

Passed by both Houses



New South Wales

# Courts and Crimes Legislation Amendment Bill 2009

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*I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2009*



New South Wales

## **Courts and Crimes Legislation Amendment Bill 2009**

Act No , 2009

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An Act to amend various Acts with respect to courts, crimes and other matters.

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*I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.*

*Assistant Speaker of the Legislative Assembly.*

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

**1 Name of Act**

This Act is the *Courts and Crimes Legislation Amendment Act 2009*.

**2 Commencement**

- (1) This Act commences on the date of assent to this Act, except as provided by subsections (2) and (3).
- (2) Schedule 2.6 [3] commences on a day to be appointed by proclamation.
- (3) Schedule 2.9 commences, or is taken to have commenced, on the commencement of the *Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Act 2009*.

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## **Schedule 1      Amendment of Acts relating to eligible Judges and Magistrates**

### **1.1 Crimes (Criminal Organisations Control) Act 2009 No 6**

#### **Section 5 Eligible Judges**

Omit section 5 (6). Insert instead:

- (6) A declaration of an eligible Judge under subsection (3) cannot be revoked by the Attorney General. However, the declaration of a Judge as an eligible Judge is revoked if:
  - (a) the eligible Judge revokes his or her consent in accordance with subsection (5) or ceases to be a Judge, or
  - (b) the Chief Justice notifies the Attorney General that the Judge should not continue to be an eligible Judge.
- (7) To avoid doubt, the selection of the eligible Judge to exercise any particular function conferred on eligible Judges is not to be made by the Attorney General or other Minister of the Crown, and the exercise of that particular function is not subject to the control and direction of the Attorney General or other Minister of the Crown.

### **1.2 Law Enforcement and National Security (Assumed Identities) Act 1998 No 154**

#### **Section 8 Eligible Judges**

Omit section 8 (6). Insert instead:

- (6) A nomination of an eligible Judge under subsection (3) cannot be revoked by the Attorney General. However, the nomination of a Judge as an eligible Judge is revoked if:
  - (a) the eligible Judge revokes his or her consent in accordance with subsection (5) or ceases to be a Judge, or
  - (b) the Chief Justice notifies the Attorney General that the Judge should not continue to be an eligible Judge.
- (7) To avoid doubt, the selection of the eligible Judge to exercise any particular function conferred on eligible Judges is not to be made by the Attorney General or other Minister of the Crown, and the exercise of that particular function is not subject to the control and direction of the Attorney General or other Minister of the Crown.

### **1.3 Law Enforcement (Powers and Responsibilities) Act 2002 No 103**

#### **Section 46B Eligible Judges**

Omit section 46B (6). Insert instead:

- (6) A declaration of an eligible Judge under subsection (3) cannot be revoked by the Attorney General. However, the declaration of a Judge as an eligible Judge is revoked if:
  - (a) the eligible Judge revokes his or her consent in accordance with subsection (5) or ceases to be a Judge, or
  - (b) the Chief Justice notifies the Attorney General that the Judge should not continue to be an eligible Judge.
- (7) To avoid doubt, the selection of the eligible Judge to exercise any particular function conferred on eligible Judges is not to be made by the Attorney General or other Minister of the Crown, and the exercise of that particular function is not subject to the control and direction of the Attorney General or other Minister of the Crown.

### **1.4 Surveillance Devices Act 2007 No 64**

#### **Section 5 Eligible Judges and Magistrates**

Omit section 5 (7). Insert instead:

- (7) A declaration of an eligible Judge under subsection (3) cannot be revoked by the Attorney General. However, the declaration of a Judge as an eligible Judge is revoked if:
  - (a) the eligible Judge revokes his or her consent in accordance with subsection (6) or ceases to be a Judge, or
  - (b) the Chief Justice notifies the Attorney General that the Judge should not continue to be an eligible Judge.
- (8) A declaration of an eligible Magistrate under subsection (3) cannot be revoked by the Attorney General. However, the declaration of a Magistrate as an eligible Magistrate is revoked if:
  - (a) the eligible Magistrate revokes his or her consent in accordance with subsection (6) or ceases to be a Magistrate, or
  - (b) the Chief Magistrate notifies the Attorney General that the Magistrate should not continue to be an eligible Magistrate.

