



New South Wales

COVID-19 Legislation Amendment (Stronger Communities and Health) Bill 2021

Explanatory note

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

Overview of Bill

The objects of this Bill are to—

- (a) amend the following Acts and regulations to extend the operation of temporary provisions that were introduced because of the COVID-19 pandemic until 26 September 2021, and allow their further extension to a day not later than 26 March 2022 by regulation if necessary—
 - (i) *Child Protection (Working with Children) Act 2012*,
 - (ii) *Child Protection (Working with Children) Regulation 2013*,
 - (iii) *Children (Community Service Orders) Act 1987*,
 - (iv) *Children (Community Service Orders) Regulation 2020*,
 - (v) *Children (Detention Centres) Act 1987*,
 - (vi) *Children (Detention Centres) Regulation 2015*,
 - (vii) *Civil and Administrative Tribunal Act 2013*,
 - (viii) *Civil and Administrative Tribunal Regulation 2013*,
 - (ix) *Constitution Act 1902*,
 - (x) *Constitution (COVID-19 Emergency Measures Regulation 2020)*,
 - (xi) *Court Security Act 2005*,
 - (xii) *Court Security Regulation 2016*,
 - (xiii) *Crimes (Administration of Sentences) Act 1999*,
 - (xiv) *Crimes (Administration of Sentences) Regulation 2014*,

- (xv) *Criminal Procedure Act 1986*,
 - (xvi) *Criminal Procedure Regulation 2017*,
 - (xvii) *Evidence (Audio and Audio Visual Links) Act 1998*,
 - (xviii) *Evidence (Audio and Audio Visual Links) Regulation 2015*,
 - (xix) *Interpretation Act 1987*,
 - (xx) *Jury Act 1977*,
 - (xxi) *Jury Regulation 2015*,
 - (xxii) *Private Health Facilities Act 2007*,
 - (xxiii) *Public Health Act 2010*,
 - (xxiv) *Sheriff Act 2005*,
 - (xxv) *Sheriff Regulation 2016*, and
- (b) repeal temporary regulation-making powers in the following Acts that were introduced because of the COVID-19 pandemic—
- (i) *Civil and Administrative Tribunal Act 2013*,
 - (ii) *Criminal Procedure Act 1986*, and
 - (iii) *Interpretation Act 1987*, and
- (c) amend the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (the *Act*) to—
- (i) ensure the process for making orders relating to diversion of accused persons in the Local Court does not trigger the processes under the *Local Court Act 2007* relating to the commencement of proceedings, and
 - (ii) clarify that the Mental Health Review Tribunal’s power to extend of a statutory review period applies only to mandatory reviews for forensic patients, mandatory reviews for correctional patients and reviews of persons in custody who are subject to community treatment orders, and
 - (iii) provide for the transitional arrangements for criminal proceedings in the Supreme Court and District Court in which the court had imposed a limiting term in respect of the accused person and that were commenced before the commencement of the Act, and
 - (iv) clarify the transitional arrangements for summary proceedings before a Magistrate and that were commenced before the commencement of the Act, and
- (d) repeal the *Mental Health (Forensic Provisions) Amendment (Victims) Act 2018*.

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.

Schedule 1 Amendment of Acts and instruments relating to COVID-19 emergency measures

Child Protection (Working with Children) Act 2012 No 51

Schedule 1.1 amends section 54 to provide that the temporary provisions allowing the Children’s Guardian to extend the period for which a working with children check clearance is in force are extended to 26 September 2021 or a later day, not later than 26 March 2022, prescribed by regulation.

Child Protection (Working with Children) Regulation 2013

Schedule 1.2 repeals clause 19A consequent on the amendment in Schedule 1.1.

Children (Community Service Orders) Act 1987 No 56

Schedule 1.3[1] amends the definition of *prescribed period* in section 9A(3) to provide that the temporary provisions allowing a court to make a children's community service order if satisfied that community service work will become available, even if not available at the time because of the COVID-19 pandemic, are extended to 26 September 2021 or a later day, not later than 26 March 2022, prescribed by regulation.

