

Justice Legislation Amendment Act (No 3) 2018 No 87

[2018-87]



New South Wales

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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

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(Repealed)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[4] (Repealed)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.

1.6-1.8

(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

(Repealed)

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.