



New South Wales

# Justice Legislation Amendment (Miscellaneous) Bill 2024

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to make various amendments to the following Acts relating to courts, crimes and other Communities and Justice portfolio matters—

- (a) the *Children (Detention Centres) Act 1987*,
- (b) the *Coptic Orthodox Church (NSW) Property Trust Act 1990*,
- (c) the *Defamation Act 2005*,
- (d) the *Dormant Funds Act 1942*,
- (e) the *Firearms Act 1996*,
- (f) the *Prisoners (Interstate Transfer) Act 1982*,
- (g) the *Solicitor General Act 1969*,
- (h) the *Terrorism (High Risk Offenders) Act 2017*,
- (i) the *Trees (Disputes Between Neighbours) Act 2006*.

## Outline of provisions

**Clause 1** sets out the name, also called the short title, of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act.

**Clause 3** provides that explanatory notes in schedules of the proposed Act do not form part of the proposed Act.

**Schedules 1–9** contain amendments to the Acts specified in the overview and explanatory notes for the amendments.



New South Wales

# Justice Legislation Amendment (Miscellaneous) Bill 2024

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*This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.*

*Legislative Assembly*

*Clerk of the Legislative Assembly*



New South Wales

## **Justice Legislation Amendment (Miscellaneous) Bill 2024**

No           , 2024

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### **A Bill for**

An Act to amend various Acts relating to courts, crimes and other Communities and Justice portfolio matters.

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*The LEGISLATIVE COUNCIL has this day agreed to this Bill with/without amendment.*

*Legislative Council*

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*Clerk of the Parliaments*

<b>The Legislature of New South Wales enacts—</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Justice Legislation Amendment (Miscellaneous) Act 2024</i> .	3
<b>2 Commencement</b>	4
This Act commences on the date of assent to this Act.	5
<b>3 Explanatory notes</b>	6
An explanatory note in a schedule of this Act does not form part of this Act.	7

<b>Schedule 1</b>	<b>Amendment of Children (Detention Centres) Act</b>	1
	<b>1987 No 57</b>	2
<b>[1]</b>	<b>Section 32A Regulations</b>	3
	Omit section 32A(r). Insert instead—	4
	(r) the circumstances and way in which the following may be conducted—	5
	(i) a search, including a body search, of a detainee,	6
	(ii) a search of a detainee’s room or property,	7
	(iii) a search of a visitor or a vehicle under the control of a visitor at a detention centre,	8
	(iv) a search of a juvenile justice officer or anything at a detention centre under the control of a juvenile justice officer,	10
		11
<b>[2]</b>	<b>Section 32A(x)–(z)</b>	12
	Omit “centre.” from section 32A(x). Insert instead—	13
	centre,	14
	(y) decisions that the Secretary or centre manager may make about matters referred to in the regulations,	15
	(z) case plans, including management and development of case plans.	16
		17
	<b>Explanatory note</b>	18
	Item [1] of the proposed amendments creates regulation-making powers in relation to searches of various persons and property.	19
	Item [2] creates regulation-making powers in relation to decision-making powers and case plans.	20
		21

