

# Justice Legislation Amendment Act (No 3) 2018 No 87

[2018-87]



New South Wales

## Status Information

### Currency of version

Historical version for 29 November 2018 to 1 December 2018 (accessed 9 November 2024 at 8:45)

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### 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 (No 3) 2018 No 87



New South Wales

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# Justice Legislation Amendment Act (No 3) 2018 No 87



New South Wales

An Act to amend various Acts and Regulations relating to courts, crimes and other Justice portfolio matters; and for other purposes.

## 1 Name of Act

This Act is the *Justice Legislation Amendment Act (No 3) 2018*.

## 2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by this section.
- (2) Schedules 1.2 [1]–[3], 1.4 [1] and [4], 1.5, 1.9 [2], 1.17 [1] and [4], 1.20 and 1.26 and 3 commence on a day or days to be appointed by proclamation.
- (3) Schedule 1.6 commences on 1 December 2018 or the date of assent to this Act, whichever is later.
- (4) Schedule 1.11 [1] and [2] commence on 17 December 2018 or the date of assent to this Act, whichever is later.
- (5) Schedule 1.22 commences on 1 January 2019 or the date of assent to this Act, whichever is later.

## 3 Explanatory notes

The matter appearing under the heading “Explanatory note” in Schedules 1–3 does not form part of this Act.

## Schedule 1 Principal amendments

### 1.1

(Repealed)

## **1.2 Bail Act 2013 No 26**

### **[1] Section 16B Offences to which the show cause requirement applies**

Insert “(whether granted under this Act or a law of another jurisdiction)” after “bail” in section 16B (1) (h) (i).

### **[2] Section 16B (1) (h) (ii)**

Insert “(whether granted under a law of this State or another jurisdiction)” after “parole”.

### **[3] Section 18 Matters to be considered as part of assessment**

Insert “(whether granted under this Act or a law of another jurisdiction)” after “bail” in section 18 (1) (e).

### **[4] (Repealed)**

#### **Explanatory note**

Items [1] and [2] of the proposed amendments extend the category of offences for which bail is to be refused unless the accused person shows cause to include a serious indictable offence that is committed while the accused person is on bail or parole granted under the law of another jurisdiction.

Item [3] extends the requirement for a person making a bail decision to consider whether the accused person has previously committed a serious offence while on bail to include bail granted under the law of another jurisdiction.

Item [4] updates cross-references.

## **1.3**

(Repealed)

## **1.4 Children (Detention Centres) Act 1987 No 57**

### **[1] Section 37D Disclosure of information obtained in administration or execution of Act**

Omit the section.

### **[2], [3] (Repealed)**

### **[4] Sections 102-102B**

Omit section 102. Insert instead:

#### **102 Unlawful disclosure of information**

(1) A person must not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made:

(a) with the consent of the person from whom the information was obtained, or

- (b) in connection with the administration or execution of this Act, or
- (c) for the purposes of any legal proceedings, or
- (d) in accordance with a requirement of the *Ombudsman Act 1974* or with any request made by the Ombudsman, or
- (e) with other lawful excuse.

Maximum penalty: 10 penalty units or imprisonment for 12 months, or both.

- (2) Without limiting the disclosures that may fall within subsection (1) (e), a person makes a disclosure with lawful excuse for the purposes of that paragraph if the disclosure is:
  - (a) authorised by the Secretary, or
  - (b) in accordance with an official policy made by the Secretary for the purposes of this section.

#### **102A Authority to disclose information**

- (1) The Secretary may disclose information obtained by the Secretary in connection with the exercise of the Secretary's official functions under this or any other Act for any purpose prescribed by the regulations.
- (2) A regulation made under this section extends to information obtained before the commencement of the regulation unless the regulation otherwise provides.
- (3) The power to prescribe a purpose under subsection (1) does not imply that the Secretary may disclose information only for a prescribed purpose.
- (4) The authority to disclose information under this section applies despite the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*.
- (5) The Minister is to consult with the Minister for Health before recommending the making of a regulation under subsection (1) that may result in the disclosure or use of health information (within the meaning of the *Health Records and Information Privacy Act 2002*).
- (6) A failure to comply with subsection (5) does not affect the validity of a regulation.

#### **102B Authority to exchange certain information**

- (1) The Secretary may enter into an arrangement (an **information sharing arrangement**) with the head of a relevant agency for the purpose of sharing or exchanging information that is held by the Department or the relevant agency.

- (2) Under an information sharing arrangement, each party to the arrangement is authorised:
  - (a) to request and receive prescribed information that is held by the other party to the arrangement, and
  - (b) to disclose prescribed information that is held by the party to the other party to the arrangement.
- (3) An information sharing arrangement extends to information obtained before the commencement of the regulation under which it is made unless the regulation otherwise provides.
- (4) The authority to disclose, request or receive information under this section applies despite the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*.

