

Passed by both Houses



New South Wales

Justice Portfolio Legislation (Miscellaneous Amendments) Bill 2016

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The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Justice Portfolio Legislation (Miscellaneous Amendments) Act 2016*.

2 Commencement

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

Schedule 1 Amendment of Acts

1.1 Bail Act 2013 No 26

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

supervision order means an extended supervision order or an interim supervision order under the *Crimes (High Risk Offenders) Act 2006*.

[2] Section 16B Offences to which the show cause requirement applies

Omit the definition of *supervision order* from section 16B (3).

[3] Section 50 Prosecutor may make detention application

Insert “or for the grant of bail with the imposition of bail conditions” after “refusal or revocation of bail for an offence” in section 50 (1).

[4] Section 68 Limited powers when proceedings pending in another court

Insert after section 68 (2):

(2A) Despite subsection (1) (a), the Local Court or an authorised justice may hear a variation application with the consent of the accused person and the prosecutor.

1.2 Bail Amendment Act 2015 No 44

[1] Schedule 1 Amendment of Bail Act 2013 No 26 in response to Hatzistergos and Sentencing Council reports

Insert at the end of section 16B (1) (l) (ii) in Schedule 1 [2]:

, or

(iii) the *Criminal Procedure Act 1986*, or

(iv) the *Crimes (Sentencing Procedure) Act 1999*.

[2] Schedule 1

Insert after section 18 (1) (f) (ix) in Schedule 1 [4]:

(x) supervision orders,

1.3 Children (Criminal Proceedings) Act 1987 No 55

[1] Section 29 Jurisdiction in respect of 2 or more co-defendants who are not all children

Insert “if the Children’s Court is of the opinion that it is in the interests of justice to do so” after “both of those persons” in section 29 (2).

[2] Section 29 (3)

Omit the subsection.

1.4 Crimes Act 1900 No 40

[1] Section 308H Unauthorised access to or modification of restricted data held in computer (summary offence)

Insert after section 308H (3):

- (4) Proceedings for an offence against this section must be commenced not later than 12 months from when the offence was alleged to have been committed.

[2] Schedule 10

Omit clause 1 (a)–(d1) and (f) (ii)–(vi).

[3] Schedule 10, clause 1 (f) (i)

Omit “165, 166, 168, 169, 170, 172, 178A, 178BA, 178BB, 178C, 184A, 185.”

1.5 Crimes (Domestic and Personal Violence) Amendment (Review) Act 2016 No 33

Schedule 1 Amendment of Crimes (Domestic and Personal Violence) Act 2007 No 80

Insert “and the regulations” after “this Part” in clause 11 (3) in Schedule 1 [35].

1.6 Crimes (Sentencing Procedure) Act 1999 No 92

[1] Section 45 Court may decline to set non-parole period

Omit “(other than an offence or offences set out in the Table to Division 1A of this Part)” from section 45 (1).

[2] Section 45 (1A) and (1B)

Insert after section 45 (1):

- (1A) A court may decline to set a non-parole period for a sentence of imprisonment, or an aggregate sentence of imprisonment, for an offence or offences set out in the Table to Division 1A of this Part only if the term of the sentence is at least as long as the term of the non-parole period that the court would have set for the sentence if a non-parole period had been set in accordance with that Division.
- (1B) Subsection (1A) does not apply in relation to the sentencing of an offender in respect of an offence:
- (a) which is being dealt with summarily, or
- (b) if the offender was under the age of 18 years at the time the offence was committed.

[3] Section 46 Court not to set non-parole period for sentence of 6 months or less

Insert at the end of the section:

- (2) For the avoidance of doubt, subsection (1) does not apply to a court imposing an aggregate sentence of imprisonment in respect of 2 or more offences for a term exceeding 6 months. This subsection has effect even if the sentence that would have been imposed for any of those offences would have been 6 months or less (as referred to in section 53A (2) (b)).

[4] Section 53B

Insert after section 53A:

53B Limitation on aggregate sentences imposed by Local Court

For the avoidance of doubt, the Local Court may impose an aggregate sentence of imprisonment that does not exceed 5 years.

[5] Section 71 Commencement of ICOs

Insert at the end of the section:

- (2) Subsection (1) does not apply to an intensive correction order made in relation to a sentence of imprisonment that is to be served consecutively (or partly concurrently and partly consecutively) with some other sentence of imprisonment the subject of an intensive correction order.
- (3) An intensive correction order is not invalidated merely because it specifies a date of commencement of the sentence of imprisonment that does not comply with the requirements of this section.

