

Courts and Crimes Legislation Further Amendment Act 2008 No 107

[2008-107]



New South Wales

Status Information

Currency of version

Historical version for 17 July 2009 to 8 July 2010 (accessed 23 November 2024 at 0:49)

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 2010 No 59](#) (not commenced — to commence on 9.7.2010)
- **Proposed repeal**
The Act is to be repealed by sec 5 (1) of this Act on the day following the day on which all of the provisions of this Act have commenced.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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Courts and Crimes Legislation Further Amendment Act 2008 No 107



New South Wales

An Act to amend various Acts in relation to courts, crimes and civil and criminal procedure.

1 Name of Act

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

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by this section.
- (2) Section 4, and Schedules 4, 14 [1]-[8] and [10]-[15], 16, 17, 19, 22, 24 and 29, commence on a day or days to be appointed by proclamation.
- (3) Schedule 7 [11] commences on:
 - (a) the date of assent to this Act, or
 - (b) the date of commencement of Schedule 1.11 [21] to the *Crimes and Courts Legislation Amendment Act 2006*,whichever is the later.
- (4) Schedule 11 commences on:
 - (a) the date of assent to this Act, or
 - (b) the date of commencement of Schedule 1 [81] to the *Evidence Amendment Act 2007*,whichever is the later.

3 Amendments

The Acts specified in Schedules 1-29 are amended as set out in those Schedules.

4 Repeal of **Wardens' Courts Rules 1992**

The *Wardens' Courts Rules 1992* are repealed.

5 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- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.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.

Schedules 1-3 (Repealed)

Schedule 4 Amendment of **Confiscation of Proceeds of Crime Act 1989 No 90**

(Section 3)

[1] Section 45A Contravention of restraining orders

Omit "Supreme Court" from section 45A (1).

Insert instead "court that is dealing with the offence".

[2] Section 74 Proceedings for offences

Omit "\$10,000" wherever occurring in section 74 (2) and (3).

Insert instead "the jurisdictional limit of the Local Court".

[3] Section 74 (5)

Insert after section 74 (4):

- (5) In this section, the ***jurisdictional limit of the Local Court*** means the jurisdictional limit of a Local Court sitting in its General Division, within the meaning of the *Local Courts Act 1982*.

[4] Schedule 1 Savings, transitional and other provisions

Insert after Part 2:

Part 3 Provision consequent on enactment of **Courts and**

Crimes Legislation Further Amendment Act 2008

7 Proceedings for offences

Section 74, as amended by Schedule 4 to the *Courts and Crimes Legislation Further Amendment Act 2008*, extends to proceedings commenced before the commencement of that Schedule.

Schedules 5, 6 (Repealed)

Schedule 7 Amendment of **Criminal Procedure Act 1986 No 209**

(Section 3)

[1]-[10] (Repealed)

[11] Schedule 2 Savings, transitional and other provisions

Insert “and any such warrant expires at the end of 20 years from the date of issue” after “provisions” in clause 53.

[12] (Repealed)

Schedules 8-15 (Repealed)

Schedule 16 Amendment of **Mental Health Act 2007 No 8**

(Section 3)

[1] Section 4 Definitions

Omit “by a Magistrate after a mental health inquiry or” from the definition of ***involuntary patient*** in section 4 (1).

Insert instead “after a mental health inquiry or otherwise”.

[2] Section 4 (1), definition of “mental health inquiry”

Omit “a Magistrate”. Insert instead “the Tribunal”.

[3] Section 27 Steps for medical examination requirements for ongoing detention in mental health facility

Omit “bring the person before a Magistrate” from section 27 (d).

Insert instead “notify the Tribunal and bring the person before the Tribunal”.

[4] Section 27 (d)

Omit:

The person must be brought before a Magistrate as soon as practicable after the authorised medical officer is notified of the relevant finding of the second or third examiner.

Insert instead:

The person must be brought before the Tribunal as soon as practicable after admission (subject to meeting the requirements set out above).

[5] Section 33 Actions may be delayed because of other illnesses or conditions

Omit “a Magistrate” from section 33 (b). Insert instead “the Tribunal”.

[6] Section 34

Omit the section. Insert instead:

34 Mental health inquiries to be held

- (1) The Tribunal must hold an inquiry about an assessable person under step 4 in section 27 (d).

Note—

Section 27 sets out the events that result in a mental health inquiry. Notice of the inquiry is to be given to the person concerned, and all reasonably practicable steps are to be taken to notify primary carers in accordance with section 76.

