

# Justice Legislation Amendment Act 2018 No 4

[2018-4]



New South Wales

## Status Information

### Currency of version

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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—

- **Note**

Amending Acts and amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

### Authorisation

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# Justice Legislation Amendment Act 2018 No 4



New South Wales

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# Justice Legislation Amendment Act 2018 No 4



New South Wales

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

## 1 Name of Act

This Act is the *Justice Legislation Amendment Act 2018*.

## 2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by this section.
- (2) Schedule 1.4 [3] and [4], 1.5 [2]–[9], 1.7, 1.8 and 1.11 [3] and [4] commence on a day or days to be appointed by proclamation.

## 3 Explanatory notes

The matter appearing under the heading “Explanatory note” in Schedule 1 does not form part of this Act.

## Schedule 1 Amendments

### 1.1 Anti-Discrimination Act 1977 No 48

#### [1] Section 25 Discrimination against applicants and employees

Omit section 25 (1A) and (2A).

#### [2] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

any other Act that amends this Act

#### Explanatory note

**Item [1]** of the proposed amendments removes 2 exemptions to the general prohibition on discrimination on the ground of sex. The exemptions allowed an employer to not offer a pregnant woman a job or to dismiss a pregnant woman from her job if the woman was pregnant at the time she applied for or was interviewed for the job.

**Item [2]** enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act or

any other Act that amends the [Anti-Discrimination Act 1977](#).

## 1.2 Civil and Administrative Tribunal Act 2013 No 2

### [1] Section 45 Representation of parties

Omit section 45 (4A). Insert instead:

(4A) In proceedings that directly or significantly affect a child (that is, a person under the age of 18 years) who is not a party to the proceedings, the Tribunal may:

- (a) appoint a person to act as guardian ad litem for the child, or
- (b) order that the child be separately represented.

(4B) The Tribunal may, at its discretion, revoke any appointment or order made under subsection (4) or (4A).

### [2] Section 45 (5)

Insert “or (4A) (b)” after “subsection (4) (c)”.

### [3] Section 45 (6)

Omit “a party to proceedings”. Insert instead “a party or other person”.

### [4] Section 45 (6)

Insert “or other person” after “the party”.

### [5] Schedule 3 Administrative and Equal Opportunity Division

Omit “(other than for the purposes of the [Community Services \(Complaints, Reviews and Monitoring\) Act 1993](#))” from clause 9 (1).

### [6] Schedule 6 Guardianship Division

Omit “If the Tribunal is constituted by less than 3 Division members, the Tribunal” from clause 11 (2).

Insert instead “The Tribunal”.

#### Explanatory note

**Item [1]** of the proposed amendments enables the Civil and Administrative Tribunal (**NCAT**) to appoint a person to act as a separate representative or guardian ad litem for a child in proceedings that directly or significantly affect the child, where the child is not a party to the proceedings. **Items [2]–[4]** are consequential amendments.

**Item [5]** provides that parties to proceedings under the [Community Services \(Complaints, Reviews and Monitoring\) Act 1993](#) in the Administrative and Equal Opportunity Division of NCAT are entitled to be represented by an Australian legal practitioner without NCAT having to grant leave. This is currently the case in all other proceedings under that Division.

**Item [6]** provides that a statement of written reasons is not required to be provided to the parties to proceedings in NCAT’s

Guardianship Division that relate to certain provisions of the [Guardianship Act 1987](#) irrespective of how many NCAT members are hearing the proceedings. Currently, a written statement of reasons is not required if the proceedings are heard by less than 3 NCAT members. The general requirement for NCAT to provide a written statement of reasons in any proceedings if requested to do so by a party to the proceedings continues to apply.

### **1.3 Crime Commission Act 2012 No 66**

#### **[1] Section 29 Power to obtain documents and things**

Omit section 29 (4). Insert instead:

- (4) The Commission is to retain any document or thing produced in accordance with a production notice in safe custody for the purposes of the investigation.

#### **[2] Section 30 Refusal or failure of person to produce document or thing**

Omit “so that it may be sealed and” from section 30 (3) (b). Insert instead “to be”.

