



New South Wales

Justice Legislation Amendment Act (No 3) 2018 No 87

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New South Wales

Justice Legislation Amendment Act (No 3) 2018 No 87

Act No 87, 2018

An Act to amend various Acts and Regulations relating to courts, crimes and other Justice portfolio matters; and for other purposes. [Assented to 28 November 2018]

See also the *Crimes Legislation Amendment (Victims) Act 2018* and the *Government Information (Public Access) Amendment Act 2018*.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Justice Legislation Amendment Act (No 3) 2018*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by this section.
- (2) Schedules 1.2 [1]–[3], 1.4 [1] and [4], 1.5, 1.9 [2], 1.17 [1] and [4], 1.20 and 1.26 and 3 commence on a day or days to be appointed by proclamation.
- (3) Schedule 1.6 commences on 1 December 2018 or the date of assent to this Act, whichever is later.
- (4) Schedule 1.11 [1] and [2] commence on 17 December 2018 or the date of assent to this Act, whichever is later.
- (5) Schedule 1.22 commences on 1 January 2019 or the date of assent to this Act, whichever is later.

3 Explanatory notes

The matter appearing under the heading “Explanatory note” in Schedules 1–3 does not form part of this Act.

Schedule 1 Principal amendments

1.1 Anzac Memorial (Building) Act 1923 No 27

[1] Section 2 Definitions

Omit “pursuant to section 7 (1), as in force immediately before the commencement of the *Anzac Memorial (Building) Amendment Act 1984*” from the definition of *memorial building*.

Insert instead “on the land described in Schedule 1”.

[2] Section 2 (2)

Insert at the end of section 2:

- (2) Notes included in this Act do not form part of this Act.

[3] Section 3 Trustees

Omit section 3 (1) (h). Insert instead:

- (h) the Australian Defence Force representative—see section 3C,

[4] Section 3 (1) (i)

Omit “(from the transition date)”.

[5] Section 3 (5)

Omit the subsection.

[6] Section 3C

Insert after section 3B:

3C Australian Defence Force representative

- (1) The Australian Defence Force representative is a person for the time being appointed by the Minister, by instrument in writing, as the Australian Defence Force representative for the purposes of this Act.
- (2) The Minister is, on the nomination of the Chief of the Australian Defence Force, to appoint, by rotation, one of the following as the Australian Defence Force representative:
 - (a) the Commander Forces Command, Australian Army,
 - (b) the Commander Australian Fleet, Royal Australian Navy,
 - (c) the Air Commander Australia, Royal Australian Air Force.
- (3) The Australian Defence Force representative holds office as a trustee for the period (not exceeding 3 years but not less than 2 years) that is specified in the instrument of appointment, but is eligible for re-appointment.
- (4) The Minister may at any time revoke the appointment of a person as the Australian Defence Force representative.

[7] Section 7 Application of money

Omit section 7 (2). Insert instead:

- (2) The site of the memorial building is in the City of Sydney on the land described in Schedule 1.

Note. Schedule 1 contains land dedicated for a war memorial under section 25 of the *Crown Lands Consolidation Act 1913* on 9 January 1931 and land that was added when the memorial building site was expanded in 2018.

[8] Section 9 By-laws

Omit “the Schedule to this Act” wherever occurring in section 9 (1) and (5).

Insert instead “Schedule 1”.

[9] Section 9 (4A)

Omit “the Schedule”. Insert instead “Schedule 1”.

[10] Section 12

Insert after section 11:

12 Personal liability of trustees

- (1) Anything done or omitted to be done by a trustee does not subject the trustee personally to any action, liability, claim or demand if the thing was done, or omitted to be done, in good faith for the purpose of exercising the functions of the trustee under this Act.
- (2) However, any such liability attaches instead to the Crown.

[11] Schedule

Omit the Schedule. Insert instead:

Schedule 1 Land dedicated for memorial building

Original memorial building site

Lot 1915, DP 906666, being the land dedicated for a war memorial under section 25 of the *Crown Lands Consolidation Act 1913*, by notification in the Gazette on 9 January 1931 with dedication number D1000124.

Additional land for memorial building site

Part of Lot 200, DP 1230973, as shown marked “Pt 1” in proposed Plan of Subdivision of Lot 200, DP 1230973 (being unregistered DP 1246361) approved by the Secretary of the Department of Industry on or before the date of assent to the *Justice Legislation Amendment Act (No 3) 2018* and held in the office of the Department of Industry at Parramatta.

Explanatory note

Item [11] of the proposed amendments expands the site of the Anzac Memorial Building, which is under the care of the trustees, by adding a parcel of adjacent land to the existing site. Items [1] and [7]–[9] are consequential amendments.

Item [2] provides that notes in the text of the Act do not form part of the Act. A note is inserted by item [7].

Items [3] and [6] provide for a representative of the Australian Defence Force to be a trustee of the Anzac Memorial Building. The Australian Defence Force representative, who will be appointed by the Minister for Veterans Affairs on the nomination of the Chief of the Australian Defence Force, will be the Commander Forces Command of the Australian Army, the Commander Australian Fleet of the

Royal Australian Navy or the Air Commander Australia of the Royal Australian Air Force on rotation for a 2 to 3 year term each.

Item [10] protects the trustees of the Anzac Memorial Building from personal liability for things done in good faith when exercising the functions of the trustees.

Items [4] and [5] omit spent transitional provisions.

1.2 Bail Act 2013 No 26

[1] Section 16B Offences to which the show cause requirement applies

Insert “(whether granted under this Act or a law of another jurisdiction)” after “bail” in section 16B (1) (h) (i).

[2] Section 16B (1) (h) (ii)

Insert “(whether granted under a law of this State or another jurisdiction)” after “parole”.

[3] Section 18 Matters to be considered as part of assessment

Insert “(whether granted under this Act or a law of another jurisdiction)” after “bail” in section 18 (1) (e).

