

# Justice Legislation Amendment Act (No 2) 2019 No 20

[2019-20]



New South Wales

## Status Information

### Currency of version

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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**

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### Authorisation

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# Justice Legislation Amendment Act (No 2) 2019 No 20



New South Wales

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# Justice Legislation Amendment Act (No 2) 2019 No 20



New South Wales

An Act to amend various Acts and regulations relating to courts, crimes and other Communities and Justice portfolio matters.

## 1 Name of Act

This Act is the *Justice Legislation Amendment Act (No 2) 2019*.

## 2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by this section.
- (2) Schedule 1.1, 1.10[15], 1.11, 1.12, 1.15, 1.21, 1.24 and 1.25 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 Bail Act 2013 No 26

#### [1] Section 43A

Insert after section 43—

#### **43A Police power to make bail decision—witnesses**

- (1) A police officer may make a bail decision in respect of a person referred to in section 229 or 308 of the *Criminal Procedure Act 1986* if the person is unable to be brought before a court, authorised justice or authorised officer immediately after the person’s arrest.

- (2) Subject to subsection (3), this Act applies to the person as if—
  - (a) the person were accused of an offence, and
  - (b) the proceedings in which the person is required to be examined or produce a document or thing were proceedings for that offence.
- (3) In making a bail decision under this section, a police officer may not impose any bail conditions under this Act.
- (4) Bail may be granted for the period between—
  - (a) the police officer making a bail decision for the purposes of this section, and
  - (b) the person being examined as a witness or producing the document or thing.

**Note—**

See sections 230 and 308 of the *Criminal Procedure Act 1986* for provisions relating to bail decisions made by courts and authorised officers.

**[2] Section 77 Police officers may take actions to enforce bail requirements**

Omit “A police officer” from section 77(1).

Insert instead “Unless section 77A applies, a police officer”.

**[3] Section 77A**

Insert after section 77—

**77A Courts may take action to enforce bail requirement to appear**

- (1) This section applies where bail has been granted in relation to a person who has been sentenced to imprisonment and the execution of the sentence has been stayed under any of the following provisions—
  - (a) section 63(2)(c) of the *Crimes (Appeal and Review) Act 2001*,
  - (b) section 17C(2)(a) of the *Crimes (Sentencing Procedure) Act 1999*,
  - (c) section 69C(2)(a) of the *Supreme Court Act 1970*.
- (2) If the person has failed to appear before a court in accordance with the person’s bail acknowledgment, a court may issue a warrant to apprehend the person and bring the person before a court specified in the warrant.

**Explanatory note**

Item [1] of the proposed amendments enables a police officer to make a bail decision about a witness who is arrested under a warrant for failing to appear before a court or failing to comply with a subpoena if the witness is unable to be brought before a

court, authorised justice or authorised officer immediately after the witness is arrested.

Items [2] and [3] enable a court (instead of a police officer) to enforce a bail requirement to appear where bail has been granted in relation to a person who has been sentenced to imprisonment and the execution of the sentence has been stayed. The court may issue a bench warrant to apprehend the person and bring the person before the court. Currently, police officers may take action to enforce bail requirements under the [Bail Act 2013](#).

## **1.2 Child Protection (Offenders Registration) Act 2000 No 42**

### **Section 17 Offence of failing to comply with reporting obligations**

Insert after section 17(2)—

(2A) In proceedings for an offence under this section, the onus of proving that a registrable person had a reasonable excuse lies with the person and must be proved on the balance of probabilities.

#### **Explanatory note**

The proposed amendment makes it clear that a registrable person who is charged with failing to comply with the person's reporting obligations has the onus of proving the defence of reasonable excuse on the balance of probabilities.

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

### **[1] Section 40 Application of Part**

Insert after section 40(1)—

(2) This Part ceases to apply to a juvenile offender when the juvenile offender reaches the age of 18 years.

### **[2] Section 40(3)**

Omit "This Part also applies to a juvenile offender".

Insert instead "Despite subsection (2), this Part continues to apply to a juvenile offender".

### **[3] Section 40(3)(a1)**

Omit the paragraph.

### **[4] Schedule 1 Savings and transitional 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 2) 2019

### Application of amendment to existing parole orders

The amendments made to section 40 by the *Justice Legislation Amendment Act (No 2) 2019* extend to a juvenile offender who, immediately before the commencement of the amendments, was subject to a parole order or statutory parole order.

#### Explanatory note

Items [1] and [3] of the proposed amendments provide that certain juvenile offenders are subject to the provisions of the *Crimes (Administration of Sentences) Act 1999* relating to parole of adult offenders once they reach the age of 18 years. The proposed amendments restore the provisions that were in force before the commencement of amendments to the *Children (Detention Centres) Act 1987* made by the *Justice Legislation Amendment Act (No 2) 2018*. Item [2] makes a consequential amendment. Item [4] inserts a transitional provision.

### 1.4 Coroners Act 2009 No 41

#### [1] Section 101E Members of Team

Omit section 101E(4A).

#### [2] Section 101E(5)

Insert before paragraph (a) and renumber existing paragraphs (a) and (b) as (c) and (d), respectively—

- (a) 1 Deputy Chief Magistrate, recommended by the Chief Magistrate,
- (b) the Commissioner of Victims Rights,

#### [3] Section 101E(7)

Omit “19”. Insert instead “20”.

#### [4] Schedule 3 Members and procedure of Domestic Violence Death Review Team

Insert “a Deputy Chief Magistrate,” after “the State Coroner,” in clause 3.

#### Explanatory note

Item [2] of the proposed amendments provides that one Deputy Chief Magistrate, recommended by the Chief Magistrate, is to be appointed to the Domestic Violence Death Review Team. Items [1], [3] and [4] make consequential amendments.

### 1.5 Court Security Act 2005 No 1

#### [1] Section 4 Definitions

Insert “, belt” after “shoes” in paragraph (c) of the definition of *personal search* in section 4(1).

**[2] Section 10 Power to search persons and vehicles**

Omit section 10(1)(b). Insert instead—

- (b) submit to a personal search of the person if—
  - (i) the officer believes on reasonable grounds that the person possesses a restricted item or offensive implement, or
  - (ii) the person has submitted to a scanner search and the officer believes, as a result of the scanner search, that a personal search is appropriate,

**Explanatory note**

Item [1] of the proposed amendments provides that a personal search of a person conducted by a security officer at court premises may include requiring the person to remove the person's belt.

Item [2] enables a security officer to require a person at court premises to submit to a personal search if the person has submitted to a scanner search and, as a result of that search, the officer believes that a personal search is appropriate. This is in addition to the existing power to require a person to submit to a personal search if the officer believes the person possesses a restricted item or offensive implement.

## **1.6 Crimes Act 1900 No 40**

**[1] Section 93T Participation in criminal groups**

Insert after section 93T(5)—

- (6) To avoid doubt, for the purposes of this section a person may participate in a criminal group whether or not the person is a member of the criminal group.

**[2] Part 4, Division 5A, heading**

Omit the heading. Insert instead—

Division 5A **Offences relating to theft of motor vehicles, vessels and trailers**

**[3] Section 154E Definitions**

Insert in alphabetical order in section 154E(1)—

**trailer** has the same meaning as in the [Road Transport Act 2013](#).

**[4] Section 154F Stealing motor vehicle, vessel or trailer**

Omit "motor vehicle or vessel". Insert instead "motor vehicle, vessel or trailer".

**[5] Section 154G Facilitating organised car, boat or trailer rebirthing activities**

Omit "car or boat" wherever occurring in section 154G(1), (3) and (4).

Insert instead “car, boat or trailer”.

**[6] Section 154G(2)**

Omit “*car or boat*”. Insert instead “*car, boat or trailer*”.

**[7] Section 154G(2)(a)-(e)**

Omit “motor vehicle or vessel” wherever occurring.

Insert instead “motor vehicle, vessel or trailer”.

**[8] Section 154G(2)(a), (e) and (f)**

Omit “stolen motor vehicle or stolen vessel” wherever occurring.

Insert instead “stolen motor vehicle, stolen vessel or stolen trailer”.

**[9] Section 154H Making, using and interfering with unique identifiers**

Omit “motor vehicle or vessel” wherever occurring in section 154H(1)(b) and (d) and (2)-(4).

Insert instead “motor vehicle, vessel or trailer”.

**[10] Section 154H(1)(d) and (2)-(4)**

Omit “motor vehicle, vessel”. Insert instead “motor vehicle, vessel, trailer”.

**[11] Section 154I Possession of motor vehicle, vessel or trailer where unique identifier has been interfered with**

Omit “motor vehicle or vessel” wherever occurring in section 154I(1).