(5) In this section:

**law enforcement agency** means any of the following:

- (a) the NSW Police Force, or the police force of another State or a Territory,
- (b) the New South Wales Crime Commission,
- (c) the Australian Federal Police,
- (d) the Australian Crime Commission,
- (e) the Director of Public Prosecutions of New South Wales, of another State or a Territory or of the Commonwealth,
- (f) the Law Enforcement Conduct Commission,
- (g) the Independent Commission Against Corruption,
- (h) a person or body prescribed by the regulations for the purposes of this definition.

**prescribed information** means information prescribed by the regulations.

**relevant agency** means any of the following that is prescribed by the regulations as a relevant agency:

- (a) a law enforcement agency,
- (b) a government agency of a State or Territory that corresponds with the Department,
- (c) any other person or body.

## [5] (Repealed)

### Explanatory note

Item [2] of the proposed amendments provides that the period of supervision of a juvenile offender under a parole order is the period specified in the regulations under the *Children (Detention Centres) Act 1987*. The period of supervision will no longer be set by the Children's Court in the parole order itself. Item [5] inserts a transitional provision.

Item [3] makes a centre manager of a detention centre, in the exercise of the centre manager's functions under the *Children (Detention Centres) Act 1987*, subject to the control and direction of the Secretary of the Department of Justice. It also enables a centre manager to delegate the centre manager's functions.

Item [4] makes further and more detailed provision for the disclosure of information under the *Children (Detention Centres) Act 1987*. The provisions enable disclosures to be made by the Secretary of the Department of Justice in the exercise of official functions or for a purpose prescribed by the regulations. They also enable the Secretary to enter into information sharing arrangements with a person or body prescribed by the regulations for a purpose prescribed by the regulations. At present, an information sharing arrangement can only be entered into with the Commissioner of Fines Administration. The amendments also re-enact the offence of making an unauthorised disclosure of information obtained under the Act. Item [1] is a consequential amendment. Item [5] continues any existing information sharing arrangement entered into with the Commissioner of Fines Administration.

## 1.5 Children (Detention Centres) Regulation 2015

### Clause 148A

Insert before clause 149:

#### 148A Exchange of information with Commissioner of Fines Administration

- (1) The Commissioner of Fines Administration is prescribed as a **relevant agency** for the purposes of the definition of that term in section 102B of the Act.
- (2) For the purposes of the definition of **prescribed information** in section 102B of the Act, the information referred to in subclause (3) is prescribed in relation to the party concerned if it assists in the exercise of:
  - (a) the functions of the Secretary under the Act or this Regulation, or
  - (b) the functions of the Commissioner of Fines Administration under the *Fines Act 1996* or the regulations under that Act.
- (3) Under an information sharing arrangement between the Secretary and the Commissioner of Fines Administration:
  - (a) the Secretary is authorised to request and receive information from the Commissioner of Fines Administration comprising the name, address and date of birth of a person who is the subject of a detention order and is a fine defaulter (within the meaning of the *Fines Act 1996*), and details of the fine, and
  - (b) the Commissioner of Fines Administration is authorised to disclose that information to the Secretary, and

- (c) the Commissioner of Fines Administration is authorised to request and receive from the Department the following information about a person who is the subject of a detention order and is a fine defaulter (within the meaning of the *Fines Act 1996*):
  - (i) name,
  - (ii) address,
  - (iii) date of birth, and
- (d) the Secretary is authorised to disclose that information to the Commissioner of Fines Administration.

**Explanatory note**

The proposed amendment is consequential on the amendments to the *Children (Detention Centres) Act 1987* in the proposed Act, which authorise information sharing arrangements between the Secretary of the Department of Justice and other agencies. It continues existing disclosure arrangements with the Commissioner of Fines Administration.

## **1.6 Civil and Administrative Tribunal Act 2013 No 2**

**[1] Part 3A, heading**

Omit “**Diversity**”. Insert instead “**Federal**”.

**[2] Section 34A Definitions**

Omit the definition of ***federal diversity jurisdiction***. Insert instead:

***federal jurisdiction*** means jurisdiction of a kind referred to in section 75 or 76 of the Commonwealth Constitution.

**[3] Section 34B Applications or appeals involving federal jurisdiction may be made to authorised court**

Omit section 34B (2) (b). Insert instead:

(b) the determination of the application or appeal by the Tribunal would involve an exercise of federal jurisdiction, and

**[4] Section 34C Proceedings after leave granted**

Omit “diversity” from section 34C (3).

