

Explanatory note

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

The following Bills are cognate with this Bill:

- Children (Criminal Proceedings) Amendment Bill 2008
- Children (Detention Centres) Amendment Bill 2008

Overview of Bill

The objects of this Bill are as follows:

(a) to amend the Births, Deaths and Marriages Registration Act 1995:

(i) to provide for the legal recognition of persons who have undergone sex affirmation procedures and whose birth is not registered in New South Wales, and

(ii) to remove redundant offences concerning the use of birth certificates by persons who have undergone sex affirmation procedures, and

(iii) to amend terminology in the Act,

(b) to amend the Children and Young Persons (Care and Protection) Act 1998 to allow the removal of a child or young person under the Act, the execution of a search warrant or an authorised entry to, and inspection of, premises to be

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filmed (section 8 of the Surveillance Devices Act 2007 would otherwise prohibit the installation, use and maintenance of such an optical surveillance device in these circumstances),

(c) to amend the Civil Procedure Act 2005 to provide for the appointment of deputies for ex-officio members of the Uniform Rules Committee,

(d) to amend the Community Land Management Act 1989, the Consumer, Trader and Tenancy Tribunal Act 2001, the Legal Profession Act 2004, the Local Courts Act 1982, the Local Court Act 2007 and the Strata Schemes Management Act 1996 to provide that certain appeals are to be made to the District Court rather than the Supreme Court,

(e) to amend the Crimes Act 1900 and the Terrorism (Police Powers) Act 2002 to provide that membership of a terrorist organisation is to remain an offence until 13 September 2010,

(f) to amend the Crimes (Administration of Sentences) Act 1999:

(i) to update provisions regarding the conveyance and detention of offenders received from the Australian Capital Territory as a consequence of the replacement of the Removal of Prisoners Act 1968 of the Australian Capital Territory by the Crimes (Sentence Administration) Act 2005, and

(ii) to enable disclosure of information in connection with the administration or execution of interstate laws in their application to inmates who have been transferred interstate,

(g) to amend the Crimes (Domestic and Personal Violence) Act 2007 to provide for a right of appeal against the dismissal of an application for an apprehended violence order by the Local Court or Children's Court,

(h) to amend the Crimes (Serious Sex Offenders) Act 2006:

(i) to extend the definition of serious sex offence to include offences under section 61K (Assault with intent to have sexual intercourse) or 66EA (Persistent sexual abuse of a child) of the Crimes Act 1900, and

(ii) to enable the Supreme Court to appoint registered psychologists to conduct examinations of offenders during pre-trial procedures,

(i) to amend the Criminal Appeal Act 1912 to enable the Chief Judge of the Land and Environment Court and the Chief Judge of the District Court to act as Judges of the Court of Criminal Appeal in proceedings of that Court,

(j) to amend the Director of Public Prosecutions Act 1986 to enable matters taken over by the Office of the Director of Public Prosecutions and subsequently remitted to the Local Court to be handed back to the original prosecutor,
(k) to amend the District Court Act 1973 to provide that an appeal from a jury trial in the District Court lies as of right to the Supreme Court,

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(l) to amend the Land and Environment Court Act 1979:

(i) to provide that parties must participate, in good faith, in conciliation conferences, and

(ii) to make further provision with respect to on-site hearing matters, and

(iii) to enable the Land and Environment Court to, in certain circumstances, exercise the jurisdiction of the Supreme Court to grant easements over land,

(m) to amend the Medical Practice Act 1992 to enable the Governor to appoint a Judge of the Supreme Court, or a Judge having the same status as a Judge of the Supreme Court, as Chairperson or a Deputy Chairperson of the Medical Tribunal,

(n) to amend the Supreme Court Act 1970 to enable the Chief Judge of the Land and Environment Court and the Chief Judge of the District Court to sit as additional Judges of Appeal,

(o) to amend the Surveillance Devices Act 2007 to allow a law enforcement officer to film the execution of search warrants and crime scene warrants (section 8 would otherwise prohibit the installation, use and maintenance of such an optical surveillance device in these circumstances),

(p) to make consequential amendments to other Acts and instruments and amendments of a savings or transitional nature.

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 on the date of assent, subject to specified exceptions.

Clause 3 is a formal provision that gives effect to the amendments to the Acts set out in Schedules 1–21.

Clause 4 is a formal provision that gives effect to the amendments to the Regulation set out in Schedule 22.

Clause 5 repeals the Terrorism Legislation Amendment (Warrants) Act 2005.

