

Justice Legislation Amendment Act (No 2) 2019 No 20

[2019-20]



New South Wales

Status Information

Currency of version

Repealed version for 20 March 2020 to 30 April 2021 (accessed 12 December 2024 at 10:56)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Repeal**

This Act was repealed by sec 30C of the [Interpretation Act 1987 No 15](#) with effect from 1.5.2021.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 1 May 2021

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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

1.1-1.9

(Repealed)

1.10 **Criminal Procedure Act 1986 No 209**

[1]-[14] (Repealed)

[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.

1.11-1.14

(Repealed)

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.

1.16-1.28

(Repealed)