<b>Schedule 2</b>	<b>Amendment of Coptic Orthodox Church (NSW)</b>	1
	<b>Property Trust Act 1990 No 67</b>	2
<b>[1] Section 3 Definitions</b>		3
	Omit section 3(1), definition of <i>Bishop</i> .	4
<b>[2] Section 3(1)</b>		5
	Insert in alphabetical order—	6
	<i>Board</i> means the Board referred to in section 4A.	7
	<i>Diocesan Trustee</i> means a person appointed or elected, from time to time, as a Diocesan Trustee under the constitution.	8 9
<b>[3] Section 3(1), definition of “Church entity”, paragraph (b)</b>		10
	Omit “Bishop”. Insert instead “Trust”.	11
<b>[4] Section 3(1), definition of “constitution”</b>		12
	Omit the definition. Insert instead—	13
	<i>constitution</i> means—	14
	(a) the constitution of the Church adopted on 11 September 2022 by Pope Tawadros II, as amended from time to time, or	15 16
	(b) a document approved by the Pope of Alexandria and Patriarch of the See of St. Mark to replace the constitution referred to in paragraph (a).	17 18
<b>[5] Section 4 Constitution of the Trust</b>		19
	Omit section 4(2).	20
<b>[6] Sections 4A and 4B</b>		21
	Insert after section 4—	22
<b>4A Board of Trust</b>		23
	The Trust is to have a Board comprising the Diocesan Trustees.	24
<b>4B Board to conduct affairs of Trust</b>		25
	(1) The Board may determine the procedures for calling a meeting of the Board and conducting business at a meeting of the Board, subject to this Act and the constitution.	26 27 28
	(2) The quorum for a meeting of the Board—	29
	(a) is the quorum for a meeting of the Diocesan Trustees under the constitution, but	30 31
	(b) must be at least 3 members of the Board.	32
	(3) The Board, at a meeting of the Board with a quorum present, may conduct the affairs of the Trust.	33 34
	(4) A thing done by, or with the authority of, the Board is taken to be done by the Trust.	35 36
<b>[7] Section 5A</b>		37
	Omit the section. Insert instead—	38

<b>5A Delegation</b>	1
The Trust may, in accordance with the constitution, by resolution delegate a function of the Trust, other than this power of delegation, to a committee established under the constitution.	2 3 4
<b>[8] Section 12 Variation of trusts</b>	5
Insert “by resolution” before “declare” wherever occurring in section 12(1) and (4).	6
<b>[9] Section 12(2), (3) and (5)</b>	7
Omit “declaration” wherever occurring. Insert instead “resolution”.	8
<b>[10] Section 12(5)</b>	9
Insert “by resolution” after “declares”.	10
<b>[11] Section 15</b>	11
Omit the section. Insert instead—	12
<b>15 Seal</b>	13
(1) The seal of the Trust must be kept by the Secretary.	14
(2) The seal of the Trust must only be affixed to a document—	15
(a) in accordance with a resolution of the Trust, and	16
(b) in the presence of the Chairperson and another member of the Board, and	17 18
(c) with an attestation by the signature of both of the persons in paragraph (b) of the fact of the affixing of the seal.	19 20
(3) An instrument is taken to be executed in accordance with this section if—	21
(a) it purports to have been sealed with the seal of the Trust, and	22
(b) it purports to have been signed by the Chairperson and another member of the Board.	23 24
(4) In this section—	25
<i>Chairperson</i> means the person holding, from time to time, the position of Chairperson of the Diocesan Trustees under the constitution.	26 27
<i>Secretary</i> means the person elected, from time to time, as Secretary of the Diocesan Trustees under the constitution.	28 29
<b>[12] Section 21 Indemnification of certain persons</b>	30
Omit “The Bishop and any other person”.	31
Insert instead “A member of the Board or another person”.	32
<b>[13] Section 22</b>	33
Omit the section. Insert instead—	34
<b>22 Service of documents</b>	35
A document may be served on the Trust in the following ways—	36
(a) by post to the registered office of the Trust,	37
(b) by leaving it at the registered office of the Trust with a person apparently over 16 years of age,	38 39