1.7 Criminal Procedure Act 1986 No 209

[1] Section 164A

Insert after section 164:

164A Judge unable to continue in trial by jury

- (1) If the presiding judge of criminal proceedings being tried by a jury in the District Court or the Supreme Court dies, becomes ill or is otherwise unable to continue the proceedings (the *former presiding judge*), the senior judicial officer of the relevant court may, after hearing submissions from the parties to the proceedings:
 - (a) nominate another judge of the court (the *new presiding judge*) to take over the conduct of the proceedings, or
 - (b) discharge the jury and order a new trial.
- (2) Before making a decision to nominate a new presiding judge, the senior judicial officer must consider whether it would be in the interests of justice to do so, including (but not limited to) the following matters:
 - (a) whether the new presiding judge will be available to take over the conduct of the proceedings within a reasonable time,
 - (b) whether a transcript, audio or video recording of all of the proceedings is available,
 - (c) the time that will be required for the new presiding judge to familiarise himself or herself with any available transcript or audio or video recording of the proceedings, and with any evidence that has been given in the proceedings,
 - (d) the submissions from the parties,
 - (e) the progress of the trial, including whether any key witnesses for the prosecution or the defence have given evidence,
 - (f) the history, estimated length and complexity of the trial,
 - (g) the availability of witnesses,
 - (h) whether the decision to nominate a new presiding judge would be unfair to any of the parties to the trial.

- (3) If the senior judicial officer of the relevant court is unable to make a decision, the senior judicial officer may nominate another judge of the relevant court to make a decision in accordance with this section.
- (4) If a new presiding judge takes over the conduct of the proceedings, an order or ruling made by the former presiding judge is binding on the new presiding judge unless, in the opinion of the new presiding judge, it would not be in the interests of justice for that order or ruling to be binding.

Note. Section 5F (Appeal against interlocutory judgment or order) of the *Criminal Appeal Act 1912* does not extend to a decision made under this section.

[2] Section 291 Proceedings must be held in camera when complainant gives evidence

Insert “, or an audio visual or audio recording of evidence of the complainant is heard by the court,” after “evidence is given by a complainant” in section 291 (1).

[3] Section 291 (6)

Omit “or, if the record is an audio visual or audio recording, heard by the court in camera”.

[4] Section 306M Definitions

Insert in alphabetical order in section 306M (1):

police officer means:

- (a) a member of the Australian Federal Police, or
- (b) a member of the police force of a State or Territory.

[5] Section 306Q Regulations may require interviews with vulnerable persons to be recorded

Insert at the end of the section:

- (2) In this section, *investigating official* does not include:
 - (a) a member of the Australian Federal Police, or
 - (b) a member of the police force of another State or Territory.

[6] Schedule 2 Savings, transitional and other provisions

Insert “or prosecution witness” after “a complainant” in the definition of *witness* in clause 82.

[7] Schedule 2, clause 83 (1)

Omit “a prescribed sexual offence (whenever committed)”.

Insert “a prescribed sexual offence whenever committed (or, if the proceedings relate to more than one offence, at least one of those offences is a prescribed sexual offence whenever committed)”.

[8] Schedule 2, clause 83 (1) (b)

Omit the paragraph. Insert instead:

- (b) before the commencement of this Part but only if the matter:
 - (i) was not listed for trial before that commencement, or
 - (ii) was listed for trial before that commencement, but was or is re-listed for trial after that commencement.

[9] Schedule 2, clause 83 (3)

Insert after clause 83 (2):

- (3) The amendments to subclause (1) by the *Justice Portfolio Legislation (Miscellaneous Amendments) Act 2016* are taken to have commenced on the commencement of this Part.

[10] Schedule 2, clause 88 (1)

Omit “and explain”.

[11] Schedule 2, clause 89 (2)

Insert “, Teaching” after “Speech Pathology”.

1.8 District Court Act 1973 No 9

[1] Section 18 Acting Judges

Omit “The remuneration payable to such a person is to be paid to the person so long as he or she continues to hold office.” from section 18 (3B).

[2] Section 18 (3C)

Insert after section 18 (3B):

- (3C) The remuneration payable to a person appointed under this section is to be paid:
- (a) so long as the person continues to hold office, or
 - (b) until the person has completed or otherwise dealt with matters (as referred to in subsection (3A)),
- whichever is the later.

1.9 Drug Misuse and Trafficking Act 1985 No 226

[1] Section 43 Certificate evidence

Omit “Director-General of the Department of Industry and Investment” from section 43 (5).
Insert instead “Secretary of the Department of Industry, Skills and Regional Development”.

