Passed by both Houses

New South Wales

Justice Legislation Amendment Bill (No 2) 2018

Contents

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

Clerk of the Parliaments

Legislative Council
2018

New South Wales

Justice Legislation Amendment Bill (No 2) 2018

Act No , 2018

An Act to amend various Acts and Regulations relating to courts and crimes and other related matters.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Justice Legislation Amendment Act (No 2) 2018*.

2 Commencement

(1) This Act commences on the date of assent to this Act, except as provided by this section.

(2) Schedule 1.10 [14], 1.14, 1.16, 1.17 [1]–[4] and [8], 1.18 [1]–[4], 1.19 and 1.20 commence on a day or days to be appointed by proclamation.

3 Explanatory notes

The matter appearing under the heading "Explanatory note" in Schedules 1 and 2 does not form part of this Act.

Schedule 1 Principal amendments

1.1 Children (Criminal Proceedings) Act 1987 No 55

Section 33 Penalties

Insert after section 33 (6):

(7) The functions of a juvenile justice officer in relation to the supervision of a person who has entered into a good behaviour bond or been released on probation under this section may be exercised by a community corrections officer (within the meaning of the *Crimes (Administration of Sentences) Act 1999*), and the functions of a community corrections officer in relation to the supervision of any such person may be exercised by a juvenile justice officer, in accordance with any arrangements between Juvenile Justice NSW and Corrective Services NSW.

Explanatory note

The proposed amendment provides that the functions of a juvenile justice officer in relation to the supervision of a person who has entered into a good behaviour bond or been released on probation may be exercised by a community corrections officer and, similarly, that the functions of a community corrections officer may be exercised by a juvenile justice officer, in accordance with any arrangements between Juvenile Justice NSW and Corrective Services NSW. This enables the type of officer supervising a person to be changed without an application being made to the Children's Court to vary the bond or probation.

1.2 Children (Detention Centres) Act 1987 No 57

[1] Section 40 Application of Part

Omit section 40 (2).

[2] Section 40 (3)

Omit "Despite subsection (2), this Part continues to apply to a juvenile offender".

Insert instead "This Part also applies to a juvenile offender".

[3] Section 40 (3) (a1)

Insert after section 40 (3) (a):

(a1) the offender is detained in a detention centre (whether or not the offender has reached the age of 18 years), or

Explanatory note

Item [3] of the proposed amendments provides that an offender who is over the age of 18 years and detained in a detention centre and who becomes eligible for parole is to be dealt with under the juvenile parole provisions of the *Children (Detention Centres) Act 1987*, rather than the adult parole provisions under the *Crimes (Administration of Sentences) Act 1999*. Items [1] and [2] are consequential amendments.

1.3 Court Suppression and Non-publication Orders Act 2010 No 106

[1] Section 8 Grounds for making an order

Insert after section 8 (2):

(3) Despite subsection (1) (d), a court may make a suppression order or non-publication order on the grounds that the order is necessary to avoid causing undue distress or embarrassment to a defendant in criminal proceedings involving an offence of a sexual nature only if there are exceptional circumstances.

[2] Schedule 1 Savings, transitional and other provisions

Omit clause 1 (1). Insert instead:

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.

Explanatory note

Item [1] of the proposed amendments provides that a court may make a suppression order or non-publication order to avoid causing undue distress or embarrassment to a defendant in criminal proceedings involving an offence of a sexual nature only if there are exceptional circumstances.

Item [2] enables savings and transitional regulations to be made as a consequence of any amendments to the Act.

1.4 Crimes Act 1900 No 40

[1] Section 91FB Child abuse material—meaning

Insert ", whether bare or covered by underwear" after "anal area" in section 91FB (4) (a).

[2] Section 91FB (4) (b)

Insert ", or transgender or intersex person identifying as female, whether or not the breasts are sexually developed" after "person".

[3] Section 91I Definitions

Insert ", whether or not the breasts are sexually developed" after "as female" in paragraph (b) of the definition of ***private parts*** in section 91I (1).

[4] Section 91N Definitions

Insert ", whether or not the breasts are sexually developed" after "as female" in paragraph (b) of the definition of ***private parts*** in section 91N (1).

[5] Section 193A Definitions

Insert after paragraph (a) of the definition of ***serious offence***:

(a1) an offence against a law of the Commonwealth that may be prosecuted on indictment, or

Explanatory note

Items [2]–[4] of the proposed amendments make it clear that the breasts of a female person, or transgender or intersex person identifying as female, are private parts whether or not the breasts are sexually developed.

Items [1] and [2] amend the definition of ***private parts*** in relation to child abuse material offences to make it consistent with the definition used in offences relating to voyeurism and recording intimate images by providing that:

(a) a person's genital and anal areas are private parts whether bare or covered by underwear, and

(b) the breasts of a transgender or intersex person identifying as female are private parts.

Item [5] provides that a Commonwealth indictable offence is a serious offence for the purposes of money laundering offences.

1.5 Crimes (Administration of Sentences) Act 1999 No 93

[1] Section 3 Interpretation

Insert "or any person (however described) who is authorised by the Commissioner to be in charge of the correctional centre" after "in charge of the correctional centre" in the definition of ***governor*** in section 3 (1).

[2] Section 165 Parole Authority may reinstate revoked intensive correction order

Omit "must" from section 165 (3). Insert instead "may".

[3] Section 256B Information to be provided to victims

Insert after section 256B (1) (f):

(g) a decision by the Commissioner to issue a local leave permit in respect of the offender,

(h) the exercise, by the Governor, of the prerogative of mercy in respect of the offender.

[4] Section 256B (1A)

Insert after section 256B (1):

(1A) In addition, the Commissioner may provide the following information to a victim of a high risk offender (within the meaning of section 271A) whose name is recorded in the Victims Register, if requested to do so by the victim or at the Commissioner's discretion:

(a) if the offender is the subject of an extended supervision order under the *Crimes (High Risk Offenders) Act 2006* or the *Terrorism (High Risk Offenders) Act 2017*—the release of the offender from custody at the commencement of the extended supervision order or the return of the offender to custody following a failure to comply with the requirements of the order,

(b) if the offender is the subject of a continuing detention order under the *Crimes (High Risk Offenders) Act 2006* or the *Terrorism (High Risk Offenders) Act 2017*—the expiry of the order and the release of the offender from custody.

Explanatory note

Item [1] of the proposed amendments provides that a governor of a correctional centre includes a person authorised by the Commissioner of Corrective Services (the ***Commissioner***) to be in charge of the centre.

Item [2] provides that the State Parole Authority may refer an offender for a suitability assessment before reinstating a revoked intensive correction order, rather than being required to do so.

Item [3] provides that the Commissioner may notify a victim of an offender if the offender has been issued with a local leave permit or is to be released because the Governor exercises the prerogative of mercy.

Item [4] provides that the Commissioner may notify a victim of a high risk offender who is subject to an extended supervision order or continuing detention order under the *Crimes (High Risk Offenders) Act 2006* or the *Terrorism (High Risk Offenders) Act 2017* if the offender is released from custody or returned to custody for failing to comply with an order.

1.6 Crimes (Domestic and Personal Violence) Act 2007 No 80

Section 41 Measures to protect children in proceedings

Insert after section 41 (1) (e):

(f) proceedings in which an apprehended violence order is sought or proposed to be made against a child,

(g) proceedings in relation to an application for the variation or revocation of an apprehended violence order made against a child.

Explanatory note

The proposed amendment provides that proceedings relating to an apprehended violence order against a child are to be held in closed court, as is currently the case for proceedings in which a child is a witness or a protected person.

1.7 Crimes (Sentencing Procedure) Act 1999 No 92

Section 21A Aggravating, mitigating and other factors in sentencing

Insert "person working at a hospital (other than a health worker)," after "such as a" in section 21A (2) (l).

Explanatory note

The proposed amendment includes a person working at a hospital as an example of a victim who is vulnerable because of the victim's occupation. It is an aggravating factor to be taken into account in sentencing if the victim is vulnerable.

1.8 Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017 No 53

[1] Schedule 1 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92—principal amendments

Omit proposed section 17C (1) (b) in Schedule 1 [17]. Insert instead:

(b) such a request may be made at the following times only:

(i) after finding an offender guilty of an offence and before a sentence is imposed,

(ii) during sentencing proceedings after a sentence of imprisonment has been imposed on the offender,

(iii) during proceedings to impose, vary or revoke an additional or further condition on a community correction order or conditional release order that has been made in respect of the offender,

(iv) during proceedings to correct a sentencing error in accordance with section 43,

(v) during proceedings to re-sentence an offender after a court has revoked the offender's community correction order or conditional release order.