(c)	by personal service on 2 members of the Board.	1
[14]	<b>Schedule 1 Savings and transitional provisions</b>	2
	Insert before clause 1—	3
	<b>Part 1 General</b>	4
	<b>1A Regulations</b>	5
(1)	The regulations may contain provisions of a savings or transitional nature consequent on the commencement of—	6
	(a) a provision of this Act, or	7
	(b) a provision amending this Act.	8
(2)	A savings or transitional provision consequent on the commencement of a provision must not be made more than 2 years after the commencement.	9
(3)	A savings or transitional provision made consequent on the commencement of a provision is repealed 2 years after the commencement.	10
(4)	A savings or transitional provision made consequent on the commencement of a provision may take effect before the commencement but not before—	11
	(a) for a provision of this Act—the date of assent to this Act, or	12
	(b) for a provision amending this Act—the date of assent to the amending Act.	13
(5)	A savings or transitional provision taking effect before its publication on the NSW legislation website does not—	14
	(a) affect the rights of a person existing before the publication in a way prejudicial to the person, or	15
	(b) impose liabilities on a person for anything done or omitted to be done before the publication.	16
(6)	In this clause—	17
	<i>person</i> does not include the State or an authority of the State.	18
[15]	<b>Schedule 1, Part 2</b>	19
	Insert after clause 1—	20
	<b>Part 2 Provisions consequent on enactment of Justice Legislation Amendment (Miscellaneous) Act 2024</b>	21
	<b>2 Definition</b>	22
	In this part—	23
	<i>amending Act</i> means the <i>Justice Legislation Amendment (Miscellaneous) Act 2024</i> .	24
	<b>3 Validation of certain actions</b>	25
(1)	This clause applies if—	26
	(a) from 11 September 2022 and before the commencement of the amending Act, action was taken by the Board in relation to the Trust, and	27

(b)	from the commencement of the amending Act, the action would be permitted under the constitution in accordance with this Act.	1 2
(2)	An action of the Board that would have been validly taken if the amending Act was in force when it was taken, is taken to be, and to have always been, validly taken.	3 4 5
<b>4</b>	<b>The Bishop</b>	6
(1)	The Board is taken to be a continuation of the Bishop in the Bishop's capacity as sole trustee.	7 8
(2)	The regulations may contain further provisions relating to subclause (1).	9
(3)	This clause does not limit Schedule 1, clause 1A.	10
(4)	In this clause— <i>Bishop</i> means the Bishop of the Church, in the Bishop's capacity as sole trustee under the Act, section 4(2), immediately before the commencement of the amending Act.	11 12 13 14
<b>5</b>	<b>Church entities</b>	15
	A body certified in writing by the Bishop to be a Church entity before the commencement of the amending Act is taken to be certified in writing by the Trust to be a Church entity.	16 17 18
	<b>Explanatory note</b>	19
	Items [5] and [6] of the proposed amendments remove the Bishop as the sole trustee of the Coptic Orthodox Church (NSW) Property Trust and instead establish a Board of Trustees that may conduct the affairs of the Trust.	20 21 22
	Item [4] updates a reference to the constitution of the Coptic Orthodox Church.	23
	Items [1]–[3] and [7]–[13] make consequential amendments.	24
	Items [14] and [15] insert savings and transitional provisions.	25

<b>Schedule 3</b>	<b>Amendment of Defamation Act 2005 No 77</b>	1
<b>[1] Schedule 1 Additional publications to which absolute privilege applies</b>		2
Insert at the end of the schedule, with appropriate clause numbering—		3
<b>Matters relating to Judicial Commission</b>		4
Without limiting section 27(2)(a)–(c), matter published to the following for the purpose of making a complaint under the <i>Judicial Officers Act 1986</i> , section 15—		5
(a) the Judicial Commission,		6
(b) a member of staff of the Judicial Commission acting in that capacity,		7
(c) the Conduct Division established under the <i>Judicial Officers Act 1986</i> , section 13.		8
<b>[2] Schedule 2 Additional kinds of public documents</b>		9
Omit “Act.” from clause 8(g). Insert instead—		10
Act,		11
(h) a document, or part of a document, if the document or part—		12
(i) is produced to the Modern Slavery Committee constituted under the <i>Modern Slavery Act 2018</i> , Part 2, Division 4 in proceedings conducted in private, and		13
(ii) has been disclosed or published in accordance with that Act, Schedule 1, clause 7.		14
<b>[3] Schedule 3 Additional proceedings of public concern</b>		15
Omit “Act.” from clause 17(g). Insert instead—		16
Act,		17
(h) proceedings of the Modern Slavery Committee constituted under the <i>Modern Slavery Act 2018</i> , Part 2, Division 4 conducted in private, but only to the extent that the proceedings relate to the taking of evidence that is disclosed or published in accordance with that Act, Schedule 1, clause 7.		18
<b>[4] Schedule 4 Savings, transitional and other provisions</b>		19
Insert at the end of the schedule, with appropriate part and clause numbering—		20
<b>Part</b>	<b>Provisions consequent on enactment of Justice Legislation Amendment (Miscellaneous) Act 2024</b>	21
		22
<b>Application of Modern Slavery Act provisions</b>		23
The following provisions as inserted by the <i>Justice Legislation Amendment (Miscellaneous) Act 2024</i> extend to proceedings commenced and actions taken before the commencement of the provisions—		24
(a) Schedule 2, clause 8(h),		25
(b) Schedule 3, clause 17(h).		26
<b>Explanatory note</b>		27
Item [1] of the proposed amendments provides absolute privilege to matters published to the Judicial Commission, its staff and the Conduct Division.		28