[4] Sections 65 (a) and 68 (2) (c)

Omit “section 104 of the *Criminal Procedure Act 1986*” wherever occurring.

Insert instead “section 101 of the *Criminal Procedure Act 1986*”.

Explanatory note

Items [1] and [2] of the proposed amendments extend the category of offences for which bail is to be refused unless the accused person shows cause to include a serious indictable offence that is committed while the accused person is on bail or parole granted under the law of another jurisdiction.

Item [3] extends the requirement for a person making a bail decision to consider whether the accused person has previously committed a serious offence while on bail to include bail granted under the law of another jurisdiction.

Item [4] updates cross-references.

1.3 Children (Criminal Proceedings) Act 1987 No 55

Section 41 Enforcement of conditions of good behaviour bond or probation or compliance with outcome plan

Omit “, on oath,” from section 41 (1).

Explanatory note

The proposed amendment provides that juvenile justice officers, members of the police force and other authorised officers may inform the Children’s Court about a person’s failure to comply with a good behaviour bond, probation or outcome plan without having to give the information on oath, as is currently the case.

1.4 Children (Detention Centres) Act 1987 No 57

[1] Section 37D Disclosure of information obtained in administration or execution of Act

Omit the section.

[2] Section 55 Conditions as to supervision

Omit “by or under the order or under the regulations” from section 55 (2).

Insert instead “in the regulations”.

[3] Section 101A

Insert after section 101:

101A Functions of centre manager

- (1) A centre manager is, in the exercise of the centre manager's functions under this Act, subject to the direction and control of the Secretary.
- (2) A centre manager may delegate to any person any of the centre manager's functions, other than this power of delegation and other than any function delegated to the centre manager by the Secretary.

[4] Sections 102–102B

Omit section 102. Insert instead:

102 Unlawful disclosure of information

- (1) A person must not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made:
 - (a) with the consent of the person from whom the information was obtained, or
 - (b) in connection with the administration or execution of this Act, or
 - (c) for the purposes of any legal proceedings, or
 - (d) in accordance with a requirement of the *Ombudsman Act 1974* or with any request made by the Ombudsman, or
 - (e) with other lawful excuse.

Maximum penalty: 10 penalty units or imprisonment for 12 months, or both.

- (2) Without limiting the disclosures that may fall within subsection (1) (e), a person makes a disclosure with lawful excuse for the purposes of that paragraph if the disclosure is:
 - (a) authorised by the Secretary, or
 - (b) in accordance with an official policy made by the Secretary for the purposes of this section.

102A Authority to disclose information

- (1) The Secretary may disclose information obtained by the Secretary in connection with the exercise of the Secretary's official functions under this or any other Act for any purpose prescribed by the regulations.
- (2) A regulation made under this section extends to information obtained before the commencement of the regulation unless the regulation otherwise provides.
- (3) The power to prescribe a purpose under subsection (1) does not imply that the Secretary may disclose information only for a prescribed purpose.
- (4) The authority to disclose information under this section applies despite the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*.
- (5) The Minister is to consult with the Minister for Health before recommending the making of a regulation under subsection (1) that may result in the disclosure or use of health information (within the meaning of the *Health Records and Information Privacy Act 2002*).
- (6) A failure to comply with subsection (5) does not affect the validity of a regulation.

102B Authority to exchange certain information

- (1) The Secretary may enter into an arrangement (an ***information sharing arrangement***) with the head of a relevant agency for the purpose of sharing or exchanging information that is held by the Department or the relevant agency.
- (2) Under an information sharing arrangement, each party to the arrangement is authorised:
 - (a) to request and receive prescribed information that is held by the other party to the arrangement, and
 - (b) to disclose prescribed information that is held by the party to the other party to the arrangement.
- (3) An information sharing arrangement extends to information obtained before the commencement of the regulation under which it is made unless the regulation otherwise provides.
- (4) The authority to disclose, request or receive information under this section applies despite the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*.
- (5) In this section:

law enforcement agency means any of the following:

 - (a) the NSW Police Force, or the police force of another State or a Territory,
 - (b) the New South Wales Crime Commission,
 - (c) the Australian Federal Police,
 - (d) the Australian Crime Commission,
 - (e) the Director of Public Prosecutions of New South Wales, of another State or a Territory or of the Commonwealth,
 - (f) the Law Enforcement Conduct Commission,
 - (g) the Independent Commission Against Corruption,
 - (h) a person or body prescribed by the regulations for the purposes of this definition.

prescribed information means information prescribed by the regulations.

relevant agency means any of the following that is prescribed by the regulations as a relevant agency:

 - (a) a law enforcement agency,
 - (b) a government agency of a State or Territory that corresponds with the Department,
 - (c) any other person or body.

[5] Schedule 1 Savings and transitional provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering:

**Part Provisions consequent on enactment of Justice
Legislation Amendment Act (No 3) 2018**

Parole supervision conditions

The amendment to section 55 by the *Justice Legislation Amendment Act (No 3) 2018* applies to a parole order made on or after the commencement of the amendment.

Saving of information sharing arrangement

An information sharing arrangement between the Secretary and the Commissioner of Fines Administration that was in force under section 102 immediately before its substitution by the *Justice Legislation Amendment Act (No 3) 2018* continues in force, despite that substitution, and is taken, on that substitution, to have been entered into under section 102B, as inserted by that Act.

Explanatory note

Item [2] of the proposed amendments provides that the period of supervision of a juvenile offender under a parole order is the period specified in the regulations under the *Children (Detention Centres) Act 1987*. The period of supervision will no longer be set by the Children's Court in the parole order itself. Item [5] inserts a transitional provision.

Item [3] makes a centre manager of a detention centre, in the exercise of the centre manager's functions under the *Children (Detention Centres) Act 1987*, subject to the control and direction of the Secretary of the Department of Justice. It also enables a centre manager to delegate the centre manager's functions.

