



New South Wales

Justice Legislation Amendment Bill (No 3) 2018

Explanatory note

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

The following Bills are cognate with this Bill:

Crimes Legislation Amendment (Victims) Bill 2018

Government Information (Public Access) Amendment Bill 2018

Overview of Bill

The object of this Bill is to amend various Acts and Regulations relating to courts, crimes and other matters in the Justice portfolio, including as follows:

- (a) to provide for a representative of the Australian Defence Force to be a trustee of the Anzac Memorial Building and to expand the site of the Memorial Building,
- (b) to make further provision for the disclosure of information in the administration or execution of the *Children (Detention Centres) Act 1987*,
- (c) to extend the circumstances in which a sexual assault will be treated as an aggravated sexual assault,
- (d) to enable an inmate in a correctional centre to be held for up to 4 days after the inmate's release date if there is a good reason to delay the release and the inmate requests or consents to the delay,
- (e) to enable a court to deal with an offender who has breached a community correction order or conditional release order after the order has expired in respect of matters arising during the term of the order,
- (f) to enable a community corrections officer to deal with an offender who has breached a re-integration home detention order in less formal ways before referring the breach to the State Parole Authority,

- (g) to enable the State Parole Authority to revoke an intensive correction order for reasons other than a breach,
- (h) to limit the circumstances in which a relationship between a dependant and a paid carer is treated as a domestic relationship under the *Crimes (Domestic and Personal Violence) Act 2007*,
- (i) to ensure that the sharing of information under an information sharing arrangement does not prevent a claim of sexual assault communications privilege in relation to that information,
- (j) to clarify the circumstances in which the Crown can appeal against a sentence,
- (k) to enable proceedings for back up summary offences to be brought outside the usual 6-month time limit in certain circumstances,
- (l) to provide for the giving of expert evidence concurrently and consecutively in criminal proceedings,
- (m) to provide that telephone numbers and addresses are not required to be disclosed in subpoenaed material, unless they are a materially relevant part of the evidence or a court orders the disclosure,
- (n) to restrict access by an accused person to sensitive evidence held by a health authority,
- (o) to enable interviews and recordings with children made by interstate investigating officials to be used as evidence under the special arrangements that apply to the giving of evidence by children in criminal proceedings,
- (p) to clarify the jurisdiction of the District Court in relation to actions arising out of commercial transactions,
- (q) to enable the Drug Court to remove any motor vehicle licence disqualifications to which a person is subject (similar to the Local Court),
- (r) to provide that documents served by post are presumed to have been served on the seventh working day after being posted, instead of the fourth working day,
- (s) to increase the jurisdictional limit of the Local Court's Small Claims Division from \$10,000 to \$20,000,
- (t) to enable the Registrar of Births, Deaths and Marriages to provide or arrange for the provision of celebratory services in connection with the registration of a relationship,
- (u) to make further provision in respect of applications to the Local Court for the removal of driver licence disqualifications and the quashing of existing habitual traffic offender declarations,
- (v) to clarify the effect of same sex marriages, divorces and annulments that are now recognised in Australia on wills made before same sex marriage was recognised in Australia,
- (w) to enable the Commissioner of Victims Rights to provide funding from the Victims Support Fund to organisations that support victims,
- (x) to increase the retirement age for judicial officers from 72 years to 75 years and to increase the maximum age for acting judicial officers from 77 years to 78 years,
- (y) to abolish the Solicitors Mutual Indemnity Fund and to distribute the monetary assets of the Fund equally to an account for community legal services that is established in the Public Purpose Fund and to the Law Society of NSW,
- (z) to require the Law Society of NSW to subscribe to an amount of capital in Lawcover Insurance Pty Ltd that is not less than the amount of monetary assets transferred to the Law Society of NSW from the Solicitors Mutual Indemnity Fund,
- (aa) to transfer the rights and liabilities of the manager of the Solicitors Mutual Indemnity Fund relating to indemnity insurance by the failed HIIH insurance group to Lawcover Insurance Pty Ltd,

- (ab) to provide that a law practice is to make deposits to the Law Society of NSW from the trust fund kept by the law practice every 3 months instead of every 12 months,
- (ac) to make other minor and consequential amendments.

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.

Clause 3 provides that explanatory notes do not form part of the proposed Act.

Schedule 1 Principal amendments

Schedule 1 amends the following instruments:

- (a) *Anzac Memorial (Building) Act 1923*,
- (b) *Bail Act 2013*,
- (c) *Children (Criminal Proceedings) Act 1987*,
- (d) *Children (Detention Centres) Act 1987*,
- (e) *Children (Detention Centres) Regulation 2015*,
- (f) *Civil and Administrative Tribunal Act 2013*,
- (g) *Civil Liability Act 2002*,
- (h) *Crimes Act 1900*,
- (i) *Crimes (Administration of Sentences) Act 1999*,
- (j) *Crimes (Appeal and Review) Act 2001*,
- (k) *Crimes (Domestic and Personal Violence) Act 2007*,
- (l) *Crimes (Interstate Transfer of Community Based Sentences) Act 2004*,
- (m) *Crimes (Sentencing Procedure) Act 1999*,
- (n) *Criminal Appeal Act 1912*,
- (o) *Criminal Procedure Act 1986*,
- (p) *District Court Act 1973*,
- (q) *Drug Court Act 1998*,
- (r) *Interpretation Act 1987*,
- (s) *Law Enforcement (Powers and Responsibilities) Act 2002*,
- (t) *Local Court Act 2007*,
- (u) *Parole Orders (Transfer) Act 1983*,
- (v) *Relationships Register Act 2010*,
- (w) *Road Transport Act 2013*,
- (x) *Succession Act 2006*,
- (y) *Sydney Bethel Union Extension Act 1908*,
- (z) *Victims Rights and Support Act 2013*.

The amendments to each instrument are explained in detail in the explanatory note relating to the instrument concerned set out in Schedule 1.

Schedule 2 Amendments relating to retirement age for judicial officers

Schedule 2 amends the following Acts:

- (a) *Director of Public Prosecutions Act 1986*,
- (b) *District Court Act 1973*,
- (c) *Judges' Pensions Act 1953*,
- (d) *Judicial Officers Act 1986*,
- (e) *Land and Environment Court Act 1979*,
- (f) *Local Court Act 2007*,
- (g) *Solicitor General Act 1969*,
- (h) *Supreme Court Act 1970*.

The amendments are explained in detail in the explanatory note relating to the Act concerned set out in Schedule 2.

Schedule 3 Amendment of Legal Profession Uniform Law application legislation

Schedule 3 amends the *Legal Profession Uniform Law Application Act 2014* and the *Legal Profession Uniform Law Application Regulation 2015*.

The amendments are explained in detail in the explanatory note relating to the Act and Regulation set out in Schedule 3.