#### **[3] Section 30 (5)**

Omit the subsection. Insert instead:

- (5) The Commission is to retain any document or thing deposited with the Commission in safe custody pending the hearing.

#### **[4] Section 75 Disclosure of certain financial information**

Insert “, or performing services for the Commission as arranged under section 74 (3) or (4),” after “section 74 (2)” in section 75 (3).

#### **[5] Section 75 (3)**

Insert “or section 76” after “subsection (1)”.

#### **[6] Section 84 Service of documents**

Omit section 84 (1). Insert instead:

- (1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by any of the following methods:
  - (a) in the case of an individual—by personal delivery to the person,
  - (b) by post to the address specified by the person for the service of documents of that kind,
  - (c) in the case of an individual who has not specified such an address—by post to the residential or business address of the person last known to the person serving the document,

- (d) in the case of a corporation—by post to the registered office or any other office of the corporation or by leaving it at any such office with a person apparently over the age of 16 years,
- (e) by email to an email address specified by the person for the service of documents of that kind,
- (f) by any other method authorised by the regulations for the service of documents of that kind.

**[7] Section 84 (3)**

Insert after section 84 (2):

- (3) In this section:

**serve** includes give or send.

**Explanatory note**

**Items [1] and [3]** of the proposed amendments remove the requirement for the Crime Commission (the **Commission**) to seal a document or thing that is produced to the Commission as part of an investigation. The Commission will still be required to keep the documents and things in safe custody. **Item [2]** is a consequential amendment.

**Item [4]** provides that the Commission may waive the usual financial information disclosure requirements that apply to Commission staff in the case of staff seconded from another NSW government agency or police officers seconded from outside NSW. **Item [5]** clarifies that the waiver operates to waive the ongoing requirement to disclose changes in a person's financial information under section 76.

**Items [6] and [7]** update the methods for serving a document, including by allowing service by email if the person specifies that such a document may be served by email to a specified email address.

## **1.4 Crimes Act 1900 No 40**

**[1] Section 73 Sexual intercourse with child between 16 and 18 under special care**

Omit section 73 (3) (b). Insert instead:

- (b) the offender is a member of the teaching staff of the school at which the victim is a student, or

**[2] Section 73 (6)**

Insert after section 73 (5):

- (6) In this section:

**member of the teaching staff** of a school means:

- (a) a teacher at the school, or

(b) the principal or a deputy principal at the school, or

(c) any other person employed at the school who has students at the school under his or her care or authority.

**[3] Section 94 Robbery or stealing from the person**

Insert “(a)” before “robs”.

**[4] Section 94**

Insert “(b)” before “steals”.

**Explanatory note**

**Items [1] and [2]** of the proposed amendments expand an existing provision that makes it an offence for a person (the **offender**) to have sexual intercourse with a person aged between 16 and 18 years (the **victim**) if the offender is the victim’s school teacher. The offence will now extend to any member of the teaching staff at the school at which the victim is a student, including teachers, the principal or deputy principal and any other person employed at the school who has students at the school under his or her care or authority. The offence continues to apply to other special care relationships, including where the offender has an established personal relationship with the victim in connection with the provision of religious, sporting, musical or other instruction to the victim.

**Items [3] and [4]** are law revision amendments and are consequential on amendments to the [Criminal Procedure Act 1986](#) in Schedule 1.5 [2], [4] and [8].

## **1.5 Criminal Procedure Act 1986 No 209**

**[1] Section 174 Commencement of private prosecutions**

Omit “by the court” from section 174 (3). Insert instead “by a Magistrate”.

**[2] Schedule 1 Indictable offences triable summarily**

Omit “section 94” from clause 3 (b) in Table 1. Insert instead “section 94 (b)”.

**[3] Schedule 1, Table 1, clause 3 (c)**

Insert “193B (3),” after “192,”.

**[4] Schedule 1, Table 1, clause 3A**

Insert after clause 3:

**3A Robbery**

An offence under section 94 (a) of the [Crimes Act 1900](#).

**[5] Schedule 1, Table 1, clause 15 (2)**

Insert “319,” after “317,”.

