



New South Wales

# Courts and Crimes Legislation Further Amendment Bill 2008

## 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 the *Administrative Decisions Tribunal Act 1997* so as to enable a retired judge of a New South Wales Court to be appointed as a judicial member of the Administrative Decisions Tribunal,
- (b) to amend the *Bail Act 1978* so as:
  - (i) to provide for bail decisions of a superior court to be reviewed by the Court of Criminal Appeal, and
  - (ii) to make it clear that restrictions on multiple applications for bail apply only to applications in courts of the same jurisdiction, not applications in other courts,
- (c) to amend the *Births, Deaths and Marriages Registration Act 1995* so as:
  - (i) to restrict the District Court's power to make certain orders with respect to the registration of births, and
  - (ii) to enable a new form of birth certificate to be issued in relation to adopted persons,

- 
- (d) to amend the *Confiscation of Proceeds of Crime Act 1989* so as to enable a Local Court to deal with applications for restraining orders in relation to property having a value of up to the Court's jurisdictional limit when sitting in its General Division (currently \$60,000),
  - (e) to amend the *Crimes Act 1900* so as:
    - (i) to provide that tanks and other military vehicles are "conveyances" for the purposes of the offence of taking a conveyance without the consent of its owner, and
    - (ii) to create a new offence of intentionally or recklessly destroying or damaging property in company,
  - (f) to amend the *Criminal Appeal Act 1912* so as to confer jurisdiction on the Court of Criminal Appeal to deal with appeals (by offenders and the Crown) against sentences imposed by the Drug Court when exercising the criminal jurisdiction of the District Court or a Local Court,
  - (g) to amend the *Criminal Procedure Act 1986* so as:
    - (i) to provide that the common law offence of false imprisonment is to be tried summarily in a Local Court unless either the prosecutor or the defendant elects to have the matter dealt with on indictment, and
    - (ii) to extend the provisions of that Act with respect to warrants to those issued by the District Court or the Supreme Court, and
    - (iii) to provide for certain existing warrants to expire 20 years after they were issued,
  - (h) to amend the *Crown Prosecutors Act 1986* so as to enable the Director of Public Prosecutions to suspend a Crown Prosecutor from duty if he or she is being considered for removal from office,
  - (i) to amend the *Drug Court Act 1998* so as to enable Judges of the Supreme Court and District Court (and other NSW courts of equivalent status) to be appointed as Judges of the Drug Court (such appointments currently being limited to Judges of the District Court),
  - (j) to amend the *Dust Diseases Tribunal Act 1989* so as to enable Judges of the Supreme Court and District Court (and other NSW courts of equivalent status) to be appointed as members of the Dust Diseases Tribunal (such appointments currently being limited to Judges of the District Court),
  - (k) to amend section 190 of the *Evidence Act 1995* so as to bring it into line with other provisions to be inserted into that Act by the *Evidence Amendment Act 2007*,
  - (l) to amend the *Evidence Amendment Act 2007* so as to remove certain inconsistencies in expression,