Schedule 1.3[2] amends the definition of *prescribed period* in section 14A(3) to provide that the temporary provisions enabling a person to present at a place by audio link or audio visual link for the purposes of a children's community service order are extended to 26 September 2021 or a later day, not later than 26 March 2022, prescribed by regulation.

Children (Community Service Orders) Regulation 2020

Schedule 1.4 repeals clause 16A consequent on the amendments in Schedule 1.3[1] and [2].

Children (Detention Centres) Act 1987 No 57

Schedule 1.5 amends the definition of *prescribed period* in section 110(5) to provide that the temporary provisions allowing the Secretary of the Department of Communities and Justice to prohibit or restrict visitors to detention centres are extended to 26 September 2021 or a later day, not later than 26 March 2022, prescribed by regulation.

Children (Detention Centres) Regulation 2015

Schedule 1.6 repeals clause 157 consequent on the amendment in Schedule 1.5.

Civil and Administrative Tribunal Act 2013 No 2

Schedule 1.7[1] amends the definition of *prescribed period* in Schedule 1, clause 22 to provide that the temporary provisions providing the NSW Civil and Administrative Tribunal flexibility in practices and procedures when exercising functions during the COVID-19 pandemic are extended to 26 September 2021 or a later day, not later than 26 March 2022, prescribed by regulation.

Schedule 1.7[2] repeals Schedule 1, clauses 26 and 30, which contain temporary regulation-making powers that were introduced because of the COVID-19 pandemic.

Civil and Administrative Tribunal Regulation 2013

Schedule 1.8 repeals clause 11 consequent on the amendment in Schedule 1.7[1].

Constitution Act 1902 No 32

Schedule 1.9[1] amends the definition of *prescribed period* in Schedule 8, clause 1 to provide that the temporary provisions enabling the Governor to make regulations prescribing the ways and forms in which a Bill may be assented to, and in which meetings of the Executive Council may be held, are extended to 26 September 2021 or a later day, not later than 26 March 2022, prescribed by regulation.

Schedule 1.9[2] amends Schedule 8, clause 5 to provide that the temporary provisions are repealed on 27 March 2022.

Constitution (COVID-19 Emergency Measures) Regulation 2020

Schedule 1.10 repeals clause 3A consequent on the amendment in Schedule 1.9[1].

Court Security Act 2005 No 1

Schedule 1.11 substitutes section 12H to provide that the temporary provisions allowing security officers to conduct temperature checks for people entering the court premises and deny entry to people who present with signs of illness are repealed on 26 September 2021 or a later day, not later than 26 March 2022, prescribed by regulation.

Court Security Regulation 2016

Schedule 1.12 repeals clause 7A consequent on the amendment in Schedule 1.11.

Crimes (Administration of Sentences) Act 1999 No 93

Schedule 1.13 amends the definition of *prescribed period* in section 274 to provide that the temporary provisions allowing the Commissioner of Corrective Services to prohibit or restrict visitors to correctional premises, or grant parole to inmates of prescribed classes, are extended to 26 September 2021 or a later day, not later than 26 March 2022, prescribed by regulation.

Crimes (Administration of Sentences) Regulation 2014

Schedule 1.14 repeals clause 329A consequent on the amendment in Schedule 1.13.

Criminal Procedure Act 1986 No 209

Schedule 1.15[1] repeals Chapter 7, Part 5, Division 5, which contains temporary regulation-making powers that were introduced because of the COVID-19 pandemic.

Schedule 1.15[2] substitutes section 367 to provide that the temporary provisions providing for the following matters are repealed on 26 September 2021 or a later day, not later than 26 March 2022, prescribed by regulation—

- (a) the making and use of pre-recorded evidence in criminal proceedings,
- (b) judge alone trials,
- (c) written pleas by an accused person who has been granted or refused bail or in relation to whom bail has been dispensed with.

Criminal Procedure Regulation 2017

Schedule 1.16 repeals clause 120 consequent on the amendment in Schedule 1.15[2].

Evidence (Audio and Audio Visual Links) Act 1998 No 105

Schedule 1.17 amends the definition of *prescribed period* in section 22C(9) to provide that the temporary provisions facilitating the increased use of audio and audio visual links in court to reduce the need for court attendances are extended to 26 September 2021 or a later day, not later than 26 March 2022, prescribed by regulation.