- (9) To avoid doubt, the selection of the eligible Judge or eligible Magistrate to exercise any particular function conferred on eligible Judges or eligible Magistrates is not to be made by the Attorney General or other Minister of the Crown, and the exercise of that particular function is not subject to the control and direction of the Attorney General or other Minister of the Crown.

## **1.5 Terrorism (Police Powers) Act 2002 No 115**

### **Section 27B Eligible Judges**

Omit section 27B (6). Insert instead:

- (6) A declaration of an eligible Judge under subsection (3) cannot be revoked by the Attorney General. However, the declaration of a Judge as an eligible Judge is revoked if:
- (a) the eligible Judge revokes his or her consent in accordance with subsection (5) or ceases to be a Judge, or
  - (b) the Chief Justice notifies the Attorney General that the Judge should not continue to be an eligible Judge.
- (7) To avoid doubt, the selection of the eligible Judge to exercise any particular function conferred on eligible Judges is not to be made by the Attorney General or other Minister of the Crown, and the exercise of that particular function is not subject to the control and direction of the Attorney General or other Minister of the Crown.

## **Schedule 2 Other amendments of Acts**

### **2.1 Bail Act 1978 No 161**

#### **[1] Section 22A Power to refuse to hear bail application**

Omit section 22A (1). Insert instead:

- (1) A court is to refuse to entertain an application for bail by a person accused of an offence if an application by the person in relation to that bail has already been made and dealt with by the court, unless there are grounds for a further application for bail.
- (1A) For the purposes of this section, the grounds for a further application for bail are:
  - (a) the person was not legally represented when the previous application was dealt with and the person now has legal representation, or
  - (b) information relevant to the grant of bail is to be presented in the application that was not presented to the court in the previous application, or
  - (c) circumstances relevant to the grant of bail have changed since the previous application was made.

#### **[2] Section 22A (5)**

Omit the subsection. Insert instead:

- (5) If a court has previously dealt with an application for bail for a person accused of an offence, a lawyer may refuse to make a further application to the court on behalf of that person if there are no grounds for a further application for bail.

### **2.2 Children and Young Persons (Care and Protection) Act 1998 No 157**

#### **Section 107 Examination and cross-examination of witnesses**

Omit “an authorised Magistrate within the meaning” from section 107 (4).

Insert instead “a Magistrate within the meaning of section 13 (2)”.

### **2.3 Children (Detention Centres) Act 1987 No 57**

#### **Section 39 Expediting trials and appeals**

Omit “or any authorised Magistrate” from section 39 (3) (c).

Insert instead “or Magistrate”.

## **2.4 Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009 No 13**

### **Schedule 2 Amendments relating to recommendations 11.2,13.1,13.3,13.4,13.9 and 13.12**

Omit Schedule 2.1 [3].

## **2.5 Children's Court Act 1987 No 53**

### **[1] Section 13 Single member to exercise jurisdiction of the Court**

Insert at the end of section 13 (b):

or

(c) a Magistrate,

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

Insert at the end of section 13:

- (2) In this section, *Magistrate* means a Magistrate authorised by the President and Chief Magistrate to exercise any function conferred or imposed on a Children's Magistrate by or under this or any other Act.

### **[3] Schedule 2 Savings and transitional provisions**

Insert after Part 3:

## **Part 4 Provision consequent on enactment of Courts and Crimes Legislation Amendment Act 2009**

### **9 Authorised Magistrates**

- (1) Anything done before the commencement of this clause by an authorised Magistrate in the purported exercise of jurisdiction conferred by the proclamation referred to in clause 4 in accordance with the directions of the President or Chief Magistrate and which would have been validly done had section 13 (c) and (2) (as inserted by the amending Act) been in force when it was done is validated.
- (2) In this clause:  
*amending Act* means the *Courts and Crimes Legislation Amendment Act 2009*.

## **2.6 Civil Procedure Act 2005 No 28**

### **[1] Section 8 Uniform Rules Committee**

Omit “11 members” from section 8 (1). Insert instead “12 members”.