[2] Schedule 1 [17], proposed section 17D (1A)

Insert after proposed section 17D (1):

(1A) However, the sentencing court is not required to obtain an assessment report (except if required under subsection (2) or (4)) if it is satisfied that there is sufficient information before it to justify the making of an intensive correction order without obtaining an assessment report.

[3] Schedule 1 [29], proposed section 69 (1) (a)

Omit "the assessment report referred to in section 17D (1) relating".

Insert instead "any assessment report obtained in relation".

[4] Schedule 1 [29], proposed section 69 (1) (b)

Omit "such evidence from a community corrections officer as".

Insert instead "evidence from a community corrections officer and any other information before the court that".

[5] Schedule 1 [29], proposed section 69 (3)

Insert after proposed section 69 (2):

(3) The sentencing court may not make an intensive correction order in respect of an offender who resides, or intends to reside, in another State or Territory,

unless the State or Territory is declared by the regulations to be an approved jurisdiction.

[6] Schedule 1 [29], proposed section 73A (1A) and (1B)

Insert after proposed section 73A (1):

(1A) Despite subsection (1), the sentencing court is not required to impose an additional condition if the court is satisfied there are exceptional circumstances.

(1B) The sentencing court must make a record of its reasons for not imposing an additional condition. The failure of the sentencing court to do so does not invalidate the sentence.

[7] Schedule 1 [29], proposed section 73A (2) (d)

Insert "or the number of hours prescribed by the regulations in respect of the class of offences to which the relevant offence belongs, whichever is the lesser" after "750 hours".

[8] Schedule 1 [29], proposed section 73A (5)

Insert after proposed section 73A (4):

(5) The period during which a community service work condition requiring the performance of a specified number of hours of community service work is in force must not be less than the period prescribed by the regulations in respect of the specified number of hours of community service work.

[9] Schedule 1 [31], proposed section 89 (2) (b)

Insert "or the number of hours prescribed by the regulations in respect of the class of offences to which the relevant offence belongs, whichever is the lesser" after "500 hours".

[10] Schedule 1 [31], proposed section 89 (2) (g) (i)

Omit "or (iii)".

[11] Schedule 1 [31], proposed section 89 (2) (g) (iii)

Omit "or" from the end of proposed section 89 (2) (g) (ii) and omit proposed section 89 (2) (g) (iii).

[12] Schedule 1 [31], proposed section 89 (2A)

Insert after proposed section 89 (2):

(2A) The functions of a community corrections officer under a supervision condition may be exercised by a juvenile justice officer and the functions of a juvenile justice officer under a supervision condition may be exercised by a community corrections officer, in accordance with any arrangements between Corrective Services NSW and Juvenile Justice NSW.

[13] Schedule 1 [31], proposed section 89 (4A)–(4C)

Insert after the note to proposed section 89 (4):

(4A) The sentencing court may not impose a supervision condition on a community correction order in respect of an offender who resides, or intends to reside, in another State or Territory, unless the State or Territory is declared by the regulations to be an approved jurisdiction.

(4B) The sentencing court may not impose a community service work condition on a community correction order in respect of an offender who resides, or intends to reside, in another State or Territory, unless:

(a) the court is satisfied that the offender is able and willing to travel to New South Wales to complete the community service work, or

(b) the State or Territory is declared by the regulations to be an approved jurisdiction.

(4C) The period during which a community service work condition requiring the performance of a specified number of hours of community service work is in force must not be less than the period prescribed by the regulations in respect of the specified number of hours of community service work.

[14] Schedule 1 [31], proposed section 99 (2) (e) (i)

Omit "or (iii)".

[15] Schedule 1 [31], proposed section 99 (2) (e) (iii)

Omit "or" from the end of proposed section 99 (2) (e) (ii) and omit proposed section 99 (2) (e) (iii).

[16] Schedule 1 [31], proposed section 99 (2A)

Insert after proposed section 99 (2):

(2A) The functions of a community corrections officer under a supervision condition may be exercised by a juvenile justice officer and the functions of a juvenile justice officer under a supervision condition may be exercised by a community corrections officer, in accordance with any arrangements between Corrective Services NSW and Juvenile Justice NSW.

[17] Schedule 1 [31], proposed section 99 (3A)

Insert after proposed section 99 (3):

(3A) The sentencing court may not impose a supervision condition on a conditional release order in respect of an offender who resides, or intends to reside, in another State or Territory, unless the State or Territory is declared by the regulations to be an approved jurisdiction.

[18] Schedule 2 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92—savings and transitional provisions

Insert after proposed clause 74 (7):

(8) Section 89 (2A) as inserted by the amending Act applies to a good behaviour bond to which this clause applies.

[19] Schedule 2, proposed clause 75 (8)

Insert after proposed clause 75 (7):

(8) Section 99 (2A) as inserted by the amending Act applies to a good behaviour bond to which this clause applies.

[20] Schedule 3 Amendment of Crimes (Administration of Sentences) Act 1999 No 93

Insert after proposed section 81A (3) in Schedule 3 [5]:

(4) However, the Parole Authority is not required to impose a replacement additional condition if the Parole Authority is satisfied there are exceptional circumstances.

Explanatory note

Items [1]–[19] of the proposed amendments amend the *Crimes (Sentencing Procedure) Act 1999*, which is proposed to be amended by uncommenced provisions of the *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017*.

Item [1] provides that the sentencing court may request an assessment report on an offender at any time during sentencing proceedings before a sentence is imposed and at other specified times during proceedings.

Item [2] provides that the sentencing court is not required to obtain an assessment report before making an intensive correction order if the court has sufficient information before it. Item [3] is a consequential amendment.

Item [4] enables a sentencing court that is deciding whether to make an intensive correction order to have regard to any evidence it considers necessary for that purpose, not only evidence from a community corrections officer.

Item [5] provides that an intensive correction order may not be made in respect of an interstate offender, unless the State or Territory is an approved jurisdiction under the regulations.

Item [6] provides that the sentencing court is not required to impose an additional condition on an intensive correction order if there are exceptional circumstances. The sentencing court is required to make a record of its reasons for not imposing an additional condition.

Items [7] and [9] enable the regulations to prescribe the number of hours of community service work that may be imposed as a condition of an intensive correction order or community correction order.

Item [8] provides that the period during which a community service work condition requiring the performance of a specified number of hours of community service work is in force for an intensive correction order must not be less than the period prescribed by the regulations in respect of the specified number of hours. Item [13] makes a similar amendment in relation to community service work conditions on community correction orders.

Item [12] provides that the functions of a community corrections officer under a supervision condition imposed on a community correction order may be exercised by a juvenile justice officer and, similarly, that the functions of a juvenile justice officer may be exercised by a community corrections officer, in accordance with any arrangements between Corrective Services NSW and Juvenile Justice NSW.This enables the type of officer supervising an offender to be changed without an application being made to the sentencing court to vary the supervision condition. Items [10] and [11] are consequential amendments. Items [14]–[16] make the same amendments in relation to a supervision condition imposed on a conditional release order and items [18] and [19] make the same amendments in relation to supervision under existing orders.

Item [13] provides that the sentencing court may not impose a supervision condition on a community correction order in relation to an interstate offender, unless the State or Territory is an approved jurisdiction under the regulations. The amendment also provides that the sentencing court may not impose a community service work condition for an interstate offender, unless the offender is able and willing to travel to New South Wales to complete the work or resides in an approved jurisdiction.

Item [17] provides that a sentencing court may not impose a supervision condition on a conditional release order in respect of an interstate offender, unless the State or Territory is approved under the regulations.

Item [20] amends the *Crimes (Administration of Sentences) Act 1999* to provide that the State Parole Authority is not required to impose an additional condition on an intensive correction order to replace a revoked additional condition if there are exceptional circumstances.

1.9 Criminal Assets Recovery Act 1990 No 23

[1] Section 10A Proceedings for restraining orders

Insert at the end of section 10A (5) (a) (iii):

or

(iv) the person has not disclosed an interest in property in evidence or a warranty or other representation given or made by the person in proceedings relating to an application for an assets forfeiture order, proceeds assessment order or unexplained wealth order, or examination proceedings under this Act, and the interest to which the application relates is capable of being the subject of an order under section 31A or 31B because of that non-disclosure,

[2] Section 10D Duration of restraining orders

Insert at the end of section 10D (1) (d):

, or

(e) there is an application for an order under section 31A in respect of the interest pending before the Supreme Court, or

(f) there is an unsatisfied order under section 31B in force against the person whose non-disclosure formed the basis of the restraining order or there is an application for such an order pending before the Supreme Court.

[3] Section 20 Effect on restraining order of refusal to make confiscation order

Omit "in respect of interests in property to which the restraining order relates or a proceeds assessment order or unexplained wealth order" from section 20 (1).

Insert instead "or an order under section 31A in respect of interests in property to which the restraining order relates or a proceeds assessment order, an unexplained wealth order or an order under section 31B".