Insert instead “motor vehicle, vessel or trailer”.

**[12] Section 154J Possession of identification plate not attached to motor vehicle or trailer**

Omit “a vehicle identification plate” from section 154J(1).

Insert instead “an identification plate”.

**[13] Section 154J(1)**

Insert “or trailer” after “motor vehicle”.

**[14] Section 154J(3)**

Omit the definitions of **vehicle identification number** and **vehicle identification plate**.



Insert in alphabetical order—

**identification plate** has the same meaning as in the *Motor Vehicle Standards Act 1989* of the Commonwealth.

**[15] Section 308B Meaning of unauthorised access, modification or impairment**

Insert after section 308B(2)—

(2A) For the purposes of an offence under section 308D, 308E or 308H, any such access, modification or impairment is also not unauthorised if—

- (a) it is caused by an authorised person, and
- (b) the computer concerned is in the lawful custody of the authorised person when the access, modification or impairment is caused, and
- (c) the purpose of the access, modification or impairment is to preserve, or prevent the concealment, fabrication, destruction or loss of, evidence of the commission of an offence.

**[16] Section 308B(4)-(7)**

Insert after section 308B(3)—

(4) For the purposes of an offence under section 308I, impairment of the reliability, security or operation of data is not unauthorised if—

- (a) it is caused by an authorised person, and
- (b) the computer disk, credit card or other device concerned is in the lawful custody of the authorised person when the impairment is caused, and
- (c) the purpose of the impairment is to preserve, or prevent the concealment, fabrication, destruction or loss of, evidence of the commission of an offence.

(5) If an authorised person causes the access, modification or impairment referred to in subsection (2A) or (4), the authorised person must, as soon as practicable after causing that access, modification or impairment, make a record in writing of the manner of that access, modification or impairment.

(6) Failure to comply with subsection (5) does not make the access, modification or impairment unauthorised.

(7) In this section—

**authorised person** means a law enforcement officer or a person authorised by a

law enforcement agency.

**law enforcement agency** has the same meaning as in section 13 of the *Criminal Records Act 1991*.

**law enforcement officer** has the same meaning as in Division 8A of Part 3.

#### Explanatory note

Item [1] of the proposed amendments makes it clear that a person may commit an offence that involves participating in a criminal group whether or not the person is a member of the criminal group.

Items [2]-[11] and [13] extend the application of certain offences relating to the theft of motor vehicles and vessels to trailers.

Items [12] and [14] update references to identification plates issued under the *Motor Vehicle Standards Act 1989* of the Commonwealth.

Items [15] and [16] provide that access to or modification of computer data, or impairment of electronic communications, that is caused by a law enforcement officer does not constitute an offence under the *Crimes Act 1900* if it is for the purpose of preserving evidence of the commission of an offence, or preventing the concealment, fabrication, destruction or loss of evidence of the commission of an offence.

## 1.7 Crimes (Administration of Sentences) Act 1999 No 93

### [1] Section 253A Definitions

Insert in alphabetical order—

**relevant offence** means an offence under this Act or the regulations, but does not include an offence prescribed by the regulations.

### [2] Sections 253I and 253J

Omit “an offence under this Part” wherever occurring. Insert instead “a relevant offence”.

### [3] Section 253I Powers of correctional officers

Omit “any offence under this Part” from section 253I(6). Insert instead “a relevant offence”.

### [4] Section 253MA Use of reasonable force—visitors

Omit the note to section 253MA(2). Insert instead—

#### Note—

Section 253I confers powers on a correctional officer to arrest a person suspected of committing a relevant offence, to search and detain the person and to seize things that are evidence of the commission of a relevant offence.

### [5] Section 257A Authority to disclose and exchange certain information

Insert after paragraph (a) of the definition of **relevant agency** in section 257A(4)—

(a1) an intelligence agency of an Australian jurisdiction, or

**[6] Section 257A(4), paragraph (c) of the definition of “relevant agency”**

Insert “prescribed by the regulations as a relevant agency” after “body”.

**[7] Section 257A(4), definition of “relevant agency”**

Omit “that is prescribed by the regulations as a relevant agency”.

**[8] Section 257A(5A)**

Insert after section 257A(5)—

(5A) The disclosure, sharing and exchange of information in accordance with subsection (1) or under an information sharing arrangement must comply with any conditions prescribed by the regulations for the purposes of this section.

**Explanatory note**

Items [1]-[4] of the proposed amendments extend the powers of correctional officers in certain circumstances to enable officers to stop, detain, search and arrest persons suspected of committing an offence under the *Crimes (Administration of Sentences) Act 1999* or any regulations made under that Act.

Item [5] enables the Commissioner of Corrective Services to enter into an information sharing arrangement with the head of an intelligence agency. Items [6] and [7] provide that all law enforcement agencies or government agencies of a State or Territory that correspond with Corrective Services NSW may enter into an information sharing arrangement with the Commissioner of Corrective Services without being prescribed by the regulations. Item [8] enables the regulations to prescribe conditions for the disclosure, sharing and exchange of information.

## **1.8 Crimes Legislation Amendment Act 2018 No 83**

**[1] Schedule 1 Amendment of *Crimes (Domestic and Personal Violence) Act 2007 No 80***

Omit Schedule 1[2].

**[2] Schedule 1[4]**

Omit “final apprehended violence order”.

Insert instead “A final apprehended violence order”.

**[3] Schedule 1[4]**

Omit “apprehended personal violence order”.

Insert instead “An apprehended personal violence order”.

**[4] Schedule 1[5], proposed section 79A**

Omit the proposed section. Insert instead—

### **79A Duration of apprehended domestic violence orders**

- (1) An apprehended domestic violence order remains in force for—
  - (a) the period specified in the order by the court, or
  - (b) if the court fails to specify a period in the order, the default period.
- (2) The period specified is to be as long as is necessary, in the opinion of the court, to ensure the safety and protection of the protected person.
- (3) In forming the opinion, the court is to consider the following matters—
  - (a) the circumstances of the protected person and that person's views,
  - (b) the circumstances of the defendant and, if the defendant was under 18 years of age when the application for the order was first made, the impact of the order if the duration of the order were to be more than the default period,
  - (c) any material that the court relied on under sections 16 and 17 in deciding to make an apprehended domestic violence order,
  - (d) any other matter that the court considers to be relevant.

**Note—**

Section 9(4) requires the court to be guided by the objects referred to in section 9 when exercising a power in relation to domestic violence. Section 9(3)(d) may be of particular relevance when determining the appropriate duration for an apprehended domestic violence order.

- (4) The court may form the opinion at the same time that it decides to make the order under Part 4.
- (5) This section is subject to sections 73, 73A and 79C.
- (6) In this section—

***default period*** means—

- (a) if the order relates to a defendant who was under 18 years of age when the application for the order was first made—1 year after the date the order is made, or
- (b) in any other case—2 years after the date the order is made.

**[5] Schedule 1[5], proposed section 79B(1)(b)**

Omit “is 18 years of age or older”.

Insert instead “was 18 years of age or older when the application for the order was first made”.

**[6] Schedule 1[5], proposed section 79C(2)**

Omit “section 79A (4)”. Insert instead “section 79A(3)”.

**[7] Schedule 1[6]**

Omit the proposed clause headed “**Application of amendment about content of applications**”.

**Explanatory note**

Item [1] of the proposed amendments omits proposed section 49AA of the *Crimes (Domestic and Personal Violence) Act 2007*, which made provision for an applicant for an apprehended domestic violence order to request the period for which the order will remain in force. Item [7] is a consequential amendment.

Item [4] substitutes proposed section 79A of the *Crimes (Domestic and Personal Violence) Act 2007* to provide that an apprehended domestic violence order remains in force for the period specified by the court (or, if no period is specified, for the default period) and to specify, in a more general manner, the factors that the court must consider in forming an opinion as to that duration. It also makes it clear that the opinion can be formed at the same time that the court decides whether or not to make the order. Item [6] is a consequential amendment.

Item [5] provides that an apprehended domestic violence order of infinite duration cannot be made against a defendant who was under 18 years of age when the application for the order was first made.

Items [2] and [3] are law revision amendments that correct grammatical errors.

## **1.9 Criminal Appeal Act 1912 No 16**

**[1] Section 5DB Appeals by Crown against sentences for related or back up summary offences in criminal cases dealt with by Supreme Court or District Court**

Omit “a related summary offence” from section 5DB(1). Insert instead “an offence”.