**[5] Schedule 5 Occupational Division**

Insert in alphabetical order in clause 4 (1):



## *Point to Point Transport (Taxis and Hire Vehicles) Act 2016*

### *Tattoo Parlours Act 2012*

#### **Explanatory note**

In *Burns v Corbett*[2018] HCA 15, the High Court decided that the Civil and Administrative Tribunal could not exercise jurisdiction of the kind referred to in section 75 or 76 of the Commonwealth Constitution (commonly called **federal jurisdiction**) because only courts could exercise federal jurisdiction. It was common ground between the parties in that case that the Tribunal was not a court of the State, so the High Court was not required to decide the issue.

An Appeal Panel of the Tribunal decided in *Johnson v Dibbin; Gatsby v Gatsby*[2018] NSWCATAP 45 that the Tribunal was a court of the State and could, as a result, exercise federal jurisdiction. However, the Court of Appeal decided in *Attorney General for New South Wales v Gatsby*[2018] NSWCA 254 that the Tribunal was not a court of the State for this purpose.

Items [2]-[4] of the proposed amendments extend the current provisions of Part 3A of the *Civil and Administrative Tribunal Act 2013* to enable certain persons to commence proceedings in the District Court or Local Court for the determination of original applications and external appeals that the Civil and Administrative Tribunal cannot determine because they involve the exercise of federal jurisdiction. Currently, Part 3A is limited to exercises of federal diversity jurisdiction (that is, jurisdiction referred to in section 75 (iv) of the Commonwealth Constitution). Item [1] makes a consequential amendment.

Item [5] transfers the administrative review jurisdiction of the Civil and Administrative Tribunal for the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* and the *Tattoo Parlours Act 2012* from the Administrative and Equal Opportunity Division (the default Division for Acts not otherwise allocated) to the Occupational Division.

## **1.7, 1.8**

(Repealed)

## **1.9 Crimes (Administration of Sentences) Act 1999 No 93**

### **[1] (Repealed)**

### **[2] Section 8 Release from custody**

Insert after section 8 (2):

(2A) An inmate may be released from custody at any time during the period of 4 days after the date on which the inmate would otherwise be required to be released under this section if:

- (a) there is a good reason to delay the release (such as a lack of transport), and
- (b) the inmate requests or consents to the delay.

(2B) Subsection (2A) does not permit an inmate to be held in a correctional centre for any period longer than the period requested or consented to by the inmate.

### **[3]-[14] (Repealed)**

#### **Explanatory note**

Item [2] of the proposed amendments enables an inmate to be kept in custody for up to 4 days after the inmate's release date if there is a good reason to delay the release (such as a lack of transport) and if the inmate requests or consents to the delay.

Currently, if an inmate's release date is on the weekend or a public holiday, the inmate can request to stay in custody until the following Monday or the day after the public holiday.

Items [3] and [4] enable a court to take action against an offender who has breached a community correction order or conditional release order after the order has expired, but only in respect of matters arising during the term of the order.

Item [5] provides that the period of supervision of an offender under a parole order is to be the period specified in the regulations under the *Crimes (Administration of Sentences) Act 1999*. The period of supervision will no longer be set by the State Parole Authority (the **Parole Authority**) in the parole order itself. Item [14] is a transitional provision.

Items [6] and [7] reinstate the Parole Authority's powers in relation to revoking an intensive correction order that the Authority had before the commencement of the *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017* on 24 September 2018. The Parole Authority may revoke an intensive correction order for reasons other than a breach of the order and may do so without holding an inquiry or hearing from the offender. Item [14] inserts a transitional provision. Item [8] is a consequential amendment.

Item [9] enables a community corrections officer to deal with a breach of a re-integration home detention order in the same way as an officer may deal with a breach of an intensive correction order or a parole order, including by recording the breach but not taking further action or by giving the offender a warning or reasonable directions. The amendment also enables a community corrections officer or the Commissioner of Corrective Services to refer a more serious breach to the Parole Authority and recommend the action to be taken.

Item [11] requires the Parole Authority to record reasons for any decision that follows a recommendation or submission by the State or the Commissioner of Corrective Services. Item [10] corrects a cross-reference.

Items [1], [12] and [13] are consequential on changes to Corrective Services NSW staff arrangements.

## 1.10

(Repealed)

## 1.11 Crimes (Domestic and Personal Violence) Act 2007 No 80

### [1] Section 5 Meaning of "domestic relationship"

Insert "(subject to section 5A)" after "other person" in section 5 (1) (f).