Explanatory note

Item [1] of the proposed amendments provides that the Supreme Court may make a restraining order in respect of a person's interest in property that is capable of being the subject of an assets forfeiture order, proceeds assessment order or unexplained wealth order because the person did not disclose the interest during proceedings in which the New South Wales Crime Commission was seeking such an order in the same way as a restraining order can be made in respect of a person's interest in property that was disclosed.

Item [2] specifies how long a restraining order made in respect of an undisclosed interest in property remains in force.

Item [3] is a consequential amendment.

1.10 Criminal Procedure Act 1986 No 209

[1] Section 275A

Insert after the heading to Part 2 of Chapter 6:

275A NSW Police Force exhibits management system

In any criminal proceedings, the production of one or more exhibit detail sheets certified by a member of the NSW Police Force to have been issued under the authority of the NSW Police Force exhibits management system, and relating to the whole or part of an exhibit identified in the sheets, is prima facie evidence of the dealings with that exhibit that are listed in the sheets, without proof of the signature or appointment of the person purporting to sign the sheets.

[2] Section 279 Compellability of family members to give evidence in certain proceedings

Omit section 279 (1) (a) (not including the note). Insert instead:

(a) a reference to a member of the accused person's family means the spouse or de facto partner of the accused person or a parent (within the meaning of the *Evidence Act 1995*) or child (within the meaning of that Act) of the accused person, and

[3] Section 279 (1) (c)

Omit "the spouse of an accused person".

Insert instead "a member of an accused person's family".

[4] Section 279 (1) (c)

Omit "the spouse" where secondly occurring.

Insert instead "a member of the accused person's family".

[5] Section 279 (2) and (3)

Omit "The spouse of an accused person" wherever occurring.

Insert instead "A member of an accused person's family".

[6] Section 279 (2) (a)

Omit "the spouse". Insert instead "a member of the accused person's family".

[7] Section 279 (2) (b) (ii)

Omit "of the accused person and the spouse".

Insert instead "(within the meaning of the *Evidence Act 1995*) of the accused person".

[8] Section 279 (2A)

Insert after section 279 (2):

(2A) This section does not make a member of an accused person's family (other than the accused person's spouse) compellable to give evidence in proceedings for a domestic violence offence committed on a member of the accused person's family if the accused person is under the age of 18 years.

[9] Section 279 (3)

Omit "the spouse". Insert instead "the family member".

[10] Section 279 (4)

Omit "the spouse of an accused person".

Insert instead "a member of an accused person's family".

[11] Section 279 (4) (a)

Omit "that spouse". Insert instead "that family member".

[12] Section 279 (4) (b)

Omit "the spouse". Insert instead "the family member".

[13] Section 279 (5), (6) and (8)

Omit "the spouse of an accused person" wherever occurring.

Insert instead "a member of an accused person's family".

[14] Chapter 6, Part 2B

Insert after Part 2A of Chapter 6:

Part 2B Terrorism evidence

281G Definitions

(1) In this Part:

accused person, ***criminal investigation***, ***criminal proceedings*** and ***prosecuting authority*** have the same meanings as in Part 2A of this Chapter.

Commonwealth Criminal Code means the Criminal Code set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth.

designated terrorism evidence means any thing that is designated as terrorism evidence by a prosecuting authority, as identified in a terrorism evidence notice.

publish means disseminate or provide access to one or more persons by means of the internet, radio, television or other media.

terrorism evidence means any thing that contains or displays material that:

(a) advocates support for engaging in any terrorist acts or violent extremism, or

(b) relates to planning or preparing for, or engaging in, any terrorist acts or violent extremism, or

(c) advocates joining or associating with a terrorist organisation.

terrorism evidence notice means a notice under this Part that identifies a thing as terrorism evidence.

terrorist act has the same meaning as in Part 5.3 of the Commonwealth Criminal Code.

terrorist organisation has the same meaning as in Division 102 of Part 5.3 of the Commonwealth Criminal Code.

unrepresented accused person means an accused person who is not represented by an Australian legal practitioner.

(2) In this Part:

(a) a reference to an ***accused person*** does not include a reference to an Australian legal practitioner representing the accused person, and

(b) a reference to a ***prosecuting authority*** does include a reference to an Australian legal practitioner representing the prosecuting authority.

281H Accused person not entitled to copy of terrorism evidence

(1) A prosecuting authority is not required and cannot be required (whether by subpoena or any other procedure), in or in connection with any criminal investigation or criminal proceedings, to give an accused person a copy of any thing designated by the prosecuting authority as terrorism evidence.

(2) A prosecuting authority may designate a thing as terrorism evidence only if the prosecuting authority reasonably considers the thing to be terrorism evidence.

(3) This section applies despite anything to the contrary in this or any other Act, or any other law.

281I Procedure for dealing with terrorism evidence

(1) If, but for this Part, a prosecuting authority would be required, in or in connection with any criminal investigation or criminal proceedings, to give to an accused person any thing designated by the prosecuting authority as terrorism evidence, the prosecuting authority must:

(a) identify the thing that has been designated as terrorism evidence in a written notice (a ***terrorism evidence notice***), and

(b) serve the notice on:

(i) in the case of an unrepresented accused person—the accused person, or

(ii) in the case of an accused person represented by an Australian legal practitioner—the Australian legal practitioner.

(2) A terrorism evidence notice must also contain the following information:

(a) that the prosecuting authority is not required to, and will not, give the accused person a copy of designated terrorism evidence,

(b) that an unrepresented accused person may view or listen to the designated terrorism evidence at a place nominated by the prosecuting authority and under the supervision of the prosecuting authority,

(c) the name and contact details of the person responsible for arranging for the unrepresented accused person to view or listen to the designated terrorism evidence on behalf of the prosecuting authority,

(d) that the prosecuting authority will give an Australian legal practitioner representing the accused person a copy of the designated terrorism evidence but the Australian legal practitioner is not to allow the accused person to view or listen to the evidence except under the supervision of the Australian legal practitioner,

(e) that it is an offence for an accused person to be in possession of designated terrorism evidence and for an Australian legal practitioner to give possession of designated terrorism evidence to the accused person.

281J Return of designated terrorism evidence

(1) A prosecuting authority may also serve a terrorism evidence notice in respect of evidence that it has provided to the accused person (including by subpoena or any other procedure) in or in connection with a criminal investigation or criminal proceedings that it later designates as terrorism evidence.

(2) The notice is to identify the thing that has been designated as terrorism evidence, and is to be served on the accused person or the Australian legal practitioner who represents the accused person, in the same way as a notice under section 281I.

(3) A terrorism evidence notice that is served under this section must also contain the following information:

(a) that the accused person must return the designated terrorism evidence, if it is in the person's possession, to the prosecuting authority within the period of time specified in the notice (not being less than 7 days after the notice is served on the accused person),

(b) that an unrepresented accused person may, after having returned the designated terrorism evidence, view or listen to the evidence at a place nominated by the prosecuting authority and under the supervision of the prosecuting authority,

(c) the name and contact details of the person responsible for arranging for the unrepresented accused person to view or listen to the designated terrorism evidence on behalf of the prosecuting authority,

(d) that an Australian legal practitioner representing an accused person may retain the designated terrorism evidence but is not to allow the accused person to view or listen to the designated terrorism evidence except under the supervision of the Australian legal practitioner,

(e) that it is an offence for an accused person to be in possession of designated terrorism evidence and for an Australian legal practitioner to give possession of designated terrorism evidence to the accused person.

281K Procedures for giving access to designated terrorism evidence to unrepresented accused person

(1) After receiving a terrorism evidence notice, an unrepresented accused person may give the prosecuting authority a written notice (an ***access request notice***) that indicates that the unrepresented accused person requires access to the designated terrorism evidence.

(2) The prosecuting authority must, as soon as practicable after receiving an access request notice, give the unrepresented accused person reasonable access to the designated terrorism evidence so as to enable them to view or listen to (but not copy) the evidence. This may require access to be given on more than one occasion.

(3) The prosecuting authority may require any such access to take place subject to such conditions as the prosecuting authority considers appropriate to ensure that there is no unauthorised reproduction or circulation of the designated terrorism evidence and that its integrity is protected.

(4) Without limiting subsection (3), the prosecuting authority may require any such access to take place under the supervision of the prosecuting authority or a person assisting the prosecuting authority.

(5) A person who is given access to designated terrorism evidence by a prosecuting authority under this section must not, without the authority of the prosecuting authority:

(a) copy, or permit a person to copy, the designated terrorism evidence, or

(b) give the designated terrorism evidence to another person, or

(c) remove the designated terrorism evidence from the custody of the prosecuting authority, or

(d) publish the designated terrorism evidence.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

281L Improper copying or circulation of designated terrorism evidence

(1) A person who has possession of designated terrorism evidence and who knows, or ought reasonably to know, that it is designated terrorism evidence, must not copy, or permit a person to copy, the evidence, give possession of the evidence to another person or publish the evidence except:

(a) for the legitimate purposes of a criminal investigation or criminal proceedings, or

(b) if the person is a public official, in the proper exercise of the person's public official functions (including any functions relating to education or training).