Clause 6 provides for the repeal of the proposed Act on the day following the day on which all of the provisions of the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the Interpretation Act 1987 provides that the repeal of an amending Act does not affect the amendments made by that Act.

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Schedule 1 Amendment of Births, Deaths and Marriages Registration Act 1995 No 62

Schedule 1 [1] amends the definition of registrable event in section 4 of the Births, Deaths and Marriages Registration Act 1995 so as to enable a change of sex to be recorded in the Register for a person whose birth is not registered in New South Wales.

Schedule 1 [2] inserts the definition of recognised details certificate into section 32A. Schedule 1 [3] replaces the definition of sexual reassignment surgery with sex affirmation procedure and Schedule 1 [4] makes consequential

amendments as a result of the amendment in Schedule 1 [3].

Schedule 1 [5] inserts proposed sections 32DA–32DD. Proposed section 32DA provides that certain persons (or parents or guardians of certain children) whose birth is not registered in New South Wales may apply to have their change of sex registered. Proposed section 32DB prescribes the documents that must accompany an application to register a change of sex. Proposed section 32DC outlines how the Registrar is to determine an application to register change of sex and proposed section 32DD provides that where the Registrar registers a person's change of sex, the Registrar must, on application, issue a recognised details certificate certifying the details contained in the Register.

Schedule 1 [8] inserts proposed section 32J to provide that the legal effect of registering a person's change of sex (whether in New South Wales or interstate) is that the person is a person of the sex as so registered.

Schedule 1 [6] and [7] remove redundant offences from the Births, Deaths and Marriages Registration Act 1995.

Schedule 2 Amendment of Children and Young Persons (Care and Protection) Act 1998

No 157

Section 8 of the Surveillance Devices Act 2007 makes it an offence for a person to knowingly install, use or maintain an optical surveillance device if it involves entry to premises or a vehicle without the consent of the owner or occupier of the premises or vehicle. Schedule 2 amends the Children and Young Persons (Care and Protection) Act 1998 to provide an exemption from section 8 of the Surveillance Devices Act 2007 so that the following may be filmed:

(a) the removal of a child or young person from a place or premises under the Children and Young Persons (Care and Protection) Act 1998,

(b) the execution of a search warrant (including any activity in connection with the execution of the warrant),

(c) the entry into, and inspection of, premises authorised under the Children and Young Persons (Care and Protection) Act 1998 or the regulations.

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Schedule 3 Amendment of Civil Procedure Act 2005

No 28

Schedule 3 [1]–[3] amend Schedule 2 to the Civil Procedure Act 2005 to provide that certain members of the Uniform Rules Committee may nominate a deputy to attend meetings on their behalf. Schedule 3 [4] makes it clear that a deputy is not entitled to exercise any of the functions of a presiding member of the Uniform Rules Committee.

Schedule 4 Amendment of Community Land Management Act 1989 No 202

Schedule 4 [1] makes various amendments to the Community Land Management Act 1989 to provide that appeals arising from decisions of the Consumer, Trader and Tenancy Tribunal in relation to certain matters are to be heard in the District Court instead of the Supreme Court. Schedule 4 [3] provides that only those pending appeals that have been allocated a hearing date by the Supreme Court are to continue to be heard in that court. Schedule 4 [2] enables regulations to be made of a savings and transitional nature.

Schedule 5 Amendment of Consumer, Trader and Tenancy Tribunal Act 2001 No 82

Schedule 5 [1] makes various amendments to the Consumer, Trader and Tenancy Tribunal Act 2001 to provide that appeals on questions of law arising from decisions of the Consumer, Trader and Tenancy Tribunal are to be heard in the District Court

instead of the Supreme Court. Schedule 5 [4] provides that only those pending appeals that have been allocated a hearing date by the Supreme Court are to continue to be heard in that court. Schedule 5 [3] enables regulations to be made of a savings and transitional nature. Schedule 5 [2] makes a consequential amendment.

Schedule 6 Amendment of Crimes Act 1900 No 40

Schedule 6 [2] provides for the repeal of Part 6B of the Crimes Act 1900. The effect of this amendment is to extend the sunset clause for the offence of being a member of a terrorist organisation. This offence was inserted into the Crimes Act 1900 by Schedule 4 to the Terrorism Legislation Amendment (Warrants) Act 2005 for the purpose of enabling legislation providing for the issue of covert search warrants. The offence was to be repealed on 13 September 2008 by which time it was anticipated that the Commonwealth Parliament would have enacted a national covert search warrant scheme. The additional 2 years before the repeal of the offence is to ensure that covert search warrants can continue to be granted until a national scheme is adopted. Schedule 6 [1] omits the introductory note to Part 6B of the Crimes Act 1900.