### [2] Section 5A

Insert after section 5:

#### 5A Special provisions—carers and their dependants

- (1) A person (a **dependant**) who has or has had a relationship with another person involving the person's dependence on the ongoing paid care of the other person (a **paid carer**) is treated as having a domestic relationship with the paid carer only for the purposes of the protection of the dependant.
- (2) Accordingly:
  - (a) a paid carer and a dependant are to be treated as having a domestic relationship for the purposes of any offence committed by a paid carer against a dependant, but not for the purposes of an offence committed by a dependant against a paid carer, and

(b) an apprehended domestic violence order may be made against a paid carer for the protection of a dependant (or for the protection of two or more persons at least one of whom is a dependant), but not against a dependant for the protection of a paid carer.

(3) This section does not limit or otherwise affect the application of this Act to a relationship between a dependant and an unpaid carer, or to a relationship between a dependant and a carer that, disregarding section (5) (1) (f), would be a domestic relationship under section 5.

**Note—**

For example, if a dependant and a paid carer are relatives, they will be treated as having a domestic relationship under section 5 (1) (g) and an apprehended domestic violence order could be made against the dependant for the protection of the paid carer.

(4) To avoid doubt, an apprehended personal violence order may be made against a dependant for the protection of a paid carer if the paid carer and dependant do not have a domestic relationship.

**[3], [4] (Repealed)**

**Explanatory note**

Items [1] and [2] of the proposed amendments change the way in which a relationship between a dependant and a paid carer is treated under the *Crimes (Domestic and Personal Violence) Act 2007*. At present, a relationship between a dependant and a paid or unpaid carer is treated as a domestic relationship under the Act. The amendments provide that a relationship with a paid carer is to be treated as a domestic relationship only for the protection of the dependant. Accordingly, a personal violence offence committed by a paid carer against a dependant is treated as a domestic violence offence under the Act, but a personal violence offence committed by a dependant against a paid carer is not.

The effect of the amendment is that an apprehended domestic violence order will no longer be available for the protection of a paid carer from a dependant, only for the protection of a dependant from a paid carer. A paid carer will still be able to apply for an apprehended personal violence order against a dependant.

As it is currently mandatory for the Police to apply for an apprehended domestic violence order in domestic relationship situations, this means it will no longer be mandatory for Police to apply for an apprehended domestic violence order in a case where it is alleged that a paid carer is threatened by a dependant. It will continue to be mandatory for Police to apply for an apprehended domestic violence order if it is alleged that a paid carer has committed a domestic violence offence against a dependant.

The amendment does not affect the application of the Act to a relationship between an unpaid carer and a dependant or a relationship between a carer (paid or unpaid) and a dependant that is treated as a domestic relationship otherwise than because of the dependency relationship. For example, if a dependant and a paid carer are relatives, the pair will still be treated as having a domestic relationship and an apprehended domestic violence order may be obtained by the carer against the dependant.

Item [4] is a transitional provision.

Item [3] makes it clear that the collection, use or disclosure of information under certain statutory information sharing arrangements between agencies that facilitate the protection of victims of domestic violence and access to support services does not affect the application of any sexual assault communications privilege in relation to that information. The privilege continues to apply whether or not a protected confider consents to the collection, use or disclosure of the information under those information sharing arrangements.

**1.12-1.16**

(Repealed)

## 1.17 Drug Court Act 1998 No 150

### [1] Section 12A

Insert after section 12:

#### 12A Special jurisdiction—traffic matters

- (1) If a drug offender's program is terminated, the Drug Court may, on application by the drug offender, exercise the same functions as the Local Court under Division 3A of Part 7.4 of Chapter 7 of the *Road Transport Act 2013* in relation to any licence disqualifications to which the drug offender is then subject.
- (2) Accordingly, the Drug Court may make any order under section 221B of that Act removing all licence disqualifications to which the drug offender is then subject in the circumstances provided for by that Division.

**Note—**

Section 221B of the *Road Transport Act 2013* permits licence disqualifications to be removed on application by a disqualified person if the Court considers it appropriate to do so. Licence disqualifications may be removed only if the disqualified person has not been convicted of any driving offence for conduct during the relevant offence-free period.

- (3) Division 3A of Part 7.4 of Chapter 7 of the *Road Transport Act 2013* applies to the Drug Court as if a reference to the Local Court included a reference to the Drug Court.
- (4) No appeal under the *Crimes (Appeal and Review) Act 2001* or section 5AF of the *Criminal Appeal Act 1912* lies against a decision of the Drug Court under that Division.
- (5) The rules of court may include provisions relating to the practice and procedure for applications and orders by the Drug Court under this section.

### [2], [3] (Repealed)

### [4] Section 27 Rules of court

Insert at the end of section 27 (b):

, and

- (c) any matter for or with respect to which a power to make rules is conferred by this Act.