Evidence (Audio and Audio Visual Links) Regulation 2015

Schedule 1.18 repeals clause 4B consequent on the amendment in Schedule 1.17.

Interpretation Act 1987 No 15

Schedule 1.19[1] substitutes section 84(3) and (4) to—

- (a) enable a person to agree to extend, suspend or waive a period to a day no later than to 26 September 2021 or a later day, not later than 26 March 2022, prescribed by regulation, and
- (b) enable a person to agree that a thing be done, or not done, by a day no later than to 26 September 2021 or a later day, not later than 26 March 2022, prescribed by regulation.

Schedule 1.19[2] substitutes section 90 to repeal sections 85, 86, 87(2) and (3), 88 and 89 on 26 March 2021 and the remainder of Part 12 on 26 September 2021 or a later day, not later than 26 March 2022, prescribed by regulation.

Jury Act 1977 No 18

Schedule 1.20 amends section 25(6) to provide that the temporary provisions allowing the sheriff to exempt persons summoned for jury selection for trials or coronial inquests based on health and safety considerations are repealed on 26 September 2021 or a later day, not later than 26 March 2022, prescribed by regulation.

Jury Regulation 2015

Schedule 1.21 repeals clause 4B consequent on the amendment in Schedule 1.20.

Private Health Facilities Act 2007 No 9

Schedule 1.22 substitutes section 70(3) to provide that the temporary provisions that allow the Secretary to exempt a licensee, or class of licensees, from particular conditions imposed on a licence or particular requirements if reasonably required because of the COVID-19 pandemic are repealed on 26 September 2021 or a later day, not later than 26 March 2022, prescribed by regulation.

Public Health Act 2010 No 127

Schedule 1.23[1] repeals sections 63(2C), 64(8), 71A(4), 112(3) and 118(8), consequent on the amendment in Schedule 1.23[2].

Schedule 1.23[2] inserts proposed section 135 to provide that the COVID-19 emergency measures provisions, being sections 63(2A) and (2B), 64(7), 71A, 112(2) and 118(6) and (7), are repealed on 26 September 2021 or a later day, not later than 26 March 2022, prescribed by regulation.

Sheriff Act 2005 No 6

Schedule 1.24 amends the definition of *prescribed period* in section 7C(14) to provide that the temporary provisions enabling sheriff's officers to exercise particular powers to assist agencies in connection with the COVID-19 response, including issuing directions to leave or remain in premises or refrain from specified conduct, and powers of entry and arrest for failure to comply with a direction or to prevent or stop assault or property damage, are extended to 26 September 2021 or a later day, not later than 26 March 2022, prescribed by regulation.

Sheriff Regulation 2016

Schedule 1.25 repeals clause 5A consequent on the amendment in Schedule 1.24.

Schedule 2 Amendment of Mental Health and Cognitive Impairment Forensic Provisions Act 2020 No 12

Schedule 2[1] omits section 9(2) to remove the unintended consequence of the reference to applications in that subsection triggering the processes under the *Local Court Act 2007* relating to the commencement of proceedings in the Local Court when making orders relating to diversion of an accused person in the Local Court.

Schedule 2[2] amends section 77 to clarify that the Mental Health Review Tribunal's power to extend a statutory review period applies only to mandatory reviews for forensic patients, mandatory reviews for correctional patients and reviews of persons in custody who are subject to community treatment orders.

Schedule 2[3] inserts proposed Schedule 2, clause 7A to provide that the relevant provisions of the *Mental Health (Forensic Provisions) Act 1990* (the *former Act*) continue to apply to criminal proceedings in the Supreme Court and District Court that were commenced before the commencement of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (the *new Act*) and in which the court had imposed a limiting term in respect of the accused person.

Schedule 2[4] substitutes Schedule 1, clause 8 to clarify that the relevant provisions of the former Act continue to apply to summary proceedings before a Magistrate that were commenced before the commencement of the new Act.

