

Courts and Crimes Legislation Amendment Act 2008 No 53

[2008-53]



New South Wales

Status Information

Currency of version

Historical version for 10 December 2008 to 7 January 2010 (accessed 3 May 2024 at 8:31)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **Does not include amendments by**
[Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2009 No 106](#) (not commenced — to commence on 8.1.2010)
- **Proposed repeal**
The Act is to be repealed by sec 6 (1) of this Act on the day following the day on which all of the provisions of this Act have commenced.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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Contents

Long title 3

1 Name of Act 3

2 Commencement 3

3 Principal amendments 3

4 Consequential amendments 3

5 Repeal of Terrorism Legislation Amendment (Warrants) Act 2005 No 54 3

6 Repeal of Act 4

Schedule 1 Amendment of Births, Deaths and Marriages Registration Act 1995 No 62

..... 4

Schedules 2-20 (Repealed) 6

Schedule 21 Amendment of Terrorism (Police Powers) Act 2002 No 115 .. 6

Schedule 22 Amendment of Births, Deaths and Marriages Registration Regulation 2006

..... 7

Courts and Crimes Legislation Amendment Act 2008 No 53



New South Wales

An Act to amend certain Acts with respect to courts, court procedure, jurisdiction, rights and avenues of appeal and various criminal offences; and for other purposes.

1 Name of Act

This Act is the *Courts and Crimes Legislation Amendment Act 2008*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsections (2)–(6).
- (2) Schedules 1 and 22 commence on a day or days to be appointed by proclamation.
- (3) Schedules 2 and 20 commence on the date of commencement of section 8 of the *Surveillance Devices Act 2007*.
- (4) Schedules 4, 5, 14, 15 [2]–[6], 16 and 18 commence on 1 September 2008.
- (5) Schedule 8 commences on 1 July 2008.
- (6) Schedule 21 commences on 13 September 2010.

3 Principal amendments

The Acts specified in Schedules 1–21 are amended as set out in those Schedules.

4 Consequential amendments

The *Births, Deaths and Marriages Registration Regulation 2006* is amended as set out in Schedule 22.

5 Repeal of *Terrorism Legislation Amendment (Warrants) Act 2005 No 54*

The *Terrorism Legislation Amendment (Warrants) Act 2005* is repealed.

6 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of **Births, Deaths and Marriages Registration Act 1995 No 62**

(Section 3)

[1] Section 4 Definitions

Insert “, change of sex” after “change of name” in the definition of **registrable event** in section 4 (1).

[2] Section 32A Definitions

Insert in appropriate order:

recognised details certificate means a certificate issued under section 32DD certifying the sex of a person who has undergone a sex affirmation procedure.

[3] Section 32A

Omit the definition of **sexual reassignment surgery**. Insert instead:

sex affirmation procedure means a surgical procedure involving the alteration of a person’s reproductive organs carried out:

- (a) for the purpose of assisting a person to be considered to be a member of the opposite sex, or
- (b) to correct or eliminate ambiguities relating to the sex of the person.

[4] Sections 32B (1) and (2) and 32C

Omit “sexual reassignment surgery” wherever occurring.

Insert instead “a sex affirmation procedure”.

[5] Sections 32DA–32DD

Insert after section 32D:

32DA Application to register change of sex

- (1) A person who is 18 or above:
 - (a) who is an Australian citizen or permanent resident of Australia, and
 - (b) who lives, and has lived for at least one year, in New South Wales, and
 - (c) who has undergone a sex affirmation procedure, and
 - (d) who is not married, and
 - (e) whose birth is not registered under this Act or a corresponding law,may apply to the Registrar, in a form approved by the Registrar, for the registration of the person's sex in the Register.
- (2) The parents of a child (or a parent if the applicant is the sole parent), or the guardian of a child:
 - (a) who is an Australian citizen or permanent resident of Australia, and
 - (b) who lives, and has lived for at least one year, in New South Wales, and
 - (c) who has undergone a sex affirmation procedure, and
 - (d) who is not married, and
 - (e) whose birth is not registered under this Act or a corresponding law,may apply to the Registrar, in a form approved by the Registrar, for the registration of the child's sex in the Register.

32DB Documents to accompany application to register change of sex

An application under section 32DA must be accompanied by:

- (a) statutory declarations by 2 doctors, or by 2 medical practitioners registered under the law of another State, verifying that the person the subject of the application has undergone a sex affirmation procedure, and
- (b) such other documents and information as may be prescribed by the regulations.

32DC Decision to register change of sex

- (1) The Registrar is to determine an application under section 32DA by registering the person's change of sex or refusing to register the person's change of sex.
- (2) Before registering a person's change of sex, the Registrar may require the applicant to provide such particulars relating to the change of sex as may be prescribed by the regulations.

- (3) A registration of a person's change of sex must not be made if the person is married.

32DD Issue of recognised details certificate

- (1) This section applies if the Registrar registers a person's change of sex under section 32DC.
- (2) The Registrar must, on application by or on behalf of the person, issue a certificate certifying the particulars contained in the entry in the Register.

[6] Section 32G Use of new birth certificate

Omit the section.

[7] Section 32H Use of old birth certificate

Omit the section.

[8] Section 32J

Insert after section 32I:

32J Effect of registration of change of sex and interstate recognised details certificates

- (1) A person the record of whose sex is registered under this Part is, for the purposes of, but subject to, any law of New South Wales, a person of the sex so registered.
- (2) A person to whom an interstate recognised details certificate relates is, for the purposes of, but subject to, any law of New South Wales, a person of the sex stated in the certificate.
- (3) An ***interstate recognised details certificate*** is a certificate issued under the law of another State that is prescribed by the regulations for the purposes of this section.

Schedules 2-20 (Repealed)

Schedule 21 Amendment of [Terrorism \(Police Powers\) Act 2002 No 115](#)

(Section 3)

Section 27A Definitions

Omit section 27A (2).

Schedule 22 Amendment of Births, Deaths and Marriages Registration Regulation 2006

(Section 4)

[1] Clause 9A

Insert after clause 9:

9A Application to register change of sex

For the purposes of section 32DB (b) of the Act, the following documents are prescribed as documents that must accompany an application under section 32DA of the Act:

- (a) a signed statement by each of the 2 doctors (or 2 medical practitioners) referred to in section 32DB (a) of the Act declaring that the doctor or practitioner concerned sighted proof of the identity of the person the subject of the application when making the statutory declaration referred to in that section, and
- (b) documentary proof to the Registrar's satisfaction:
 - (i) that the person is an Australian citizen or permanent resident of Australia, and
 - (ii) that the person lives, and has lived for at least one year, in New South Wales.

[2] Clause 10 Persons who may apply for old birth certificate

Omit "sexual reassignment surgery" from clause 10 (2) (a).

Insert instead "a sex affirmation procedure".

[3] Clause 11 Prescribed interstate laws

Insert at the end of clause 11:

- (2) For the purposes of section 32J (Effect of registration of change of sex and interstate recognised details certificates) of the Act the *Gender Reassignment Act 2000* of Western Australia is prescribed.