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

(2) The exceptions provided for by subsection (1) (a) and (b) do not authorise:

(a) an Australian legal practitioner representing an accused person to give possession of designated terrorism evidence to the accused person, except while the accused person is under the supervision of the Australian legal practitioner, or

(b) an accused person to copy, or to permit a person to copy, or to publish any designated terrorism evidence or to give possession of any designated terrorism evidence to any other person other than an Australian legal practitioner representing the person or the prosecuting authority.

(3) In this section:

public official means a public official (within the meaning of the *Independent Commission Against Corruption Act 1988*) who has possession of designated terrorism evidence as a result of the exercise of, or an opportunity that arose in the exercise of, public official functions in or in connection with a criminal investigation or criminal proceedings.

281M Accused person not to possess designated terrorism evidence

(1) An accused person who knows, or ought reasonably to know, that evidence is designated terrorism evidence must not be in possession of that evidence, except while under the supervision of:

(a) in the case of an unrepresented accused person—the prosecuting authority or a person assisting the prosecuting authority, or

(b) in the case of an accused person represented by an Australian legal practitioner—the Australian legal practitioner.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

(2) This section does not apply to designated terrorism evidence that is in the possession of an accused person if:

(a) a terrorism evidence notice has been served on the accused person requiring the person to return the designated terrorism evidence to the prosecuting authority, and

(b) the period within which the designated terrorism evidence must be returned has not ended.

281N Prosecuting authority entitled to retain possession of terrorism evidence during criminal proceedings

(1) If, during any criminal proceedings, an unrepresented accused person is given terrorism evidence, or a copy of terrorism evidence, by the prosecuting authority in the proceedings, the court must, on application by the prosecuting authority, direct the unrepresented accused person to return the terrorism evidence or copy to the custody of the prosecuting authority at or before the end of each day during which the proceedings are heard.

(2) At the completion of any criminal proceedings in which terrorism evidence is tendered by the prosecuting authority, or terrorism evidence given to the unrepresented accused person by the prosecuting authority is tendered by the unrepresented accused person, the court must, on application by the prosecuting authority, direct that the terrorism evidence, and any copies of the terrorism evidence made for the purposes of the proceedings, be returned to the custody of the prosecuting authority.

[15] Section 298A

Insert after section 298:

298A Victim cannot be required to identify counsellor

(1) A person cannot seek to compel (whether by subpoena or any other procedure) a victim or alleged victim of a sexual assault offence to produce a document or give evidence that would disclose the identity of the victim or alleged victim's counsellor in, or in connection with, criminal proceedings or preliminary criminal proceedings.

(2) In this section:

counsellor of a victim or alleged victim of a sexual assault offence means a counsellor (within the meaning of section 296 (4)) to whom or by whom a counselling communication that is a protected confidence is made.

[16] Schedule 2 Savings, transitional and other provisions

Omit "to continue" from clause 84 (7).

[17] Schedule 2, clause 92 (3)

Insert after clause 92 (2):

(3) To avoid doubt, section 20 applies to an indictment presented at a pre-recorded evidence hearing.

[18] Schedule 2

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

Part Provisions consequent on enactment of Justice Legislation Amendment Act (No 2) 2018

Definition

In this Part, ***amending Act*** means the *Justice Legislation Amendment Act (No 2) 2018*.

Compellability of family members

Section 279, as amended by the amending Act, does not apply in relation to proceedings the hearing of which began before the section was amended. Section 279, as in force before it was amended, continues to apply in relation to such proceedings.

Terrorism evidence

Part 2B of Chapter 6, as inserted by the amending Act, extends to a criminal investigation or criminal proceedings commenced but not finally determined before the commencement of that Part.

Sexual assault communications privilege

Section 298A, as inserted by the amending Act, extends to proceedings commenced but not finally determined before the commencement of that section.

Explanatory note

Item [1] of the proposed amendments provides that an exhibit detail sheet that is issued under the NSW Police Force exhibits management system and that is certified by a member of the NSW Police Force is prima facie evidence of the dealings with the exhibit that are listed in the sheet.

Item [5] extends the current provision that compels the spouse or de facto partner of an accused person to give evidence in proceedings for a domestic violence or child assault offence so that a parent or child of an accused person is also compellable to give evidence in those proceedings. Item [8] provides that family members of an accused person (other than the spouse) are not compellable in domestic violence proceedings, if the accused person is under the age of 18 years. They may still be compellable under the *Evidence Act 1995*. Items [2]–[4], [6], [7] and [9]–[13] are consequential amendments.

Item [14] inserts a new scheme that restricts access to evidence in a criminal investigation or criminal proceedings that the prosecuting authority reasonably considers to be terrorism evidence.

Proposed section 281G contains relevant definitions. A ***prosecuting authority*** means the Director of Public Prosecutions, a police officer or other public official who is responsible for a criminal

investigation or criminal proceedings. ***Terrorism evidence*** means any thing that contains or displays material that:

(a) advocates support for engaging in any terrorist acts or violent extremism, or

(b) relates to planning or preparing for, or engaging in, any terrorist acts or violent extremism, or

(c) advocates joining or associating with a terrorist organisation.

Proposed section 281H provides that a prosecuting authority is not required, in or in connection with a criminal investigation or criminal proceedings, to give evidence to an accused person that it designates as terrorism evidence. A prosecuting authority may designate a thing as terrorism evidence only if it reasonably considers it to be terrorism evidence.

Proposed section 281I requires a prosecuting authority to notify an unrepresented accused person, or the Australian legal practitioner representing an accused person, that evidence has been designated as terrorism evidence and will not be provided to the accused person. The notice must also specify how the unrepresented accused person may view the evidence under the supervision of the prosecuting authority and indicate that an accused person who is represented will be able to view the evidence under the supervision of the accused person's Australian legal practitioner, who will be given the evidence.

Proposed section 281J enables a prosecuting authority to require an accused person to return any terrorism evidence in the accused person's possession that the prosecuting authority has later designated as terrorism evidence.

Proposed section 281K sets out how an unrepresented accused person will be given access to designated terrorism evidence. It will be an offence for a person who is given access to designated terrorism evidence by a prosecuting authority to copy or publish the evidence, to give the evidence to another person or to remove the evidence from the custody of the prosecuting authority. The maximum penalty is 100 penalty units or imprisonment for 2 years, or both.

Proposed section 281L makes it an offence for a person who has possession of designated terrorism evidence and who knows, or ought reasonably to know, it is designated terrorism evidence to copy or publish the evidence or to give the evidence to another person, except for the legitimate purposes of a criminal investigation or criminal proceedings or in the proper exercise of a public official's function. The maximum penalty is 100 penalty units or imprisonment for 2 years, or both. The proposed section makes it clear that an Australian legal practitioner is not permitted to give designated terrorism evidence to an accused person and that an accused person must not copy or publish designated terrorism evidence or give the evidence to any person except the accused person's Australian legal practitioner or the prosecuting authority.

Proposed section 281M makes it an offence for an accused person who knows, or ought reasonably to know, that evidence is designated terrorism evidence to be in possession of that evidence. The maximum penalty is 100 penalty units or imprisonment for 2 years, or both.

Proposed section 281N relates to terrorism evidence that has not been designated as terrorism evidence and that is given to an accused person or tendered to the court during criminal proceedings. The court must, on request by the prosecuting authority, require such evidence to be returned to the prosecuting authority at the end of each day of criminal proceedings or at the completion of the proceedings.

Item [15] amends the current prohibition on the disclosure of certain confidential sexual assault counselling communications to provide that a person cannot seek to compel (whether by subpoena or any other procedure) a victim of a sexual assault offence to disclose the identity of the victim's counsellor.

Items [16] and [17] amend provisions relating to a pilot scheme that enables a child who is a complainant or witness in child sexual assault proceedings to give evidence by means of a pre-recorded hearing. Item [16] clarifies that a child complainant or witness is able to give evidence by means of a pre-recorded hearing even if the child becomes an adult before the proceedings are finalised. Item [17] clarifies that an indictment presented at a pre-recorded hearing cannot be amended after it has been presented, except in certain circumstances.

Item [18] contains transitional provisions.

1.11 Criminal Records Act 1991 No 8

Section 7 Which convictions are capable of becoming spent?

Insert after section 7 (4):

(5) A reference in this section to a prison sentence means, in the case of an aggregate sentence of imprisonment (within the meaning of the *Crimes (Sentencing Procedure) Act 1999*) imposed in respect of more than 1 offence, each prison sentence that would have been imposed for each offence had

separate sentences been imposed instead of an aggregate sentence, as recorded by the court that imposed the sentence.