- 
- (m) to amend the *Industrial Relations Act 1996* so as to provide that proceedings for contempt of the Industrial Relations Commission must be commenced within 6 months from when the offence was alleged to have occurred (rather than 12 months, as is currently the case),
  - (n) to amend the *Land and Environment Court Act 1979* so as:
    - (i) to provide for the exercise of the jurisdiction to be conferred on it in relation to matters arising under the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991*, and
    - (ii) to restore the power of the Land and Environment Court to grant easements over land if an appeal involving the grant or modification of development consent has already been determined by the Court,
  - (o) to amend the *Local Courts Act 1982* so as to enable a person who vacates the office of Magistrate to continue to hear part-heard proceedings that were commenced before the person vacated office,
  - (p) to amend the *Mental Health Act 2007* with respect to:
    - (i) the conduct of mental health inquiries by the Mental Health Review Tribunal instead of Magistrates, and
    - (ii) the qualifications for appointment of a “legal” member of the Mental Health Review Tribunal,
  - (q) to amend the *Mental Health (Criminal Procedure) Act 1990* so as to make amendments consequential on the changes to mental health inquiries,
  - (r) to amend the *Mental Health Legislation Amendment (Forensic Provisions) Act 2008* so as to make an amendment consequential on the changes to mental health inquiries,
  - (s) to amend the *Mining Act 1992* so as to transfer to the Land and Environment Court the jurisdiction currently conferred by that Act on wardens and Wardens’ Courts,
  - (t) to amend the *Mining Amendment Act 2008* as a consequence of the transfer of jurisdiction referred to in paragraph (s),
  - (u) to amend the *Miscellaneous Acts (Local Court) Amendment Act 2007* so as to make consequential amendments,
  - (v) to amend the *Petroleum (Onshore) Act 1991* so as to transfer to the Land and Environment Court the jurisdiction currently conferred by that Act on wardens and Wardens’ Courts,
  - (w) to amend the *Pharmacy Practice Act 2006* with respect to the qualifications for appointment of the Chairperson and Deputy Chairperson of the Pharmacy Tribunal,
  - (x) to amend the *Protected Estates Act 1983* so as to make amendments consequential on the changes to mental health inquiries,

- 
- (y) to amend the *Public Defenders Act 1995* so as:
    - (i) to maintain consistency with the provisions of the *Crown Prosecutors Act 1986* in relation to the vacation of office by a Public Defender, and
    - (ii) to enable the Senior Public Defender to suspend a Public Defender from duty if he or she is being considered for removal from office,
  - (z) to amend the *Supreme Court Act 1970* so as to extend the age restrictions in relation to a retired Judge being appointed as an acting Judge,
  - (aa) to amend the *Surveillance Devices Act 2007* so as:
    - (i) to provide that certain prohibitions in that Act on the installation, use and maintenance of listening devices and optical surveillance devices do not apply to the use of a listening device or an optical surveillance device integrated into a Police Taser, and
    - (ii) to make it clear that a surveillance device warrant or retrieval warrant that authorises entry into a vehicle also authorises entry into premises adjoining or providing access to the vehicle,
  - (ab) to amend the *Young Offenders Act 1997* so as to provide that the adult present when certain explanations under that Act are given to a child may be chosen by the child if he or she is 14 years or over, rather than 16 years or over as is currently the case.
  - (ac) to amend a number of Acts and instruments as a consequence of the transfer of jurisdiction referred to in paragraph (s).

## 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, subject to specified exceptions.

**Clause 3** is a formal provision that gives effect to the amendments to the Acts set out in Schedules 1–29.

**Clause 4** repeals the *Wardens' Courts Rules 1992*.

**Clause 5** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent. Section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

## Schedule 1      **Amendment of Administrative Decisions Tribunal Act 1997 No 76**

**Schedule 1** inserts a definition of *judicial officer* into section 14 of the Act. The definition defines *judicial officer* to include a retired judicial officer, so enabling retired judicial officers to act as members of the Administrative Decisions Tribunal.

---

## **Schedule 2      Amendment of Bail Act 1978 No 161**

**Schedule 2 [1]** amends the definition of *serious personal violence offence* in section 9D (4) of the Act so as to take account of amendments to section 35 (Reckless grievous bodily harm or wounding) of the *Crimes Act 1900* made by the *Crimes Amendment Act 2007*. **Schedule 2 [7]** inserts savings and transitional provisions into Schedule 1 to the Act as a consequential amendment.

**Schedule 2 [2] and [3]** amend section 22A of the Act. Currently section 22A requires a court to refuse to entertain an 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 a 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.

The section also prevents further applications being made to a court by lawyers for an accused person (except where the application would be permitted under paragraph (a) or (b) above).

The amendments make it clear that the restrictions in section 22A in relation to applications for bail apply only to applications in courts of the same jurisdiction, not applications in other courts.

**Schedule 2 [4]** inserts proposed section 22A (7) into the Act to provide that Local Courts are taken to be the same court for that purpose.