Schedule 3 Repeal of Mental Health (Forensic Provisions) Amendment (Victims) Act 2018 No 85

Schedule 3 repeals the *Mental Health (Forensic Provisions) Amendment (Victims) Act 2018* (the **amending Act**). The only remaining amendment contained in the amending Act is to the *Mental Health (Forensic Provisions) Act 1990*, which has been substantively replaced with the new Act *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*. The substance of the amendment has been included in the new Act.



New South Wales

COVID-19 Legislation Amendment (Stronger Communities and Health) Bill 2021

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New South Wales

COVID-19 Legislation Amendment (Stronger Communities and Health) Bill 2021

No. _____, 2021

A Bill for

An Act to amend a number of Acts and instruments to extend emergency measures implemented as a result of the COVID-19 pandemic; to amend the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* for particular purposes; and to repeal the *Mental Health (Forensic Provisions) Amendment (Victims) Act 2018*.

The Legislature of New South Wales enacts—

1

1 Name of Act

2

This Act is the *COVID-19 Legislation Amendment (Stronger Communities and Health) Act 2021*.

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2 Commencement

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(1) This Act, except as provided by subsection (2), commences on the date of assent to this Act.

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(2) Schedules 1.7[2] and 1.15[1] commence on 26 March 2021.

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Schedule 1	Amendment of Acts and instruments relating to COVID-19 emergency measures	1
		2
1.1	Child Protection (Working with Children) Act 2012 No 51	3
	Section 54 Duration of clearances—response to COVID-19 pandemic	4
	Omit section 54(2). Insert instead—	5
	(2) This section is repealed on—	6
	(a) 26 September 2021, or	7
	(b) a later day, not later than 26 March 2022, prescribed by the regulations.	8
1.2	Child Protection (Working with Children) Regulation 2013	9
	Clause 19A COVID-19 pandemic—repeal of special provisions	10
	Omit the clause.	11
1.3	Children (Community Service Orders) Act 1987 No 56	12
[1]	Section 9A COVID-19 pandemic—availability of work	13
	Omit the definition of <i>prescribed period</i> from section 9A(3). Insert instead—	14
	<i>prescribed period</i> means the period—	15
	(a) starting on the commencement of this section, and	16
	(b) ending on—	17
	(i) 26 September 2021, or	18
	(ii) a later day, not later than 26 March 2022, prescribed by the regulations.	19
		20
[2]	Section 14A COVID-19 pandemic—presentation for work	21
	Omit the definition of <i>prescribed period</i> from section 14A(3). Insert instead—	22
	<i>prescribed period</i> means the period—	23
	(a) starting on the commencement of this section, and	24
	(b) ending on—	25
	(i) 26 September 2021, or	26
	(ii) a later day, not later than 26 March 2022, prescribed by the regulations.	27
		28
1.4	Children (Community Service Orders) Regulation 2020	29
	Clause 16A COVID-19 pandemic—extension of prescribed period	30
	Omit the clause.	31
1.5	Children (Detention Centres) Act 1987 No 57	32
	Section 110 Visits to detention centres during COVID-19 pandemic	33
	Omit the definition of <i>prescribed period</i> from section 110(5). Insert instead—	34
	<i>prescribed period</i> means the period—	35
	(a) starting on the commencement of this section, and	36

(b) ending on—	1
(i) 26 September 2021, or	2
(ii) a later day, not later than 26 March 2022, prescribed by the regulations.	3
	4
1.6 Children (Detention Centres) Regulation 2015	5
Clause 157 COVID-19 pandemic—extension of prescribed period	6
Omit the clause.	7
1.7 Civil and Administrative Tribunal Act 2013 No 2	8
[1] Schedule 1 Savings, transitional and other provisions	9
Omit the definition of <i>prescribed period</i> from clause 22. Insert instead—	10
<i>prescribed period</i> means the period—	11
(a) starting on the commencement of this Part, and	12
(b) ending on—	13
(i) 26 September 2021, or	14
(ii) a later day, not later than 26 March 2022, prescribed by the regulations.	15
	16
[2] Schedule 1, clauses 26 and 30	17
Omit the clauses.	18
1.8 Civil and Administrative Tribunal Regulation 2013	19
Clause 11 COVID-19 pandemic—extension of prescribed period	20
Omit the clause.	21
1.9 Constitution Act 1902 No 32	22
[1] Schedule 8 Special provisions for COVID-19 pandemic	23
Omit the definition of <i>prescribed period</i> from clause 1. Insert instead—	24
<i>prescribed period</i> means the period—	25
(a) starting on the commencement of this Schedule, and	26
(b) ending on—	27
(i) 26 September 2021, or	28
(ii) a later day, not later than 26 March 2022, prescribed by the regulations.	29
	30
[2] Schedule 8, clause 5	31
Omit “12 months after the commencement of this Schedule”.	32
Insert instead “on 27 March 2022”.	33
1.10 Constitution (COVID-19 Emergency Measures) Regulation 2020	34
Clause 3A COVID-19 pandemic—extension of prescribed period	35
Omit the clause.	36