Explanatory note

The proposed amendment makes it clear that if an aggregate sentence is imposed on a person for a series of offences, it is the individual prison sentences that would have been imposed for each offence that are to be used for the purpose of determining whether each of the person's convictions is capable of becoming spent. Only prison sentences of 6 months or less are capable of becoming spent.

1.12 Drug Misuse and Trafficking Act 1985 No 226

[1] Section 39CA

Insert after section 39C:

39CA Testing of substances

After determining the quantity of a substance to which this Part applies, the identity of the substance may be determined on the basis of the testing and analysis of a representative sample of the substance in accordance with the regulations.

[2] Schedule 1

Insert "(excluding any exception listed under the matter relating to Tetrahydrocannabinol and its alkyl homologues)" after "Cannabis leaf".

[3] Schedule 3, heading

Omit "**and transitional**". Insert instead "**, transitional and other**".

[4] Schedule 3, clause 4

Insert after clause 3:

4 Testing of substances

Section 39CA, as inserted by the *Justice Legislation Amendment Act (No 2) 2018*, extends to a substance to which Part 3A applies that was in the custody of a member of the NSW Police Force on the commencement of that section.

Explanatory note

Item [1] of the proposed amendments provides that the identity of a substance that is in the custody of the NSW Police Force (such as a prohibited plant or prohibited drug) may be determined by using testing and analysis of a representative sample of the substance. Item [4] is a transitional provision and item [3] is a consequential amendment.

Item [2] is a law revision amendment consequent on an amendment made to the *Drug Misuse and Trafficking Act 1985* by Schedule 1.11 to the *Justice Legislation Amendment Act (No 2) 2017*. The amendment makes it clear that certain hemp seed food products that have a low concentration of tetrahydrocannabinol are not a prohibited drug, whether in the form of cannabis oil or cannabis leaf (which is defined to include cannabis seeds).

1.13 Government Information (Public Access) Act 2009 No 52

Schedule 1 Information for which there is conclusive presumption of overriding public interest against disclosure

Insert after clause 15:

16 Information provided to High Risk Offenders Assessment Committee

It is to be conclusively presumed that there is an overriding public interest against disclosure of information contained in any document prepared for the

purposes of the High Risk Offenders Assessment Committee established by the *Crimes (High Risk Offenders) Act 2006* or any of its subcommittees.

Explanatory note

The proposed amendment provides for a conclusive presumption under the *Government Information (Public Access) Act 2009* that there is an overriding public interest against disclosure of information contained in any document prepared for the purposes of the High Risk Offenders Assessment Committee established by the *Crimes (High Risk Offenders) Act 2006* or any of its subcommittees.

1.14 Guardianship Act 1987 No 257

[1] Section 3F Persons who are "parties" to proceedings under this Act

Insert after section 3F (3) (e):

(e1) the Public Guardian,

[2] Section 3F (4) (e1) and (e2)

Insert after section 3F (4) (e):

(e1) the Public Guardian,

(e2) the NSW Trustee,

Explanatory note

Item [1] of the proposed amendments extends the list of persons who are parties to proceedings in the NSW Civil and Administrative Tribunal relating to a review of a guardianship order to include the Public Guardian. Item [2] includes the Public Guardian and the NSW Trustee and Guardian as parties to proceedings relating to a review of an appointment of an enduring guardian.

1.15 Industrial Relations Act 1996 No 17

[1] Section 383 Procedure

Insert ", the *Civil Procedure Act 2005*" after *"Criminal Procedure Act 1986"* in section 383 (1).

[2] Section 383 (1)

Omit "(but not the *Civil Procedure Act 2005*)".

Explanatory note

Items [1] and [2] of the proposed amendments apply the *Civil Procedure Act 2005* to proceedings in the Local Court before the Chief Industrial Magistrate or other Industrial Magistrate.

1.16 Land and Environment Court Act 1979 No 204

[1] Section 20 Class 4—environmental planning and protection, development contract and strata renewal plan civil enforcement

Insert in alphabetical order in section 20 (3) (a):

Coal Mine Subsidence Compensation Act 2017,

[2] Section 21 Class 5—environmental planning and protection summary enforcement

Insert after section 21 (hf):

(hg) proceedings under section 55 of the *Coal Mine Subsidence Compensation Act 2017*,

Explanatory note

Item [1] of the proposed amendments provides that certain civil proceedings under the *Coal Mine Subsidence Compensation Act 2017* are to be dealt with in Class 4 of the Court's jurisdiction. Item [2] provides that summary proceedings under that Act are to be dealt with in Class 5 of the Court's jurisdiction.

1.17 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

[1] Section 3 Interpretation

Insert "(including a knife blade, razor blade or any other blade)" after "knife" in paragraph (b) of the definition of ***dangerous implement*** in section 3 (1).

[2] Section 23

Insert in Division 1 of Part 4, after section 22:

23 Power to search persons for dangerous implements without warrant in public places and schools

(1) A police officer may, without a warrant, stop, search and detain a person who is in a public place or a school, and anything in the possession of or under the control of the person, if the police officer suspects on reasonable grounds that the person has a dangerous implement unlawfully in the person's possession or under the person's control.

(2) To avoid doubt, if the person is in a school and is a student at the school, the police officer may also search the person's locker at the school and examine any bag or other personal effect that is inside the locker.

(3) For the purposes of this section, the fact that a person is present in a location with a high incidence of violent crime may be taken into account in determining whether there are reasonable grounds to suspect that the person has a dangerous implement in the person's possession or under the person's control.

(4) In conducting a search of a student in a school under this section, a police officer must, if reasonably possible to do so, allow the student to nominate an adult who is on the school premises to be present during the search.

(5) A police officer may seize and detain anything found as a result of a search under this section that the police officer has reasonable grounds to suspect is a dangerous implement that is unlawfully in the person's possession or under the person's control.

(6) For the purposes of this section:

(a) ***locker*** includes any facility for the storage of a student's personal effects, and

(b) anything inside a person's locker is taken to be under the control of the person.

[3] Part 4, Division 2 Additional personal search and seizure powers in public places and schools

Omit the Division.

[4] Section 82 Entry by invitation

Omit "subsection (1)" from section 82 (3A). Insert instead "this section".

[5] Section 94A Application by occupier for review by a Magistrate of crime scene warrant

Omit "an authorised officer" from section 94A (2). Insert instead "a Magistrate".

[6] Section 94A (4)

Omit "the authorised officer". Insert instead "the Magistrate".

[7] Section 117 Certain times to be disregarded in calculating investigation period

Insert after section 117 (1) (n):

(o) any time that is reasonably required for the person to undertake a breath test or breath analysis or to provide a blood or urine sample under Division 4 of Part 10.

[8] Section 198A Giving of directions to groups of persons

Insert "(or the warning referred to in section 198 (6) in the case of a direction given under section 198)" after "the direction" in section 198A (2).

Explanatory note

Item [2] of the proposed amendments amends an existing police power to require a person in a public place or a school to submit to a search of the person (or a student's locker) if the police officer suspects on reasonable grounds that the person has a dangerous implement. A police officer will be able to stop, search and detain a person who is in a public place or a school (and to search a school student's locker) in those circumstances. The police officer will also be able to seize and detain any dangerous implement found during a search, instead of the existing power to require the person to produce any dangerous implement or other metal object. Item [3] removes the offence of failing to comply with a police officer's requirements relating to a search and removes a power to confiscate dangerous implements, which are no longer necessary because of the amended powers. Item [1] is a consequential amendment.

Item [5] provides that an occupier of premises in respect of which a crime scene warrant is issued may apply to a Magistrate (and no longer to a registrar of the Local Court) for a review of the warrant. Item [6] is a consequential amendment.

Item [7] provides that the time taken for a person to undertake a breath test or breath analysis or to provide a blood or urine sample under Division 4 of Part 10 (which applies in relation to an alleged offence under section 25A (2) of the *Crimes Act 1900*) is not to be included when calculating the investigation period that begins when a person is arrested and is limited to 6 hours (unless extended by a warrant).

Item [8] provides that when a police officer gives a move on direction to a group of intoxicated persons in a public place, the police officer is not required to repeat the associated warning (a warning that it is an offence to be intoxicated and disorderly in a public place at any time within 6 hours after the move on direction is given) to each person in the group.

Item [4] corrects a cross-reference.

1.18 Mental Health (Forensic Provisions) Act 1990 No 10

[1] Section 33 Mentally ill persons

Omit "employed in the Department of Justice" from section 33 (5A) (a).