**Schedule 2 [5]** substitutes section 45 of the Act so as to provide that bail decisions of the District Court, Land and Environment Court, Industrial Relations Commission in Court Session or Supreme Court are reviewable by the Court of Criminal Appeal, and that other bail decisions are reviewable by the Supreme Court. **Schedule 2 [6]** repeals section 46 of the Act, which will be rendered unnecessary by the new section 45. **Schedule 2 [7]** inserts a transitional provision into Schedule 1 to the Act consequent on the proposed substitution of section 45.

## **Schedule 3      Amendment of Births, Deaths and Marriages Registration Act 1995 No 62**

**Schedule 3 [2]** amends section 19 of the Act so as to restrict the District Court's power to order registration of a birth to births occurring within, or while in transit to, New South Wales, and to restrict the District Court's power to order the inclusion in the Births, Deaths and Marriages Register of information about a child's birth or parents to information concerning a birth that is already registered.

---

**Schedule 3 [7]** includes a provision that removes any obligation on the Registrar of Births, Deaths and Marriages to comply with an order with respect to the registration of a birth that was made before the proposed amendment to section 19 if such an order could not lawfully be made under amended section 19.

**Schedule 3 [3]** inserts proposed section 25A into the Act. The new section enables the Registrar of Births, Deaths and Marriages to issue a certificate, in the form of an ordinary birth certificate, in relation to an adopted person. Whereas an ordinary birth certificate contains information as to a person's birth parents and their children, the new certificate will contain the corresponding information as to the person's adoptive parents and their children. The certificate will include no information that indicates that the person has been adopted.

**Schedule 3 [7]** includes a provision that validates a certificate of the kind referred to in proposed section 25A that was issued before the commencement of that section.

**Schedule 3 [1]** inserts into section 4 of the Act a definition of *birth certificate*. **Schedule 3 [4]** makes a consequential amendment to section 32A of the Act.

**Schedule 3 [5] and [6]** make it clear that the Registrar may issue an adopted person's birth record only if authorised to do so under the *Adoption Act 2000*.

## **Schedule 4      Amendment of Confiscation of Proceeds of Crime Act 1989 No 90**

**Schedule 4 [1]** amends section 45A of the Act so as to provide that the value of the property by reference to which the amount of a fine is to be calculated is to be determined by the court dealing with the offence under that section for which the fine is to be imposed.

**Schedule 4 [2]** amends section 74 of the Act so as to provide that a Local Court may deal with offences under section 42O or 45A of the Act where the value of the property concerned is less than the jurisdictional limit of a Local Court (when sitting in its General Division) rather than the current limit of \$10,000. **Schedule 4 [4]** is a transitional provision extending the effect of the proposed amendments to proceedings commenced before the commencement of those amendments. **Schedule 4 [3]** inserts a definition of *jurisdictional limit* into section 74.

## **Schedule 5      Amendment of Crimes Act 1900 No 40**

**Schedule 5 [1]** amends section 154A (2) of the Act so as to include tanks and other military vehicles as "conveyances" for the purposes of the offence in section 154A (1) of the Act (Taking a conveyance without consent of owner).

**Schedule 5 [2]** inserts proposed section 195 (1A) into the Act so as to provide that it is an offence if a person who, in the company of another person or persons, intentionally or recklessly destroys or damages property belonging to another or to that person and another. The proposed offence is to carry a maximum penalty of:

- (a) imprisonment for 6 years, or
- (b) if the destruction or damage is caused by means of fire or explosives, imprisonment for 11 years.

### **Schedule 6      Amendment of Criminal Appeal Act 1912 No 16**

**Schedule 6 [1] and [4]** amend sections 5AF and 5DC of the Act so as to extend the rights of appeal under those sections to sentences imposed by the Drug Court in the exercise under section 24 of the *Drug Court Act 1998* of the criminal jurisdiction of the District Court or a Local Court. **Schedule 6 [2], [3], [5] and [6]** make consequential amendments to those sections. **Schedule 6 [7]** inserts a transitional provision into Schedule 1 to the Act.

