

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

(a) to amend various Acts to remove the power of the Attorney General to revoke the appointment of Supreme Court Judges as eligible Judges for the purposes of issuing search and other warrants and exercising other similar administrative functions (and to make it clear that the selection of the eligible Judge to exercise a function is not made by the Attorney General or other Minister and that the exercise of the function is not subject to the control and direction of the Attorney General or other Minister),

(b) to amend the Bail Act 1978 to revise the test to be applied by a court in determining whether to refuse to hear a further application for bail by an accused person,

(c) to amend the Children's Court Act 1987 to enable a Magistrate appointed under the Local Court Act 2007 to exercise the jurisdiction of the Children's Court without being appointed as a Children's Magistrate and to make consequential amendments to certain other Acts,

Explanatory note page 2

Courts and Crimes Legislation Amendment Bill 2009

Explanatory note

(d) to amend the Civil Procedure Act 2005 to provide for the President of the Industrial Relations Commission or a judicial member of the Commission (within the meaning of the Industrial Relations Act 1996) nominated for the time being by the President to be a member of the Uniform Rules Committee,

(e) to amend the Civil Procedure Act 2005 and the Industrial Relations Act 1996 to provide for the application of the Civil Procedure Act 2005 and the Uniform Civil Procedure Rules 2005 in civil proceedings in the Industrial Relations Commission and the Industrial Court,

(f) to amend the Confiscation of Proceeds of Crime Act 1989 to make it clear that the power to issue search warrants under Division 1 of Part 3 of that Act is exercisable by an authorised officer within the meaning of the Law Enforcement (Powers and Responsibilities) Act 2002,

(g) to amend the Crimes (Criminal Organisations Control) Act 2009 as follows:

(i) to enable a police officer to request a person suspected of being a person on whom notice of an interim control order is required to be served or of being subject to a control order and of associating with another person who is the subject of a control order to disclose his or her identity and to make it an offence for the person to fail or refuse without reasonable excuse to disclose his or her identity or to give false or misleading information about it,

(ii) to enable a police officer to detain a person suspected of being a person on whom notice of an interim control order is required to be served in order to serve the notice,

(iii) to make it clear that substituted service of an interim control order may be ordered at any time during the period in which notice of the making of the order must be served under section 16 (1) of that Act,

(iv) to enable control orders to be made against certain former members of declared organisations,

(v) to make it an offence for a controlled member of a declared organisation to associate with another controlled member on 3 or more occasions within a 3-month period,

(h) to amend the Criminal Procedure Act 1986 to enable the Industrial Registrar to make orders commencing summary proceedings under section 246 of that

Act with respect to offences that may be dealt with by the President or a judicial member of the Industrial Relations Commission under Part 5 of Chapter 4 of that Act,

(i) to amend the Evidence (Audio and Audio Visual Links) Act 1998 to require all members of the NSW Police Force to give corroborative evidence in chief of evidence given by other members of the NSW Police Force by audio link or audio visual link,

(j) to amend the Law Enforcement (Powers and Responsibilities) Act 2002 as follows:

Explanatory note page 3

Courts and Crimes Legislation Amendment Bill 2009

Explanatory note

(i) to omit a superfluous definition,

(ii) to make it clear that the eligible applicant for a covert search warrant need not personally be intending to carry out the entry and search of the premises authorised by the warrant,

(k) to amend the Legal Profession Act 2004 to put beyond doubt the power of the District Court to hear an appeal against a decision of a costs assessor as to a matter of law under section 384 of that Act that was made under the Legal Profession Act 1987 so long as no hearing date has been allocated,

(l) to amend the Local Court Act 2007 as follows:

(i) to enable the Chief Magistrate to appoint any officer of the Local Court to the Local Court Rule Committee,

(ii) so that the Minister need appoint a person as a member of the Local Court Rule Committee only if the Minister thinks it appropriate to do so.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act (with some exceptions).

Schedule 1 Amendment of Acts relating to eligible

Judges and Magistrates

A number of Acts provide for the conferral of functions of an administrative nature (such as the issue of search and other warrants) on Judges as *personae designatae*. The relevant sections of the Acts concerned provide for the Attorney General to declare a Supreme Court Judge to be an eligible Judge if the Judge has consented to being nominated as an eligible Judge and enable the Attorney General to revoke such a declaration.

Schedule 1 amends the relevant sections to remove the power of the Attorney General to revoke the declaration of an eligible Judge and provide instead for the automatic revocation of such a declaration if a Supreme Court Judge revokes his or her consent, ceases to be a Judge or if the Chief Justice notifies the Attorney General that the declaration should not continue.

The Schedule also makes it clear that the selection of the eligible Judge to exercise a function is not made by the Attorney General or other Minister and that the exercise of the function is not subject to the control and direction of the Attorney General or other Minister.