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

Insert at the end of the Schedule, with appropriate clause numbering—

### **Justice Legislation Amendment Act (No 2) 2019**

The amendment made to section 5DB by the *Justice Legislation Amendment Act (No 2) 2019* applies to a sentence imposed after the commencement of the amendment even if the proceedings before the court of trial began before that commencement.

**Explanatory note**

Item [1] of the proposed amendments enables the Attorney General or the Director of Public Prosecutions to appeal to the Court of Criminal Appeal against sentences imposed by the Supreme Court or District Court under Division 7 of Part 3 of Chapter 3 of the *Criminal Procedure Act 1986* in respect of summary offences that are back up offences in relation to indictable offences. Currently, appeals are limited to sentences imposed under that Division for related offences. Item [2] inserts a transitional provision concerning the new appeal right.

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

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

Omit the definition of *female genital mutilation offence* from section 3(1).

### **[2] Section 3(1), definition of “prescribed sexual offence”**

Insert “45, 45A,” after “section 43B,” in paragraph (a).

### **[3] Section 3(1), definition of “prescribed sexual offence”**

Insert “, 316 (if the concealed serious indictable offence is a prescribed sexual offence)” after “91G” in paragraph (a).

### **[4] Section 59 Explanation of committal process and discount for guilty plea**

Omit section 59(1). Insert instead—

(1) The Magistrate in committal proceedings must give the accused person—

(a) if the accused person is not represented by an Australian legal practitioner in the committal proceedings—an oral and written explanation of the following matters—

(i) the committal process under this Part, including charge certification and committal for trial or sentence,

(ii) the scheme under Part 3 of the *Crimes (Sentencing Procedure) Act 1999* for the sentence discount that applies in the case of a guilty plea, or

(b) if the accused person is so represented—

(i) a written explanation of the committal process under this Part, including charge certification, case conferences and committal for trial or sentence, and

(ii) an oral and written explanation of the scheme under Part 3 of the *Crimes (Sentencing Procedure) Act 1999* for the sentence discount that applies in the case of a guilty plea.

### **[5] Section 59(2)**

Omit “oral and written explanation”. Insert instead “explanations”.

### **[6] Section 67 Charge certificate must be filed**

Insert after section 67(2)(b)—

**Note—**

The first court appearance required by the court attendance notice may be before a registrar exercising certain functions of the court pursuant to rules of the court, or the functions of an authorised justice under the [Bail Act 2013](#).

**[7] Section 230 Application of [Bail Act 2013](#)—bail decisions made by courts**

Insert at the end of the section—

**Note—**

See section 43A of the [Bail Act 2013](#) for a provision relating to bail decisions made by police officers.

**[8] Section 279A Admission of evidence of complainant from related proceedings**

Omit section 279A(12).

**[9] Sections 290A(1), 306A and 306H**

Omit the definition of *prescribed sexual offence* wherever occurring.

**[10] Section 290A Definitions**

Insert at the end of section 290A(2)(c)—

, and

(d) in relation to an offence under section 316 or 316A of the [Crimes Act 1900](#), a reference to the person against whom the concealed serious indictable offence or child abuse offence (as the case requires) is alleged to have been committed.

**[11] Section 294B Giving of evidence by complainant in prescribed sexual offence proceedings—alternative arrangements**

Insert at the end of the section—

**Note—**

Part 3B of the [Witness Protection Act 1995](#) provides for alternative arrangements for the giving of evidence by a person who is, or was, a participant in a witness protection program under that Act.

**[12] Section 300 Effect of consent**

Omit “if the principal protected confider to whom the proceedings relate has consented to the production of the document or adducing of the evidence.” from section 300(1).

Insert instead—

if—

- (a) the principal protected confider to whom the proceedings relate has consented to the production of the document or adducing of the evidence, or
- (b) for a principal protected confider under 14 years of age—a person the court determines is a suitable person has consented to the production of the document or adducing of the evidence.

**[13] Section 300(1A)**

Insert after section 300(1)—

- (1A) For the purposes of subsection (1)(b), the court may determine that a person is a suitable person only if—
- (a) the person is not—
    - (i) the accused person in the proceedings, or
    - (ii) connected to the proceedings, and
  - (b) the court considers the person is acting in the best interests of the principal protected confider, and
  - (c) the court considers that determining the person is a suitable person would not—
    - (i) damage the relationship between the suitable person and the principal protected confider, or
    - (ii) cause undue embarrassment, humiliation or harm to the principal protected confider.

**[14] Section 308 Authorised officers may make bail decisions in respect of witnesses who fail to attend trial**

Insert at the end of the section—

**Note—**

See section 43A of the *Bail Act 2013* for a provision relating to bail decisions made by police officers.

**[15] Schedule 1, Table 1**

Insert after clause 30B—

**30C Offences involving supply of prohibited drugs on an ongoing basis**

An offence under section 25A(1) of the *Drug Misuse and Trafficking Act 1985*.

**Explanatory note**



Item [2] of the proposed amendments provides that female genital mutilation offences under the *Crimes Act 1900* are prescribed sexual offences. Items [1], [8] and [9] make consequential amendments.

Item [3] provides that the offence of concealing a serious indictable offence under the *Crimes Act 1900* is a prescribed sexual offence if the concealed offence is a prescribed sexual offence. Item [10] makes a consequential amendment.

Item [4] removes a requirement for a Magistrate in committal proceedings for indictable offences to give the accused person an oral explanation of the committal process if the accused person is legally represented in those proceedings. A written explanation is still required to be given. Item [5] makes a consequential amendment.

Item [6] inserts a note to clarify that the first return date for a court attendance notice in committal proceedings may be before a registrar of the court (rather than a Magistrate) if the registrar is exercising certain functions of the court pursuant to rules of the court or exercising the functions of an authorised justice under the *Bail Act 2013*. In the section to which the note relates, the first return date marks the start of a 6-month period within which a charge certificate must be filed and served on the accused in the committal proceedings.

Items [7] and [14] insert notes providing cross-references to a proposed new police power (see section 43A as inserted into the *Bail Act 2013* by the proposed Act), which enables police officers to make bail decisions in respect of witnesses who are arrested after failing to appear in court or failing to comply with a subpoena. Courts and authorised officers currently have similar powers under the *Criminal Procedure Act 1986*.

Item [11] inserts a note regarding proposed Part 3B of the *Witness Protection Act 1995*, which is inserted by the proposed Act.

Item [12] provides for a suitable person to consent to the disclosure or the adducing of evidence disclosing a protected confidence in proceedings if the principal protected confider is under 14 years of age. Item [13] provides for the grounds on which the court may determine whether a person is a suitable person.

Item [15] provides that the indictable offence of supplying a prohibited drug on an ongoing basis under the *Drug Misuse and Trafficking Act 1985* is to be dealt with summarily unless the prosecutor or person charged elects to have the offence dealt with on indictment.

## 1.11 Firearms Act 1996 No 46

### [1] Section 4 Definitions

Insert in alphabetical order in section 4(1)—

**community correction order** has the same meaning as in the *Crimes (Sentencing Procedure) Act 1999*.

**conditional release order** has the same meaning as in the *Crimes (Sentencing Procedure) Act 1999*.

### [2] Sections 11(5)(d) and 29(3)(d)

Omit the paragraphs. Insert instead—

(d) is subject to one of the following in relation to an offence prescribed by the regulations—

- (i) a good behaviour bond, whether entered into in New South Wales or elsewhere,
- (ii) a community correction order imposed in New South Wales,

(iii) a conditional release order imposed in New South Wales, or

**[3] Section 44A Prescribed persons not to be involved in firearms dealing business**

Omit section 44A(3)(e). Insert instead—

(e) is subject to one of the following in relation to an offence prescribed by the regulations—

(i) a good behaviour bond, whether entered into in New South Wales or elsewhere,

(ii) a community correction order imposed in New South Wales,

(iii) a conditional release order imposed in New South Wales, or

**[4] Schedule 3 Savings and transitional provisions**

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

**Part Provisions consequent on enactment of [Justice Legislation Amendment Act \(No 2\) 2019](#)**

**Application of eligibility amendments**

- (1) This clause applies to the amendments made to sections 11(5), 29(3) and 44A of this Act and clauses 5, 42 and 129 of the [Firearms Regulation 2017](#) by the [Justice Legislation Amendment Act \(No 2\) 2019](#) (the **eligibility amendments**).
- (2) Any licence or permit that would have been validly issued or not issued during the transitional period if the eligibility amendments had been in force at the relevant time is taken to have been validly issued or not issued (as the case requires).
- (3) Subclause (2) does not affect the validity of any decision made during the transitional period to issue or refuse to issue a licence or permit if the decision would have been valid even without the eligibility amendments.
- (4) To avoid doubt, the eligibility amendments extend to an application for a licence or permit made, but not finally determined, before the commencement of this clause.
- (5) In this clause—

**transitional period** means the period commencing on 24 September 2018 and ending immediately before the day this clause commences.