### **Schedule 7      Amendment of Criminal Procedure Act 1986 No 209**

**Schedule 7 [1] and [2]** amend section 170 of the Act so as to make it clear that certain provisions relating to warrants for arrest apply to warrants issued by a Local Court, the District Court or the Supreme Court. **Schedule 7 [4]–[9]** make consequential amendments to sections 236, 239, 240 and 242 of the Act. **Schedule 7 [12]** includes a transitional provision that makes it clear that the amendments to section 170 of the Act do not apply to proceedings commenced before the commencement of those amendments.

**Schedule 7 [3]** amends section 222 of the Act so as to provide that both the filing and service of a subpoena, rather than the filing alone, are to be regulated by rules of court.

**Schedule 7 [10]** inserts an item into Part 3 of Table 1 to Schedule 1 (Indictable offences triable summarily) to the Act to provide that the common law offence of false imprisonment may be dealt with summarily unless the prosecutor or defendant elects otherwise.

**Schedule 7 [11]** amends clause 53 of Schedule 2 to the Act so as to make it clear that a warrant for arrest issued before the commencement of section 237 (1A)–(1C), as inserted by the *Crimes and Courts Legislation Amendment Act 2006*, expires 20 years after the warrant was issued.

---

## **Schedule 8      Amendment of Crown Prosecutors Act 1986 No 208**

**Schedule 8 [1]** substitutes section 9 of the Act so as:

- (a) to provide that removal from office is a discretionary, rather than mandatory, consequence of a Crown Prosecutor becoming bankrupt or mentally incapacitated or absenting himself or herself from duty, and
- (b) to extend the grounds on which a Crown Prosecutor may be removed from office to include unsatisfactory performance.

**Schedule 8 [2]** inserts proposed section 9A into the Act so as to enable the Director of Public Prosecutions to suspend a Crown Prosecutor from duty if his or her removal from office is under consideration. Under the proposed section, the Crown Prosecutor's salary may be withheld. If the Crown Prosecutor is removed from office, his or her salary while under suspension may be forfeited to the State.

## **Schedule 9      Amendment of Drug Court Act 1998 No 150**

**Schedule 9** substitutes section 20 of the Act so as to allow a Judge of the Supreme Court or District Court (or a NSW Court of equivalent status to the Supreme Court or District Court) to be appointed as a Judge of the Drug Court. Currently only a Judge of the District Court can be so appointed.

## **Schedule 10     Amendment of Dust Diseases Tribunal Act 1989 No 63**

**Schedule 10 [1]** substitutes section 7 (2) of the Act so as allow a Judge of the Supreme Court or District Court (or a NSW Court of equivalent status to the Supreme Court or District Court) to be appointed as a member of the Dust Diseases Tribunal. Currently only a Judge of the District Court can be so appointed. **Schedule 10 [2] and [3]** make consequential amendments.

## **Schedule 11     Amendment of Evidence Act 1995 No 25**

**Schedule 11** amends section 190 of the Act so as to require a defendant who waives his or her right for proceedings to be conducted in accordance with strict rules of evidence to do so on the advice of an Australian legal practitioner or legal counsel (that is, by a lawyer who is entitled to practise law in Australia) rather than, as is presently the case, of any lawyer.



---

## **Schedule 12    Amendment of Evidence Amendment Act 2007 No 46**

**Schedule 12 [1]–[3]** amend proposed sections 128 and 128A of the *Evidence Act 1995*, and proposed section 33AA of the *Coroners Act 1980*, so as to achieve consistency of expression within those sections.

## **Schedule 13    Amendment of Industrial Relations Act 1996 No 17**

**Schedule 13 [1]** amends section 398 of the Act so as to exclude offences under section 180 of the Act (proceedings for contempt of the Industrial Relations Commission) from the 12-month time limit for commencing proceedings for offences under the Act.

**Schedule 13 [2]** inserts a note at the end of section 398 of the Act so as to flag that the 6-month time limit under section 179 of the *Criminal Procedure Act 1986* will instead apply to an offence of contempt.