- (2) An authorised medical officer of the mental health facility in which an assessable person is detained:
- (a) must ensure that, as far as practicable, the person is brought before the Tribunal dressed in street clothes, and
 - (b) must make all necessary arrangements to ensure that all appropriate medical witnesses appear before the Tribunal and other relevant medical evidence concerning the person is placed before the Tribunal at or before the inquiry, and
 - (c) as soon as practicable after notifying the Tribunal under section 27 (d), and at or before the inquiry, must provide the Tribunal with all relevant medical reports of the examinations in step 1 or step 2, as referred to in section 27 (d), and any additional information required by the Tribunal for the purposes of the inquiry.

An assessable person, or any other person, may, with the approval of the Tribunal and subject to the regulations (if any), be brought or appear before the Tribunal by way of audio visual link.

The primary carer of an assessable person may, with the approval of the Tribunal, appear at an inquiry.

Note—

The Tribunal must be constituted by at least one member who is the President or a Deputy President for the purposes of a mental health inquiry (see section 150 (2A)). Other provisions relating to the Tribunal's procedures generally, that apply to mental health inquiries and other proceedings, are set out in Part 2 of Chapter 6.

[7] Section 35 Purpose and findings of mental health inquiries

Omit "A Magistrate" from section 35 (1). Insert instead "The Tribunal when".

[8] Section 35 (2)

Omit "the Magistrate" wherever occurring. Insert instead "the Tribunal".

[9] Section 35 (2A) and (2B)

Insert after section 35 (2):

(2A) As soon as practicable after the beginning of a mental health inquiry, the Tribunal must ask the assessable person whether the person:

- (a) has been given a written statement, in the prescribed form, of the person's legal rights and other entitlements, as required by section 74, and
- (b) has been informed of the duty imposed under section 76 on the authorised medical officer relating to the giving of the notice specified in that section.

(2B) As soon as practicable after the beginning of a mental health inquiry, the Tribunal must ascertain from the authorised medical officer whether the written statement and notice referred to in subsection (2A) have been given or all such things as are reasonably practicable have been done to give that statement or notice, as the case requires.

[10] Section 35 (3)

Omit the subsection. Insert instead:

(3) If the Tribunal is not satisfied, on the balance of probabilities, that an assessable person is a mentally ill person, the Tribunal must order that the person be discharged from the mental health facility.

[11] Section 35 (4) and (5) (c)

Omit "Magistrate" wherever occurring. Insert instead "Tribunal".

[12] Section 35 (5)

Omit “A Magistrate who is satisfied, on the balance of probabilities, that an assessable person is a mentally ill person”.

Insert instead “If the Tribunal is satisfied, on the balance of probabilities, that an assessable person is a mentally ill person, the Tribunal”.

[13] Section 36

Omit the section. Insert instead:

36 Adjournments

- (1) The Tribunal may, from time to time, adjourn a mental health inquiry for a period not exceeding 14 days.
- (2) Without limiting subsection (1), the Tribunal may adjourn the inquiry if it is not satisfied:
 - (a) that the assessable person has been informed of the duty imposed under section 76 on the authorised medical officer relating to the giving of the notice specified in that section, or
 - (b) that the notice specified in the section has been given or all such things as are reasonably practicable have been done to give that notice.
- (3) The Tribunal may adjourn an inquiry under this section only if:
 - (a) the Tribunal is of the opinion that it is in the best interests of the assessable person to do so, and
 - (b) the Tribunal has considered any certificates given under this Act available to the Tribunal.
- (4) If an inquiry is adjourned, the assessable person is to continue to be detained in the mental health facility unless the person is discharged or allowed to be absent from the facility under another provision of this Act.

[14] Section 51 Community treatment orders

Omit “or a Magistrate” from section 51 (1).

[15] Section 53 Determination of applications for community treatment orders

Omit “A Magistrate or the” from section 53 (1). Insert instead “The”.

[16] Section 53 (2) and (3)

Omit “Magistrate or” wherever occurring.

[17] Section 53 (4)

Omit the subsection. Insert instead:

(4) The Tribunal may not make a community treatment order at a mental health inquiry unless the Tribunal is of the opinion that the person is a mentally ill person.

[18] Section 53 (6) and (7)

Omit “or Magistrate” wherever occurring.

[19] Section 55 Community treatment order may be made in absence of affected person

Omit “A Magistrate or the”. Insert instead “The”.

[20] Section 77 Notification to new involuntary patients of appeal rights

Omit “a Magistrate” from section 77 (1). Insert instead “the Tribunal”.

[21] Section 141 Membership of Tribunal

Omit “Australian legal practitioners” from section 141 (2) (a).