Item [4] makes further and more detailed provision for the disclosure of information under the *Children (Detention Centres) Act 1987*. The provisions enable disclosures to be made by the Secretary of the Department of Justice in the exercise of official functions or for a purpose prescribed by the regulations. They also enable the Secretary to enter into information sharing arrangements with a person or body prescribed by the regulations for a purpose prescribed by the regulations. At present, an information sharing arrangement can only be entered into with the Commissioner of Fines Administration. The amendments also re-enact the offence of making an unauthorised disclosure of information obtained under the Act. Item [1] is a consequential amendment. Item [5] continues any existing information sharing arrangement entered into with the Commissioner of Fines Administration.

1.5 Children (Detention Centres) Regulation 2015

Clause 148A

Insert before clause 149:

148A Exchange of information with Commissioner of Fines Administration

- (1) The Commissioner of Fines Administration is prescribed as a *relevant agency* for the purposes of the definition of that term in section 102B of the Act.
- (2) For the purposes of the definition of *prescribed information* in section 102B of the Act, the information referred to in subclause (3) is prescribed in relation to the party concerned if it assists in the exercise of:
 - (a) the functions of the Secretary under the Act or this Regulation, or
 - (b) the functions of the Commissioner of Fines Administration under the *Fines Act 1996* or the regulations under that Act.
- (3) Under an information sharing arrangement between the Secretary and the Commissioner of Fines Administration:

- (a) the Secretary is authorised to request and receive information from the Commissioner of Fines Administration comprising the name, address and date of birth of a person who is the subject of a detention order and is a fine defaulter (within the meaning of the *Fines Act 1996*), and details of the fine, and
- (b) the Commissioner of Fines Administration is authorised to disclose that information to the Secretary, and
- (c) the Commissioner of Fines Administration is authorised to request and receive from the Department the following information about a person who is the subject of a detention order and is a fine defaulter (within the meaning of the *Fines Act 1996*):
 - (i) name,
 - (ii) address,
 - (iii) date of birth, and
- (d) the Secretary is authorised to disclose that information to the Commissioner of Fines Administration.

Explanatory note

The proposed amendment is consequential on the amendments to the *Children (Detention Centres) Act 1987* in the proposed Act, which authorise information sharing arrangements between the Secretary of the Department of Justice and other agencies. It continues existing disclosure arrangements with the Commissioner of Fines Administration.

1.6 Civil and Administrative Tribunal Act 2013 No 2

[1] Part 3A, heading

Omit “Diversity”. Insert instead “Federal”.

[2] Section 34A Definitions

Omit the definition of *federal diversity jurisdiction*. Insert instead:

federal jurisdiction means jurisdiction of a kind referred to in section 75 or 76 of the Commonwealth Constitution.

[3] Section 34B Applications or appeals involving federal jurisdiction may be made to authorised court

Omit section 34B (2) (b). Insert instead:

- (b) the determination of the application or appeal by the Tribunal would involve an exercise of federal jurisdiction, and

[4] Section 34C Proceedings after leave granted

Omit “diversity” from section 34C (3).

[5] Schedule 5 Occupational Division

Insert in alphabetical order in clause 4 (1):

Point to Point Transport (Taxis and Hire Vehicles) Act 2016
Tattoo Parlours Act 2012

Explanatory note

In *Burns v Corbett* [2018] HCA 15, the High Court decided that the Civil and Administrative Tribunal could not exercise jurisdiction of the kind referred to in section 75 or 76 of the Commonwealth Constitution (commonly called *federal jurisdiction*) because only courts could exercise federal jurisdiction. It was common ground between the parties in that case that the Tribunal was not a court of the State, so the High Court was not required to decide the issue.

An Appeal Panel of the Tribunal decided in *Johnson v Dibbin; Gatsby v Gatsby* [2018] NSWCATAP 45 that the Tribunal was a court of the State and could, as a result, exercise federal jurisdiction. However, the Court of Appeal decided in *Attorney General for New South Wales v Gatsby* [2018] NSWCA 254 that the Tribunal was not a court of the State for this purpose.

Items [2]–[4] of the proposed amendments extend the current provisions of Part 3A of the *Civil and Administrative Tribunal Act 2013* to enable certain persons to commence proceedings in the District Court or Local Court for the determination of original applications and external appeals that the Civil and Administrative Tribunal cannot determine because they involve the exercise of federal jurisdiction. Currently, Part 3A is limited to exercises of federal diversity jurisdiction (that is, jurisdiction referred to in section 75 (iv) of the Commonwealth Constitution). Item [1] makes a consequential amendment.

Item [5] transfers the administrative review jurisdiction of the Civil and Administrative Tribunal for the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* and the *Tattoo Parlours Act 2012* from the Administrative and Equal Opportunity Division (the default Division for Acts not otherwise allocated) to the Occupational Division.

1.7 Civil Liability Act 2002 No 22

Schedule 1 Savings and transitional provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering:

Part Provisions consequent on enactment of Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017

Offenders in custody

- (1) A reference to a person described in paragraph (c) of the definition of *offender in custody* or *offender* in section 26A as substituted by the amending Act includes a reference to an offender described in that paragraph immediately before its substitution.

Note. Before its substitution by the amending Act, paragraph (c) of that definition referred to an offender within the meaning of Part 4 (Imprisonment by way of home detention) of the *Crimes (Administration of Sentences) Act 1999*.

- (2) A reference to a community correction order in paragraph (e) of that definition includes a reference to a community service order under the *Crimes (Sentencing Procedure) Act 1999* as in force before the amendment of that Act by the amending Act. The community service order is taken to be a community correction order (see Part 29 of Schedule 2 to the *Crimes (Sentencing Procedure) Act 1999*).
- (3) This clause is taken to have commenced on 24 September 2018.
- (4) In this clause, *amending Act* means the *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017*.

Explanatory note

The proposed amendment re-enacts, and correctly inserts, a transitional provision consequent on the commencement of amendments to the definition of *offender in custody* or *offender* in the *Civil Liability Act 2002*. The amendments, which were made by the *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017*, commenced on 24 September 2018.

