



New South Wales

# Justice Legislation Amendment Bill (No 2) 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 matters in the Communities and Justice portfolio, including as follows—

- (a) to amend the *Crimes Act 1900*, including—
  - (i) to clarify that a person may commit an offence involving participation in a criminal group whether or not the person is a member of the criminal group, and
  - (ii) to extend the application of certain offences relating to the theft of motor vehicles and vessels to trailers, and
  - (iii) to provide that access to or modification of computer data, or impairment of electronic communications, that is caused by a law enforcement officer does not constitute an offence if it is for certain law enforcement purposes,
- (b) to amend the *Criminal Procedure Act 1986*, including—
  - (i) to remove a requirement for a Magistrate to give an accused person an oral explanation of the committal process in proceedings for indictable offences if the accused person is legally represented, and
  - (ii) to provide that female genital mutilation offences and the offence of concealing a serious indictable offence, if the concealed offence is a prescribed sexual offence, are prescribed sexual offences, and
  - (iii) to provide for a suitable person to consent to the disclosure or the adducing of evidence disclosing a protected confidence in proceedings if the principal protected confider is under 14 years of age, and

- (iv) to provide that the indictable offences of bestiality and supplying a prohibited drug on an ongoing basis are to be dealt with summarily unless the prosecutor or person charged elects to have the offence dealt with on indictment,
- (c) to amend the *Crimes (Administration of Sentences) Act 1999* as follows—
  - (i) to enable the Commissioner of Corrective Services to enter into an information sharing arrangement with an intelligence agency,
  - (ii) to extend the powers of correctional officers in certain circumstances to enable officers to stop, detain, search and arrest a person suspected of committing an offence under the *Crimes (Administration of Sentences) Act 1999* or the regulations,
- (d) to amend the *Bail Act 2013* as follows—
  - (i) to enable a police officer to make a bail decision in relation to a witness who is arrested for failing to appear before a court or failing to comply with a subpoena,
  - (ii) to enable a court to issue a warrant to apprehend a person who fails to appear before the court in accordance with the person's bail acknowledgment,
- (e) to amend the *Law Enforcement (Powers and Responsibilities) Act 2002* as follows—
  - (i) to authorise police officers to use dogs for general drug detection without a warrant when entering premises that are subject to a declaration under the *Restricted Premises Act 1943*,
  - (ii) to require the owner of stock subject to a stock mustering order to give a copy of the order to the police officer in charge of the police station closest to the land to which the order relates,
- (f) to amend the *Criminal Appeal Act 1912* to enable the Attorney General or the Director of Public Prosecutions to appeal to the Court of Criminal Appeal against certain sentences imposed by the Supreme Court or District Court in respect of summary offences that are back up offences in relation to indictable offences,
- (g) to amend the *Parole Orders (Transfer) Act 1983* to provide that on the registration in New South Wales of a parole order made under the law of another State or Territory, the NSW standard parole conditions apply and replace the conditions imposed under that other law,
- (h) to amend the *Children (Detention Centres) Act 1987* to provide that the parole of certain juvenile offenders is to be dealt with under the *Crimes (Administration of Sentences) Act 1999* once they reach the age of 18 years,
- (i) to amend the uncommenced *Crimes Legislation Amendment Act 2018* to amend proposed sections of the *Crimes (Domestic and Personal Violence) Act 2007*, including to enable a court to determine the duration of an apprehended domestic violence order,
- (j) to amend the *Sheriff Act 2005* to permit a sheriff's officer executing an arrest warrant to search the person for items that present a danger to a person,
- (k) to amend the *Child Protection (Offenders Registration) Act 2000* to make it clear that the onus of proving a reasonable excuse as a defence to the offence of failing to comply with reporting obligations lies with the registrable person on the balance of probabilities,
- (l) to amend the *Witness Protection Act 1995* to provide for a person who is, or who has been, a participant in a witness protection program to give evidence by audio visual link,
- (m) to amend the *Legal Aid Commission Act 1979* to enable the Legal Aid Commission of New South Wales to engage law practices, rather than private legal practitioners, for the provision of legal aid,
- (n) to amend the *Court Security Act 2005* to provide that a security officer may require a person at court premises to submit to a personal search if the person has submitted to a scanner search and the officer considers a personal search is appropriate,
- (o) to amend the *Firearms Act 1996* and *Weapons Prohibition Act 1998* and the regulations under those Acts, including to update references to good behaviour bonds as a consequence