## **Schedule 14    Amendment of Land and Environment Court Act 1979 No 204**

**Schedule 14 [5]** establishes a new class of jurisdiction for the Land and Environment Court. The proposed class (Class 8) comprises the jurisdiction to be conferred on the Court pursuant to the amendments to the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991* to be made by proposed Schedules 19 and 22.

**Schedule 14 [2]** provides that an additional qualification for appointment as a Commissioner is that the appointee is an Australian lawyer. A Commissioner holding such a qualification will be eligible to exercise, under delegation, the Court's jurisdiction under proposed Class 8.

**Schedule 14 [9]** substitutes section 40 (1) of the Act so as to ensure that the Land and Environment Court continues to have the power to make an order imposing an easement over land as a consequence of earlier proceedings on an appeal under the *Environmental Planning and Assessment Act 1979* in which it has made a determination to grant or modify development consent. The new provision extends the power to all appeals under that Act, rather than just those under section 97 of that Act, as is currently the case.

**Schedule 14 [17]** inserts a transitional provision into Schedule 3 to the Act so as to validate certain applications and orders made before the commencement of proposed section 40 (1).

The remaining amendments made by Schedule 14 are consequential on the creation of the new Class 8 jurisdiction.

---

## **Schedule 15    Amendment of Local Courts Act 1982 No 164**

**Schedule 15** inserts proposed section 20A into the Act so as to provide that a Magistrate who vacates office (otherwise than by having been removed from office) may continue to hear and determine matters that he or she had begun to hear before vacating office. The proposed section parallels a similar provision in the (uncommenced) *Local Court Act 2007*.

## **Schedule 16    Amendment of Mental Health Act 2007 No 8**

**Schedule 16** amends the Act so as to remove the function of holding mental health inquiries from Magistrates and confer it on the Mental Health Review Tribunal (the *Tribunal*).

**Schedule 16 [1] and [2]** amend definitions of terms in section 4 of the Act so as to replace references to Magistrates in relation to mental health inquiries with references to the Tribunal.

**Schedule 16 [3] and [4]** amend section 27 of the Act, which sets out the procedures for involuntarily detaining a person in a mental health facility. The amendments require the Tribunal, rather than a Magistrate, to hold a mental health inquiry about a person who has been found to be a mentally ill person by 2 doctors (an *assessable person*). An assessable person must be brought before the Tribunal as soon as practicable after admission.

**Schedule 16 [5], [7], [8], [10]–[12] and [20]** amend sections 33, 35 and 77 of the Act so as to replace references to Magistrates in relation to mental health inquiries with references to the Tribunal.

**Schedule 16 [6]** substitutes section 34 of the Act. The new section requires the Tribunal to hold a mental health inquiry. It enables the Tribunal to require the authorised medical officer of a mental health facility to provide additional information for the purposes of a mental health inquiry, as well as certain medical evidence and reports, at or before the inquiry. The new section also enables persons to be brought before or to appear before mental health inquiries by audio visual link. Primary carers of persons subject to mental health inquiries will be entitled to appear at mental health inquiries. The new section re-enacts a provision currently contained in Schedule 2 to the Act (that Schedule is repealed by **Schedule 16 [29]**).

**Schedule 16 [9]** amends section 35 of the Act so as to insert provisions relating to information that must be given to persons who are subject to mental health inquiries. The amendment re-enacts provisions currently contained in Schedule 2 to the Act (that Schedule is repealed by **Schedule 16 [29]**).

---

**Schedule 16 [13]** substitutes section 36 of the Act so as to insert provisions relating to the circumstances in which mental health inquiries may be adjourned. The amendment re-enacts a provision currently contained in Schedule 2 to the Act (that Schedule is repealed by **Schedule 16 [29]**).

**Schedule 16 [14]–[19]** amend sections 51, 53 and 55 of the Act so as to replace references to Magistrates with references to the Tribunal in relation to the granting of community treatment orders in mental health inquiries.