1.8 Crimes Act 1900 No 40

[1] Section 60AA Meaning of “law enforcement officer”

Omit “probation and parole officers” from paragraph (i) of the definition of *law enforcement officer*.

Insert instead “community corrections officers”.

[2] Section 61J Aggravated sexual assault

Insert after section 61J (2) (b):

- (b1) at the time of, or immediately before or after, the commission of the offence, the alleged offender threatens to inflict grievous bodily harm or wounding on the alleged victim or any other person who is present or nearby, or

[3] Section 545B Intimidation or annoyance by violence or otherwise

Omit “he had a legal right to do, or of his having abstained from doing any act which he” from section 545B (1) (b).

Insert instead “the other person had a legal right to do or having abstained from doing any act which that other person”.

[4] Section 545B (1) (i)

Omit “his wife” wherever occurring.

Insert instead “that other person’s spouse, de facto partner”.

[5] Section 545B (1) (i)

Omit “him”. Insert instead “that other person”.

[6] Section 545B (1) (iii)

Omit “him” wherever occurring. Insert instead “that other person”

[7] Section 545B (2), definition of “Intimidation”

Omit “any member of his family or to any of his dependants”.

Insert instead “the person’s spouse, de facto partner, child or dependant”.

[8] Section 545B (2), definition of “Injury”

Omit “his”. Insert instead “the person’s”.

[9] Section 545B, note

Insert at the end of the section:

Note. *De facto partner* is defined in section 21C of the *Interpretation Act 1987*.

Explanatory note

Item [2] of the proposed amendments extends the circumstances in which the sexual assault of a person will be treated as aggravated sexual assault. The offence of aggravated sexual assault carries a heavier penalty than the offence of sexual assault. At present, if the alleged offender threatens to inflict actual bodily harm on the alleged victim or a person who is present or nearby by means of an offensive weapon or instrument, the assault will be treated as an aggravated sexual assault. Under the amendment, a sexual assault will also be treated as an aggravated sexual assault if the alleged offender threatens to inflict grievous bodily harm or wounding on the alleged victim or any other person who is present or nearby (whether or not by means of an offensive weapon or instrument).

Items [3]–[9] update the language of the offence of intimidation by replacing gender-specific language and extending the provision to include intimidation of a person’s de facto partner (currently the offence extends to intimidation of a person’s spouse only).

Item [1] updates a reference to Corrective Services NSW staff.

1.9 Crimes (Administration of Sentences) Act 1999 No 93

[1] Section 3 Interpretation

Omit the definition of *compliance and monitoring officer* from section 3 (1).

[2] Section 8 Release from custody

Insert after section 8 (2):

- (2A) An inmate may be released from custody at any time during the period of 4 days after the date on which the inmate would otherwise be required to be released under this section if:
 - (a) there is a good reason to delay the release (such as a lack of transport), and
 - (b) the inmate requests or consents to the delay.
- (2B) Subsection (2A) does not permit an inmate to be held in a correctional centre for any period longer than the period requested or consented to by the inmate.

[3] Section 107C Breach of community correction order

Insert after section 107C (6):

- (6A) A court may exercise any function under this section in relation to a community correction order after the order has expired, but only in respect of matters arising during the term of the order.

[4] Section 108C Breach of conditional release order

Insert after section 108C (6):

- (6A) A court may exercise any function under this section in relation to a conditional release order after the order has expired, but only in respect of matters arising during the term of the order.

[5] Section 128C Conditions as to supervision

Omit “by or under the order or under the regulations” from section 128C (2).

Insert instead “in the regulations”.

[6] Section 164AA

Insert after section 164:

164AA Circumstances for revocation in addition to non-compliance with intensive correction order

- (1) The Parole Authority may, on its own initiative or on the recommendation of the Commissioner, make an order revoking an intensive correction order (a *revocation order*):
 - (a) if it is satisfied that the offender is unable to comply with the offender’s obligations under the order as a result of a material change in the offender’s circumstances, or
 - (b) if the offender fails to appear before the Parole Authority when called on to do so under section 180, or
 - (c) if the offender has applied for the order to be revoked.
- (2) The Parole Authority may make a revocation order on the recommendation of the Commissioner if it is satisfied that health reasons or compassionate grounds exist that justify the revocation.

[7] Section 164A Revocation orders

Insert before section 164A (1):

- (1A) A revocation order under this Division may be made:

- (a) whether or not the offender has been called on to appear before the Parole Authority, and
- (b) whether or not the Parole Authority has held an inquiry.

[8] Section 164A (1)

Omit “(see section 164 (2) (e))”.

[9] Section 168CA

Insert after section 168C:

168CA Actions by Commissioner or community corrections officer on non-compliance with re-integration home detention order

- (1) This section applies if the Commissioner or a community corrections officer is satisfied that an offender has failed to comply with the offender’s obligations under a re-integration home detention order.
- (2) A community corrections officer may take any of the following actions:
 - (a) record the breach and take no further action,
 - (b) give an informal warning to the offender,
 - (c) give, or arrange to be given to, the offender a formal warning that further breaches will result in referral to the Parole Authority,
 - (d) give a reasonable direction to the offender relating to the kind of behaviour by the offender that caused the breach.
- (3) As an alternative, or in addition, to taking any such action, the Commissioner or a community corrections officer may decide to refer the breach to the Parole Authority because of the serious nature of the breach and may also make a recommendation as to the action that the Parole Authority may take in respect of the offender.
- (4) In deciding whether and what action should be taken in respect of the offender’s breach of the re-integration home detention order, the Commissioner or a community corrections officer may have regard to any action previously taken in respect of the breach or any earlier breaches of the order.
- (5) The regulations may make provision for or with respect to any action that may be taken by a community corrections officer under this section.

