



New South Wales

Justice Portfolio Legislation (Miscellaneous Amendments) Bill 2016

Explanatory note

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

Overview of Bill

The object of this Bill is to make miscellaneous amendments to the following Acts within, or with provisions relating to matters within, the Justice portfolio:

- (a) the *Bail Act 2013*,
- (b) the *Bail Amendment Act 2015*,
- (c) the *Children (Criminal Proceedings) Act 1987*,
- (d) the *Crimes Act 1900*,
- (e) the *Crimes (Domestic and Personal Violence) Amendment (Review) Act 2016*,
- (f) the *Crimes (Sentencing Procedure) Act 1999*,
- (g) the *Criminal Procedure Act 1986*,
- (h) the *District Court Act 1973*,
- (i) the *Drug Misuse and Trafficking Act 1985*,
- (j) the *Drug Misuse and Trafficking Amendment (Drug Exhibits) Act 2016*,
- (k) the *Land and Environment Court Act 1979*,
- (l) the *Legal Profession Uniform Law Application Act 2014*,
- (m) the *Local Court Act 2007*,
- (n) the *Statutory and Other Offices Remuneration Act 1975*,
- (o) the *Strata Schemes Management Act 2015*,

- (p) the *Supreme Court Act 1970*,
- (q) the *Surveillance Devices Act 2007*.

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.

Schedule 1 Amendment of Acts

Schedule 1.1 amends the *Bail Act 2013*:

- (a) to clarify that a prosecutor may make an application for the grant of bail with the imposition of bail conditions where there has not been a previous bail decision in relation to the offence concerned, and
- (b) to provide that the Local Court or an authorised justice may hear a variation application with the consent of the accused person and the prosecutor.

Schedule 1.2 amends the *Bail Amendment Act 2015* (which contains uncommenced amendments to the *Bail Act 2013*):

- (a) to provide that the show cause requirement under the *Bail Act 2013* applies to a serious indictable offence committed by an accused person while the person was the subject of an arrest warrant issued under the *Criminal Procedure Act 1986* or the *Crimes (Sentencing Procedure) Act 1999*, and
- (b) to provide that, in assessing bail concerns, a bail authority is to consider whether the accused person has a history of compliance or non-compliance with supervision orders under the *Crimes (High Risk Offenders) Act 2006*.

Schedule 1.3 amends the *Children (Criminal Proceedings) Act 1987* to remove a restriction that prevents the Children's Court from hearing and determining certain committal proceedings involving a charge made jointly against a child and an adult where the adult is more than 3 years older than the child. The amendment allows the Children's Court to hear and determine those proceedings if the Court is of the opinion that it is in the interests of justice to do so.

Schedule 1.4 amends the *Crimes Act 1900*:

- (a) to extend the limitation period with respect to the offence of unauthorised accessing or modifying of restricted data held in a computer from 6 months to 12 months from when the offence was alleged to have been committed, and
- (b) to remove references to repealed provisions.

Schedule 1.5 amends the *Crimes (Domestic and Personal Violence) Amendment (Review) Act 2016* to enable regulations of a savings or transitional nature to be made in relation to the application of certain new provisions of the *Crimes (Domestic and Personal Violence) Act 2007* to existing apprehended violence orders.

Schedule 1.6 amends the *Crimes (Sentencing Procedure) Act 1999*:

- (a) to enable a court to decline to set a non-parole period for a sentence of imprisonment or an aggregate sentence of imprisonment, for an offence or offences set out in the Table to Division 1A of Part 4 of that Act, being the Table of Standard non-parole periods for certain offences (that is, set a fixed term of imprisonment for convictions for these offences), but only if the term of the sentence is at least as long as the term of the non-parole period that the court would have set for the sentence if a non-parole period had been set in accordance with that Division, and
- (b) to provide that a court may set a non-parole period for a sentence of imprisonment that is 6 months or less for a conviction for an offence if it is imposing the sentence as part of an

aggregate sentence of imprisonment in respect of 2 or more offences for a term that exceeds 6 months, and

- (c) to make it clear that the Local Court may impose an aggregate sentence of imprisonment, but only if the aggregate sentence does not exceed 5 years, and
- (d) to restore certain provisions to that Act to make it clear that an intensive correction order may be made in relation to a sentence of imprisonment that is to be served consecutively (or partly concurrently and partly consecutively) with some other sentence of imprisonment the subject of an intensive correction order and that an intensive correction order is not invalidated merely because it specifies a date of commencement other than the date on which the order is made.