[2] Section 33 (5AA) and (5AB)

Insert after section 33 (5A):

(5AA) A function conferred on a juvenile justice officer by an order under this section is taken to be a function under the *Children (Detention Centres) Act 1987* and the juvenile justice officer has the same functions in respect of the defendant as the officer has in respect of a detainee under that Act and the regulations under that Act.

(5AB) If a correctional officer has power under an order under this section to take a defendant to or from a place, that power is taken to be a function under the *Crimes (Administration of Sentences) Act 1999* and the correctional officer has the same functions in respect of the defendant as the officer has in respect of an inmate under that Act and the regulations under that Act.

[3] Section 33 (5C) and (5D)

Insert after section 33 (5B):

(5C) An order under subsection (1) (b) or (1D) (b) that a defendant be brought back before a Magistrate or authorised officer may be satisfied by taking the defendant to an appropriate police officer for the making of a bail decision in respect of the defendant.

(5D) An appropriate police officer may make a bail decision in respect of a defendant brought before the appropriate police officer under this section (despite section 43 (3) of the *Bail Act 2013*).

[4] Section 33 (6)

Omit the subsection. Insert instead:

(6) In this section:

appropriate police officer means a police officer who may make a bail decision under the *Bail Act 2013* in respect of a person accused of an offence who is present at a police station.

authorised officer has the same meaning as in the *Criminal Procedure Act 1986*.

correctional officer has the same meaning as in the *Crimes Administration of Sentences) Act 1999*.

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

[5] Section 39 Effect of finding and declaration of mental illness

Omit "the Minister for Health and" from section 39 (3).

Explanatory note

Item [2] provides that a juvenile justice officer or correctional officer who is ordered to take a defendant to a mental health facility for a mental health assessment has the same functions in respect of the defendant (including powers to restrain, search and use reasonable force and safeguards applying to the use of those powers) as the officer otherwise has in respect of a juvenile detainee or adult inmate.

Item [3] enables a defendant, following a mental health assessment, to be taken to a police station for a police officer to decide whether or not to grant the defendant bail, instead of being taken before a Magistrate or authorised officer.

Item [4] inserts relevant definitions and item [1] is a consequential amendment.

Item [5] removes the requirement for the District or Supreme Court to notify the Minister for Health of the making of an order detaining or releasing an accused person following a jury's return of a special verdict that the person was not guilty of an offence by reason of mental illness.

1.19 Powers of Attorney Act 2003 No 53

Section 35 Who are interested persons and parties in relation to applications

Insert after section 35 (2) (c):

(c1) the NSW Trustee and Guardian,

Explanatory note

The proposed amendment extends the list of persons who are parties to proceedings in the Supreme Court or the NSW Civil and Administrative Tribunal relating to a review of an enduring power of attorney to include the NSW Trustee and Guardian.

1.20 Succession Act 2006 No 80

[1] Section 22 Court must be satisfied about certain matters

Omit "allow representation of all persons" from section 22 (e).

Insert instead "allow representation, as the Court considers appropriate, of persons".

[2] Section 91 Grant of probate or administration to enable application to be dealt with

Omit "the applicant" from section 91 (2).

Insert instead "any person the Court considers appropriate".

Explanatory note

Item [1] of the proposed amendments clarifies an existing provision that applies in an application by a person to make, alter or revoke a will of a person who lacks testamentary capacity. The Supreme Court (the ***Court***) is currently required to be satisfied that adequate steps have been taken to allow representation of all persons with a legitimate interest in the application. The amendment makes it clear that the Court can determine the appropriate level of representation of those persons.

Item [2] provides that, when there is an application before the Court for a family provision order or a notional estate order in respect of an estate, the Court may grant interim administration of the estate to any person the Court considers appropriate, rather than only to the person applying for the family provision order or notional estate order.

1.21 Supreme Court Act 1970 No 52

Section 69 Proceedings in lieu of writs

Omit section 69 (3). Insert instead:

(3) The jurisdiction of the Court to grant any relief or remedy in the nature of a writ of certiorari includes, if the Court is satisfied that the ultimate determination of a court or tribunal in any proceedings has been made on the basis of an error of law that appears on the face of the record of the proceedings:

(a) jurisdiction to quash the ultimate determination of the court or tribunal, and

(b) if the Court determines that, as a matter of law, only one particular determination should have been made by the court or tribunal, jurisdiction to make such judgment or orders as are required for the purpose of finally determining the proceedings.

Explanatory note

The proposed amendment makes it clear that the Supreme Court may, if it determines that a court or tribunal has made its ultimate determination on the basis of an error of law that appears on the face of the record of the proceedings:

(a) quash the determination of the court or tribunal, and

(b) if the Supreme Court determines that, as a matter of law, only one particular determination should have been made by the court or tribunal, make such judgment or orders as are required to finally determine the proceedings.

The amendment addresses a concern raised in *Morgan v District Court of New South Wales* [2017] NSWCA 105 relating to the limitation on the power of the Court of Appeal to make orders finally disposing of a matter (rather than remitting the matter to the lower court concerned).

1.22 Terrorism (High Risk Offenders) Act 2017 No 68

[1] Section 4 Definitions

Insert "or the capacity of intelligence agencies (for example, the Australian Security Intelligence Organisation) to carry out their functions" after "such acts" in paragraph (a) of the definition of ***terrorism intelligence*** in section 4 (1).

[2] Section 4 (1), paragraph (b) of the definition of "terrorism intelligence"

Insert "or investigations by intelligence agencies" after "investigations".

[3] Section 4 (1), paragraph (c) of the definition of "terrorism intelligence"

Insert "or the functions of intelligence agencies" after "enforcement".

[4] Section 12A

Insert after section 12:

12A Persons under suspended orders to be treated as being supervised or detained under this Act

A person in respect of whom an order under Part 2 or 3 has been made is to continue to be treated as being supervised or detained under this Act for the purposes of any definition for this Act set out in a provision of this Division that uses that expression even if the person's obligations under the order have been suspended.

[5] Section 17A

Insert after section 17:

17A Public interest immunity not abrogated

Nothing in this Act operates to abrogate public interest immunity.

[6] Section 20 Supreme Court may make extended supervision orders against eligible offenders if unacceptable risk

Insert "(or was in custody or under supervision at the time the original application for the order was filed)" after "under supervision" in section 20 (a).

[7] Section 34 Supreme Court may make continuing detention orders against eligible offenders if unacceptable risk

Insert "(or was a detained offender or supervised offender at the time the original application for the order was filed)" after "supervised offender" in section 34 (1) (a).

[8] Section 60

Omit the section. Insert instead:

60 Use of information involving terrorism intelligence

(1) **Making of terrorism intelligence applications**

The Attorney General or a prescribed terrorism intelligence authority may make an application (a ***terrorism intelligence application***) to the Supreme Court in any proceedings before the Court under this Act (the ***substantive proceedings***) for particular information to be dealt with as terrorism intelligence in those proceedings.

(2) The Supreme Court must grant a terrorism intelligence application if the Court is satisfied that:

(a) the information to which the application relates was provided to the Attorney General under this Part, and

(b) the information is terrorism intelligence.

(3) If the Supreme Court is not satisfied that information to which a terrorism intelligence application relates is terrorism intelligence, the Court must, before

determining the application, give each of the following an opportunity to withdraw the information from consideration by the Court:

(a) the applicant for the terrorism intelligence application,

(b) any prescribed terrorism intelligence authority that provided the information.

(4) Any information that is withdrawn from consideration by the Supreme Court must not be:

(a) disclosed to a party to the substantive proceedings who is an eligible offender or the offender's legal representatives, or

(b) taken into consideration by the Supreme Court in determining the substantive proceedings.

(5) **Unrepresented eligible offenders**

If a party to the substantive proceedings is an eligible offender who does not have any legal representatives in those proceedings, the Supreme Court is to appoint a qualified person (an ***independent third party representative***) to represent the party for the purposes of a terrorism intelligence application made in the proceedings or the granting of access to terrorism intelligence under this section.

(6) A person is a qualified person for the purposes of subsection (5) if the person is a person of a kind prescribed by the regulations as being qualified to provide independent and impartial representation for eligible offenders for the purposes of this section.

(7) An independent third party representative for an eligible offender:

(a) is to be allowed access to information or terrorism intelligence in respect of which the representative has been appointed by being provided with either a copy of the information or intelligence or being allowed to view it, and

(b) may make such submissions to the Court on behalf of the eligible offender as the representative considers to be in the best interests of the offender concerning:

(i) whether or not information is terrorism intelligence, or

(ii) the level of access to terrorism intelligence that should be given to the offender under this section.

(8) The applicant in the terrorism intelligence application concerning the information or terrorism intelligence in respect of which an independent third party representative has been appointed is responsible for the payment of the costs of the services provided by the representative.