The eligible Judges concerned are conferred with powers under the following provisions (in the Surveillance Devices Act 2007 the eligible Judge power extends to eligible Magistrates):

Explanatory note page 4

Courts and Crimes Legislation Amendment Bill 2009

Explanatory note

(a) section 9 of the Crimes (Criminal Organisations Control) Act 2009 (which confers a power to make a declaration that a particular organisation is a

declared organisation for the purposes of the Act),
(b) section 7 of the Law Enforcement and National Security (Assumed Identities) Act 1998 (which confers a power to authorise an entry in the Registry of Births, Deaths and Marriages),
(c) section 46C of the Law Enforcement (Powers and Responsibilities) Act 2002 (which confers a power to grant covert search warrants),
(d) Part 3 of the Surveillance Devices Act 2007 (which confers a power to grant surveillance device warrants),
(e) Part 3 of the Terrorism (Police Powers) Act 2002 (which confers a power to issue covert search warrants).

Schedule 2 Other amendments of Acts

Schedule 2.1 Bail Act 1978 No 161

Currently, section 22A of the Bail Act 1978 requires a court to refuse to entertain a further application for bail by a person accused of an offence if an application by the person in relation to that bail has already been made and dealt with by the court, unless:

- (a) the person was not legally represented when the previous application was dealt with, and the person now has legal representation, or
- (b) the court is satisfied that new facts or circumstances have arisen since the previous application that justify the making of another application.

Further applications to a court cannot be made by a lawyer for an accused person, except where the application would be permitted under paragraph (a) or (b) above.

Schedule 2.1 [1] requires a court to refuse to entertain an application for bail by a person accused of an offence if an application has already been made and dealt with by the court, unless there are grounds for a further application for bail. The grounds for a further application are:

- (a) the person was not legally represented when the previous application was dealt with and the person now has legal representation, or
- (b) information relevant to the grant of bail is to be presented in the application that was not presented to the court in the previous application, or
- (c) circumstances relevant to the grant of bail have changed since the previous application was made.

Schedule 2.1 [2] provides that a lawyer for an accused person may refuse to make a further application for bail if there are no grounds for a further application for bail.

Explanatory note page 5

Courts and Crimes Legislation Amendment Bill 2009

Explanatory note

Schedule 2.2 Children and Young Persons (Care and Protection) Act 1998 No 157

Schedule 2.2 amends the Children and Young Persons (Care and Protection) Act 1998 as described below in relation to the amendments made by Schedule 2.5.

Schedule 2.3 Children (Detention Centres) Act 1987 No 57

Schedule 2.3 amends the Children (Detention Centres) Act 1987 as described below in relation to the amendments made by Schedule 2.5.

Schedule 2.4 Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009 No 13

Schedule 2.4 amends the Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009 as described below in relation to the amendments made by Schedule 2.5.

Schedule 2.5 Children's Court Act 1987 No 53

Currently, a proclamation made under section 10 of the Children's Court Act 1987 that was continued in force on the repeal of that section in 2000 provides that the jurisdiction of the Children's Court may be exercised by any Magistrate sitting at any place where a Local Court is established under the Local Courts Act 1982 or any

Children's Court listed in the Schedule to the proclamation.

The proclamation is out of date as it does not reflect that, as a consequence of the commencement of the Local Court Act 2007, there is now a single Local Court (sittings of which are held in various places in New South Wales or cover all places where Children's Courts sit).

Schedule 2.5 [1] and [2] provide instead for any Magistrate to exercise the jurisdiction of the Children's Court if authorised to do so by the President of the Children's Court and the Chief Magistrate of the Local Court. Schedule 2.5 [3] makes a consequential amendment to put beyond doubt that actions taken by Magistrates in purported exercise of the jurisdiction conferred by the proclamation under section 10 of the Children's Court Act 1987 were valid.

Schedule 2.2 and 2.3 make consequential amendments to section 107 (4) of the Children and Young Persons (Care and Protection) Act 1998 and section 39 of the Children (Detention Centres) Act 1987, respectively.

Schedule 2.4 omits an amendment to section 107 (4) of the Children and Young Persons (Care and Protection) Act 1998 (the 1998 Act) made by the Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009 (the 1998 amendment) that will be superseded by the amendment proposed to be made by Schedule 2.2. The effect of the amendments (read together with section 16 (2) of the Children's Court Act 1987) is that the President of the Children's Court and Magistrates authorised to carry out functions conferred or imposed on Children's Magistrates by the President of the Children's Court and the Chief Magistrate of the Explanatory note page 6

Courts and Crimes Legislation Amendment Bill 2009

Explanatory note

Local Court may carry out the functions of Children's Magistrates under section 107 of the 1998 Act.

Schedule 2.6 Civil Procedure Act 2005 No 28

Schedule 2.6 [2] amends section 8 of the Civil Procedure Act 2005 as described in paragraph (d) of the Overview above. Schedule 2.6 [1], [4] and [5] make consequential amendments.