Schedule 1.7 amends the *Criminal Procedure Act 1986*:

- (a) to provide for a means of replacing a presiding judge in criminal proceedings being tried by a jury in the District Court or the Supreme Court if the judge dies, becomes ill or is otherwise unable to continue the proceedings, and
- (b) to clarify that any part of any proceedings in respect of a prescribed sexual offence in which evidence given by a complainant by means of an audio visual or audio recording is heard by the court, is to be held in camera, unless the court otherwise directs, and
- (c) to provide that, in sexual offence proceedings, where a record of the original evidence of the complainant is tendered by the prosecutor by means of an audio visual or audio recording, the recording is to be heard by the court in camera, unless the court otherwise directs, and
- (d) to make it clear that members of the Australian Federal Police and the police forces of other States and Territories are investigating officials for the purposes of Part 6 (Giving of evidence by vulnerable persons) of Chapter 6 of that Act, being provisions that enable the evidence of a vulnerable person of a previous representation to be given wholly or partly in the form of a recording made by an investigating official, and
- (e) to provide that the provisions of the child sexual offence evidence pilot scheme apply to evidence given by prosecution witnesses as well as any child who is a complainant in the proceedings concerned, and
- (f) to provide that the child sexual offence evidence pilot scheme applies to evidence given by children in proceedings that relate to more than one offence so long as at least one of those offences is a prescribed sexual offence for the purposes of the scheme, and
- (g) to extend the child sexual offence evidence pilot scheme to criminal proceedings in relation to a prescribed sexual offence (whenever committed) commenced by a court attendance notice filed or indictment presented before the commencement of the scheme provisions, where the matter was listed for trial before that commencement, but was or is re-listed for trial after that commencement, and
- (h) to clarify the role of children's champions under the child sexual offence evidence pilot scheme, and
- (i) to provide that persons with tertiary qualifications in teaching are suitable to be appointed as children's champions for the purposes of the scheme.

Schedule 1.8 amends the *District Court Act 1973* to make it clear that an acting District Court judge is to be paid remuneration so long as the person continues to hold office or until the acting judge has completed or otherwise dealt with matters heard, or partly heard, by the acting judge, whichever is the later.

Schedule 1.9 amends the *Drug Misuse and Trafficking Act 1985* to update certain public service references.

Schedule 1.10 amends the *Drug Misuse and Trafficking Amendment (Drug Exhibits) Act 2016* to remove certain incorrect amendments relating to public service references.

Schedule 1.11, 1.13 and 1.14 amend the *Land and Environment Court Act 1979*, the *Local Court Act 2007* and the *Statutory and Other Offices Remuneration Act 1975* to provide that the remuneration of acting Land and Environment Court Commissioners and acting Magistrates is to be determined in accordance with the *Statutory and Other Offices Remuneration Act 1975*.

Schedule 1.12 amends the *Legal Profession Uniform Law Application Act 2014*:

- (a) to provide that a party to a costs assessment may apply for a review of the determination of the assessment within 30 days after the certificate of determination by the costs assessor has been forwarded to the parties in accordance with the regulations or the costs assessment rules (rather than within 30 days after the issue of the certificate of determination), and
- (b) to enable the tabling of certain annual reports in Parliament when the Houses of Parliament are not sitting.

Schedule 1.13 also amends the *Statutory and Other Offices Remuneration Act 1975* to enable certain judicial officers to salary sacrifice a living away from home allowance.

Schedule 1.15 amends the *Strata Schemes Management Act 2015* with respect to the recovery of unpaid contributions, interest and expenses, specifically to provide that:

- (a) an owners corporation may bring proceedings for the recovery of interest or expenses in the NSW Civil and Administrative Tribunal or a court only if that action is taken together with an action to recover the unpaid contributions concerned, and
- (b) action for the recovery of unpaid contributions, interest and expenses may be brought in that Tribunal only if proceedings are already on foot between the owners corporation and the owner of the lot in the strata scheme or other person concerned, and
- (c) only reasonable expenses of owners corporations incurred in recovering such amounts may be recovered.

Schedule 1.16 amends the *Supreme Court Act 1970*:

- (a) to make it clear that an acting Supreme Court Judge is to be paid remuneration so long as the person continues to hold office or until the acting Judge has completed or otherwise dealt with matters heard, or partly heard, by the acting Judge, whichever is the later, and
- (b) to provide that appeals from a Judicial Registrar of the District Court are to be made to a Division of the Supreme Court rather than the Court of Appeal.

Schedule 1.17 amends the *Surveillance Devices Act 2007*:

- (a) to provide that law enforcement officers may use optical surveillance devices (that is, video cameras) in the conduct of a search or inspection that is permitted without a warrant under certain specified laws, and
- (b) to provide that law enforcement officers may also use optical surveillance devices in the execution of search warrants issued under a provision specified in Schedule 2 to the *Law Enforcement (Powers and Responsibilities) Act 2002* or Part 3 (Covert search warrants) of the *Terrorism (Police Powers) Act 2002*.