**Note—**

The *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017* commenced on 24 September 2018. It included transitional provisions that converted good behaviour bonds into community correction orders and conditional release orders.

#### **Explanatory note**

Items [2] and [3] of the proposed amendments update references to good behaviour bonds as a consequence of changes to community-based sentencing options made by the *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017* to include community corrections orders and conditional release orders. The effect of the amendments is that a person who is subject to a community correction order or conditional release order imposed in New South Wales in respect of a prescribed offence is not eligible for a firearms licence or permit and cannot be involved in a firearms dealing business. Items [2] and [3] also make it clear that a person subject to a good behaviour bond entered into outside of New South Wales in respect of a prescribed offence continues to be ineligible for a licence or permit and cannot be involved in a firearms dealing business. Item [1] makes a consequential amendment.

Item [4] provides that certain licences and permits issued between 24 September 2018 and the commencement of the proposed amendments are taken to be valid. A pending application for a licence or permit is to be dealt with under the amended provisions.

## **1.12 Firearms Regulation 2017**

### **[1] Clauses 5(1A) and 42(1A)**

Insert after clauses 5(1) and 42(1), respectively—

(1A) In subclause (1)—

- (a) a reference to a good behaviour bond includes a reference to a community correction order or a conditional release order, but only if it was imposed in NSW, and
- (b) a reference to a term of imprisonment (whether or not suspended) includes a reference to an intensive correction order, but only if it was imposed in NSW.

### **[2] Clauses 5(2) and 42(2)**

Insert “in respect of a person subject to a good behaviour bond” after “are prescribed”, wherever occurring.

### **[3] Clause 5 Offences that disqualify applicants**

Insert after clause 5(2)—

- (3) **Persons subject to community correction orders or conditional release orders** For the purposes of sections 11(5)(d) and 29(3)(d) of the Act, the following offences are prescribed in respect of a person subject to a community correction order or a conditional release order—
  - (a) an offence referred to in subclause (1)(a), (c), (e) or (g)–(k),
  - (b) an offence in respect of a prohibited plant or prohibited drug within the

meaning of the *Drug Misuse and Trafficking Act 1985*, or a prescribed restricted substance within the meaning of the *Poisons and Therapeutic Goods Regulation 2008*,

- (c) an offence involving any of the following—
  - (i) the infliction of actual bodily harm on a person,
  - (ii) kidnapping or abduction,
  - (iii) stalking or intimidation,
  - (iv) fraud, dishonesty or stealing,
- (d) an offence of attempting to commit, threatening to commit or conspiring to commit an offence referred to in paragraph (c)(i)–(iii).

**[4] Clause 42 Offences that prevent persons from being involved in firearms dealing business**

Insert after clause 42(2)—

- (3) **Persons subject to community correction orders or conditional release orders** For the purposes of section 44A(3)(e) of the Act, the following offences are prescribed in respect of a person subject to a community correction order or a conditional release order—
  - (a) an offence referred to in subclause (1)(a), (c), (e) or (g)–(k),
  - (b) an offence in respect of a prohibited plant or prohibited drug within the meaning of the *Drug Misuse and Trafficking Act 1985*, or a prescribed restricted substance within the meaning of the *Poisons and Therapeutic Goods Regulation 2008*,
  - (c) an offence involving any of the following—
    - (i) the infliction of actual bodily harm on a person,
    - (ii) kidnapping or abduction,
    - (iii) stalking or intimidation,
    - (iv) fraud, dishonesty or stealing,
  - (d) an offence of attempting to commit, threatening to commit or conspiring to commit an offence referred to in paragraph (c)(i)–(iii).

**[5] Clause 129 Requirements relating to exemption for unlicensed persons shooting on**

**approved ranges and for persons undertaking firearms safety training courses**

Insert in alphabetical order in clause 129(11)—

**good behaviour bond** includes a reference to a community correction order or a conditional release order, but only if it was imposed in NSW.

**Explanatory note**

Item [1] of the proposed amendments provides that a reference to a good behaviour bond in clauses 5(1) and 42(1) of the *Firearms Regulation 2017* includes a reference to a community correction order or a conditional release order. Item [1] also clarifies that a person subject to a term of imprisonment (whether or not suspended) includes a reference to a person subject to an intensive correction order. The effect of the amendment is that a person who, within the previous 10 years, has been subject to a community correction order, conditional release order or intensive correction order imposed in New South Wales in respect of certain offences is not eligible for a firearms licence or permit and cannot be involved in a firearms dealing business.

Items [3] and [4] prescribe certain offences so that a person who is subject to a community correction order or conditional release order imposed in New South Wales for an offence committed in New South Wales is not eligible for a firearms licence or permit and cannot be involved in a firearms dealing business. Item [2] makes a consequential amendment.

Item [5] makes a similar amendment in relation to unlicensed persons using approved shooting ranges and undertaking firearms safety training courses.

## **1.13 Housing Act 2001 No 52**

### **[1] Section 71 Disclosure of information**

Insert after section 71(d)—

(d1) to a law enforcement agency for the purposes of law enforcement (including in connection with the investigation of an offence) or ascertaining the whereabouts of an individual who has been reported to a police officer as a missing person, or

### **[2] Section 71(2)**

Insert at the end of section 71—

(2) 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 Department of Communities and Justice,
- (g) the Office of the Sheriff of New South Wales,
- (h) a person or body prescribed by the regulations for the purposes of this definition.

**Explanatory note**

The proposed amendments allow information obtained in connection with the administration or execution of the [Housing Act 2001](#) to be disclosed to a law enforcement agency for law enforcement purposes, including investigating an offence or ascertaining the whereabouts of a missing person.

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

### **[1] Section 148 General drug detection with dogs in authorised places**

Insert after section 148(1)(e)—

- (f) persons at, or seeking to enter or leave, any part of premises that the officer is authorised to enter under section 10 of the [Restricted Premises Act 1943](#).

### **[2] Section 210N Notice of stock mustering order**

Omit section 210N(2). Insert instead—

- (2) The owner of stock to which a stock mustering order relates is to cause a copy of the order to be served on the police officer in charge of the police station closest to the land to which the order relates.

**Explanatory note**

Item [1] of the proposed amendments authorises police officers to use dogs for general drug detection without a warrant when entering premises that are subject to a declaration under section 3 of the [Restricted Premises Act 1943](#).

Item [2] requires the owner of stock subject to a stock mustering order to give a copy of the order to the police officer in charge of the closest police station.

## **1.15 Legal Aid Commission Act 1979 No 78**

### **[1] Section 4 Definitions**

Omit the definition of ***private legal practitioner*** from section 4(1).

Insert in alphabetical order—

***associate*** of a law practice has the same meaning as in the [Legal Profession Uniform Law \(NSW\)](#).

***law practice*** has the same meaning as in the [Legal Profession Uniform Law \(NSW\)](#).

**[2] Sections 11(1)(a), 12(d) and (e), 39(1), 56(1AA)(c) and 64(c)**

Omit “private legal practitioners” wherever occurring. Insert instead “law practices”.

**[3] Section 11 Provision of legal aid**

Omit “those persons are private legal practitioners” from section 11(2).

Insert instead “the services are provided by a law practice”.

**[4] Sections 11(3), 27(3)(b) and (c), 29(2)(c), 34C, 38A(1), 40(1) and (1A), 41(1), 43A(1) and (2)-(4), 43B(1) and (2), 44(1), (3) and (4), 60(2), 63(3)(a) and 69(d)**

Omit “private legal practitioner” wherever occurring. Insert instead “law practice”.

**[5] Section 12 Duties to be observed in the provision of legal aid**

Omit section 12(f). Insert instead—

- (f) ensure, if work is assigned to a law practice, that the assignment is made in accordance with procedures determined from time to time by the Commission in accordance with Division 2 of Part 3,

**[6] Section 24 Performance of functions of solicitor**

Omit “a private” wherever occurring in section 24(2)(c). Insert instead “an Australian”.

**[7] Sections 25(1) and 34(7)**

Omit “a private legal practitioner” wherever occurring. Insert instead “from a law practice”.

**[8] Section 25 Solicitor-client relationship**

Omit “a private legal practitioner to act as solicitor for” from section 25(1A).

Insert instead “a law practice to act on behalf of”.

