



New South Wales

Mental Health Legislation Amendment Act 2025 No 5

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Mental Health Legislation Amendment Act 2025 No 5

Act No 5, 2025

An Act to amend the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* and the *Mental Health Act 2007* to make miscellaneous amendments. [Assented to 2 March 2025]

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Mental Health Legislation Amendment Act 2025*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Mental Health and Cognitive Impairment Forensic Provisions Act 2020 No 12

[1] Section 85 Conditions that may be imposed by Tribunal on release of forensic patients

Insert after section 85(1)(h)—

- (h1) prohibitions or restrictions on the use of social media or other forms of online communication,

[2] Section 148 Forensic Division to exercise functions

Omit section 148(3). Insert instead—

- (3) The Tribunal must not make either of the following orders unless the Tribunal is constituted by at least 1 member, including the President or a Deputy President, who is the holder or former holder of a judicial office—
 - (a) an order for the release of a forensic patient,
 - (b) an order granting leave of absence to a forensic patient.
- (3A) Subsection (3)(b) does not apply if the order grants leave of absence to a forensic patient only if escorted by a person employed at the mental health facility or place of detention.

[3] Section 148(6)

Insert after section 148(5)—

- (6) In this section—
judicial office has the same meaning as in the *Mental Health Act 2007*, Schedule 5, clause 5A.

Schedule 2 Amendment of Mental Health Act 2007 No 8

[1] Schedule 5 Provisions relating to members of Tribunal

Omit “clause.” from clause 1(c). Insert instead—
clause, or

- (d) a person who holds or has held office as a Magistrate.

[2] Schedule 5, clause 5(1A)

Omit the subclause. Insert instead—

- (1A) However, a President or Deputy President who is a full-time member of the Tribunal and the holder of a judicial office is entitled to be paid the higher of the following—

- (a) remuneration and allowances in accordance with subclause (1),
(b) remuneration and allowances as the holder of that judicial office.

[3] Schedule 5, clause 5(3)

Insert after clause 5(2)—

- (3) In this clause—
judicial office has the same meaning as in clause 5A.

[4] Schedule 5, clause 5A, heading

Omit “as President”.

Insert instead “or Magistrate as President or full-time Deputy President”.

[5] Schedule 5, clause 5A(1)

Omit “The”. Insert instead “Subject to clause 5(1A), the”.

[6] Schedule 5, clause 5A(1), note

Insert at the end of clause 5A(1)—

Note— This subclause preserves the tenure, rights and privileges of a person who is a President or full-time Deputy President of the Tribunal and also the holder of a judicial office. However, the preservation of the rights in relation to remuneration and allowances is subject to clause 5(1A). Under clause 5(1A), a person who is a President or full-time Deputy President of the Tribunal and the holder of a judicial office is entitled to the higher of the remuneration and allowances under this schedule or as the holder of the judicial office, but not remuneration and allowances in both capacities.

[7] Schedule 5, clause 5A(1) and (2)

Insert “or full-time Deputy President” after “President” wherever occurring.

[8] Schedule 5, clause 5A(3A)

Insert after clause 5A(3)—

- (3A) The amendments made to this clause by the *Mental Health Legislation Amendment Act 2025* extend to a person who, at the commencement of this subclause, is a current President or full-time Deputy President and the holder of the office of Magistrate.

[9] Schedule 5, clause 5A(4)

Insert “or Magistrate” after “of judge”.

[10] Schedule 5, clause 5A(4)

Insert “or acting Magistrate” after “acting judge”.

[Second reading speech made in—
Legislative Council on 21 November 2024
Legislative Assembly on 19 February 2025]