**Schedule 16 [21] and [24]** amend sections 141 and 150 of the Act so as to enable Australian lawyers (as opposed to Australian legal practitioners) to be appointed as “legal” members of the Mental Health Review Tribunal. The expressions *Australian legal practitioner* and *Australian lawyer* are defined in the *Legal Profession Act 2004*. Both expressions describe a person who has been formally admitted as a lawyer, the former indicating a person who holds a current certificate that entitles him or her to practise law, and the latter a person who does not.

**Schedule 16 [23]** amends section 150 of the Act so as to require the Tribunal to be constituted by at least 1 member who is the President or a Deputy President or who is qualified for appointment as a Deputy President for the purpose of conducting a mental health inquiry. **Schedule 16 [22]** makes a consequential amendment.

**Schedule 16 [25]** amends section 154 of the Act so as to insert a provision relating to representation before the Tribunal of persons who are subject to mental health inquiries. The amendment re-enacts provisions currently contained in Schedule 2 to the Act (that Schedule is repealed by **Schedule 16 [29]**).

**Schedule 16 [26]** amends section 160 of the Act so as to enable regulations to be made with respect to Tribunal proceedings by audio or audio visual link.

**Schedule 16 [27]** amends section 188 of the Act so as to remove a restriction on the offices Magistrates may hold under the Act, as a consequence of Magistrates’ ceasing to hold mental health inquiries. **Schedule 16 [28]** makes a consequential amendment.

**Schedule 16 [29]** omits Schedule 2 to the Act, which contains procedures for the holding of mental health inquiries. Most of the provisions in that Schedule already apply generally to proceedings before the Tribunal and other provisions of that Schedule have been re-enacted by the proposed Act.

**Schedule 16 [30]–[35]** amend Schedule 3 to the Act so as to replace references to Magistrates with references to the Tribunal in the Statement of Rights given to persons detained in mental health facilities.

**Schedule 16 [36]** amends Schedule 6 to the Act so as to enable regulations containing savings or transitional provisions to be made consequent on the enactment of the proposed Act.

**Schedule 16 [37]** amends Schedule 6 to the Act so as to enable mental health inquiries that are uncompleted when the proposed Act commences to be completed by Magistrates.

**Schedule 17    Amendment of Mental Health (Criminal Procedure) Act 1990 No 10**

**Schedule 17 [1] and [2]** amend section 33 of the Act as a consequence of the Mental Health Review Tribunal being given the function of holding mental health inquiries under the *Mental Health Act 2007* and that function being removed from Magistrates.

**Schedule 18    Amendment of Mental Health Legislation  
Amendment (Forensic Provisions) Act  
2008 No 79**

**Schedule 18** amends (uncommenced) section 53 (3A) of the *Mental Health Act 2007* as a consequence of the Mental Health Review Tribunal being given the function of holding mental health inquiries under that Act and that function being removed from Magistrates.

**Schedule 19    Amendment of Mining Act 1992 No 29**

**Schedule 19 [43]** substitutes Part 15 of the Act so as to transfer to the Land and Environment Court the jurisdiction currently conferred by the Act on wardens and Wardens' Courts.

The remaining amendments made by Schedule 19 are consequential on the proposed transfer of jurisdiction.

**Schedule 20    Amendment of Mining Amendment Act  
2008 No 19**

**Schedule 20** amends various provisions of the Act as a consequence of the proposed transfer of jurisdiction from wardens and the Wardens' Courts to the Land and Environment Court.

**Schedule 21    Amendment of Miscellaneous Acts  
(Local Court) Amendment Act 2007  
No 94**

**Schedule 21 [1]** makes an amendment to the Act to repeal proposed section 22A (7) of the *Bail Act 1978* (to be inserted into that Act by Schedule 2 [4]) on the replacement, pursuant to the (uncommenced) *Local Court Act 2007*, of Local Courts

---

by the Local Court of New South Wales. **Schedule 21 [2]–[4]** make consequential amendments.