### **[2] Section 8 (1) (c2)**

Insert after section 8 (1) (c1):

- (c2) one is to be the President of the Industrial Relations Commission or a judicial member of the Commission (within the meaning of the *Industrial Relations Act 1996*) nominated for the time being by the President, and

### **[3] Schedule 1 Application of Act**

Insert in Columns 1 and 2, after the matter relating to the Land and Environment Court:

Industrial Relations Commission (including the Commission in Court Session (the Industrial Court))	All civil proceedings
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### **[4] Schedule 2 Constitution and procedure of Uniform Rules Committee**

Insert “the President of the Industrial Relations Commission,” after “the Chief Judge of the Land and Environment Court,” in the definition of *ex officio member* in clause 1.

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

Omit “6”. Insert instead “7”.

### **[6] Schedule 6 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Courts and Crimes Legislation Amendment Act 2009* (but only to the extent to which it amends this Act)

## **2.7 Confiscation of Proceeds of Crime Act 1989 No 90**

### **[1] Section 35 Definitions**

Omit the definition of *authorised officer* from section 35 (1).

### **[2] Section 36 Search warrants**

Insert “(within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*)” after “authorised officer” in section 36 (1).

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## 2.8 Crimes (Criminal Organisations Control) Act 2009 No 6

### [1] Section 16 Notice of making of interim control order

Insert after section 16 (5):

(6) A police officer who has reasonable cause to suspect that a person is a person on whom notice of the making of an interim control order is required to be served under this section may:

- (a) request the person to disclose his or her identity, and
- (b) request the person to remain at a particular place for such period (not exceeding 2 hours) as is reasonably necessary to serve the notice.

**Note.** It is an offence for a person to fail or refuse without reasonable excuse to comply with a request to disclose his or her identity or to give false or misleading information about his or her identity—see section 35A.

(7) If the person refuses or fails to comply with a request under subsection (6) (b), the police officer may detain the person at that place for such period (not exceeding 2 hours) as is reasonably necessary to serve the notice.

### [2] Section 16A Service of notice of interim control order

Insert after section 16A (2):

(2A) An order may be made under subsection (1) whether or not the 28-day period referred to in section 16 (1) has expired.

### [3] Section 19 Court may make control order

Omit section 19 (1) (a). Insert instead:

- (a) the person:
  - (i) is a member of a particular declared organisation, or
  - (ii) is or purports to be a former member of a particular declared organisation but has an on-going involvement with the organisation and its activities, and

### [4] Section 19 (8)

Insert after section 19 (7):

(8) For the purposes of determining whether subsection (1) (a) (ii) applies to a person, the Court may take into account whether the person regularly associates with members of the declared organisation without reasonable cause and the extent to which the

conduct of the person demonstrates that the person has genuinely dissociated himself or herself from the organisation.

**[5] Section 26 Association between members of declared organisations subject to interim control order or control order**

Insert after section 26 (1):

- (1A) A controlled member of a declared organisation who, at any time within a period of 3 months, associates with another controlled member of the declared organisation on 3 or more occasions is guilty of an offence.

Maximum penalty: Imprisonment for 3 years.

**[6] Section 26 (2)–(4)**

Insert “or (1A)” after “subsection (1)” wherever occurring.

**[7] Section 26 (7A)**

Insert after section 26 (7):

- (7A) A police officer who has reasonable cause to suspect that a person is a controlled member of a declared organisation who is associating with another controlled member of the declared organisation may request the person to disclose his or her identity.

**Note.** It is an offence for a person to fail or refuse without reasonable excuse to comply with a request to disclose his or her identity or to give false or misleading information about his or her identity—see section 35A.

**[8] Section 35A**

Insert after section 35:

**35A Failure of person to disclose identity on request**

- (1) A person who is requested by a police officer in accordance with section 16 (6) or 26 (7A) to disclose his or her identity must not, without reasonable excuse, fail or refuse to comply with the request.

Maximum penalty: 20 penalty units.

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- (2) A person must not, without reasonable excuse, in response to a request made by a police officer in accordance with a provision referred to in subsection (1):
- (a) give a name that is false in a material particular, or
  - (b) give an address other than the person's full and correct address.