**[6] Schedule 1, Table 1, clause 29A**

Insert after clause 29:

**29A Supply prohibited drug involving more than indictable quantity but less than commercial quantity**

An offence under section 25 (1) of the [Drug Misuse and Trafficking Act 1985](#) where the amount of prohibited drug concerned is more than the applicable indictable quantity but less than the applicable commercial quantity.

**[7] Schedule 1, Table 1, clause 30**

Omit “section 32 (1) (a)–(f)”. Insert instead “section 32 (1) (a), (b), (c1), (d), (e) or (f)”.

**[8] Schedule 1, Table 2, clause 3 (b)**

Omit “section 94”. Insert instead “section 94 (b)”.

**[9] Schedule 1, Table 2, clause 3 (c)**

Insert “193B (3),” after “192,”.

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

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

**Part Provision consequent on enactment of [Justice Legislation Amendment Act 2018](#)**

**Application of amendments**

An amendment made to Schedule 1 to this Act by the [Justice Legislation Amendment Act 2018](#) does not apply to proceedings for an offence that commenced before the commencement of that amendment.

**Explanatory note**

**Item [1]** of the proposed amendments provides that a Magistrate, rather than the Local Court, is to be responsible for determining whether a court attendance notice is to be signed and issued in the case of a private prosecution for a summary offence, where a registrar has already refused to sign the notice.

**Items [3]–[6]** provide that the following indictable offences are to be dealt with summarily unless the prosecutor or person charged elects to have the offence dealt with on indictment:

- (a) robbery (section 94 of the [Crimes Act 1900](#)),
- (b) recklessly dealing with proceeds of crime (section 193B (3) of the [Crimes Act 1900](#)) where the value of the proceeds is more



than \$5,000,

- (c) perverting the course of justice (section 319 of the [Crimes Act 1900](#)),
- (d) supplying a prohibited drug (section 25 (1) of the [Drug Misuse and Trafficking Act 1985](#)) where the quantity of the prohibited drug involved is less than the commercial quantity.

**Items [2], [7] and [8]** are consequential amendments.

**Item [9]** provides that the offence of recklessly dealing with proceeds of crime (section 193B (3) of the [Crimes Act 1900](#)), where the value of the proceeds is \$5,000 or less, is to be dealt with summarily by the Local Court unless the prosecutor elects to have the offence dealt with on indictment.

**Item [10]** is a transitional provision.

## 1.6 Criminal Records Act 1991 No 8

### Section 19C Eligible homosexual offence convictions may be extinguished

Omit paragraph (b) from the note to section 19C (1). Insert instead:

- (b) the offender is a member of the teaching staff at the school at which the victim is a student, or

#### Explanatory note

The proposed amendment updates a reference to section 73 of the [Crimes Act 1900](#) as a consequence of the amendment to that section in Schedule 1.4.

## 1.7 Drug Misuse and Trafficking Act 1985 No 226

### [1] Section 32 Penalty for certain offences dealt with on indictment

Omit section 32 (1) (c). Insert instead:

- (c) an offence under section 25 (1),
- (c1) an offence under section 25 (1A),

### [2] Section 32 (1) (d) and (e)

Omit “or (c)” wherever occurring. Insert instead “, (c) or (c1)”.

### [3] Section 32 (2)

Omit the subsection.

### [4] Section 32, note

Insert at the end of the section:

**Note—**

Offences referred to in this section may be dealt with summarily in certain cases. See Chapter 5 of and Schedule 1 to the [Criminal Procedure Act 1986](#).

**Explanatory note**

**Item [1]** of the proposed amendments enables the offence of supplying a prohibited drug under section 25 (1) to be dealt with summarily under the [Criminal Procedure Act 1986](#) (see Schedule 1.5 [6] and [7]). **Item [2]** is a consequential amendment.

**Item [3]** is a law revision amendment that omits a provision that is unnecessary because of the operation of Chapter 5 of the [Criminal Procedure Act 1986](#). **Item [4]** is a consequential amendment.

## 1.8 Evidence Act 1995 No 25

### Section 160 Postal articles

Omit “fourth” from section 160 (1). Insert instead “seventh”.