1.11 Court Security Act 2005 No 1	1
Section 12H	2
Omit the section. Insert instead—	3
12H Repeal of Division	4
This Division is repealed on—	5
(a) 26 September 2021, or	6
(b) a later day, not later than 26 March 2022, prescribed by the regulations.	7
1.12 Court Security Regulation 2016	8
Clause 7A COVID-19 pandemic—repeal of special provisions	9
Omit the clause.	10
1.13 Crimes (Administration of Sentences) Act 1999 No 93	11
Section 274 Definitions	12
Omit the definition of <i>prescribed period</i> from section 274. Insert instead—	13
<i>prescribed period</i> means the period—	14
(a) starting on the commencement of this Part, and	15
(b) ending on—	16
(i) 26 September 2021, or	17
(ii) a later day, not later than 26 March 2022, prescribed by the regulations.	18
1.14 Crimes (Administration of Sentences) Regulation 2014	20
Clause 329A COVID-19 pandemic—extension of prescribed period	21
Omit the clause.	22
1.15 Criminal Procedure Act 1986 No 209	23
[1] Chapter 7 Miscellaneous	24
Omit Division 5 of Part 5 of Chapter 7.	25
[2] Section 367	26
Omit the section. Insert instead—	27
367 Repeal of Part	28
This Part is repealed on—	29
(a) 26 September 2021, or	30
(b) a later day, not later than 26 March 2022, prescribed by the regulations.	31
1.16 Criminal Procedure Regulation 2017	32
Clause 120 COVID-19 pandemic—repeal of special provisions	33
Omit the clause.	34

1.17 Evidence (Audio and Audio Visual Links) Act 1998 No 105	1
Section 22C COVID-19 pandemic—special provisions	2
Omit the definition of <i>prescribed period</i> from section 22C(9). Insert instead—	3
<i>prescribed period</i> means the period—	4
(a) starting on the commencement of this section, and	5
(b) ending on—	6
(i) 26 September 2021, or	7
(ii) a later day, not later than 26 March 2022, prescribed by the regulations.	8 9
1.18 Evidence (Audio and Audio Visual Links) Regulation 2015	10
Clause 4B COVID-19 pandemic—extension of prescribed period	11
Omit the clause.	12
1.19 Interpretation Act 1987 No 15	13
[1] Section 84 Power of person to modify statutory time periods	14
Omit subsections (3) and (4). Insert instead—	15
(3) If a period is extended, suspended or waived under subsection (2), the period may only be extended, suspended or waived to a day that is no later than—	16 17
(a) 26 September 2021, or	18
(b) a later day, not later than 26 March 2022, prescribed by the regulations.	19
(4) If it is agreed under subsection (2) that a thing may be done or omitted to be done despite the expiry of a period, the day by which it is agreed the thing may be done or omitted to be done may be no later than—	20 21 22
(a) 26 September 2021, or	23
(b) a later day, not later than 26 March 2022, prescribed by the regulations.	24
[2] Section 90	25
Omit the section. Insert instead—	26
90 Repeal of Part	27
(1) This Part, except as provided by subsection (2), is repealed on—	28
(a) 26 September 2021, or	29
(b) a later day, not later than 26 March 2022, prescribed by the regulations.	30
(2) Sections 85, 86, 87(2) and (3), 88 and 89 are repealed at the end of 26 March 2021.	31 32
1.20 Jury Act 1977 No 18	33
Section 25 Selection of jurors by sheriff	34
Omit section 25(6). Insert instead—	35
(6) This subsection and subsections (4) and (5) are repealed on—	36
(a) 26 September 2021, or	37
(b) a later day, not later than 26 March 2022, prescribed by the regulations.	38