**[9] Section 27 Immunity**

Omit “a private legal practitioner” from section 27(2).

Insert instead “a law practice (including an associate of a law practice)”.

**[10] Section 27(3)(a)**

Omit the paragraph. Insert instead—

- (a) the engagement of a law practice for the provision of legal aid, or

**[11] Sections 34C, 43(1) and 43A(1A)**

Omit “the legal practitioner” wherever occurring. Insert instead “the law practice”.

**[12] Sections 40(1A), 43A(1), (2) and (3), 43B(2) and 44(4)(b)**

Omit “the practitioner” wherever occurring. Insert instead “the law practice”.

**[13] Section 43A Payment of costs to law practices**

Omit “as a member of a panel established under Division 2 of Part 3” from section 43A(1)(b)(iv).

**[14] Section 43A(5)**

Insert after section 43A(4)—

- (5) A reference to a law practice in this section includes a reference to an associate of a law practice.

**[15] Section 43B Payment of money by certain law practices**

Insert after section 43B(3)—

- (4) A reference to a law practice in this section includes a reference to an associate of a law practice.

**[16] Part 3, Division 2**

Omit the Division. Insert instead—

## **Division 2 Assignment of work to law practices**

### **49 Assignment of work**

- (1) The Commission is to determine the procedure for engaging law practices for the provision of legal aid, which may relate to, without limitation—
- (a) the eligibility criteria of law practices, or
  - (b) the matters for which a law practice may be engaged, which may include (but are not limited to)—
    - (i) matters generally, or matters of a particular type or class, or
    - (ii) matters in a specified jurisdiction, or
    - (iii) matters in a specified area of the State, or



- (c) the manner in which work is to be distributed to law practices, having regard to the interests of the legally assisted person or any choice expressed by the legally assisted person for a particular law practice.
- (2) A law practice that provides community legal services is not eligible to be engaged by the Commission for the provision of legal aid, unless the Commission otherwise determines.
- (3) A law practice that has been engaged by the Commission for the provision of legal aid does not have an entitlement to be given work.

## **50 Audits**

- (1) The Commission may, in respect of any work assigned by the Commission to a law practice, carry out an audit of the law practice, or cause an audit to be carried out, in accordance with arrangements made between the Commission and the law practice when the law practice was engaged by the Commission for the provision of legal aid.
- (2) For the purposes of an audit under subsection (1), the Commission, or a person appointed by the Commission, may—
  - (a) require a law practice to produce for inspection any files, records or documents relating to an assigned matter, and
  - (b) make copies of, or take extracts or notes from, any such files, records or documents, and
  - (c) require a law practice to provide the Commission, or person, with such assistance and facilities as may be reasonably necessary to enable the Commission, or person, to exercise the functions under this section, and
  - (d) require a law practice to give the Commission, or person, such other information as is reasonably necessary for the purposes of the audit.
- (3) The relationship between a law practice and a legally assisted person does not operate to prevent or limit an audit conducted under this section.
- (4) Except in proceedings under Chapter 5 of the *Legal Profession Uniform Law (NSW)*, the production of a file, record, document or statement, or the giving of information, under this section does not subsequently affect any legal professional privilege to which, but for subsection (3), the file, record, document, statement or information would be subject.
- (5) The regulations may make provision for or with respect to audits under this section.
- (6) Nothing in section 12(i) or 25 prevents or restricts the carrying out of an audit

under this section.

**[17] Schedule 8 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 2) 2019**

**Existing service provision agreements**

- (1) A service provision agreement between the Commission and a private legal practitioner under section 52, in force immediately before the repeal of that section by the amending Act, remains in force until whichever of the following occurs first or is the earliest—
  - (a) the agreement terminates in accordance with the terms of the agreement,
  - (b) the Commission notifies the practitioner of the termination of the service provision agreement,
  - (c) the Commission engages the practitioner, or the law practice of which the practitioner is an associate, to provide legal aid in accordance with procedures determined under Division 2 of Part 3 of this Act, as substituted by the amending Act,
  - (d) 1 October 2021.
- (2) Compensation is not payable by the Commission for any loss suffered by a person because of the operation of this clause.
- (3) In this clause—

**amending Act** means the *Justice Legislation Amendment Act (No 2) 2019*.

**Explanatory note**

Items [5] and [16] of the proposed amendments enable the Legal Aid Commission of New South Wales (the **Commission**) to engage law practices (which include sole practitioners and law firms) for the provision of legal aid, instead of engaging private legal practitioners. The proposed amendments remove the need for the Commission to establish panels in order to engage law practices. Item [16] also enables the Commission to audit a law practice and require a law practice to produce documents for the purposes of an audit. Items [1]–[4] and [6]–[15] make consequential amendments. Item [17] inserts a transitional provision.

**1.16 Legal Profession Uniform Law Application Act 2014 No 16**

**Schedule 9 Savings, transitional and other provisions**

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

## Part Provisions consequent on enactment of **Justice Legislation Amendment Act (No 2) 2019**

### **Validations**

- (1) The 2015 delegation is taken to be, and always to have been, validly made under section 406 of the Uniform Law.
- (2) The 2015 delegation is taken to have had the following operation during the relevant period for the purposes of this Act and the Uniform Law—
  - (a) the delegation of functions to the Bar Association also operated to delegate the functions to the Bar Council,
  - (b) the delegation of functions to the Law Society also operated to delegate the functions to the Law Society Council,
  - (c) the delegation authorised the Bar Association, Law Society and each Council (an **authorised delegate**) to make further delegations of functions to another entity (a **subdelegate**),
  - (d) the delegation authorised an authorised delegate or a subdelegate to appoint investigators under section 282 of the Uniform Law (whether generally or in relation to a particular law practice or a particular complaints investigation),
  - (e) the delegation authorised an authorised delegate or a subdelegate to exercise the Chapter 5 functions of the NSW Commissioner in relation to complaints even if—
    - (i) a complaint was made to or by the delegate or subdelegate instead of the Commissioner, or
    - (ii) a disciplinary matter or consumer matter dealt with by the delegate or subdelegate was a matter other than one the Commissioner decided not to deal with or continue to deal with, or
    - (iii) a decision or determination was made or other action taken by a delegate or subdelegate concerning a disciplinary matter without the matter being referred to the delegate by the Commissioner, or
    - (iv) a decision or determination was made or other action taken by a delegate or subdelegate concerning a consumer matter without the matter being referred to the delegate by the Commissioner.

### **Note—**

Under the Uniform Law, **Chapter 5 functions** means—

- (a) functions under Chapter 5, or
  - (b) functions under another provision of that Law relating to Chapter 5, or
  - (c) functions under the Uniform Rules relating to Chapter 5.
- (3) Without limiting subclause (2), an authorised delegate or a subdelegate is taken during the relevant period—
- (a) to have been authorised under this Act and the Uniform Law—
    - (i) to receive or make complaints in exercise of the Chapter 5 functions of the NSW Commissioner, and
    - (ii) to initiate or prosecute proceedings in respect of complaints in a court or tribunal in exercise of the Chapter 5 functions of the NSW Commissioner, and
  - (b) to have made a complaint even if there was non-compliance with a requirement of section 267 of the Uniform Law.
- (4) Accordingly—
- (a) any decision, determination or other action of an authorised delegate or subdelegate during the relevant period that would have been valid if subclauses (1)–(3) had been in force at the time is validated, and
  - (b) any proceedings commenced by an authorised delegate or subdelegate during the relevant period that would have been validly commenced if subclauses (1)–(3) had been in force at the time are validated, and
  - (c) any order or other decision of a court or tribunal made during the relevant period in proceedings referred to in paragraph (b) that would have been valid if subclauses (1)–(3) had been in force at the time is validated.
- (5) Any proceedings commenced in a court or tribunal by an authorised delegate or subdelegate that were terminated on a relevant invalidity ground during the relevant period at the instigation of an authorised delegate or subdelegate—
- (a) may be recommenced under the authority of this clause by the same delegate or subdelegate in the court or tribunal on the basis of the applications and other documents by which those proceedings were last commenced, and
  - (b) any thing done in the terminated proceedings (other than the termination of the proceedings) is taken to have been done in the recommenced proceedings.
- (6) Proceedings may be recommenced under the authority of this clause despite

section 137 of this Act, but only if they are recommenced no later than 6 months after the day on which this clause commences.