Schedule 2.6 [3] amends Schedule 1 to the Civil Procedure Act 2005 to apply Parts 3–9 of that Act to civil proceedings before the Industrial Court (subject to the Uniform Rules under that Act) as described in paragraph (e) of the Overview above.

Schedule 2.11 makes consequential amendments to the Industrial Relations Act 1996 to ensure consistency in the application of the Civil Procedure Act 2005 and Uniform Civil Procedure Rules 2005.

Schedule 2.6 [6] amends Schedule 6 to the Civil Procedure Act 2005 to insert a savings and transitional regulation-making power.

Schedule 2.7 Confiscation of Proceeds of Crime Act 1989 No 90

Schedule 2.7 amends the Confiscation of Proceeds of Crime Act 1989 as described in paragraph (f) of the Overview above.

Schedule 2.8 Crimes (Criminal Organisations Control) Act 2009 No 6

An interim control order under the Crimes (Criminal Organisations Control) Act 2009 takes effect on the day on which notice of the order is personally served in accordance with section 16 of that Act. Service must be made within 28 days of the making of the interim control order. If notice cannot practicably be served in accordance with section 16, the Supreme Court may make a direction under section 16A of the Act for substituted service.

Schedule 2.8 [1] amends section 16 of the Crimes (Criminal Organisations Control) Act 2009 to enable a police officer to request a person to disclose his or her identity and remain at a particular place for up to 2 hours to enable service of the notice if the police officer has reasonable cause to believe the person is a person on whom notice of the making of an interim control order is required to be served. If the person fails

to comply with the request to remain at the place he or she may be detained for up to 2 hours to serve the notice.

Section 26 of the Crimes (Criminal Organisations Control) Act 2009 makes it an offence for a controlled member of a particular declared organisation to associate with another controlled member of the same organisation.

Schedule 2.8 [7] amends section 26 to enable a police officer who has reasonable cause to suspect that a person is a controlled member of a declared organisation who is associating with another controlled member of the declared organisation to request the person to disclose his or her identity.

Schedule 2.8 [5] amends section 26 to make it an offence (punishable by a maximum of 3 years' imprisonment) for a controlled member of a declared organisation to

Explanatory note page 7

Courts and Crimes Legislation Amendment Bill 2009

Explanatory note

associate with another controlled member on 3 or more occasions within a 3-month period. Schedule 2.8 [6] and [9] make consequential amendments to sections 26 and 36, respectively. Under clause 18A of Part 4 of Table 1 of Schedule 1 to the Criminal Procedure Act 1986 the new offence will be able to be prosecuted summarily.

Schedule 2.8 [8] inserts section 35A into the Crimes (Criminal Organisations Control) Act 2009 to make it an offence for a person to fail or refuse without reasonable excuse to disclose his or her identity or to give false or misleading information about it when requested to do so by a police officer under the provisions proposed to be inserted by Schedule 2.8 [1] and [7].

Schedule 2.8 [2] amends section 16A of the Crimes (Criminal Organisations Control) Act 2009 to make it clear that substituted service of an interim control order may be ordered at any time during the period in which notice of the making of the order must be served under section 16 of the Act.

Section 19 of the Crimes (Criminal Organisations Control) Act 2009 provides for the making of a control order against a member of a particular declared organisation on whom notice of an interim control order has been served. An interim control order can only be made under section 16 of the Act if the requirements for making a control order under section 19 (1) are satisfied. Schedule 2.8 [3] and [4] amend section 19 to enable a control order to be made against a person who is or purports to be a former member of a particular declared organisation but has an on-going involvement with the organisation.

Schedule 2.9 Criminal Procedure Act 1986 No 209

Schedule 2.9 amends the Criminal Procedure Act 1986 as described in paragraph (h) of the Overview above.

Schedule 2.10 Evidence (Audio and Audio Visual Links) Act 1998
No 105

Schedule 2.10 amends the Evidence (Audio and Audio Visual Links) Act 1998 as described in paragraph (i) of the Overview above and makes an associated savings.

Schedule 2.11 Industrial Relations Act 1996 No 17

Schedule 2.11 amends the Industrial Relations Act 1996 as described above in relation to the amendments made by Schedule 2.6.

Schedule 2.12 Law Enforcement (Powers and Responsibilities) Act
2002 No 103

Schedule 2.12 amends the Law Enforcement (Powers and Responsibilities) Act 2002 as described in paragraph (j) of the Overview above.

Schedule 2.13 Legal Profession Act 2004 No 112

Schedule 2.13 amends the Legal Profession Act 2004 as described in paragraph (k) of the Overview above.

Explanatory note page 8

Courts and Crimes Legislation Amendment Bill 2009

Explanatory note

Schedule 2.14 Local Court Act 2007 No 93

Schedule 2.14 amends the Local Court Act 2007 as described in paragraph (l) of the Overview above and makes an associated savings.