 2017

- [1] **Clauses 32, definitions of “Aboriginal Community Justice Group” and “Program Officer”, 33(1), 34(1)(b), 35, 36(1), 37(1)(b), 38(1), 40(1)(c), 41(b), 42(1), 51, 52(2) and 55(1)**

Omit “declared place” wherever occurring. Insert instead “specified place”.

- [2] **Clause 32 Definitions**

Insert in alphabetical order—

specified place means—

- (a) a place specified in clause 33(2), or
- (b) a place specified by the Minister by order published in the Gazette.

- [3] **Clause 33 Application**

Omit clause 32(2) and (3). Insert instead—

- (2) For the Act, section 347(4)(a)(i), Armidale, Bourke, Brewarrina, Dubbo, Kempsey, Lismore, Mount Druitt, Nambucca, Nowra and Walgett are specified.

- [4] **Clause 120**

Insert after clause 119C—

120 Savings provision—Ministerial declarations about application of circle sentencing program

A declaration made under clause 33(2)(b) that was in force immediately before the commencement of the *Justice Legislation Amendment (Miscellaneous) Act 2023* is taken to be an order made under the Act, section 347(4)(a)(ii).

Explanatory note

Items [1]–[3] are consequential on the amendments to the *Criminal Procedure Act 1986*. Item [4] makes an amendment of a savings nature.

6.13 Dormant Funds Act 1942 No 25

Section 19 Regulations

Insert after section 19(1)—

- (2) Without limiting subsection (1), the regulations may provide for the fees and charges that may be imposed for the Act, including—
 - (a) the amount, or the calculation of the amount, of a fee payable to the Commissioner for the formulation of a proposal for a dormant fund to be paid out of the fund, and
 - (b) the reduction or waiver of a fee or charge by the Minister.

Explanatory note

The amendment inserts a power into the *Dormant Funds Act 1942* to make regulations about the fees and charges that may be imposed for the Act.

6.14 Drug Misuse and Trafficking Act 1985 No 226

Section 45 Regulations

Omit section 45(2). Insert instead—

- (1A) The regulations may exempt a person or class of persons from a provision of this Act or the regulations.
- (2) A regulation made under subsection (1A) may apply as follows—
 - (a) to specified prohibited plants, prohibited drugs or psychoactive substances,
 - (b) in relation to a needle exchange program approved from time to time by the Secretary of the Ministry of Health for the regulation (an *approved needle exchange program*),
 - (c) to a person or class of persons involved in an approved needle exchange program who are approved from time to time by the Secretary of the Ministry of Health for the regulation.

Explanatory note

The amendment updates the regulation-making power in relation to exemptions from the *Drug Misuse and Trafficking Act 1985*. The amendment enables the Secretary of the Ministry of Health to approve needle exchange programs and persons involved in the programs for the purposes of exemptions made by the regulations.

6.15 NSW Trustee and Guardian Act 2009 No 49

[1] Section 111 Fees

Omit section 111(2). Insert instead—

- (2) The amount of a fee may be—
 - (a) prescribed by the regulations, or
 - (b) determined by the NSW Trustee in accordance with the regulations.

[2] Section 128 Regulations

Insert after section 128(2)(c)—

- (d) fees payable under this Act, including the determination by the NSW Trustee of the amount of the fees payable.

Explanatory note

Item [1] allows the NSW Trustee and Guardian to determine the fees payable in relation to the NSW Trustee and Guardian's functions, in addition to allowing the fees to be prescribed by the regulations. Item [2] makes a consequential amendment.

6.16 Terrorism (High Risk Offenders) Act 2017 No 68

[1] Section 57 Definitions

Omit the definition of *offender information*. Insert instead—

offender information means—

- (a) any document, report or other information from which the behaviour, beliefs, financial circumstances, or physical or mental condition of an eligible offender may be inferred, or
- (b) terrorism intelligence about the offender.

[2] Section 59B Appointment and role of independent third parties

Insert after section 59B(2)—

- (2A) The regulations under subsection (2) may provide that a person is a *qualified person* only if the person meets the prescribed requirements to the satisfaction of the Supreme Court.

[3] Section 59B(5)

Insert after section 59B(4)—

- (5) The regulations may make provisions about the duties of independent third parties.

Explanatory note

Item [1] clarifies that certain documents from which certain information of an eligible offender may be inferred are offender information for the purposes of the *Terrorism (High Risk Offenders) Act 2017*, Part 5.

Items [2] and [3] enable the regulations to make certain provisions about the appointment and role of independent third parties.

[Second reading speech made in—
Legislative Assembly on 10 October 2023
Legislative Council on 19 October 2023]