- (7) Without limiting any other power to make rules of court, rules of court may be made under the *Civil Procedure Act 2005* and the *Civil and Administrative Tribunal Act 2013* for or with respect to the practice and procedure to be followed in connection with recommenced proceedings.
- (8) To avoid doubt—
- (a) any decision that terminated proceedings during the relevant period on a relevant invalidity ground is not affected by this clause unless proceedings are recommenced, and
- (b) any decision as to costs made in respect of terminated proceedings is not affected by this clause regardless of whether proceedings are recommenced.
- (9) This clause (including anything authorised by this clause) has effect despite anything to the contrary in—
- (a) the 2015 delegation, or
- (b) this Act, the Uniform Law or any other law.
- (10) In this clause—

**2015 delegation** means the delegation of the NSW Commissioner's functions to the Bar Association and Law Society purportedly made by the NSW Commissioner under section 406 of the Uniform Law on 18 June 2015.

**action** includes an omission.

**commenced**, in relation to proceedings, includes initiated or prosecuted.

**consumer matter** has the meaning given by section 269 of the Uniform Law.

**disciplinary matter** has the meaning given by section 270 of the Uniform Law.

**proceedings** include purported proceedings.

**relevant invalidity ground**, in relation to proceedings, means on the ground that the proceedings were not validly commenced by an authorised delegate or subdelegate because of any one or more of the following reasons—

- (a) the delegate or subdelegate was not authorised to commence the proceedings by the 2015 delegation, including because—
- (i) the 2015 delegation was not valid, or
- (ii) the terms of the 2015 delegation did not allow the delegate or

subdelegate to commence the proceedings, or

- (iii) the delegate, subdelegate or NSW Commissioner did not comply with a provision of the 2015 delegation,
- (b) the proceedings were based on a complaint purportedly made to or by the delegate or subdelegate in circumstances where this Act or the Uniform Law required the complaint to have been made to or by the NSW Commissioner,
- (c) the proceedings were based on a complaint purportedly made to or by the delegate or subdelegate in circumstances where there was non-compliance with a requirement of section 267 of the Uniform Law.

**relevant period** means the period commencing on 18 June 2015 and ending immediately before the day on which this clause commences.

**rules of court**, in relation to the Civil and Administrative Tribunal, means—

- (a) Tribunal rules referred to in section 25 of the *Civil and Administrative Tribunal Act 2013*, and
- (b) procedural directions given by the President of the Tribunal under section 26 of that Act.

**terminated** includes withdrawn, stayed, dismissed, discontinued or otherwise not proceeded with.

**Uniform Law** means the *Legal Profession Uniform Law (NSW)*.

#### **Explanatory note**

The proposed amendment validates decisions, determinations and other actions taken under the authority of a delegation purportedly given in 2015 to the New South Wales Bar Association and Law Society of New South Wales by the Legal Services Commissioner. In particular, the proposed amendment seeks to address certain issues identified by the Civil and Administrative Tribunal in *Council of the Law Society of NSW v DXW*[2019] NSWCATOD 101.

## **1.17 NSW Trustee and Guardian Act 2009 No 49**

### **[1] Section 11 General trustee and other functions**

Insert after section 11(3)—

- (3A) The NSW Trustee may prepare instruments that create enduring guardianship appointments and carry out professional services in connection with the preparation of the instruments.
- (3B) The NSW Trustee may prepare instruments that create powers of attorney and carry out professional services in connection with powers of attorney.

**[2] Section 16 Powers of NSW Trustee relating to property and other matters**

Omit section 16(1)(w). Insert instead—

- (w) repair and insure against fire or accident any property and charge the cost of repairs to capital or income, or apportion the cost between capital and income, as the NSW Trustee considers equitable.

**Explanatory note**

Item [1] of the proposed amendments extends the functions of the NSW Trustee to include the preparation of instruments that create enduring guardianship appointments and powers of attorney.

Item [2] enables the NSW Trustee to charge the cost of any property repairs to capital or income, or apportion between capital and income, when acting in a trust or protective capacity.

## **1.18 Parole Orders (Transfer) Act 1983 No 190**

**[1] Section 3 Definitions**

Insert in alphabetical order—

**State Parole Authority** means the State Parole Authority constituted by section 183 of the *Crimes (Administration of Sentences) Act 1999*.

**[2] Section 8 Registration**

Insert after section 8(1)(a)—

- (a1) attaching to the parole order a document specifying the conditions of the parole order that apply, on and from the registration, because of the operation of section 9A, and

**[3] Section 8(2)**

Omit the subsection. Insert instead—

- (2) When the Registrar has registered a parole order, the Registrar is—
- (a) to provide the Chairperson of the State Parole Authority with access to the parole order and memorandum, the document referred to in subsection (1)(a1) and the document sent by the designated authority under section 6(1)(b), and
  - (b) to notify the designated authority that requested the registration of the parole order in writing of the order's registration and the date of registration, and
  - (c) to personally serve a notice on the person to whom the parole order relates that

specifies the date of registration and the conditions of the parole order that apply, on and from registration, because of the operation of section 9A.

**[4] Section 9A**

Insert after section 9—

**9A Conditions of interstate parole orders**

- (1) When a parole order made under a law of another State or a Territory (a **registered interstate parole order**) is registered under this Act—
  - (a) the parole order is taken to be subject to the NSW standard parole conditions as if the parole order was a parole order made under the *Crimes (Administration of Sentences) Act 1999* and the provisions of that Act relating to conditions of a parole order apply accordingly, and
  - (b) the NSW standard parole conditions replace any conditions imposed under the law of the other State or Territory to which the parole order was subject immediately before registration.
- (2) The **NSW standard parole conditions** are—
  - (a) the standard conditions imposed by the *Crimes (Administration of Sentences) Act 1999* or the regulations made under that Act, as referred to in section 128 of that Act, and
  - (b) a condition that the offender is subject to supervision as prescribed by the regulations under section 128C of that Act for the relevant period of supervision.
- (3) The **relevant period of supervision** is the period that is the lesser of the following—
  - (a) the remaining period of the parole order,
  - (b) 3 years plus any extension of that period under subsection (4).
- (4) The State Parole Authority may while the parole order is in force extend the relevant period of supervision by, or impose a further period of supervision of, up to 3 years at a time.
- (5) The regulations may modify the application of the NSW standard parole conditions to a person to whom a registered interstate parole order relates, including by prescribing a different relevant period of supervision.

**Note—**



The State Parole Authority may impose additional conditions on a registered interstate parole order, and vary or revoke additional conditions, under the *Crimes (Administration of Sentences) Act 1999* in the same way as it can in relation to a parole order made in New South Wales.

**[5] Schedule 1**

Insert after Part 4—

## **Schedule 1 Savings, transitional and other provisions**

### **Part 1 Provisions consequent on enactment of Justice Legislation Amendment Act (No 2) 2019**

#### **1 Definition**

In this Part—

**amending Act** means the *Justice Legislation Amendment Act (No 2) 2019*.

#### **2 Regulations**

- (1) A regulation (a **transitional regulation**) may make provision about a matter for which—
  - (a) it is necessary to make provision to allow or facilitate the doing of any thing to achieve the transition from the operation of this Act before it was amended by the amending Act to the operation of this Act as amended by the amending Act, and
  - (b) this Act does not make provision or sufficient provision.
- (2) A transitional regulation may have retrospective operation to a day not earlier than the commencement of this Part.
- (3) A transitional regulation must declare it is a transitional regulation.
- (4) This clause and any transitional regulations expire 2 years after the commencement of this Part.

#### **3 Conditions of registered interstate parole orders**

- (1) The amendments made to Part 2 of this Act by the amending Act are taken to apply to an existing registered interstate parole order as soon as the Registrar has complied with section 8(1)(a1) and (2) in respect of the order.
- (2) The regulations may make further modifications to the application of section 9A to a person to whom an existing registered interstate parole order applies.

(3) In this clause—

**existing registered interstate parole order** means a parole order that was registered under this Act immediately before the commencement of section 9A.

**Explanatory note**

Item [4] of the proposed amendments provides that on the registration in New South Wales of a parole order made under a law of another State or a Territory, the NSW standard parole conditions apply and replace the conditions imposed under that other law. Item [2] requires the Registrar of Transferred Parole Orders (the **Registrar**), when registering the parole order, to attach a document to the order setting out the NSW standard parole conditions. Item [3] requires the Registrar to provide the Chairperson of the State Parole Authority with access to the registered parole order and related documents, to notify the designated authority in the other State or Territory that the order has been registered and to serve, personally on the person subject to the parole order, a notice that sets out when the parole order was registered and the NSW standard parole conditions.

Item [5] inserts a power to make transitional regulations and applies the amendments to existing registered interstate parole orders.

Item [1] includes a definition of **State Parole Authority**.