[10] Section 193C Parole Authority decisions

Omit “section 163 (1)” from section 193C (1) (c). Insert instead “section 164AA”.

[11] Section 193C (1) (f)

Insert after section 193C (1) (e):

- (f) any other decisions following a submission or recommendation by the Commissioner or the State.

[12] Section 235G Functions of Departmental compliance and monitoring officers

Omit the section.

[13] Section 236O Residential facility officers

Omit section 236O (7).

[14] Schedule 5 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering:

**Part Provisions consequent on enactment of Justice
Legislation Amendment Act (No 3) 2018**

Supervision conditions

The amendment made to section 128C by the *Justice Legislation Amendment Act (No 3) 2018* applies to a parole order made on or after the commencement of the amendment.

Revocation of intensive correction orders

Division 1 of Part 7 of this Act has effect as if the amendments to that Division made by the *Justice Legislation Amendment Act (No 3) 2018* had commenced on 24 September 2018.

Explanatory note

Item [2] of the proposed amendments enables an inmate to be kept in custody for up to 4 days after the inmate's release date if there is a good reason to delay the release (such as a lack of transport) and if the inmate requests or consents to the delay. Currently, if an inmate's release date is on the weekend or a public holiday, the inmate can request to stay in custody until the following Monday or the day after the public holiday.

Items [3] and [4] enable a court to take action against an offender who has breached a community correction order or conditional release order after the order has expired, but only in respect of matters arising during the term of the order.

Item [5] provides that the period of supervision of an offender under a parole order is to be the period specified in the regulations under the *Crimes (Administration of Sentences) Act 1999*. The period of supervision will no longer be set by the State Parole Authority (the **Parole Authority**) in the parole order itself. Item [14] is a transitional provision.

Items [6] and [7] reinstate the Parole Authority's powers in relation to revoking an intensive correction order that the Authority had before the commencement of the *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017* on 24 September 2018. The Parole Authority may revoke an intensive correction order for reasons other than a breach of the order and may do so without holding an inquiry or hearing from the offender. Item [14] inserts a transitional provision. Item [8] is a consequential amendment.

Item [9] enables a community corrections officer to deal with a breach of a re-integration home detention order in the same way as an officer may deal with a breach of an intensive correction order or a parole order, including by recording the breach but not taking further action or by giving the offender a warning or reasonable directions. The amendment also enables a community corrections officer or the Commissioner of Corrective Services to refer a more serious breach to the Parole Authority and recommend the action to be taken.

Item [11] requires the Parole Authority to record reasons for any decision that follows a recommendation or submission by the State or the Commissioner of Corrective Services. Item [10] corrects a cross-reference.

Items [1], [12] and [13] are consequential on changes to Corrective Services NSW staff arrangements.

1.10 Crimes (Appeal and Review) Act 2001 No 120

Section 63 Stay of execution of sentence pending determination of appeal

Insert after section 63 (2B):

- (2C) Subject to subsection (2A), subsection (2) operates to stay the operation of a disqualification of a driver licence that arises under an Act as a consequence of a conviction, whether the relevant appeal is against the conviction or the sentence imposed as a consequence of the conviction.

Explanatory note

The proposed amendment makes it clear that (subject to existing exceptions) an automatic disqualification of a driver licence that arises under an Act as a result of a conviction is stayed under the *Crimes (Appeal and Review) Act 2001* pending the determination of an appeal under that Act, whether the appeal is against the conviction or the sentence imposed as a result of the conviction.

1.11 Crimes (Domestic and Personal Violence) Act 2007 No 80

[1] Section 5 Meaning of “domestic relationship”

Insert “(subject to section 5A)” after “other person” in section 5 (1) (f).

[2] Section 5A

Insert after section 5:

5A Special provisions—carers and their dependants

- (1) A person (a *dependant*) who has or has had a relationship with another person involving the person’s dependence on the ongoing paid care of the other person (a *paid carer*) is treated as having a domestic relationship with the paid carer only for the purposes of the protection of the dependant.
- (2) Accordingly:
 - (a) a paid carer and a dependant are to be treated as having a domestic relationship for the purposes of any offence committed by a paid carer against a dependant, but not for the purposes of an offence committed by a dependant against a paid carer, and
 - (b) an apprehended domestic violence order may be made against a paid carer for the protection of a dependant (or for the protection of two or more persons at least one of whom is a dependant), but not against a dependant for the protection of a paid carer.
- (3) This section does not limit or otherwise affect the application of this Act to a relationship between a dependant and an unpaid carer, or to a relationship between a dependant and a carer that, disregarding section (5) (1) (f), would be a domestic relationship under section 5.

Note. For example, if a dependant and a paid carer are relatives, they will be treated as having a domestic relationship under section 5 (1) (g) and an apprehended domestic violence order could be made against the dependant for the protection of the paid carer.
- (4) To avoid doubt, an apprehended personal violence order may be made against a dependant for the protection of a paid carer if the paid carer and dependant do not have a domestic relationship.

[3] Section 98KA

Insert after section 98K:

98KA Part has no effect on sexual assault communications privilege

- (1) The collection, use or disclosure of information under this Part does not affect the application of Division 2 of Part 5 of Chapter 6 of the *Criminal Procedure Act 1986* to any of that information that is a protected confidence.
- (2) This section applies whether or not a protected confider consents to the collection, use or disclosure of the information under this Part.
- (3) In this section, *protected confidence* and *protected confider* have the same meanings as they have in Division 2 of Part 5 of Chapter 6 of the *Criminal Procedure Act 1986*.

[4] Schedule 1 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering:

**Part Provisions consequent on enactment of
Justice Legislation Amendment Act (No 3)
2018**

Changes to definition of “domestic relationship”

- (1) Section 5A, as inserted by the *Justice Legislation Amendment Act (No 3) 2018*, does not apply to, or affect the validity of, any order made under this Act before the commencement of the section.
- (2) Section 5A, as inserted by the *Justice Legislation Amendment Act (No 3) 2018*, does not affect an application for an order under this Act made but not finally determined before the commencement of the section or any proceedings arising from the application that have not finally been determined before the commencement of the section, even if those proceedings take place after that commencement. For the purposes of the application and proceedings, this Act as in force immediately before the commencement of section 5A is taken to continue to apply.