#### Explanatory note

Item [1] of the proposed amendments confers on the Drug Court the same powers as the Local Court has under Division 3A of Part 7.4 of Chapter 7 of the *Road Transport Act 2013* to remove all licence disqualifications to which a disqualified person is

subject. The power may be exercised by the Drug Court after it terminates a drug offender's program. On terminating a drug offender's program, the Drug Court must determine the final sentence of the drug offender. The proposed section will enable the Drug Court to remove licence disqualifications in conjunction with determining the final sentence of the drug offender (instead of referring any outstanding licence disqualifications to the Local Court). The proposed section also enables the Drug Court to make rules about the practice and procedure to be adopted in relation to removal of licence disqualifications. Item [4] is a consequential amendment.

Items [2] and [3] update references to Corrective Services NSW staff.

## **1.18, 1.19**

(Repealed)

## **1.20 Local Court Act 2007 No 93**

### **[1] Section 29 Jurisdictional limit of Court**

Omit "\$10,000" from section 29 (1) (b). Insert instead "\$20,000".

### **[2] Schedule 4 Savings, transitional and other provisions**

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

## **Part Provision consequent on enactment of [Justice Legislation Amendment Act \(No 3\) 2018](#)**

### **Changes to jurisdictional limit**

The amendment made to section 29 by the [Justice Legislation Amendment Act \(No 3\) 2018](#) does not apply to proceedings instituted in the Court before the commencement of the amendment.

#### **Explanatory note**

Item [1] of the proposed amendments increases the jurisdiction of the Small Claims Division of the Local Court from \$10,000 to \$20,000. Item [2] is a transitional provision.

## **1.21**

(Repealed)

## **1.22 Relationships Register Act 2010 No 19**

### **Section 16A**

Insert after section 16:

#### **16A Registrar may provide celebratory services**

(1) The Registrar may, at the request of an applicant for registration, provide or

arrange for the provision of celebratory services in connection with registration of the person's relationship under this Act.

- (2) The Registrar may charge a fee for providing or arranging for the provision of those services.
- (3) If the regulations do not prescribe a fee for providing or arranging for the provision of those services, the fee (if any) for those services is the fee fixed by negotiation between the Registrar and the person who requests the services.

**Explanatory note**

The proposed amendment enables the Registrar of Births, Deaths and Marriages to provide, or to arrange for the provision of, celebratory services in connection with registration of a relationship under the [Relationships Register Act 2010](#).

## **1.23-1.25**

(Repealed)

## **1.26 Victims Rights and Support Act 2013 No 37**

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

Insert in alphabetical order in section 3 (1):

**victims group** means an organisation that provides support services for victims of crime.

### **[2] Section 10 Functions of Commissioner**

Insert after section 10 (1) (b):

(b1) to provide funding to victims groups approved by the Commissioner,

### **[3] Section 16 Payments from Fund**

Insert after section 16 (c):

(c1) any funding provided to victims groups approved by the Commissioner,

**Explanatory note**

The proposed amendments enable the Commissioner of Victims Rights to provide funding from the Victims Support Fund to organisations that provide support services for victims of crime that are approved by the Commissioner.

## **Schedule 2 (Repealed)**

## **Schedule 3 Amendment of Legal Profession Uniform Law application**

## legislation

### 3.1 Legal Profession Uniform Law Application Act 2014 No 16

#### [1] Section 49 Trustees of the Public Purpose Fund

Omit “3” from section 49 (2) (a). Insert instead “4”.

#### [2] Section 49 (2) (a) (ii)

Omit “appropriate qualifications and experience”.

Insert instead “the financial and investment expertise”.

#### [3] Section 49 (2) (a) (iii)

Insert after section 49 (2) (a) (ii):

- (iii) 1 is to be a person whom the Attorney General considers to have appropriate qualifications and experience to act as a trustee, and

#### [4] Section 50A

Insert after section 50:

##### 50A Community legal services account

- (1) The Trustees are to establish a separate account (the **community legal services account**) in the Public Purpose Fund for money paid to the Fund:
  - (a) from the assets of the Solicitors Mutual Indemnity Fund under clause 12 of Schedule 9, and
  - (b) under clause 18 of Schedule 9.
- (2) Payments are not to be made from the capital of the community legal services account other than for the purposes of the investment of amounts in accordance with section 50.
- (3) The income from investment of the community legal services account is to be allocated to that account.

#### [5] Section 55 Discretionary payments from Fund for other purposes

Insert after section 55 (1):

- (1A) The Trustees may from time to time, with the concurrence of the Attorney General,

determine that an amount is to be paid from income earned from the investment of the community legal services account established in the Public Purpose Fund for the purposes of the community legal services program managed by the Legal Aid Commission.

(1B) Subsection (1A) does not limit the payment of any other money from the Public Purpose Fund under any other provision of this section.

**[6] Section 55 (3)**

Insert “or a purpose specified in subsection (1A)” after “Legal Aid Fund” where firstly occurring.