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Schedule 7 Amendment of Crimes (Administration of Sentences) Act 1999 No 93

Schedule 7 [1] substitutes Division 4 of Part 2 of the Crimes (Administration of Sentences) Act 1999. The proposed Division merely replicates the existing Division with such changes as are necessary as a consequence of the replacement of the Removal of Prisoners Act 1968 of the Australian Capital Territory by the Crimes (Sentence Administration) Act 2005.

Schedule 7 [2] and [3] amend section 257 of that Act so as to enable information to be disclosed in connection with the administration or execution of interstate laws in their application to inmates who have been transferred interstate, and so as to provide that information may be disclosed despite anything to the contrary in the Privacy and Personal Information Protection Act 1998 or the Health Records and Information Privacy Act 2002.

Schedule 8 Amendment of Crimes (Domestic and Personal Violence) Act 2007 No 80

Schedule 8 [3] amends section 84 of the Crimes (Domestic and Personal Violence) Act 2007 to provide that an applicant whose application for an apprehended violence order has been dismissed by the Local Court or Children's Court may appeal that decision in the District Court. Schedule 8 [1], [2] and [4]–[6] make consequential amendments.

Schedule 9 Amendment of Crimes (Serious Sex Offenders) Act 2006 No 7

Schedule 9 [1] amends the definition of serious sex offence to enable the extended supervision and continuing detention, under the Crimes (Serious Sex Offenders) Act 2006, of a person who is convicted of an offence under section 61K (Assault with intent to have sexual intercourse) or 66EA (Persistent sexual abuse of a child) of the Crimes Act 1900. Schedule 9 [6] provides that this amendment extends to offences committed before the commencement of the amendment.

Schedule 9 [2] and [4] enable the Supreme Court to appoint the following to conduct examinations of offenders during pre-trial procedures (as an alternative to 2 qualified psychiatrists only):

- (a) 2 registered psychologists, or
- (b) 1 registered psychologist and 1 qualified psychiatrist, or
- (c) 2 registered psychologists and 2 qualified psychiatrists.

Schedule 9 [3] and [5] make consequential amendments.

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Schedule 10 Amendment of Criminal Appeal Act 1912

No 16

Schedule 10 enables the Chief Judge of the Land and Environment Court and the Chief Judge of the District Court to act as Judges of the Court of Criminal Appeal in proceedings of that Court if the Chief Justice of the Supreme Court so directs.

Schedule 11 Amendment of Director of Public

Prosecutions Act 1986 No 207

Schedule 11 [1] inserts proposed section 9A into the Director of Public Prosecutions Act 1986 to provide that when certain proceedings are remitted to a Local Court the Director of Public Prosecutions may hand the matter back to the original prosecutor.

Schedule 11 [2] inserts proposed section 10 (1A) to provide that the Director of Public Prosecutions must inform the original prosecutor (or the original prosecutor's successor) and the relevant Local Court that the proceedings have been handed back to the original prosecutor (or the original prosecutor's successor).

Schedule 12 Amendment of District Court Act 1973

No 9

Schedule 12 [2] inserts proposed section 127A into the District Court Act 1973 to provide that an appeal lies as of right to the Supreme Court from a jury decision in the District Court. Schedule 12 [1] makes a consequential amendment.

Schedule 13 Amendment of Land and Environment

Court Act 1979 No 204

Schedule 13 [1] provides for the senior Judge of the Land and Environment Court to be Acting Chief Judge if the Chief Judge is absent from Australia and an Acting Chief Judge has not been appointed by the Governor, by commission under the public seal, under section 10 (1) of the Land and Environment Court Act 1979.

Schedule 13 [3] amends the Land and Environment Court Act 1979 to provide that parties to proceedings must participate in good faith in conciliation conferences.

Section 34B of the Land and Environment Court Act 1979 provides that on-site hearing matters must be dealt with by a single Commissioner. Schedule 13 [4]–[6] amend section 34B to provide that more than one Commissioner may hear and determine on-site hearing matters.

Schedule 13 [7] substitutes section 34D of the Land and Environment Court Act 1979 to enable the Court to dispense with an inspection of the site of a proposed development if a matter can be properly determined without the need for an inspection (in addition to an agreement between the parties to dispense with an inspection).

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Schedule 13 [9] substitutes section 40 to enable the Land and Environment Court to, in certain circumstances, exercise the jurisdiction of the Supreme Court under section 88K of the Conveyancing Act 1919 to impose an easement over land.