Explanatory note

Items [1] and [2] of the proposed amendments change the way in which a relationship between a dependant and a paid carer is treated under the *Crimes (Domestic and Personal Violence) Act 2007*. At present, a relationship between a dependant and a paid or unpaid carer is treated as a domestic relationship under the Act. The amendments provide that a relationship with a paid carer is to be treated as a domestic relationship only for the protection of the dependant. Accordingly, a personal violence offence committed by a paid carer against a dependant is treated as a domestic violence offence under the Act, but a personal violence offence committed by a dependant against a paid carer is not.

The effect of the amendment is that an apprehended domestic violence order will no longer be available for the protection of a paid carer from a dependant, only for the protection of a dependant from a paid carer. A paid carer will still be able to apply for an apprehended personal violence order against a dependant.

As it is currently mandatory for the Police to apply for an apprehended domestic violence order in domestic relationship situations, this means it will no longer be mandatory for Police to apply for an apprehended domestic violence order in a case where it is alleged that a paid carer is threatened by a dependant. It will continue to be mandatory for Police to apply for an apprehended domestic violence order if it is alleged that a paid carer has committed a domestic violence offence against a dependant.

The amendment does not affect the application of the Act to a relationship between an unpaid carer and a dependant or a relationship between a carer (paid or unpaid) and a dependant that is treated as a domestic relationship otherwise than because of the dependency relationship. For example, if a dependant and a paid carer are relatives, the pair will still be treated as having a domestic relationship and an apprehended domestic violence order may be obtained by the carer against the dependant.

Item [4] is a transitional provision.

Item [3] makes it clear that the collection, use or disclosure of information under certain statutory information sharing arrangements between agencies that facilitate the protection of victims of domestic violence and access to support services does not affect the application of any sexual assault communications privilege in relation to that information. The privilege continues to apply whether or not a protected confider consents to the collection, use or disclosure of the information under those information sharing arrangements.

1.12 Crimes (Interstate Transfer of Community Based Sentences) Act 2004 No 72

Section 27A Definitions

Omit “, compliance and monitoring officer or probation and parole officer” from the definition of *local law enforcement officer*.

Insert instead “or community corrections officer”.

Explanatory note

The proposed amendment updates a reference to Corrective Services NSW staff.

1.13 Crimes (Sentencing Procedure) Act 1999 No 92

[1] Section 3 Interpretation

Omit the definition of *probation and parole officer* from section 3 (1).

[2] Section 17C Request for assessment report

Insert after section 17C (1) (b) (v):

- (vi) during proceedings to determine an appeal against a sentence,
- (vii) any other times prescribed by the regulations.

Explanatory note

Item [1] of the proposed amendments removes a redundant definition as a consequence of changes to Corrective Services NSW staff.

Item [2] provides that a court determining an appeal against sentence may request an assessment report be prepared in relation to the offender and provides for the regulations to prescribe other times at which a court may request an assessment report.

1.14 Criminal Appeal Act 1912 No 16

Section 5DA Appeal by Crown against reduced sentence for assistance to authorities

Insert “or varied or imposed by the District Court on appeal from the Local Court or the Children’s Court” after “Court of Criminal Appeal” in section 5DA (3).

Explanatory note

The proposed amendment makes it clear that the Crown may appeal against a sentence varied or imposed on appeal from the Local Court or the Children’s Court to the District Court if the sentence was reduced because the person undertook to assist law enforcement authorities and the person fails wholly or partly to fulfil the undertaking.

1.15 Criminal Procedure Act 1986 No 209

[1] Section 179 Time limit for commencement of summary proceedings

Insert at the end of section 179 (2) (c):

- , or
- (d) to a back up summary offence if the District Court determines an appeal against a conviction or finding of guilt by the Children’s Court or Local Court for the related indictable offence by setting aside the conviction or finding of guilt.

[2] Section 179 (4) and (5)

Insert after section 179 (3):

- (4) Proceedings for a back up summary offence must be commenced not later than 6 months after the District Court determines an appeal against the conviction or finding of guilt by the Children's Court or Local Court for the related indictable offence by setting aside the conviction or finding of guilt.
- (5) In this section, a summary offence is a *back up summary offence* if a charge for the summary offence was laid against a person but was withdrawn or dismissed after the person was convicted or found guilty of an indictable offence (the *related indictable offence*) by the Children's Court or Local Court on the basis of the same facts.

[3] Section 222 Issue of subpoenas

Insert after section 222 (2):

- (2A) A police officer may issue a subpoena under subsection (2) on behalf of a public officer.

[4] Section 275C

Insert after section 275B:

275C Court may direct expert evidence be given concurrently or consecutively

- (1) The court may, at any time, give directions as it considers appropriate to enable the giving of expert evidence concurrently or consecutively in criminal proceedings.
- (2) Directions under this section may include the following:
 - (a) a direction that an expert witness give evidence at any stage of the proceedings,
 - (b) a direction that more than one expert witness give evidence at the same time in the proceedings,
 - (c) a direction that an expert witness give an oral exposition of the witness's opinion on a particular matter,
 - (d) a direction that an expert witness be examined, cross-examined or re-examined in a particular manner or sequence, including by putting to each expert witness, in turn, each question relevant to one matter or issue at a time,
 - (e) a direction that an expert witness be permitted to ask questions of another expert witness who is giving evidence at the same time during the proceedings.
- (3) A direction may be given under this section only with the consent of the prosecutor and the accused person.
- (4) This section does not limit any other powers of a court to give directions in relation to evidence, witnesses or the management and conduct of proceedings.