**[7] Part 8 Professional indemnity insurance**

Omit Divisions 2, 3, 4 and 5 from Part 8.

**[8] Schedule 5 Trustees of the Public Purpose Fund**

Omit “3” from clause 11. Insert instead “4”.

**[9] Schedule 7 Professional indemnity insurance—provisions relating to HIH insurance**

Insert in alphabetical order in clause 1 (1):

***Lawcover Insurance*** means Lawcover Insurance Pty Limited (ABN 15 095 082 509).

**[10] Schedule 7, clause 1 (2) and (3)**

Omit the subclauses.

**[11] Schedule 7, clause 2 (1)**

Omit “the Company from the Indemnity Fund”. Insert instead “Lawcover Insurance”.

**[12] Schedule 7, clause 2 (2)**

Omit “from the Indemnity Fund, the Company”. Insert instead “, Lawcover Insurance”.

**[13] Schedule 7, clause 2 (4)**

Omit “The Company”. Insert instead “Lawcover Insurance”.

**[14] Schedule 7, clause 2 (5)-(8)**

Omit “the Company” wherever occurring. Insert instead “Lawcover Insurance”.

**[15] Schedule 7, clause 2 (6) and (7)**

Omit “from the Indemnity Fund” wherever occurring.



**[16] Schedule 7, clause 2 (8)**

Omit “from the Indemnity Fund”. Insert instead “by Lawcover Insurance”.

**[17] Schedule 7, clause 2 (9) and (10)**

Omit the subclauses.

**[18] Schedule 7, clause 3**

Omit the clause.

**[19] Schedule 9 Savings, transitional and other provisions**

Insert at the end of the Schedule:

## **Part 4 Provisions consequent on enactment of Justice Legislation Amendment Act (No 3) 2018**

### **11 Definitions**

In this Part:

**amending Act** means the *Justice Legislation Amendment Act (No 3) 2018*.

**assets** means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents.

**Indemnity Fund** means the Solicitors Mutual Indemnity Fund established under section 101 of this Act (as in force immediately before the repeal day).

**insolvent insurer agreements** means the following agreements entered into on 27 November 2001:

- (a) the LawCover scheme loan and claims authority agreement between CIC Insurance Limited (in liquidation), Lawcover Pty Limited, the Law Society of New South Wales and Anthony McGrath and Alexander Macintosh as liquidators,
- (b) the LawCover scheme loan and claims authority agreement between HIH Casualty and General Insurance Limited (in liquidation), Lawcover Pty Limited, the Law Society of New South Wales and Anthony McGrath and Alexander Macintosh as liquidators,
- (c) the LawCover scheme loan and claims authority agreement between FAI General Insurance Company Limited (in liquidation), Lawcover Pty Limited, the Law Society of New South Wales and Anthony McGrath and Alexander Macintosh as

liquidators.

**instrument** means an instrument (other than this Act or an instrument made under this Act) or any other document that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order, process or other instrument issued by a court or tribunal.

**Lawcover Insurance** means Lawcover Insurance Pty Limited (ABN 15 095 082 509).

**Lawcover Pty Ltd** means Lawcover Pty Limited (ABN 48 003 326 618).

**liabilities** means any liabilities, debts or obligations (whether present or future, whether vested or contingent and whether personal or assignable).

**repeal day** means the day on which Division 3 of Part 8 of this Act is repealed by the amending Act.

**rights** means any rights, powers, privileges or immunities (whether present or future, whether vested or contingent and whether personal or assignable).

## **12 Closure of Indemnity Fund and transfer of contents**

(1) On the repeal day, the following has effect:

- (a) half of the monetary assets of the Indemnity Fund are transferred to, and become the assets of, the Law Society,
- (b) half of the monetary assets of the Indemnity Fund are transferred to, and become the assets of, the Public Purpose Fund,
- (c) all assets of the Indemnity Fund that are not monetary assets are transferred to, and become the assets of, Lawcover Insurance.

(2) On the repeal day, the following has effect:

- (a) the rights and liabilities arising in connection with the monetary assets transferred to the Law Society vest in the Law Society,
- (b) the rights and liabilities arising in connection with the monetary assets transferred to the Public Purpose Fund vest in the Trustees of the Public Purpose Fund,
- (c) all other rights and liabilities arising in connection with the Indemnity Fund or assets of the Indemnity Fund, and of Lawcover Pty Ltd as manager of the Indemnity Fund, vest in Lawcover Insurance.

(3) Without limiting subclause (2) (c), the rights or liabilities transferred to Lawcover

Insurance include any rights or liabilities relating to the Indemnity Fund, and Lawcover Pty Ltd as the manager of that Fund, under the insolvent insurer agreements.