Item [2] provides the defence in the *Defamation Act 2005 (the Act)*, section 28 to publication of defamatory matter for documents produced to the Modern Slavery Committee in accordance with the *Modern Slavery Act 2018*, Schedule 1, clause 7.

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Item [3] provides the defence in the Act, section 29 to publication of defamatory matter in proceedings of the Modern Slavery Committee if the proceedings relate to the taking of evidence disclosed or published in accordance with the *Modern Slavery Act 2018*, Schedule 1, clause 7.

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Item [4] provides for retrospective application for items [2] and [3].

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<b>Schedule 4</b>	<b>Amendment of Dormant Funds Act 1942 No 25</b>	1
<b>Section 19 Regulations</b>		2
Insert after section 19(2)—		3
(3)	Without limiting subsection (2), fees may be calculated as a percentage of the value of a dormant fund regardless of the value of the fund.	4 5
<b>Explanatory note</b>		6
	The proposed amendment allows fees prescribed by the regulations made under the <i>Dormant Funds Act 1942</i> to be set as a percentage of the value of a dormant fund.	7 8

<b>Schedule 5</b>	<b>Amendment of Firearms Act 1996 No 46</b>	1
	<b>Section 12 Genuine reasons for having a licence</b>	2
	Omit “Department of Industry” wherever occurring in section 12, Table.	3
	Insert instead “Department of Primary Industries and Regional Development”.	4
	<b>Explanatory note</b>	5
	The proposed amendment replaces redundant references to the Department of Industry with references to the Department of Primary Industries and Regional Development following a machinery of government change.	6
		7
		8

**Schedule 6      Amendment of Prisoners (Interstate Transfer) Act  
1982 No 104**

**Section 13 Necessary consents**

Insert after section 13(2)—

(3) In this section—

*prescribed officer* means the Secretary of the Department of Communities and Justice or an officer authorised by the Secretary.

**Explanatory note**

The proposed amendment allows the Secretary of the Department of Communities and Justice to authorise an officer to certify an order of transfer on the Secretary's behalf.