**Explanatory note**

The proposed amendment provides that a postal article is presumed to have been received 7 working days after it is sent, rather than 4 working days, as a consequence of changes to Australia Post delivery times.

## 1.9 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

Omit “section 193” from section 20 (1) (cg). Insert instead “sections 193 and 202”.

### [2] Section 20 (1) (cga)

Omit “Division 2 of Part 13”.

Insert instead “Division 2 of Part 13 and sections 13.22 and 13.27”.

### [3] Section 20 (1) (ck)

Insert after section 20 (1) (cja):

(ck) proceedings under section 57 of the [Dangerous Goods \(Road and Rail Transport\) Act 2008](#),

### [4] Section 20 (1) (dg)

Insert after section 20 (1) (df1):

(dg) proceedings under section 353D of the [Water Management Act 2000](#),

**Explanatory note**

**Items [1]–[4]** of the proposed amendments provide that proceedings under the following provisions are to be dealt with under Class 4 of the Land and Environment Court’s jurisdiction:

- (a) section 202 of the *National Parks and Wildlife Act 1974*,
- (b) sections 13.22 and 13.27 of the *Biodiversity Conservation Act 2016*,
- (c) section 57 of the *Dangerous Goods (Road and Rail Transport) Act 2008*,
- (d) section 353D of the *Water Management Act 2000*.

The proceedings involve the recovery of costs, expenses and compensation from an offender against whom an offence against the Act concerned has been proved, and in the case of the *Biodiversity Conservation Act 2016* proceedings relating to the enforcement of undertakings are also included.

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

### **Section 134 Orders for the taking of identification particulars**

Insert after section 134 (5) (c) (i):

- (ia) section 111 (1) (a) or (b) or (3) (a) or (b),

#### **Explanatory note**

The proposed amendment provides that a court that finds the offence of driving with illicit drugs in a person's oral fluid, blood or urine under section 111 of the *Road Transport Act 2013* to have been proven may make an order requiring the person to attend a police station to have the person's photograph, finger-prints and palm-prints taken.

## **1.11 Succession Act 2006 No 80**

### **[1] Section 3 Definitions**

Omit "fee and reward" from section 3 (4) (a). Insert instead "fee or reward".

### **[2] Section 23 Execution of will made under order**

Omit section 23 (2). Insert instead:

- (2) A will may be signed by the Registrar for the purposes of subsection (1) (b) even after the death of the person in relation to whom the order was made.

### **[3] Section 58 When an application may be made**

Insert "or the parties to the proceedings consent to the application being made out of time" after "shown" in section 58 (2).

### **[4] Section 64**

Omit the section. Insert instead:

#### **64 Orders may affect property outside jurisdiction**

A family provision order may be made in respect of property situated outside New

South Wales when, or at any time after, the order is made, only if the deceased person was, at the time of death, domiciled in New South Wales.

**[5] Section 124**

Omit the section. Insert instead:

**124 Spouses' entitlement where any issue are not issue of a surviving spouse**

If an intestate leaves more than one spouse and any issue who are not issue of a surviving spouse, the spouses are entitled to share, in accordance with this Division:

- (a) the intestate's personal effects, and
- (b) the statutory legacy that would be payable if the intestate had left only one surviving spouse, and
- (c) one-half of the remainder (if any) of the intestate estate.

**Explanatory note**

**Item [2]** of the proposed amendments provides that the Registrar of the Supreme Court may sign a will, being a will that is made or altered by an order of the Supreme Court for a person without testamentary capacity, for the purposes of executing the will, even after the death of the person in relation to whom the order was made.

**Item [3]** enables an application for a family provision order to be made later than 12 months after the death of the deceased person if the parties to the proceedings consent to the application being made out of time.

**Item [4]** clarifies that a family provision order may be made in respect of property outside New South Wales only if the deceased person lived in New South Wales at the time of death.

**Item [5]** clarifies that the statutory legacy (payable to a surviving spouse of an intestate, where there are also surviving issue who are not the issue of the surviving spouse) is to be shared between multiple spouses in the same way as other property is shared.

**Item [1]** corrects a grammatical error.