(4) Assets, rights and liabilities may be transferred to the Public Purpose Fund, the Law Society or Lawcover Insurance under this Part despite any other law or agreement (including the insolvent insurer agreements) and whether or not the consent of the Trustees of the Public Purpose Fund, the Law Society or Lawcover Insurance has been obtained.

(5) In this clause:

**monetary assets** means money and any property that may be realised as money.

### **13 Vesting of assets, rights and liabilities in transferees**

(1) The following provisions apply to assets, rights or liabilities transferred under this Part:

- (a) the assets vest by virtue of clause 12 and without the need for any further conveyance, transfer, assignment or assurance,
- (b) the rights or liabilities become by virtue of clause 12 the rights or liabilities of the transferee,
- (c) all proceedings relating to the assets, rights or liabilities commenced before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee,
- (d) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the transferor or a predecessor of the transferor is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,
- (e) the transferee has all the entitlements and obligations of the transferor in relation to those assets, rights and liabilities that the transferor would have had but for the transfer, whether or not those entitlements and obligations were actual or potential at the time the transfer took effect,
- (f) a reference in any Act, in any instrument made under any Act or in any document of any kind to:
  - (i) the transferor, or
  - (ii) any predecessor of the transferor,

to the extent to which the reference relates to those assets, rights or liabilities, is taken to be, or include, a reference to the transferee.

(2) No attornment to the transferee by a lessee from the transferor is required.

(3) In this clause:

***transferee***, in relation to assets, rights or liabilities, means a person to whom the assets, rights or liabilities are transferred under this Part.

***transferor*** means Lawcover Pty Ltd in its capacity as the manager of the Indemnity Fund.

#### **14 No compensation payable**

No compensation is payable to any person or body in connection with a transfer under this Part.

#### **15 Confirmation of vesting**

(1) The Minister may, by notice in writing, confirm a transfer of particular assets, rights or liabilities under this Part.

(2) The notice is conclusive evidence of the transfer.

#### **16 Law Society to subscribe for shares in Lawcover Insurance**

(1) The Law Society must, on or after the repeal day, subscribe to an amount of capital in Lawcover Insurance that is not less than the value, on the repeal day, of the monetary assets transferred to the Law Society under this Part.

(2) The Law Society may deduct from that amount any costs incurred by the Law Society relating to the subscription.

#### **17 Effect of amendment of Schedule 7**

Schedule 7, as amended by the amending Act, has effect despite any other law or agreement (including the insolvent insurer agreements).

#### **18 Payment of amounts to be shared with Public Purpose Fund**

(1) If an amount is recovered by Lawcover Insurance as a result of the exercise of its functions under Schedule 7 or this Part (including functions under the insolvent insurer agreements that are conferred under that Schedule or this Part):

(a) half the amount is to be retained by Lawcover Insurance, and

(b) half the amount is to be paid into the Public Purpose Fund.

- (2) This clause does not apply to an amount that is payable to another person under any other Act or law or the insolvent insurer agreements (subject to this Part).

## **19 Operation of Part**

The operation of this Part, or the operation of Schedule 7 as amended by the amending Act, is not to be regarded:

- (a) as a breach of contract or confidence or otherwise as a civil wrong, or
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
- (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability, or
- (d) as an event of default under any contract or other instrument.

## **20 Additional matters relating to insolvent insurer agreements**

- (1) For the purposes of this Part, and the transfer of assets, rights and liabilities under this Part that arise under the insolvent insurer agreements:
- (a) references in the agreements to Lawcover Pty Ltd acting in its capacity as the manager of the Indemnity Fund are taken to be references to Lawcover Insurance, and
  - (b) references in the agreements to the payment of amounts to or from the Indemnity Fund are taken to be references to payment of amounts to or from an account of Lawcover Insurance nominated by Lawcover Insurance for that purpose.
- (2) The amendments made to this Act by the amending Act do not affect:
- (a) the operation of the insolvent insurer agreements, except as provided by or under this Schedule or Schedule 7, or
  - (b) the power of the Law Society and Lawcover Insurance to enter into amendments to those agreements to reflect the effect of the amendments made to this Act by the amending Act.

## **21 Law Society consent to change in functions**

The Law Society is taken to consent to the exercise by Lawcover Insurance of functions conferred on Lawcover Insurance under this Part or as a result of the amendments made to this Act by the amending Act.

## 22 Displacement of Corporations legislation

This Part and Schedule 7 are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to section 477 of the Corporations legislation.