[2] Section 43 (5)

Omit “Director-General” where secondly occurring. Insert instead “Secretary”.

1.10 Drug Misuse and Trafficking Amendment (Drug Exhibits) Act 2016 No 6

Schedule 1 Amendment of Drug Misuse and Trafficking Act 1985 No 226

Omit Schedule 1 [7] and [8].

1.11 Land and Environment Court Act 1979 No 204

[1] Section 13 Acting Commissioners

Omit section 13 (4). Insert instead:

- (4) An acting Commissioner is entitled to be paid:

- (a) remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*, and
- (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the acting Commissioner.

[2] Schedule 3 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate clause numbering:

Provision consequent on enactment of Justice Portfolio Legislation (Miscellaneous Amendments) Act 2016

Section 13 (4), as in force before its substitution by the *Justice Portfolio Legislation (Miscellaneous Amendments) Act 2016*, continues to apply until the Statutory and Other Offices Remuneration Tribunal makes provision for the remuneration of acting Commissioners under the *Statutory and Other Offices Remuneration Act 1975*.

1.12 Legal Profession Uniform Law Application Act 2014 No 16

[1] Section 70 Certificate as to determination of costs to parties

Insert after section 70 (5):

- (5A) The regulations may make provision for or with respect to the forwarding of a certificate issued under this section (or a copy of the certificate):
 - (a) by the costs assessor to the parties to the costs assessment or the Manager, Costs Assessment or both, and
 - (b) by the Manager, Costs Assessment to the parties to the costs assessment.

[2] Section 83 Application by party for review

Omit “within 30 days after the issue of a certificate of determination by a costs assessor” from section 83 (1).

Insert instead “within 30 days after the certificate of determination by the costs assessor has been forwarded to the parties in accordance with the regulations or the costs assessment rules”.

[3] Section 84 Application by Manager, Costs Assessment for review

Omit “within 30 days after the issue of a certificate of determination by a costs assessor” from section 84 (1).

Insert instead “within 30 days after the certificate of determination by the costs assessor has been forwarded to the parties in accordance with the regulations or the costs assessment rules”.

[4] Section 93 Costs assessment rules

Omit section 93 (1) (b) (vi). Insert instead:

- (vi) the issue of certificates of determinations and the forwarding of such certificates (or copies of such certificates):
 - (A) by the costs assessor to the parties to the costs assessment or the Manager, Costs Assessment or both, and
 - (B) by the Manager, Costs Assessment to the parties to the costs assessment, and

[5] Section 167

Insert after section 166:

167 Tabling of certain annual reports in Parliament when it is not sitting

- (1) This section applies with respect to a report that the Attorney General is required by the following provisions to lay (or cause to be laid) before a House of Parliament:
 - (a) section 26 or 34 of this Act,
 - (b) clause 26 (5) of Schedule 1 or clause 10 (7) of Schedule 2 to the *Legal Profession Uniform Law (NSW)*.
- (2) If a House of Parliament is not sitting when the Attorney General seeks to lay the report before it, the Attorney General is to cause a copy of the report to be presented to the Clerk of that House of Parliament.
- (3) A report presented under subsection (2):
 - (a) is, on presentation and for all purposes, taken to have been laid before the House, and
 - (b) may be printed by authority of the Clerk of the House, and
 - (c) if so printed, is taken to be a document published by or under the authority of the House, and
 - (d) is to be recorded:
 - (i) in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, and
 - (ii) in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the copy of the report by the Clerk.
- (4) In this section, *lay* includes table.

1.13 Local Court Act 2007 No 93

[1] Schedule 1 Provisions relating to Magistrates

Omit clause 12 (4). Insert instead:

- (4) A person appointed as an acting Magistrate is entitled to be paid remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*.

[2] Schedule 4 Savings, transitional and other provisions

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

Part Provision consequent on enactment of Justice Portfolio Legislation (Miscellaneous Amendments) Act 2016

Remuneration of acting Magistrates

Clause 12 (4) of Schedule 1, as in force before its substitution by the *Justice Portfolio Legislation (Miscellaneous Amendments) Act 2016*, continues to apply until the Statutory and Other Offices Remuneration Tribunal makes provision for the remuneration of acting Magistrates under the *Statutory and Other Offices Remuneration Act 1975*.