Insert instead “Australian lawyers”.

[22] Section 150 Composition of the Tribunal

Insert “in relation to mental health inquiries or” after “other than” in section 150 (2).

[23] Section 150 (2A)

Insert after section 150 (2):

(2A) For the purpose of conducting a mental health inquiry, the Tribunal must consist of at least 1 member who is to be the President or a Deputy President or a member qualified to be appointed as a Deputy President.

[24] Section 150 (3) (b)

Omit “Australian legal practitioner”. Insert instead “Australian lawyer”.

[25] Section 154 Rights of appearance and representation

Insert after section 154 (2):

(2A) An assessable person who is before the Tribunal for a mental health inquiry must, unless the person decides that he or she does not want to be represented, be represented by an Australian legal practitioner or, with the approval of the Tribunal, by another person of his or her choice.

[26] Section 160 Tribunal procedure generally

Insert after section 160 (2) (e):

(e1) conditions for the use of audio or audio visual links and other matters relating to the use of audio or audio visual links in Tribunal proceedings,

[27] Section 188 Restrictions on holding of certain offices

Omit section 188 (1) (d).

[28] Section 188 (3)

Omit “or Magistrate”.

[29] Schedule 2 Mental health inquiries

Omit the Schedule.

[30] Schedule 3

Omit “see a Magistrate”.

Insert instead “see the Mental Health Review Tribunal”.

[31] Schedule 3

Omit “Magistrates’ mental health inquiries”.

Insert instead “mental health inquiries”.

[32] Schedule 3

Omit “**Magistrate’s**” wherever occurring.

[33] Schedule 3

Omit “A Magistrate’s”. Insert instead “A”.

[34] Schedule 3

Omit “The Magistrate” and “the Magistrate” wherever occurring.

Insert instead “Mental Health Review Tribunal”.

[35] Schedule 3

Omit “he or she” where secondly occurring. Insert instead “it”.

[36] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Courts and Crimes Legislation Further Amendment Act 2008

[37] Schedule 6

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

Part Provisions consequent on enactment of [Courts and Crimes Legislation Further Amendment Act 2008](#)

Existing mental health inquiries

A mental health inquiry that was commenced, but not determined, before the substitution of section 34 by the [Courts and Crimes Legislation Further Amendment Act 2008](#) may be determined in accordance with this Act as in force immediately before that substitution.

Schedule 17 Amendment of [Mental Health \(Criminal Procedure\) Act 1990 No 10](#)

(Section 3)

[1] Section 33 Mentally ill persons

Omit “by a Magistrate” from section 33 (1A).

Insert instead “at a mental health inquiry”.

[2] Section 33 (1B)

Omit “a Magistrate”. Insert instead “the Tribunal”.

Schedules 18-23 (Repealed)

Schedule 24 Amendment of [Protected Estates Act 1983 No 179](#)

(Section 3)

[1] Section 15 Notice that person’s capability to manage affairs will be considered

Omit “a Magistrate”. Insert instead “the MHRT”.

[2] Section 15 (b)

Omit “Magistrate”. Insert instead “MHRT”.

[3] Section 16 Consideration of capability of patients to manage affairs

Omit “a Magistrate” from section 16 (1). Insert instead “the MHRT”.

[4] Section 16 (1)

Omit “the Magistrate”. Insert instead “the MHRT”.

[5] Section 16 (2)

Omit the subsection. Insert instead:

- (2) For the purposes of determining whether or not to make an order under subsection (1), the MHRT may defer the question of a person’s capability to manage their own affairs pending the provision to the MHRT of information about the detained person or the detained person’s affairs.

[6] Section 17 Consideration by MHRT of capability of patients to manage affairs

Omit the section.

[7] Section 19 Subsequent applications

Omit “a Magistrate or” from section 19 (2).

[8] Section 20 Interim orders

Omit “A Magistrate or the MHRT may, if it appears to the Magistrate or MHRT” from section 20 (1).

Insert instead “The MHRT may, if it appears to the MHRT”.

[9] Section 21 Appeals to Court against management orders

Omit “a Magistrate or” from section 21 (1).

[10] Section 21A Appeals to ADT against estate management orders made by MHRT

Omit “a Magistrate or” from section 21A (1).

[11] Section 21B Notice of reasons for orders and appeal rights

Omit “a Magistrate or” from section 21B (1).

[12] Section 21B

Omit “the Magistrate or” wherever occurring. Insert instead “the”.

[13] Section 23 Management of estates of persons who are protected persons

Omit “a Magistrate”. Insert instead “the MHRT”.

Schedules 25-29 (Repealed)