[5] Section 280A

Insert after section 280:

280A Disclosure of personal information in subpoenaed documents and things

- (1) A person to whom a subpoena is addressed is not required to disclose in any document or thing produced in compliance with the subpoena any personal information, unless:
 - (a) the personal information is a materially relevant part of the evidence, or
 - (b) the court makes an order requiring the disclosure.
- (2) An application for such an order may be made by the prosecution or the defence.
- (3) The court may make such an order only if it is satisfied that disclosure is not likely to present a reasonably ascertainable risk to the welfare or protection of any person or that the interests of justice outweigh any such risk.
- (4) Personal information that is not required to be disclosed may, without reference to the person to whom the personal information relates, be deleted from the document or thing, or rendered illegible, before the document or thing is produced to the court or given to the accused person in compliance with the subpoena.
- (5) This section does not prevent the disclosure of an address if the disclosure does not identify it as a particular person's address, or it could not reasonably be inferred from the matters disclosed that it is a particular person's address.
- (6) In this section:

address includes a private, business or official address.

personal information means the address or telephone number of the person to whom the subpoena is addressed or of any other living person.

telephone number includes a private, business or official telephone number.

[6] Chapter 6, Part 2A Sensitive evidence

Insert before section 281A:

Division 1 Preliminary

[7] Section 281A Definitions

Insert in alphabetical order in section 281A (1):

access supervisor—see section 281FB.

health authority means any of the following:

- (a) a public health organisation (within the meaning of the *Health Services Act 1997*),
- (b) a public hospital (within the meaning of the *Health Services Act 1997*),
- (c) a private health facility (within the meaning of the *Private Health Facilities Act 2007*) that is licensed under that Act and that provides health services to the public on behalf of the Ministry of Health, the Health Administration Corporation constituted by the *Health Administration Act 1982* or a local health district (within the meaning of the *Health Services Act 1997*),

- (d) a person or body that provides health services and is prescribed by the regulations.

supervised access arrangements—see section 281FD.

[8] Chapter 6, Part 2A, Division 2, heading

Insert after section 281B:

Division 2 Evidence held by prosecuting authority

[9] Chapter 6, Part 2A, Division 3

Insert after section 281F:

Division 3 Evidence held by health authority

281FA Accused person not entitled to obtain sensitive evidence from health authority

- (1) In any criminal proceedings, a health authority is not required to produce, in response to a subpoena given by the accused person, anything the health authority reasonably considers to be sensitive evidence.
- (2) This section applies despite anything to the contrary in this or any other Act, or any other law.

281FB Health authority to give sensitive evidence notice

- (1) If a health authority wishes to rely on this Division to refuse production of a thing that it would otherwise be required to produce under a subpoena, the health authority must give the court and the accused person a written notice (a *sensitive evidence notice*) that complies with this section.
- (2) The sensitive evidence notice must:
 - (a) describe the thing that the health authority considers to be sensitive evidence, and
 - (b) indicate that, as the health authority considers the thing to be sensitive evidence, the health authority is not required to produce the thing, and
 - (c) indicate that the thing will not be produced, and
 - (d) contain information to the effect that the accused person is entitled to view or listen to the thing in accordance with supervised access arrangements, and
 - (e) set out the name and contact details of the person (the *access supervisor*) who is responsible for arranging access to the thing under the supervised access arrangements.
- (3) The court must, on receipt of the sensitive evidence notice, set aside the subpoena (wholly or to the extent that it relates to the sensitive evidence) and order that the accused person be given access to the sensitive evidence in accordance with the sensitive evidence notice.
- (4) The Attorney General may approve the form of a notice to be used for the purposes of this section.

281FC Access to be given to accused person

- (1) The access supervisor under a sensitive evidence notice must, as soon as practicable after receiving a written request from the accused person, give the accused person, and any other person who has been engaged to assist with the

accused person's case, access to the sensitive evidence under supervised access arrangements.

- (2) The access supervisor must ensure that reasonable access is given. This may require access to be given on more than one occasion.
- (3) A person who is given access to a thing under supervised access arrangements must not, without the permission of the access supervisor:
 - (a) copy, or permit a person to copy, the thing, or
 - (b) give the thing to another person, or
 - (c) remove the thing from the custody of the access supervisor.

Maximum penalty: 100 penalty units, or 2 years imprisonment, or both.

281FD Supervised access arrangements

- (1) A health authority may approve arrangements that enable an accused person, and any other person who has been engaged to assist with the accused person's case, to view or listen to (but not copy) sensitive evidence held by the health authority. Those arrangements are *supervised access arrangements*.
- (2) The supervised access arrangements may require access to take place subject to such conditions as the health authority considers appropriate to ensure that there is no unauthorised reproduction or circulation of the thing and that the integrity of the thing is protected.
- (3) Without limiting subsection (2), the conditions may require access to take place under the immediate or general supervision of the health authority.
- (4) A function of a health authority under a supervised access arrangement may, with the agreement of a prosecuting authority, be exercised by the prosecuting authority on behalf of the health authority.

281FE Health authority entitled to retain possession of sensitive evidence

- (1) If during any criminal proceedings an accused person is given sensitive evidence, or a copy of sensitive evidence, by a health authority, the court must, on application by the health authority, direct the accused person to return the sensitive evidence or copy to the custody of the health authority at or before the end of each day during which the proceedings are heard.
- (2) At the completion of any criminal proceedings in which sensitive evidence is produced by a health authority, or sensitive evidence given to the accused person by a health authority is tendered by the accused person, the court must, on application by the health authority, direct that the sensitive evidence, and any copies of the sensitive evidence made for the purposes of the proceedings, be returned to the custody of the health authority.
- (3) A function of a health authority under this section may, with the agreement of a prosecuting authority, be exercised by the prosecuting authority on behalf of the health authority. In that case, sensitive evidence is to be returned to the prosecuting authority instead of the health authority.