Schedule 13 [2] and [8] make consequential amendments.

Schedule 14 Amendment of Legal Profession Act

2004 No 112

Schedule 14 [1]–[3] amend the Legal Profession Act 2004 to provide that appeals arising from the decisions of costs assessors are to be heard in the District Court instead of the Supreme Court. Schedule 14 [5] provides that only those pending appeals that have been allocated a hearing date by the Supreme Court are to continue to be heard in that court. Schedule 14 [4] enables regulations to be made of a savings and transitional nature.

Schedule 15 Amendment of Local Court Act 2007

No 93

Schedule 15 [1] amends the Local Court Act 2007 to provide that a deputy registrar may exercise the functions of a registrar.

Schedule 15 [2] provides that certain appeals arising from the decisions of the Local Court are to be heard in the District Court instead of the Supreme Court. Schedule 15 [6] provides that only those pending appeals that have been allocated a hearing date by the Supreme Court are to continue to be heard in that court. Schedule 15 [5] enables regulations to be made of a savings and transitional nature and Schedule 15 [3] and [4] make consequential amendments.

Schedule 16 Amendment of Local Courts Act 1982

No 164

Schedule 16 [1] amends the Local Courts Act 1982 to provide that certain appeals arising from the decisions of the Local Court are to be heard in the District Court instead of the Supreme Court. Schedule 16 [5] provides that only those pending appeals that have been allocated a hearing date by the Supreme Court are to continue to be heard in that court. Schedule 16 [4] enables regulations to be made of a savings and transitional nature and Schedule 16 [2] and [3] make consequential amendments.

Schedule 17 Amendment of Medical Practice Act 1992

No 94

Schedule 17 [1] and [3] amend section 148 of the Medical Practice Act 1992 to enable the Governor to appoint a Judge of the Supreme Court, or a Judge having the same status as a Judge of the Supreme Court, as Chairperson or a Deputy Chairperson

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of the Medical Tribunal. At present, only a Judge of the District Court may be appointed as Chairperson or a Deputy Chairperson. Schedule 17 [3] also makes it clear that this amendment does not affect the validity of any existing appointments.

Schedule 17 [2] makes a consequential amendment.

Schedule 18 Amendment of Strata Schemes

Management Act 1996 No 138

Schedule 18 [2] makes various amendments to the Strata Schemes Management Act 1996 to provide that appeals arising from decisions of the Consumer, Trader and Tenancy Tribunal in relation to certain matters are to be heard in the District Court instead of the Supreme Court. Schedule 18 [4] provides that only those pending appeals that have been allocated a hearing date by the Supreme Court are to continue to be heard in that court. Schedule 18 [3] enables regulations to be made of a savings and transitional nature and Schedule 18 [1] and [5] make consequential amendments.

Schedule 19 Amendment of Supreme Court Act 1970

No 52

Schedule 19 enables the Chief Judge of the Land and Environment Court and the Chief Judge of the District Court to act as additional Judges of Appeal in proceedings on the Court of Appeal if the Chief Justice of the Supreme Court certifies that it is expedient for them to do so.

Schedule 20 Amendment of Surveillance Devices Act

2007 No 64

Section 8 of the Surveillance Devices Act 2007 makes it an offence for a person to knowingly install, use or maintain an optical surveillance device if it involves entry to premises or a vehicle without the consent of the owner or occupier of the premises or vehicle. Schedule 20 amends the Surveillance Devices Act 2007 to provide an exemption from section 8 so that a law enforcement officer may film the execution

of a search warrant or crime scene warrant (including any activity in connection with the execution of the warrant).

Schedule 21 Amendment of Terrorism (Police Powers) Act 2002 No 115

Schedule 21 amends the Terrorism (Police Powers) Act 2002 to remove a redundant provision as a consequence of the amendments proposed by Schedule 6.

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Schedule 22 Amendment of Births, Deaths and Marriages Registration Regulation 2006

Schedule 22 [1] amends the Births, Deaths and Marriages Registration Regulation 2006 by inserting proposed clause 9A. Proposed clause 9A prescribes various documents that must accompany an application to register a change of sex.

Schedule 22 [3] amends clause 11 by prescribing, for the purposes of proposed section 32J of the Births, Deaths and Marriages Registration Act 1995, the Gender Reassignment Act 2000 of Western Australia.

Schedule 22 [2] makes a consequential amendment as a result of the amendment proposed by Schedule 1 [3].