## 1.19 Restricted Premises Act 1943 No 6

### [1] Section 10 Entry by police

Insert “, do any of the following” after “without warrant” in section 10(1).

### [2] Section 10(1)(g)

Insert after section 10(1)(f)—

(g) exercise any of the powers conferred under this subsection with the aid of any assistants the member considers necessary.

**Note—**

A police officer is authorised to use a dog to carry out general drug detection at the premises under section 148 of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#). Section 196 of that Act also authorises the use of dogs for general firearms or explosives detection.

**Explanatory note**

Item [2] of the proposed amendments enables police officers to use assistants when entering restricted premises. Item [1] makes a law revision amendment.

## 1.20 Scrap Metal Industry Act 2016 No 42

### Section 14 Prohibitions on buying or disposing of unidentified motor vehicles

Insert “, unless authorised to do so by a police officer by order in writing,” after “must not” in section 14(1).

**Explanatory note**

The proposed amendment allows a scrap metal dealer to buy scrap metal that consists of a motor vehicle that has had its unique identifier removed, obliterated, defaced or altered if the dealer is authorised to do so by a police officer by order in

writing.

## **1.21 Sheriff Act 2005 No 6**

### **[1] Section 7B**

Insert after section 7A—

#### **7B Powers when executing certain arrest warrants**

- (1) A sheriff's officer executing an arrest warrant issued by a court under section 97 of the *Civil Procedure Act 2005* may require a person named in the warrant to submit to a personal search if the officer believes on reasonable grounds that it is prudent to do so to ascertain whether the person is carrying anything that would present a danger to a person.
- (2) Before requiring a person to submit to a personal search under this section, the sheriff's officer must show the person the arrest warrant and the officer's certificate of identification referred to in section 13.
- (3) A sheriff's officer may seize and detain a thing found in a personal search under this section that the officer believes on reasonable grounds would present a danger to a person.
- (4) A sheriff's officer who seizes any thing under subsection (3) must—
  - (a) if the officer is satisfied after examining the thing that its retention as evidence is not required and it is not a danger to a person—return the thing to the person from whom it was confiscated, or
  - (b) if the officer is not so satisfied—deliver the thing to a police officer as soon as is reasonably practicable.
- (5) A personal search of a person conducted under this section must, as far as is reasonably practicable in the circumstances, comply with the following requirements—
  - (a) the sheriff's officer must inform the person to be searched of the following matters—
    - (i) whether the person will be required to remove clothing during the search,
    - (ii) why it is necessary to remove the clothing,
  - (b) the sheriff's officer must ask for the person's co-operation,
  - (c) a personal search must be conducted—
    - (i) in a way that provides reasonable privacy for the person searched, and

- (ii) as quickly as is reasonably practicable,
  - (d) the sheriff's officer must conduct the least invasive kind of search practicable in the circumstances,
  - (e) a personal search of a person must be conducted by a sheriff's officer of the same sex as the person or, if a sheriff's officer of that sex is unavailable, by another person of that sex at the direction of a sheriff's officer.
- (6) If a sheriff's officer makes a requirement of a person under subsection (1) and the person fails immediately to comply with that requirement, the sheriff's officer may again make the requirement and, in that case, must warn the person that a failure immediately to comply with the requirement may be an offence.
- (7) If a sheriff's officer makes a requirement of a person in accordance with subsection (6), the person must immediately comply with the requirement.
- Maximum penalty—5 penalty units.
- (8) In this section—

***personal search*** has the same meaning as in the [Court Security Act 2005](#).

## **[2] Section 13A**

Insert before section 14—

### **13A Nature of proceedings for offences**

Proceedings for an offence under this Act or the regulations may be dealt with summarily before the Local Court.

#### **Explanatory note**

Item [1] of the proposed amendments permits a sheriff's officer to search a person named in a warrant issued by a court under section 97 of the [Civil Procedure Act 2005](#) if the officer believes on reasonable grounds it is prudent to do so to ascertain whether the person is carrying anything that would present a danger to a person. A sheriff's officer may seize and detain a thing found in the search that the officer believes would present a danger to a person. Item [2] makes a consequential amendment.

## **1.22 Surveillance Devices Act 2007 No 64**

### **[1] Section 17 Application for a surveillance device warrant**

Omit "(b) and (c)" from section 17(5A).

### **[2] Section 25 Application for a retrieval warrant**

Omit "(b)" from section 25(5A).

**[3] Section 40 Prohibition on use, communication or publication of protected information**

Insert “or students of policing within the meaning of the *Police Act 1990*” after “Police Force” in section 40(4A)(b).

**Explanatory note**

Items [1] and [2] of the proposed amendments extend the information required to be included in a notice served on the Attorney General in relation to an application for a surveillance device warrant or retrieval warrant to include the grounds on which the warrant is sought.

Item [3] allows information obtained from the use of body-worn video by police officers to be used in connection with the education and training of students of policing.

## **1.23 Trustee Act 1925 No 14**

### **Section 100A**

Insert after section 100—

#### **100A Limitation of liability of beneficiaries in respect of trustees**

(1) The rule of equity known as the rule in *Hardoon v Belillos* is abolished.

**Note—**

The rule is considered to have originated in the decision of the Privy Council in *Hardoon v Belillos*[1901] AC 118. The NSW Law Reform Commission recommended the abolition of the rule in *Report 144 (2018): Laws relating to beneficiaries of trusts*. This section gives effect to Recommendation 2.1 of that Report.

(2) Accordingly, a beneficiary under a trust (whether created before, on or after the commencement day) is not liable to indemnify the trustee or make any other payment to the trustee or any other person for any act, default, obligation or liability of the trustee arising on or after the commencement day unless—

- (a) the beneficiary has agreed in writing to be liable, or
- (b) subsection (3) applies.

(3) This section does not prevent a trustee of an investment trust from recovering any amount that a beneficiary under the trust is liable to pay for a right, interest or other entitlement to profits, income or other returns generated by the trust.

(4) To avoid doubt, this section does not affect any liability that a beneficiary under a trust may have in a capacity other than as a beneficiary.

(5) In this section—

**commencement day** means the day on which this section commenced.

**investment trust** means any trust (however described) created for the purpose

of generating profits, income or other returns for its beneficiaries using funds provided by them, and includes a unit trust scheme within the meaning of the *Duties Act 1997*.

#### **Explanatory note**

The proposed amendment abolishes a rule of equity (known as the rule in *Hardoon v Belilios*) under which a trust beneficiary could be held liable in certain circumstances to indemnify or make other payments in respect of acts, defaults, obligations or liabilities of the trustee. The NSW Law Reform Commission recommended the abolition of the rule in *Report 144 (2018): Laws relating to beneficiaries of trusts*.

## **1.24 Weapons Prohibition Act 1998 No 127**

### **[1] Section 4 Definitions**

Insert in alphabetical order in section 4(1)—

**community correction order** has the same meaning as in the *Crimes (Sentencing Procedure) Act 1999*.

**conditional release order** has the same meaning as in the *Crimes (Sentencing Procedure) Act 1999*.

### **[2] Section 10 Issuing of permit**

Omit section 10(3)(c). Insert instead—

(c) is subject to one of the following in relation to an offence prescribed by the regulations—

- (i) a good behaviour bond, whether entered into in New South Wales or elsewhere,
- (ii) a community correction order imposed in New South Wales,
- (iii) a conditional release order imposed in New South Wales, or

### **[3] Schedule 2 Savings and transitional provisions**

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

## **Part Provisions consequent on enactment of Justice Legislation Amendment Act (No 2) 2019**

### **Application of eligibility amendments**

- (1) This clause applies to the amendments made to section 10(3) of this Act and clause 5 of the *Weapons Prohibition Regulation 2017* by the *Justice Legislation Amendment Act (No 2) 2019* (the **eligibility amendments**).

- (2) Any permit that would have been validly issued or not issued during the transitional period if the eligibility amendments had been in force at the relevant time is taken to have been validly issued or not issued (as the case requires).
- (3) Subclause (2) does not affect the validity of any decision made during the transitional period to issue or refuse to issue a permit if the decision would have been valid even without the eligibility amendments.
- (4) To avoid doubt, the eligibility amendments extend to an application for a permit made, but not finally determined, before the commencement of this clause.
- (5) In this clause—

***transitional period*** means the period commencing on 24 September 2018 and ending immediately before the day this clause commences.

**Note—**

The *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017* commenced on 24 September 2018. It included transitional provisions that converted good behaviour bonds into community correction orders and conditional release orders.