- of changes to community-based sentencing options made by the *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017*,
- (p) to amend the *Surveillance Devices Act 2007* as follows—
    - (i) to extend the information required to be included in a notice served on the Attorney General in relation to an application for a surveillance device warrant or retrieval warrant to include the grounds on which the warrant is sought,
    - (ii) to allow information obtained from the use of body-worn video by police officers to be used in connection with the education and training of students of policing,
  - (q) to amend the *Housing Act 2001* to allow information obtained in connection with the administration or execution of the Act to be disclosed to a law enforcement agency for law enforcement purposes,
  - (r) to amend the *NSW Trustee and Guardian Act 2009* as follows—
    - (i) to include the preparation of instruments that create enduring guardianship appointments and powers of attorney as functions of the NSW Trustee and Guardian,
    - (ii) to enable the NSW Trustee and Guardian to charge the cost of any property repairs when acting in a trust or protective capacity,
  - (s) to amend the *Coroners Act 2009* to provide that one Deputy Chief Magistrate is to be appointed to the Domestic Violence Death Review Team on the recommendation of the Chief Magistrate,
  - (t) to amend the *Scrap Metal Industry Act 2016* to allow a scrap metal dealer to buy an unidentified motor vehicle for scrap metal if authorised by a police officer,
  - (u) to amend the *Legal Profession Uniform Law Application Act 2014* to validate decisions and other actions taken under the authority of a delegation purportedly given in 2015 to the New South Wales Bar Association and Law Society of New South Wales by the Legal Services Commissioner,
  - (v) to amend the *Trustee Act 1925* to abolish a rule of equity (known as the rule in *Hardoon v Belillos*) under which a trust beneficiary could be held liable in certain circumstances to indemnify or make other payments in respect of acts, defaults, obligations or liabilities of the trustee,
  - (w) to amend the *Workplace Injury Management and Workers Compensation Act 1998* to provide for the pension entitlements of a Judge of the Land and Environment Court or the District Court who concurrently holds the office of President of the Workers Compensation Commission,
  - (x) to make other minor, consequential and law revision 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 Amendments

**Schedule 1** amends the following Acts and Regulations—

- (a) *Bail Act 2013*,
- (b) *Child Protection (Offenders) Registration Act 2000*,
- (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 Legislation Amendment Act 2018*,
- (i) *Criminal Appeal Act 1912*,
- (j) *Criminal Procedure Act 1986*,
- (k) *Firearms Act 1996*,
- (l) *Firearms Regulation 2017*,
- (m) *Housing Act 2001*,
- (n) *Law Enforcement (Powers and Responsibilities) Act 2002*,
- (o) *Legal Aid Commission Act 1979*,
- (p) *Legal Profession Uniform Law Application Act 2014*,
- (q) *NSW Trustee and Guardian Act 2009*,
- (r) *Parole Orders (Transfer) Act 1983*,
- (s) *Restricted Premises Act 1943*,
- (t) *Scrap Metal Industry Act 2016*,
- (u) *Sheriff Act 2005*,
- (v) *Surveillance Devices Act 2007*,
- (w) *Trustee Act 1925*,
- (x) *Weapons Prohibition Act 1998*,
- (y) *Weapons Prohibition Regulation 2017*,
- (z) *Witness Protection Act 1995*,
- (aa) *Workers Compensation Act 1987*,
- (ab) *Workplace Injury Management and Workers Compensation Act 1998*.

The amendments are explained in detail in the explanatory note for each Act and Regulation in Schedule 1.