(9) **Steps to maintain confidentiality**

If the Supreme Court grants a terrorism intelligence application, the Supreme Court is to take steps to maintain the confidentiality of the terrorism intelligence concerned in the substantive proceedings, including steps to receive evidence and hear argument about the intelligence in private.

(10) The Supreme Court is to allow one of the following forms of access to the terrorism intelligence to be given to a party to the substantive proceedings and the party's legal representatives in those proceedings (having regard to what the Court considers appropriate because of the nature of the intelligence and the degree of risk of disclosure to non-parties by the party or the legal representatives and any other matter the Court considers relevant):

(a) providing both the party and the party's legal representatives with a copy of the intelligence,

(b) providing the party's legal representatives with a copy of the intelligence and allowing the party to view (but not have a copy of) that intelligence,

(c) providing the party's legal representatives with a copy of the intelligence, but denying the party any form of access to that intelligence,

(d) allowing both the party and the party's legal representatives to view (but not have a copy of) the intelligence,

(e) allowing the party's legal representatives to view (but not have a copy of) the intelligence, but denying the party any form of access to that intelligence.

(11) Without limiting subsection (10), the Supreme Court may allow one of the following forms of access to be given to a party to the substantive proceedings who is an eligible offender without any legal representatives in those proceedings instead of a form of access specified by subsection (10) (having regard to what the Court considers appropriate because of the nature of the intelligence and the degree of risk of disclosure to non-parties by the party and any other matter the Court considers relevant):

(a) providing the party with access to or a copy of the document containing the intelligence that has been redacted to the extent necessary to prevent the disclosure of the intelligence,

(b) providing the party with both access to or a copy of the document containing the intelligence that has been redacted to the extent necessary to prevent the disclosure of the intelligence and a written summary of the nature of the redacted intelligence,

(c) providing the party with both access to or a copy of the document containing the intelligence that has been redacted to the extent necessary to prevent the disclosure of the intelligence and a written statement of the facts that the intelligence would (or would be likely) to establish.

(12) Subsections (10) and (11) are subject to any agreement under subsection (13) and the regulations.

(13) **Agreements concerning dealing with terrorism intelligence under section**

An agreement may be entered at any time in the substantive proceedings by the following persons as to arrangements about the disclosure, protection, storage, handling or destruction of the terrorism intelligence in the proceedings:

(a) the Attorney General on behalf of the State,

(b) if the terrorism intelligence is provided by a prescribed terrorism intelligence authority—the authority,

(c) one or more other parties to the proceedings (or their legal representatives on their behalf).

(14) **Orders by Supreme Court for purposes of section**

The Supreme Court may make such orders that it considers appropriate:

(a) to prohibit or restrict access to, or the disclosure or publication of, the terrorism intelligence for the purposes of this section, or

(b) to give effect to an agreement under subsection (13).

(15) A person is guilty of an offence if the person contravenes an order under this section.

Maximum penalty:

(a) in the case of a corporation—100 penalty units, or

(b) in the case of an individual—100 penalty units or imprisonment for 2 years (or both).

(16) A person is guilty of an offence against this subsection if the person commits an offence against subsection (15) in circumstances in which the person:

(a) intends to endanger the health or safety of any person or prejudice the effective conduct of an investigation into a relevant indictable offence, or

(b) knows that, or is reckless as to whether, the disclosure of the information:

(i) endangers or will endanger the health or safety of any person, or

(ii) prejudices or will prejudice the effective conduct of an investigation into a relevant indictable offence.

Maximum penalty: imprisonment for 7 years.

(17) **Regulations concerning dealing with terrorism intelligence under section**

The regulations may make provision for or with respect to:

(a) the ways in which terrorism intelligence to which this section applies is to be stored, handled or destroyed, and

(b) the ways in which, and places at which, terrorism intelligence to which this section applies may be accessed and documents or records relating to such intelligence may be prepared.

(18) **Definition**

In this section:

relevant indictable offence means an offence against a law of this State or any other Australian jurisdiction that may be prosecuted on indictment.

[9] Section 60A

Insert after section 60:

60A Withdrawal from consideration of documents or reports for which public interest immunity claimed

(1) This section applies in respect of a document or report provided to the Attorney General under this Part if the State, or a prescribed terrorism intelligence authority that provided it, makes a claim in proceedings before the Supreme Court under this Act that the document or report is subject to public interest immunity.

(2) If the Supreme Court is not satisfied that the document or report is subject to public interest immunity, the Court must, before determining the claim for immunity, give the claimant an opportunity to withdraw the document or report from consideration by the Court in the proceedings.

(3) However, the Supreme Court is not required to allow the document or report to be withdrawn from consideration in the proceedings if the Court considers that its withdrawal would be manifestly unfair to a party to the proceedings who is an eligible offender.

(4) A document that is withdrawn from consideration by the Supreme Court must not be:

(a) disclosed to a party to the proceedings who is an eligible offender or the offender's legal representatives, or

(b) taken into consideration by the Supreme Court in determining any proceedings under this Act.

[10] Section 68 Proceedings for offences

Omit "60 (7) or (8)" wherever occurring. Insert instead "60 (15) or (16)".

[11] Schedule 1 Savings, transitional and other proceedings

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

Part Provisions consequent on enactment of Justice Legislation Amendment Act (No 2) 2018

Application of amendments

(1) An amendment to this Act made by the amending Act extends to proceedings that were begun (but had not yet been determined) before the amendment commenced.

(2) Without limiting subclause (1):

(a) an application that was made under section 60 (but had not yet been determined) before the substitution of that section by the amending Act may be determined by reference to the section as substituted and the definition of ***terrorism intelligence*** in section 4 (1) (as amended by the amending Act), and

(b) if access to terrorism intelligence had not yet been provided under section 60 before its substitution, it may be provided by reference to section 60 as substituted, and

(c) any order made by the Supreme Court under section 60 in force immediately before the substitution of the section continues in force as an order under that section as substituted, and

(d) any agreement in force under section 60 immediately before the substitution of the section continues in force as an agreement under that section as substituted.

(3) However, section 68 and clause 10H in Part 6 of Table 2 of Schedule 1 to the *Criminal Procedure Act 1986*, as in force immediately before the amendment of section 68 by the amending Act, continue to apply in respect of offences against section 60 committed before the commencement of the amendment.

(4) In this clause:

amending Act means the *Justice Legislation Amendment Act (No 2) 2018*.

Explanatory note

Items [1]–[3] of the proposed amendments make it clear that terrorism intelligence for the purposes of the *Terrorism (High Risk Offenders) Act 2017* includes information relating to actual or suspected terrorism activity (whether in the State or elsewhere) the disclosure of which could reasonably be expected to have certain impacts on the operations of intelligence agencies.

Item [4] makes it clear that a person in respect of whom an order under Part 2 or 3 of the Act has been made is to continue to be treated as being supervised or detained under this Act for the purposes of any definition for this Act set out in a provision of Division 1.3 of the Act that uses that expression even if the person's obligations under the order have been suspended.

Item [5] makes it clear that the Act does not abrogate public interest immunity.

Items [6] and [7] provide that an extended supervision order or a continuing detention order can be made in respect of an eligible offender who was in custody or under supervision at the time the application for the order was filed, but has since ceased to be in custody or under supervision.

Item [8] substitutes section 60 of the Act with the following changes:

(a) an application to the Supreme Court (a ***terrorism intelligence application***) for information in proceedings before the Supreme Court under the Act (the ***substantive proceedings***) to be dealt with as terrorism intelligence will not be limited to information that is offender information,

(b) the Supreme Court must grant a terrorism intelligence application if the Court is satisfied that the information to which the application relates was provided under Part 5 of the Act and the information was terrorism intelligence,

(c) the Supreme Court will be required to allow an applicant in a terrorism intelligence application, or the prescribed terrorism intelligence authority providing the information to which the application relates, to withdraw the information from consideration by the Court if the Court is not satisfied that the information is terrorism intelligence,

(d) the Supreme Court will be required to appoint a representative for a party to the substantive proceedings who is an eligible offender without any legal representatives in those proceedings for the purposes of making representations for the offender concerning the classification of information as terrorism intelligence and access to such intelligence,

(e) the Supreme Court will be permitted to allow more limited forms of access to terrorism intelligence to be given to a party to the substantive proceedings who is an eligible offender with no legal representatives in those proceedings.

Item [9] requires the Supreme Court to allow the State or a prescribed terrorism intelligence authority to withdraw a document or report provided under Part 5 of the Act from consideration by the Court if public interest immunity is claimed over it and the Court is not satisfied that the document or report is subject to the immunity.

Item [10] is a consequential amendment and item [11] contains savings and transitional provisions.