**Explanatory note**

Item [2] of the proposed amendments updates a reference to good behaviour bonds as a consequence of changes to community-based sentencing options made by the *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017* to include community correction orders and conditional release orders. The effect of the amendment is that a person who is subject to a community correction order or conditional release order imposed in New South Wales in respect of a prescribed offence is not eligible for a weapons permit. Item [2] also makes it clear that a person subject to a good behaviour bond entered into outside of New South Wales in respect of a prescribed offence continues to be ineligible for a weapons permit. Item [1] makes a consequential amendment.

Item [3] provides that certain permits issued between 24 September 2018 and the commencement of the proposed amendments are taken to be valid. A pending application for a permit is to be dealt with under the amended provisions.

## **1.25 Weapons Prohibition Regulation 2017**

### **[1] Clause 5 Offences that disqualify applicants**

Insert after clause 5(1)—

(1A) In subclause (1)—

- (a) a reference to a good behaviour bond includes a reference to a community correction order or a conditional release order, but only if it was imposed in New South Wales, and
- (b) a reference to a term of imprisonment (whether or not suspended) includes a reference to an intensive correction order, but only if it was imposed in New South Wales.

**[2] Clause 5(2)**

Insert “in respect of a person subject to a good behaviour bond” after “are prescribed”.

**[3] Clause 5(3)**

Insert after clause 5(2)—

- (3) **Persons subject to community correction orders or conditional release orders** For the purposes of section 10(3)(c) of the Act, the following offences are prescribed in respect of a person subject to a community correction order or a conditional release order—
- (a) an offence referred to in subclause (1)(a), (c), (e) or (g)–(k),
  - (b) an offence in respect of a prohibited plant or prohibited drug within the meaning of the *Drug Misuse and Trafficking Act 1985*, or a prescribed restricted substance within the meaning of the *Poisons and Therapeutic Goods Regulation 2008*,
  - (c) an offence involving any of the following—
    - (i) the infliction of actual bodily harm on a person,
    - (ii) kidnapping or abduction,
    - (iii) stalking or intimidation,
    - (iv) fraud, dishonesty or stealing,
  - (d) an offence of attempting to commit, threatening to commit or conspiring to commit an offence referred to in paragraph (c)(i)–(iii).

**Explanatory note**

Item [1] of the proposed amendments provides that a reference to a good behaviour bond in clause 5(1) of the *Weapons Prohibition Regulation 2017* includes a reference to a community correction order or a conditional release order. Item [1] also clarifies that a person subject to a term of imprisonment (whether or not suspended) includes a reference to a person subject to an intensive correction order. The effect of the amendment is that a person who, within the previous 10 years, has been subject to a community correction order, conditional release order or intensive correction order imposed in New South Wales in respect of certain offences is not eligible for a weapons permit.

Item [3] prescribes certain offences so that a person who is subject to a community correction order or conditional release order imposed in New South Wales for an offence committed in New South Wales is not eligible for a weapons permit. Item [2] makes a consequential amendment.

## **1.26 Witness Protection Act 1995 No 87**

### **Part 3B**

Insert after Part 3A—



## Part 3B Giving evidence by audio visual link

### 31F Definitions

In this Part—

**audio visual link** means facilities (including closed-circuit television) that enable audio and visual communication between persons at different places.

**court** includes a tribunal, Royal Commission or other commission of inquiry and the person or body holding or conducting a relevant proceeding.

**protected witness** means a person who is, or has been, a participant in a witness protection program.

**relevant proceeding** means any of the following—

- (a) a proceeding before a court,
- (b) an inquest or inquiry under the *Coroners Act 2009*,
- (c) a hearing under the *Crime Commission Act 2012* or the *Special Commissions of Inquiry Act 1983*,
- (d) an inquiry under the *Royal Commissions Act 1923*,
- (e) an examination under the *Law Enforcement Conduct Commission Act 2016*.

### 31G Protected witness to give evidence by audio visual link

- (1) A protected witness who gives evidence in a relevant proceeding before a court is entitled to give that evidence by means of audio visual link.
- (2) However, a protected witness is not entitled to give evidence by means of audio visual link if the court orders that the protected witness may not give evidence by means of audio visual link.
- (3) The court may make an order under subsection (2) only if the court is satisfied that it is not in the interests of justice for the protected witness to give evidence by means of audio visual link.
- (4) Without limiting subsection (3), a court may take into account the safety of the protected witness and the nature of the evidence when deciding whether or not to make an order under subsection (2).
- (5) Subsection (1) does not apply unless the necessary audio visual links are available or can reasonably be made available.

### **31H Proceedings may be moved to allow use of audio visual link**

- (1) If the court is not equipped with facilities or technology for the giving of evidence by means of audio visual link, or the court otherwise considers it appropriate, the court may adjourn the relevant proceeding or part of the relevant proceeding to a court or place that is equipped with the facilities or technology to enable a protected witness to give evidence by means of audio visual link.
- (2) If a protected witness gives evidence by means of audio visual link from a location outside a court—
  - (a) the location is taken to be part of the court in which the relevant proceeding is being held, and
  - (b) the court may order that a court officer, or any other person approved by the court, including a police officer, be present at the location.

### **31I Use of audio visual link**

An audio visual link used under this Part for the giving of evidence by a protected witness in a relevant proceeding is to be operated in a way that enables the persons who have an interest in the proceeding to see the protected witness on a television monitor.

### **31J Application of [Evidence \(Audio and Audio Visual Links\) Act 1998](#)**

Sections 5D, 20D and 20E of the [Evidence \(Audio and Audio Visual Links\) Act 1998](#) apply to a relevant proceeding in which a protected witness gives evidence by means of audio visual link under this Part in the same way as they apply to proceedings before a NSW court in which evidence is given by means of audio visual link under that Act.

#### **Explanatory note**

The proposed amendment provides that a person who is, or who has been, a participant in a witness protection program is entitled to give evidence in court proceedings by audio visual link unless the court considers it is not in the interests of justice.

## **1.27 [Workers Compensation Act 1987 No 70](#)**

### **Schedule 6 Savings, transitional and other provisions**

Insert after Part 19L—

## **Part 19M Provisions consequent on enactment of [Justice](#)**

## Legislation Amendment Act (No 2) 2019

### 1 Definition

In this Part—

**commencement day** means the day on which the amendments made to the 1998 Act by the *Justice Legislation Amendment Act (No 2) 2019* commence.

### 2 Application of *Judges' Pensions Act 1953*

- (1) The amendments made to the 1998 Act by the *Justice Legislation Amendment Act (No 2) 2019* extend to a Judge of a court of record appointed as President who died or retired from the office of President before the commencement day.
- (2) However, the amendments do not affect any amount of pension to which the Judge would otherwise be entitled under the *Judges' Pensions Act 1953* in respect of any period before the commencement day.

#### Explanatory note

The proposed amendment makes a transitional provision consequent on the amendment to the *Workplace Injury Management and Workers Compensation Act 1998* in the proposed Act.

## 1.28 Workplace Injury Management and Workers Compensation Act 1998 No 86

### [1] Schedule 5 Provisions relating to members of Commission

Insert after clause 5(2)—

- (3) This clause is subject to clause 5A.

### [2] Schedule 5, clause 5A

Insert after clause 5—

#### 5A Appointment of holder of judicial office as President

- (1) This clause applies to a retired or deceased President who, while holding that office, was a Judge of a court of record other than the Supreme Court.
- (2) The *Judges' Pensions Act 1953* applies to the retired or deceased President as if the judicial office held by the person while President was equivalent to the office of Judge of the Supreme Court.
- (3) In the application of the *Judges' Pensions Act 1953* to the retired or deceased President—

- (a) service by the person as President is taken to be service as a Judge of the Supreme Court, and
- (b) references to a Judge or judicial office include references to the person in his or her capacity as President and the office of President, and
- (c) references in that Act to notional judicial salary are, in relation to the person while President, references to the salary payable to a Supreme Court Judge.

**Explanatory note**

Item [2] of the proposed amendments extends the application of the *Judges' Pensions Act 1953* so that it applies to a Judge of the Land and Environment Court or the District Court who concurrently holds the office of President of the Workers Compensation Commission in the same way as it applies to a Judge of the Supreme Court. The amendment makes the amount of pension to which the judge is entitled on retirement consistent with the amount to which a Judge of the Supreme Court is entitled. (Currently, the amount of salary to which the President is entitled under the *Statutory and Other Offices Remuneration Act 1975* is equivalent to the salary of a Judge of the Supreme Court.) However, if the judge continues to hold office as a judge of that lower court after retiring as President, the pension entitlements will instead be calculated by reference to the judicial salary payable to the judge at the time of retirement from that judicial office. Item [1] makes a consequential amendment.