### **Schedule 22    Amendment of Petroleum (Onshore) Act 1991 No 84**

**Schedule 22 [17]** substitutes section 115 of the Act so as to transfer to the Land and Environment Court the jurisdiction currently conferred by the Act on wardens and Wardens' Courts.

The remaining amendments made by Schedule 22 are consequential on the proposed transfer of jurisdiction.

### **Schedule 23    Amendment of Pharmacy Practice Act 2006 No 59**

**Schedule 23** amends section 113 of the Act so as to enable the Governor to appoint an Australian lawyer of at least 7 years' standing (as opposed to an Australian legal practitioner of at least 7 years' standing) to the office of Chairperson or Deputy Chairperson of the Pharmacy Tribunal. The expressions *Australian legal practitioner* and *Australian lawyer* are defined in the *Legal Profession Act 2004*. Both expressions describe a person who has been formally admitted as a lawyer, the former indicating a person who holds a current certificate that entitles him or her to practise law, and the latter a person who does not.

### **Schedule 24    Amendment of Protected Estates Act 1983 No 179**

**Schedule 24 [1]–[13]** amend sections 15–17, 19, 21, 21A, 21B and 23 of the Act as a consequence of the Mental Health Review Tribunal being given the function of holding mental health inquiries under the *Mental Health Act 2007* and that function being removed from Magistrates. The amendments also make it clear that the Tribunal may defer consideration of the capacity of a person to manage his or her own affairs when holding a mental health inquiry, pending the provision of further information.

### **Schedule 25    Amendment of Public Defenders Act 1995 No 28**

**Schedule 25 [1]** substitutes clause 5 of Schedule 1 to the Act so as to bring it into line with the corresponding provision of the *Crown Prosecutors Act 1986* (as to be substituted by Schedule 8 [1]).

**Schedule 25 [2]** inserts proposed clause 5A into Schedule 1 to the Act so as to enable the Senior Public Defender to suspend a Public Defender from duty if his or her removal from office is under consideration. Under the proposed clause, the Public Defender's salary may be withheld. If the Public Defender is removed from office, his or her salary while under suspension may be forfeited to the State.

## **Schedule 26    Amendment of Supreme Court Act 1970 No 52**

**Schedule 26** amends section 37 of the Act so as to provide that certain retired judges may be appointed to serve as acting judges and to further provide for the length of time that they may be appointed to serve as acting judges. The proposed subsections make it clear that a judge who retires at the statutory retirement age may serve as an acting judge until he or she reaches 77 years of age, whereas a judge who retires before the statutory retirement age may serve as an acting judge until he or she reaches 75 years of age.

## **Schedule 27    Amendment of Surveillance Devices Act 2007 No 64**

**Schedule 27 [1] and [2]** amend sections 7 (Prohibition on installation, use and maintenance of listening devices) and 8 (Installation, use and maintenance of optical surveillance devices without consent) of the Act to provide that those sections do not apply to the use of a listening device or an optical surveillance device, being a device integrated into a Taser issued to a member of the NSW Police Force, to record the operation of the Taser and the circumstances surrounding its operation.

**Schedule 27 [3]–[5]** amend sections 21 and 29 of the Act so as to provide that where a surveillance device warrant or a retrieval warrant authorises entry into a vehicle, the warrant will also authorise entry into premises adjoining or providing access to the vehicle.

## **Schedule 28    Amendment of Young Offenders Act 1997 No 54**

Sections 22 (2) (c) and 39 (2) (c) of the Act provide that the adult present when certain explanations under the Act are given to a child may, if the child is 16 years or over, be an adult chosen by the child.

**Schedule 28 [1] and [2]** amend those provisions so as to provide that a child 14 years or over may make that choice of adult.

---

**Schedule 29    Amendment of other Acts and  
instruments consequent on the abolition  
of Wardens Courts**

**Schedule 29** amends various Acts and instruments as a consequence of the proposed transfer of jurisdiction from wardens and Wardens' Courts to the Land and Environment Court.