



New South Wales

Stronger Communities Legislation Amendment (Courts and Civil) Bill 2020

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 and other matters in the Communities and Justice portfolio, including as follows—

- (a) to extend obligations relating to the reporting of conduct to the Children’s Guardian (for example, allegations of sexual assault against a child) to third parties who provide services to children on behalf of entities that are already subject to those reporting requirements,
- (b) to extend the definition of *contractor* for the purposes of the reportable conduct scheme under the *Children’s Guardian Act 2019* to include an employee of, or a volunteer for, a third party employer,
- (c) to extend the definition of *employee* for the purposes of the reportable conduct scheme to an individual who is the head of a third party employer in certain circumstances,
- (d) to enable the transfer of existing functions and powers of the Children’s Guardian under the *Children and Young Persons (Care and Protection) Act 1998* and the *Adoption Act 2000* to the *Children’s Guardian Act 2019* and the regulations under that Act, including by—
 - (i) providing for the Children’s Guardian to register and accredit agencies providing out-of-home care and to maintain relevant registers, and
 - (ii) providing for the accreditation of accredited adoption service providers, and
 - (iii) providing for conditions on an employer’s authority, including a condition to comply with a Code of Practice relating to child employment, and for appropriate exemptions from the requirement to hold an authority,

- (e) to provide for the surrender of a designated agency's accreditation and the withdrawal of an application for accreditation as a designated agency,
- (f) to provide that the unauthorised sharing or transmission of an authorised recording of court proceedings is an offence in the same manner as it is an offence to make and transmit an unauthorised recording of court proceedings,
- (g) to provide that a person who applies for employment with the Office of the Sheriff must disclose spent convictions consistent with disclosures for employment with Corrective Services and the Police,
- (h) to provide that unclaimed money held by the District Court is managed consistently with fines and fees paid into the Court,
- (i) to transfer provisions that enable electronic witnessing and attestation of certain documents from the *Electronic Transactions Regulation 2017* to the *Electronic Transactions Act 2000* as a pilot scheme,
- (j) to transfer certain provisions relating to the administration of deceased estates from the *Imperial Acts Application Act 1969* to the *Probate and Administration Act 1898*,
- (k) to provide that certain procedural functions of the Conduct Division of the Judicial Commission of NSW can be exercised by the Chairperson alone rather than 3 members of the Division together,
- (l) to allow for the suspension of a judicial officer whose ability to perform the functions of the office is impaired,
- (m) to provide for the Legal Services Commissioner to delegate certain of the Commissioner's powers to the Bar Council or the Law Society Council,
- (n) to put beyond doubt the validity of costs assessments undertaken by the Manager, Costs Assessment, prior to 17 February 2020,
- (o) to provide that the NSW Trustee may meet liabilities incurred in exercising official functions from either money appropriated from the Consolidated Fund or from the NSW Trustee and Guardian's Reserve Fund,
- (p) to provide for federal judicial officers to witness statutory declarations in the same manner as state judicial officers,
- (q) to provide for appeals and reviews arising from the decisions of former judges to be assigned to the Court of Appeal,
- (r) to bring NSW into line with other jurisdictions by allowing the Supreme Court to vary or revoke a trust where that is in the interests of the beneficiaries and fulfils the purpose of the trust.

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.

Clause 4 provides for the repeal of the *Courts Legislation Amendment Act 2004*.

Schedule 1 Amendments

Schedule 1 amends the following instruments—

- (a) *Children's Guardian Act 2019*,
- (b) *Court Security Act 2005*,
- (c) *Criminal Records Act 1991*,
- (d) *District Court Act 1973*,

- (e) *Electronic Transactions Act 2000,*
- (f) *Electronic Transactions Regulation 2017,*
- (g) *Imperial Acts Application Act 1969,*
- (h) *Judicial Officers Act 1986,*
- (i) *Legal Profession Uniform Law Application Act 2014,*
- (j) *NSW Trustee and Guardian Act 2009,*
- (k) *Oaths Act 1900,*
- (l) *Probate and Administration Act 1898,*
- (m) *Supreme Court Act 1970,*
- (n) *Trustee Act 1925.*

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