1.21 Jury Regulation 2015	1
Clause 4B COVID-19 pandemic—repeal of special provisions	2
Omit the clause.	3
1.22 Private Health Facilities Act 2007 No 9	4
Section 70 Exemptions during COVID-19 pandemic	5
Omit section 70(3). Insert instead—	6
(3) This section is repealed on—	7
(a) 26 September 2021, or	8
(b) a later day, not later than 26 March 2022, prescribed by the regulations.	9
1.23 Public Health Act 2010 No 127	10
[1] Sections 63(2C), 64(8), 71A(4), 112(3) and 118(8)	11
Omit the subsections.	12
[2] Section 135	13
Insert after section 134—	14
135 COVID-19 emergency measures	15
(1) The COVID-19 emergency measures provisions are repealed on—	16
(a) 26 September 2021, or	17
(b) a later day, not later than 26 March 2022, prescribed by the regulations.	18
(2) In this section—	19
COVID-19 emergency measures provisions means sections 63(2A) and (2B),	20
64(7), 71A, 112(2) and 118(6) and (7).	21
1.24 Sheriff Act 2005 No 6	22
Section 7C COVID-19 pandemic—powers when assisting in COVID-19 response	23
Omit the definition of <i>prescribed period</i> from section 7C(14). Insert instead—	24
<i>prescribed period</i> means the period—	25
(a) starting on the commencement of this section, and	26
(b) ending on—	27
(i) 26 September 2021, or	28
(ii) a later day, not later than 26 March 2022, prescribed by the	29
regulations.	30
1.25 Sheriff Regulation 2016	31
Clause 5A COVID-19 pandemic—extension of prescribed period	32
Omit the clause.	33

Schedule 2	Amendment of Mental Health and Cognitive Impairment Forensic Provisions Act 2020 No 12	1
		2
[1] Section 9 Magistrate may make order at any time		3
Omit section 9(2).		4
[2] Section 77 Extension of mandatory review period		5
Omit section 77(1). Insert instead—		6
(1) The period within which the following reviews must be held may, on the motion of the Tribunal or on the application of the forensic patient or correctional patient or a designated carer or the principal care provider of the patient, be extended by the Tribunal to a maximum of 12 months—		7
		8
		9
		10
(a) a mandatory review of a forensic patient under section 78(d), (e), (f) or (g),		11
		12
(b) a mandatory review of a correctional patient under section 91(b),		13
(c) a review under section 100 of a person in custody who is subject to a community treatment order.		14
		15
[3] Schedule 2 Savings, transitional and other provisions		16
Insert after clause 7—		17
7A Application of Part 2 of former Act to particular persons		18
(1) Part 2 of the former Act is to continue to apply to existing proceedings as if the former Act had not been repealed.		19
		20
(2) In this clause—		21
<i>existing proceedings</i> means criminal proceedings—		22
(a) in which the court has, before the commencement of this Act, nominated a limiting term in respect of a person, and		23
		24
(b) in which the court has not made an order under section 27 of the former Act in relation to the person.		25
		26
[4] Schedule 2, clause 8		27
Omit the clause. Insert instead—		28
8 Application of Part 3 of former Act to existing proceedings		29
(1) Part 3 of the former Act is to continue to apply to existing proceedings as if the former Act had not been repealed.		30
		31
(2) In this clause—		32
<i>existing proceedings</i> means criminal proceedings for which a court attendance notice was issued before the commencement of this Act, even if another court attendance notice is issued in relation to the proceedings after that commencement.		33
		34
		35
		36

Schedule 3	Repeal of Mental Health (Forensic Provisions) Amendment (Victims) Act 2018 No 85	1
		2
Repeal		3
	The <i>Mental Health (Forensic Provisions) Amendment (Victims) Act 2018</i> No 85 is	4
	repealed.	5