



New South Wales

Justice Legislation Amendment Bill 2019

Explanatory note

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

Overview of Bill

The object of this Bill is to amend various Acts and regulations relating to courts, crimes and other Stronger Communities portfolio matters as follows—

- (a) to provide that notices relating to complaints made by post under the *Anti-Discrimination Act 1977* are presumed to have been made 7 working days after posting,
- (b) to clarify that committal proceedings for serious children's indictable offences are dealt with under the *Criminal Procedure Act 1986*,
- (c) to correct references to the Justice Health and Forensic Mental Health Network,
- (d) to extend the period for which a person may be appointed as an Official Visitor to correctional centres and detention centres from 2 to 4 years,
- (e) to establish a Victims Register for victims of young offenders, enabling those victims to be provided with certain information about the movements of offenders,
- (f) to remove the requirement to report deaths occurring in circumstances where the deceased person had not been attended by a medical practitioner 6 months before their death,
- (g) to enable pathologists to conduct certain non-invasive preliminary examinations of a deceased person's remains in coronial matters,
- (h) to provide that the Domestic Violence Death Review Team is to include representatives of the Legal Aid Commission of New South Wales,
- (i) to include portable document scanners as a type of recording device that is prohibited from use in court premises,

- (j) to clarify that the prosecution of a child sexual offence where there is uncertainty as to exactly when the alleged conduct occurred may be brought where the potentially applicable sexual offences have the same maximum penalty,
- (k) to clarify that a person whose release from custody has been delayed with the person's consent continues to be held in custody as an 'inmate' until the day of release,
- (l) to clarify that provisions limiting or authorising the disclosure of information obtained in connection with the administration or execution of the *Crimes (Administration of Sentences) Act 1999* include information to which certain persons have or had access,
- (m) to increase the standard non-parole period for bushfire arson offences under the *Crimes Act 1900* from 5 to 9 years,
- (n) to provide a savings and transitional provision enabling the court to call up breaches of good behaviour bonds entered into in connection with suspended sentence orders that had expired before those orders were repealed by an amending Act,
- (o) to clarify that a prosecutor's requirement to certify in a charge certificate that a disclosure certificate under section 15A of the *Director of Public Prosecutions Act 1986* was received and considered does not extend to offences prosecuted by the Commonwealth Director of Public Prosecutions,
- (p) to clarify that an accused's legal representative's obligation to explain the sentencing law, penalty or effect of a plea for the purposes of case conferences is limited to offences that are covered by the Early Appropriate Guilty Pleas scheme under Division 1A of Part 3 of the *Crimes (Sentencing Procedure) Act 1999*,
- (q) to provide an exception to the requirement to file a case conference certificate where a matter is to be dealt with summarily or is not to proceed to committal,
- (r) to provide that certain indictable offences relating to a person's misuse of health practitioner titles and practice restrictions under the *Health Practitioner Regulation National Law (NSW)* may be tried summarily unless the matter is elected to be dealt with on indictment,
- (s) to clarify that children who are eligible to give evidence by means of a pre-recorded hearing in child sexual assault proceedings remain eligible even if the child has become an adult before relevant orders are made,
- (t) to extend the defence of absolute privilege afforded to certain publications under the *Legal Profession Uniform Law (NSW)* to matter that is published in a report of a compliance audit of a law practice under that law by or to certain local regulatory authorities (for example, the Bar Council, Law Society Council or Legal Services Commissioner) or by a person appointed under that Law to conduct the compliance audit,
- (u) to confer a defence of absolute privilege to the publication of defamatory matter published by the Independent Planning Commission (or its predecessor) in a report or other document under certain planning legislation,
- (v) to remove references from the *Drug Misuse and Trafficking Act 1985* to the Poisons List, which is covered by the *Poisons and Therapeutic Goods Act 1966*,
- (w) to enable the Secretary of the Department of Communities and Justice to delegate the Secretary's functions under the *Justices of the Peace Act 2002* or its regulations to senior Departmental staff members,
- (x) to enable certain eligible former justices of the peace to apply for the use of a retirement title after their names,
- (y) to clarify that appeals under Acts against building product rectification orders are to be heard in Class 2 of the Land and Environment Court's jurisdiction (ie similar to local government appeals),

- (z) to enable applications for notices to produce documents under the *Law Enforcement (Powers and Responsibilities) Act 2002* to be made by email and any other method authorised by the regulations,
- (za) to provide that the minutes of the Legal Aid Commission's Board meeting be submitted to the Minister with reasonable promptness after the meeting is held,
- (zb) to enable justices of the peace to witness the execution of documents for use in any other State or Territory or the Commonwealth if permitted by the jurisdiction,
- (zc) to provide that the indictable offence of engaging in unsafe conduct as a provider or driver of passenger services may be dealt with summarily or on indictment,
- (zd) to clarify that the Sheriff's functions include those conferred or imposed on the Sheriff under the laws of the Commonwealth, another State or a Territory (including functions conferred by delegation),
- (ze) to relocate the exclusion of certain sexual offences from the offences covered by the *Young Offenders Act 1997* from the regulations to the Act,
- (zf) to make other necessary consequential and related amendments, including savings and transitional 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 in Schedule 1 do not form part of the proposed Act.

Schedule 1 Amendments

Schedule 1 amends the following instruments—

- (a) *Anti-Discrimination Act 1977*,
- (b) *Children (Criminal Proceedings) Act 1987*,
- (c) *Children (Detention Centres) Act 1987*,
- (d) *Coroners Act 2009*,
- (e) *Court Security Act 2005*,
- (f) *Crimes Act 1900*,
- (g) *Crimes (Administration of Sentences) Act 1999*,
- (h) *Crimes (Sentencing Procedure) Act 1999*,
- (i) *Criminal Procedure Act 1986*,
- (j) *Criminal Procedure Regulation 2017*,
- (k) *Defamation Act 2005*,
- (l) *Drug Misuse and Trafficking Act 1985*,
- (m) *Justices of the Peace Act 2002*,
- (n) *Land and Environment Court Act 1979*,
- (o) *Law Enforcement (Powers and Responsibilities) Act 2002*,
- (p) *Law Enforcement (Powers and Responsibilities) Regulation 2016*,
- (q) *Legal Aid Commission Act 1979*,
- (r) *Oaths Act 1900*,
- (s) *Point to Point Transport (Taxis and Hire Vehicles) Act 2016*,
- (t) *Sheriff Act 2005*,

- (u) *Young Offenders Act 1997*,
- (v) *Young Offenders Regulation 2016*.

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