Maximum penalty: 20 penalty units.

**Note.** Section 201 of the *Law Enforcement (Powers and Responsibilities) Act 2002* sets out safeguards in relation to such a request.

**[9] Section 36 Proceedings for offences**

Insert "or an offence under section 26 (1A)" after "order)" in section 36 (2).

**2.9 Criminal Procedure Act 1986 No 209**

**Section 245 Summary jurisdiction of Supreme Court**

Insert after the note at the end of section 245 (2):

- (3) Despite subsection (2), the Industrial Registrar within the meaning of the *Industrial Relations Act 1996* may, subject to the rules, make an order under section 246 with respect to an offence that may be dealt with by the President or a judicial member of the Industrial Relations Commission under this Part.

**2.10 Evidence (Audio and Audio Visual Links) Act 1998 No 105**

**[1] Section 5BAA Taking evidence of government agency witnesses from outside courtroom or place where court is sitting—proceedings generally**

Omit "police officer" wherever occurring from paragraph (b) of the definition of *government agency witness* in section 5BAA (5).

Insert instead "member of the NSW Police Force".

**[2] Schedule 1 Savings, transitional and other provisions**

Insert after clause 1:

**2 Evidence of government agency witnesses**

Section 5BAA, as amended by the *Courts and Crimes Legislation Amendment Act 2009*, does not apply to proceedings commenced before the commencement of that amendment.

## 2.11 Industrial Relations Act 1996 No 17

### Sections 185A–185C

Insert after section 185:

#### 185A Practice notes

- (1) Subject to rules of the Commission, the President may issue practice notes with respect to any matter for which rules may be made.
- (2) A practice note must be published in the Gazette.
- (3) Sections 40 and 41 of the *Interpretation Act 1987* apply to a practice note in the same way as they apply to a statutory rule.

#### 185B Commission may dispense with rules in particular cases

In relation to particular civil proceedings, the Commission may, by order, dispense with any requirement of rules of the Commission if satisfied that it is appropriate to do so in the circumstances of the case.

#### 185C Commission may give directions in circumstances not covered by rules

- (1) In relation to particular proceedings, the Commission may give directions with respect to any aspect of practice or procedure not provided for by or under this Act, the *Criminal Procedure Act 1986*, the *Civil Procedure Act 2005* or any other Act.
- (2) Anything done in accordance with such a direction (including the commencing of proceedings and the taking of any step in proceedings) is taken to have been validly done.

## 2.12 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

### [1] Section 46 Interpretation

Omit the definition of *authorised officer* from section 46 (1).

### [2] Section 47 Power to apply for search warrants

Omit “who proposes to enter and search premises covertly may apply to an eligible issuing officer for the issue of a covert search warrant” from section 47 (3).

Insert instead “may apply to an eligible issuing officer for a covert search warrant to authorise the covert entry and search of premises”.

## **2.13 Legal Profession Act 2004 No 112**

### **Schedule 9 Savings, transitional and other provisions**

Insert at the end of clause 34:

- (2) The reference to an appeal in subclause (1) extends to an appeal made to the Supreme Court under section 208L (Appeal against decision of costs assessor as to matter of law) of the *Legal Profession Act 1987*.

## **2.14 Local Court Act 2007 No 93**

### **[1] Section 25 Local Court Rule Committee**

Omit “a registrar” from section 25 (2) (e). Insert instead “an officer”.

### **[2] Section 25 (2) (g)**

Omit the paragraph. Insert instead:

- (g) if the Minister thinks that it is appropriate to appoint a person as a member—a person appointed by the Minister,

### **[3] Schedule 4 Savings, transitional and other provisions**

Insert after clause 12:

## **Part 4 Provision consequent on enactment of Courts and Crimes Legislation Amendment Act 2009**

### **13 Member of Rule Committee appointed by Attorney General**

A person appointed and holding office under section 25 (2) (g), as in force immediately before its substitution by the *Courts and Crimes Legislation Amendment Act 2009*, is taken to have been appointed under section 25 (2) (g) as substituted by that Act.