1.14 Statutory and Other Offices Remuneration Act 1975 (1976 No 4)

[1] Section 11C

Insert after section 11B:

11C Salary sacrifice for living away from home expenses for office holders not subject to section 11A

- (1) This section applies to office holders other than office holders to whom section 11A applies.
- (2) The employment benefit that an office holder may be provided with under this section is a living away from home allowance to compensate the office holder (and family members) for additional expenses incurred and disadvantages suffered as a result of the office holder being required to live away from the office holder's usual place of residence in order to perform the office holder's functions for a temporary period of time (such as accommodation and food expenses).
- (3) An office holder to whom this section applies is entitled to be provided with any such employment benefit if:
 - (a) the office holder elects by notice in writing to the Minister to be provided with that employment benefit, and
 - (b) the Minister approves of the provision of that employment benefit, and
 - (c) the salary otherwise payable to the office holder under section 11 is reduced by the cost of that employment benefit (being the cost determined by the Secretary of the Department of Justice).
- (4) An election referred to in subsection (3) (a) may, with the approval of the Minister, be revoked at any time.
- (5) This section has effect despite anything to the contrary in this Part.

[2] Schedule 1 Public offices

Insert after the matter relating to Magistrates under the *Local Court Act 2007*:

Acting Magistrate (under the *Local Court Act 2007*)

[3] Schedule 2 Public offices

Insert after the matter relating to Full-time Commissioners under the *Land and Environment Court Act 1979* in Part 1:

Acting Commissioner (under the *Land and Environment Court Act 1979*)

1.15 Strata Schemes Management Act 2015 No 50

[1] Section 85 Interest, discounts on contributions and payment plans

Insert "or a court" after "The Tribunal" in section 85 (8).

[2] Section 85 (8)

Insert "or the court" after "the Tribunal".

[3] Section 86 Recovery of unpaid contributions and interest

Omit section 86 (1) and (2). Insert instead:

- (1) The Tribunal may order the owner of a lot in the strata scheme, or other person, to pay a contribution that is payable by the owner or other person under this

Act that is not paid at the end of 1 month after it becomes due and payable, together with any interest payable on that unpaid contribution and the reasonable expenses of the owners corporation incurred in recovering those amounts.

- (2) The Tribunal may make an order under subsection (1) only:
- (a) on the application of the owners corporation, and
 - (b) if proceedings between the owners corporation and the owner of a lot in the strata scheme or other person are pending before the Tribunal.
- (2A) An owners corporation may, without obtaining an order under this section, recover as a debt in a court of competent jurisdiction, a contribution not paid at the end of 1 month after it becomes due and payable, together with any interest payable on that unpaid contribution and the reasonable expenses of the owners corporation incurred in recovering those amounts.

Note. Clause 6 of Schedule 4 to the *Civil and Administrative Tribunal Act 2013* provides for the transfer of proceedings between the Tribunal and a court which has jurisdiction (and vice versa) if the parties to the proceedings agree or if the Tribunal or court of its own motion or on the application of a party so directs.

1.16 Supreme Court Act 1970 No 52

[1] Section 37 Acting Judges

Omit “The remuneration payable to an acting Judge is to be paid to the acting Judge so long as his or her commission continues in force.” from section 37 (3B).

[2] Section 37 (3C)

Insert after section 37 (3B):

- (3C) The remuneration payable to an acting Judge is to be paid:
- (a) so long as the acting Judge’s commission continues in force, or
 - (b) until the acting Judge has completed or otherwise dealt with matters (as referred to in subsection (3A)),
- whichever is the later.

[3] Section 48 Assignment to the Court of Appeal

Insert “(but not a Judicial Registrar of that Court)” after “Judge of the District Court” in section 48 (1) (a) (iv).

1.17 Surveillance Devices Act 2007 No 64

[1] Section 8 Installation, use and maintenance of optical surveillance devices without consent

Insert after section 8 (2) (d):

- (d1) the use of an optical surveillance device by a law enforcement officer in the conduct of a search or inspection (including the use of an optical surveillance device to record any activity in connection with the search or inspection) that is permitted without a warrant under the following:
- (i) the *Child Protection (Offenders Registration) Act 2000*,
 - (ii) the *Firearms Act 1996*,
 - (iii) the *Restricted Premises Act 1943*,
 - (iv) the *Terrorism (Police Powers) Act 2002*,

[2] Section 8 (3), definition of “search warrant”

Insert after paragraph (a):

- (a1) a provision specified in Schedule 2 to the *Law Enforcement (Powers and Responsibilities) Act 2002*, or
- (a2) Part 3 (Covert search warrants) of the *Terrorism (Police Powers) Act 2002*, or