### Note—

Section 5G of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

### Explanatory note

Item [1] of the proposed amendments increases the number of trustees of the Public Purpose Fund appointed by the Attorney General from 3 to 4. Items [2] and [3] require that 1 of the trustees appointed by the Attorney General is to be a person whom the Attorney General considers has the financial and investment expertise to act as a trustee and 1 trustee is to be a person whom the Attorney General considers has appropriate qualifications and experience to act as trustee. Item [8] makes a consequential amendment relating to the quorum for a meeting of the trustees.

Item [4] requires a community legal services account to be established in the Public Purpose Fund and for money received from assets of the Solicitors Mutual Indemnity Fund (the *Indemnity Fund*), which is being abolished by the proposed Act, to be allocated to the account. Money received from claims made against certain insolvent insurers will also be paid to the community legal services account. The only purpose for which the capital of the community legal services account may be used is investment and income from any such investment is to be allocated to the account.

Item [5] enables the trustees of the Public Purpose Fund, with the concurrence of the Attorney General, to pay amounts from income earned from the investment of the community legal services account for the purposes of the community legal services program managed by the Legal Aid Commission.

Item [6] prevents the requirement to consider whether adequate provision has been made from the Public Purpose Fund for the supplementation of the Legal Aid Fund before making a payment from the Public Purpose Fund from applying to payments for a purpose for which the income from investment of the community legal services account may be used.

Item [7] omits provisions relating to the establishment and use of the Indemnity Fund as well as provisions enabling contributions to the Fund to be obtained from legal practitioners.

Items [9]–[18] amend provisions relating to a scheme for indemnifying legal practitioners who obtained professional indemnity insurance from the insolvent HIH insurance group companies. The scheme, which formerly provided for payments to be made from the Indemnity Fund under the management of Lawcover Pty Ltd in its capacity as manager of the Indemnity Fund and conferred rights of recovery against the liquidators of the insurance group, will now provide for payments to be made directly by Lawcover Insurance Pty Ltd (*Lawcover Insurance*) from funds nominated by it and for the rights to be conferred on Lawcover Insurance. The proposed amendments also repeal a provision that enabled contributions to the Indemnity Fund to be required from solicitors or former solicitors.

Item [19] inserts savings, transitional and other provisions consequent on the abolition of the Indemnity Fund. The amendments:

- (a) transfer half of the monetary assets of the Indemnity Fund (and related rights and liabilities) to the Law Society and half to the Public Purpose Fund, and
- (b) transfer non-monetary assets to Lawcover Insurance, and the rights or liabilities relating to all the non-monetary assets of the Indemnity Fund to Lawcover Insurance, including the previous rights and liabilities of Lawcover Pty Ltd as manager of the Indemnity Fund that are specified under agreements entered into with the liquidators of the HIH insurance group, and
- (c) set out the effect of the transfers, and
- (d) provide that no compensation is payable in connection with the transfers, and
- (e) confer on the Attorney General the power to conclusively confirm a transfer of assets, rights or liabilities under the proposed

amendments, and

- (f) require the Law Society to subscribe to an amount of capital in Lawcover Insurance that is not less than the monetary assets of the Indemnity Fund transferred to the Law Society, and
- (g) require half of all amounts payable to Lawcover Insurance under agreements entered into with the liquidators of the HIH insurance group to be paid by Lawcover Insurance to the Public Purpose Fund and indirectly amend references to the Indemnity Fund and Lawcover Insurance in those agreements, and
- (h) provide for the operation of the proposed amendments in relation to existing agreements and instruments, and
- (i) deem the Law Society to have consented to the exercise by Lawcover Insurance of the functions conferred by the proposed amendments, and
- (j) make a declaration for the purposes of the *Corporations Act 2001* of the Commonwealth that has the effect of providing that section 477 of that Act does not apply to the extent that it is inconsistent with the *Legal Profession Uniform Law Application Act 2014* as amended by the amending Act. In particular, the effect of the displacement of section 477 is to remove any requirement that the indirect amendments to the agreements made with the liquidators of the HIH insurance group require further approval by the Supreme Court (as may have been required if that section had continued to operate).

## 3.2 Legal Profession Uniform Law Application Regulation 2015

### [1] Clause 12 Applicable period

Omit “12 months ending on 31 March” from clause 12 (1).

Insert instead “3 months ending on 31 March, 30 June, 30 September or 31 December”.

### [2] Clause 12 (2)

Omit the subclause. Insert instead:

- (2) However, in relation to a law practice that commences to practise or provide legal services after the commencement of an applicable period, the first applicable period is the period starting on the commencement of the practice or the provision of legal services and ending at the end of the applicable period.

#### Explanatory note

Item [1] of the proposed amendments changes the intervals at which a law practice must make a statutory deposit from its general trust account with the Law Society from 12 months to every quarter.

Item [2] provides that, if a law practice commences practice part way through a quarter, the payment period for the statutory deposit is to be the period starting when practice commences and ending at the end of the quarter.