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<b>Schedule 7</b>	<b>Amendment of Solicitor General Act 1969 No 80</b>	1
<b>Section 3 Powers, authorities etc of Solicitor General</b>		2
Omit section 3(1)(b). Insert instead—		3
(b) exercise and discharge the powers, authorities, duties and functions conferred or imposed on the Attorney General by or under any Act or incident by law to the office of the Attorney General if—		4
(i) the office of Attorney General is vacant, or		5
(ii) the Attorney General is absent from the State, or		6
(iii) the Attorney General is on leave but still within the State, or		7
(iv) the Attorney General is unable to exercise and discharge the powers, authorities, duties and functions because of illness.		8
<b>Explanatory note</b>		9
The proposed amendment extends the circumstances in which the Solicitor General has the functions of the Attorney General to when the Attorney General is on leave but still in NSW.		10
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<b>Schedule 8</b>	<b>Amendment of Terrorism (High Risk Offenders) Act 2017 No 68</b>	1
		2
<b>[1] Section 4 Definitions</b>		3
	Insert in alphabetical order in section 4(1)—	4
	<i>sentence of imprisonment for a NSW indictable offence</i> —see section 6A.	5
<b>[2] Section 6A</b>		6
	Insert after section 6—	7
<b>6A Sentence of imprisonment for NSW indictable offence</b>		8
	In this Act, a <i>sentence of imprisonment for a NSW indictable offence</i> is a sentence of imprisonment in relation to which there is at least 1 offence that is a NSW indictable offence, including—	9 10 11
	(a) an aggregate sentence of imprisonment, and	12
	(b) a cumulative sentence of imprisonment.	13
<b>[3] Section 7 Eligible offender</b>		14
	Omit section 7(b). Insert instead—	15
	(b) serving, or is continuing to be supervised or detained under this Act after serving, a sentence of imprisonment for a NSW indictable offence.	16 17
<b>[4] Section 8 Convicted NSW terrorist offender</b>		18
	Omit “sentence of imprisonment for any other NSW indictable offence” from section 8(b).	19
	Insert instead “sentence of imprisonment for a NSW indictable offence that is not an offence against section 310J of the <i>Crimes Act 1900</i> ”.	20 21
<b>[5] Section 8(2)</b>		22
	Insert at the end of section 8—	23
	(2) In this section—	24
	<i>sentence of imprisonment for an offence against section 310J of the Crimes Act 1900</i> extends to an aggregate sentence of imprisonment or a cumulative sentence of imprisonment in relation to which at least 1 of the offences is an offence against section 310J of the <i>Crimes Act 1900</i> .	25 26 27 28
<b>[6] Section 20 Supreme Court may make extended supervision orders against eligible offenders if unacceptable risk</b>		29 30
	Omit section 20(a)(ii)–(iv). Insert instead—	31
	(ii) under an existing interim supervision order, extended supervision order, interim detention order or continuing detention order, and	32 33
<b>[7] Section 23 Requirements with respect to application</b>		34
	Omit section 23(1)(a). Insert instead—	35
	(a) while serving a sentence of imprisonment for a NSW indictable offence, or	36 37
<b>[8] Section 33 Definitions</b>		38
	Omit the definition of <i>detained offender</i> , paragraph (a). Insert instead—	39

- (a) while serving a sentence of imprisonment for a NSW indictable offence,  
or

**Explanatory note**

Item [2] of the proposed amendments defines **sentence of imprisonment for a NSW indictable offence** for the purposes of the *Terrorism (High Risk Offenders) Act 2017* to ensure aggregate and cumulative sentences of imprisonment are covered by the definition. Items [1], [3], [4] and [6]–[8] make consequential amendments.

Item [5] inserts a similar definition to ensure aggregate and cumulative sentences of imprisonment are covered in relation to a sentence of imprisonment for a particular offence.

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<b>Schedule 9</b>	<b>Amendment of Trees (Disputes Between Neighbours) Act 2006 No 126</b>	1
		2
<b>[1]</b>	<b>Section 8 Notice of application for order to be given to owners of affected land</b>	3
	Omit “at least 21 days notice of the lodging of the application and the terms of any order sought” from section 8(1).	4
		5
	Insert instead “notice of the lodging of the application and the terms of any order sought at least 21 days before a hearing in relation to the application”.	6
		7
<b>[2]</b>	<b>Section 14C Notice of application for order to be given to owners of affected land</b>	8
	Omit “at least 21 days notice of the lodging of the application and the terms of any order sought” from section 14C(1).	9
		10
	Insert instead “notice of the lodging of the application and the terms of any order sought at least 21 days before a hearing in relation to the application”.	11
		12
	<b>Explanatory note</b>	13
	The proposed amendments clarify when certain notices must be given under the <i>Trees (Disputes Between Neighbours) Act 2006</i> .	14
		15