



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.