1.23 Young Offenders Act 1997 No 54

Section 66 Disclosure of records

Insert after section 66 (2A):

(2B) Despite subsection (1), information (including records) referred to in that subsection that is in the form of statistical data and does not identify any person to whom the information relates may:

(a) be divulged to the Minister or a person employed in the Department of Justice who is involved in the administration or execution of this Act, and

(b) be included in any report to Parliament.

Explanatory note

The proposed amendment allows statistical information about warnings, cautions and conferences given to young people under the *Young Offenders Act 1997* to be divulged to the Attorney General and persons employed in the Department of Justice involved in the administration or execution of that Act and to be included in reports to Parliament.

Schedule 2 Consequential and statute law revision amendments

2.1 Children (Community Service Orders) Act 1987 No 56

Section 3 Definitions

Omit the definition of ***officer*** from section 3 (1). Insert instead:

> ***officer*** means a person employed in Juvenile Justice NSW, Department of Justice.

Explanatory note

The proposed amendment clarifies that only those persons employed within Juvenile Justice NSW within the Department of Justice may perform the functions of officers under the *Children (Community Service Orders) Act 1987* (rather than persons employed in the Department of Justice generally), as a consequence of past administrative changes orders.

2.2 Court Security Act 2005 No 1

[1] Section 12 Power to confiscate restricted items and other things

Omit "Local Area Commander of Police" wherever occurring in section 12 (2) (b), (3), (4), (7) and (11).

Insert instead "Police Area Commander or Police District Commander".

[2] Section 12 (2) (b)

Insert "or district" after "for the area".

Explanatory note

Item [1] of the proposed amendments updates references to a police commander as a consequence of changes to the NSW Police Force. Item [2] is a consequential amendment.

2.3 Crimes Act 1900 No 40

[1] Section 428B Offences of specific intent to which Part applies

Omit the matter relating to sections 38, 41, 48, 55, 158, 172, 174, 175, 176, 178BB, 179, 180, 181, 184, 185, 298, 300, 301, 302 and 302A from paragraph (a) of the Table.

Insert in appropriate order:

38	Using intoxicating substance to commit an indictable offence
38A	Spiking drink or food
41	Using poison etc to injure or to cause distress or pain
48	Causing explosives to be placed in or near building, conveyance or public place
51A	Predatory driving
55	Possessing or making explosives or other things with intent to injure
60C	Obtaining of personal information about law enforcement officers
91M	Installing device to facilitate observation or filming
93L	Threatening to contaminate goods with intent to cause public alarm or economic loss
93M	Making false statements concerning contamination of goods with intent to cause public alarm or economic loss
93R	Leaving or sending an article with intent to cause alarm

192F	Intention to defraud by destroying or concealing accounting records
192G	Intention to defraud by false or misleading statement
192H	Intention to deceive members or creditors by false or misleading statement of officer of organisation
192J	Dealing with identification information
192K	Possession of identification information
192L	Possession of equipment etc to make identification documents or things
193B (1)	Money laundering
193D (1)	Dealing with property that subsequently becomes an instrument of crime
203B	Sabotage
203C	Threaten sabotage
249K	Blackmail offence
253	Forgery—making false document
254	Using false document
255	Possession of false document
256 (1) and (3)	Making or possession of equipment etc for making false documents
308C	Unauthorised access, modification or impairment with intent to commit serious indictable offence
308D	Unauthorised modification of data with intent to cause impairment
308F	Possession of data with intent to commit serious computer offence
308G	Producing, supplying or obtaining data with intent to commit serious computer offence
308H	Unauthorised access to or modification of restricted data held in computer
308I	Unauthorised impairment of data held in computer disk, credit card or other device
530 (1)	Serious animal cruelty

[2] Section 428B, Table

Omit the matter relating to sections 78I, 78L, 78O and 91 from paragraph (b).

Explanatory note

Items [1] and [2] of the proposed amendments omit references to repealed offences and update references to current offences in the *Crimes Act 1900*, being offences that are examples of offences of specific intent for the purpose of provisions relating to the use of intoxication as a defence.

2.4 Crimes (Domestic and Personal Violence) Act 2007 No 80

Sections 28A (3) and 33A (4)

Omit "Local Area Commander of Police" wherever occurring.

Insert instead "Police Area Commander or Police District Commander".

Explanatory note

The proposed amendment updates references to a police commander as a consequence of changes to the NSW Police Force.

2.5 Crimes (Forensic Procedures) Act 2000 No 59

Section 3 Interpretation

Omit the definition of ***under arrest*** in section 3 (1).

Explanatory note

The proposed amendment removes a redundant definition.

2.6 Criminal Procedure Act 1986 No 209

[1] Section 332 Definitions

Omit paragraph (a) of the definition of ***senior police officer*** in section 332 (1).

Insert instead:

(a) a Police Area Commander, or

(a1) a Police District Commander, or

[2] Schedule 1 Indictable offences triable summarily

Omit "60 (7) or (8)" from clause 10H in Part 6 of Table 2. Insert instead "60 (15) or (16)".

Explanatory note

Item [1] of the proposed amendments updates a reference to a police commander as a consequence of changes to the NSW Police Force.

Item [2] is consequential on the amendments made to the *Terrorism (High Risk Offenders) Act 2017* by Schedule 1 to the proposed Act.

2.7 Criminal Procedure Regulation 2017

[1] Clause 28, heading

Omit "**spouses**". Insert instead "**family members**".

[2] Schedule 1 Forms

Omit "a spouse" from Form 2. Insert instead "a family member".

[3] Schedule 1, Form 2

Omit "the spouse of the accused person".

Insert instead "a member of the accused person's family".

Explanatory note

Items [1]–[3] of the proposed amendments update terminology as a consequence of the amendments to the *Criminal Procedure Act 1986* in Schedule 1 to the proposed Act. Those amendments make a parent or child of an accused person compellable to give evidence in proceedings for a domestic violence or child assault offence (other than where the accused person is under the age of 18 years), as is currently the case for the spouse or de facto partner of an accused person.

2.8 Evidence Act 1995 No 25

Section 19 Compellability of spouses and others in certain criminal proceedings

Omit "spouses" from section 19 (b). Insert instead "family members".

Explanatory note

The proposed amendment updates a reference to a provision of the *Criminal Procedure Act 1986* amended by Schedule 1 to the proposed Act.

2.9 Gaming and Liquor Administration Act 2007 No 91

Section 3 Definitions

Omit "Local Area Commander" from paragraph (f) of the definition of ***key official*** in section 3 (1).

Insert instead "Police Area Commander or Police District Commander".

Explanatory note

The proposed amendment updates a reference to a police commander as a consequence of changes to the NSW Police Force.

2.10 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

[1] Section 3 Interpretation

Omit paragraph (a) of the definition of ***senior police officer*** in section 3 (1).

Insert instead:

(a) a Police Area Commander, or

(a1) a Police District Commander, or

[2] Sections 45C (2), 212 (1), 213 (1) and 214 (2)

Omit "Local Area Commander of Police" wherever occurring.

Insert instead "Police Area Commander or Police District Commander".

[3] Section 212 (1)

Insert "or district" after "area".

[4] Section 212 (4)

Omit "Local Area Commander".

Insert instead "Police Area Commander or Police District Commander".

Explanatory note

Items [1], [2] and [4] of the proposed amendments update references to a police commander as a consequence of changes to the NSW Police Force. Item [3] is a consequential amendment.

2.11 Law Enforcement (Powers and Responsibilities) Regulation 2016

Schedule 1 Forms

Omit "to apply to an authorised officer" from Form 26.

Insert instead "to apply to a Magistrate".

Explanatory note

The proposed amendment updates a form as a consequence of an amendment to section 94A of the *Law Enforcement (Powers and Responsibilities) Act 2002* in Schedule 1 to the proposed Act, which allows an occupier of premises in respect of which a crime scene warrant is issued to apply to a Magistrate (and no longer to a registrar of the Local Court) for a review of the warrant.

2.12 Local Government Act 1993 No 30

[1] Section 632A Confiscation of alcohol in certain public and other places

Omit "Local Area Commander of Police" from section 632A (8).

Insert instead "Police Area Commander or Police District Commander".

[2] Section 632A (8)

Insert "or district" after "for the area".

Explanatory note.

Item [1] of the proposed amendments updates a reference to a police commander as a consequence of changes to the NSW Police Force. Item [2] is a consequential amendment.

2.13 Mental Health (Forensic Provisions) Regulation 2017

[1] Clause 14 Transport of defendants in Local Court proceedings

Omit clause 14 (1) (b).

[2] Clause 14 (2)

Omit the subclause.

Explanatory note

Items [1] and [2] of the proposed amendments omit redundant provisions as a consequence of amendments to the *Mental Health (Forensic Provisions) Act 1990* in Schedule 1 to the proposed Act, which provide for the functions of correctional officers and juvenile justice officers in relation to a defendant who has been ordered to be detained and taken to a mental health facility for a mental health assessment.