281FF Improper copying or circulation of sensitive evidence

- (1) A person who has possession of sensitive evidence that is health evidence must not copy, or permit a person to copy, the sensitive evidence, or give possession of the sensitive evidence to another person, except:
 - (a) for the legitimate purposes of a criminal investigation or criminal proceedings, or

- (b) if the person is a public official, in the proper exercise of the person's public official functions (including any functions relating to education or training).
Maximum penalty: 100 penalty units, or 2 years imprisonment, or both.
- (2) For the purposes of this section, any sensitive evidence in the possession of a person is **health evidence** if:
 - (a) the person was given possession of the sensitive evidence by a health authority, or by a prosecuting authority exercising functions on behalf of a health authority, in or in connection with a criminal investigation or criminal proceedings, or
 - (b) the person is a public official who created, or obtained possession of, the sensitive evidence in the exercise of, or as a result of an opportunity that arose in the exercise of, public official functions in or in connection with a criminal investigation or criminal proceedings.
- (3) A person cannot be found guilty of an offence against this section and an offence against section 281F in respect of the same act or omission.
- (4) In this section:
public official has the same meaning as in the *Independent Commission Against Corruption Act 1988*.

281FG Evidence may be provided to prosecuting authority

This Part does not prevent a health authority from giving a police officer or prosecuting authority access to sensitive evidence held by the health authority in connection with any criminal investigation or criminal proceedings.

[10] Section 306M Definitions

Omit paragraph (b) of the definition of **investigating official**. Insert instead:

- (b) in relation to the questioning of a child—a person who is engaged, in conjunction with an investigating official described in paragraph (a), in an investigation caused to be made by the Secretary of the Department of Family and Community Services under the *Children and Young Persons (Care and Protection) Act 1998* or caused to be made under child protection legislation of another State or a Territory, or

[11] Section 306Q Regulations may require interviews with vulnerable persons to be recorded

Insert at the end of section 306Q (2) (b):

- , or
- (c) an investigating official of another State or a Territory acting under child protection legislation of the other State or Territory.

[12] Schedule 2 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering:

**Part Provisions consequent on enactment of Justice
Legislation Amendment Act (No 3) 2018**

Definition

In this Part, *amending Act* means the *Justice Legislation Amendment Act (No 3) 2018*.

Back up summary offences

The amendments made to section 179 by the amending Act do not apply in respect of a back up summary offence if the conviction for the related indictable offence is set aside by the District Court on appeal before the commencement of the amendments.

Giving of evidence by vulnerable persons

- (1) Part 6 of Chapter 6, as amended by the amending Act, extends to an interview carried out, or a recording made, by an interstate investigating official before the commencement of the amendments to that Part made by that Act.
- (2) An *interstate investigating official* means a person who is an investigating official because of the amendments to section 306M made by the amending Act.

Explanatory note

Items [1] and [2] of the proposed amendments enable proceedings for a summary offence to be brought outside the usual 6-month time limit if the summary offence was a back up offence to an indictable offence that was withdrawn or dismissed at the time the accused person was found guilty or convicted of the indictable offence and if the conviction for the related indictable offence is later set aside by the District Court on appeal. Proceedings for the summary offence may be brought up to 6 months after the related indictable offence conviction is set aside on appeal. Item [12] inserts a transitional provision.

Item [3] enables a police officer to issue a subpoena on behalf of a public officer where the public officer is the prosecutor. A public officer includes the Director of Public Prosecutions.

Item [4] provides that a court in criminal proceedings may give directions to enable expert witnesses to give evidence concurrently or consecutively, rather than prosecution and defence expert witnesses giving evidence in the usual order and manner. Directions may only be given with the consent of the prosecutor and accused person.

Item [5] provides that telephone numbers and addresses are not required to be disclosed in material produced in compliance with a subpoena, unless they are a materially relevant part of the evidence or the court makes an order requiring the disclosure.

Item [9] enables a health authority to refuse to produce sensitive evidence in response to a subpoena given by an accused person in criminal proceedings. Sensitive evidence includes an obscene or indecent image, or an image of a person the provision of which would interfere with the person's privacy. The health authority may instead make arrangements for an accused person to listen to or view (but not copy) the sensitive evidence under general or immediate supervision. The amendments also enable a health authority to retain custody of any sensitive evidence produced by the health authority that is tendered in criminal proceedings. The provisions are similar to the arrangements that apply to sensitive evidence that is in the custody of a prosecuting authority. Items [6]–[8] are consequential amendments.

Item [10] extends the special arrangements for the giving of evidence by children in criminal proceedings so that they apply when a child is interviewed, in connection with a possible offence, by an interstate official conducting an investigation under a child protection law of another State or a Territory in conjunction with police. This will enable a recording made by an investigating official of another State or a Territory of an interview with a child about the commission of an offence to be admitted in evidence as the evidence in chief of the child. Item [11] is a consequential amendment and item [12] inserts a transitional provision.

1.16 District Court Act 1973 No 9

[1] Section 44 Actions

Insert after section 44 (1) (c):

- (c1) subject to paragraph (c), any action arising out of a commercial transaction in which the amount (if any) claimed does not exceed the Court's jurisdictional limit, whether on a balance of account or after an admitted set-off or otherwise,

[2] Schedule 3 Savings and transitional provisions consequent on amendments to this Act

Insert at the end of clause 1 (1):

any other Act that amends this Act

[3] Schedule 3

Insert at the end of the Schedule, with appropriate Part and clause numbering:

Part Provisions consequent on enactment of Justice Legislation Amendment Act (No 3) 2018

Application of amendment to section 44

- (1) Section 44 (1) (c1), as inserted by the *Justice Legislation Amendment Act (No 3) 2018*, is taken to have applied on and after 2 February 1998 in respect of the jurisdiction of the Court.
- (2) Accordingly, any action determined by the Court on or after 2 February 1998 that would have been within the Court's jurisdiction to determine had section 44 (1) (c1) been in force at the time is taken to have been within the jurisdiction of the Court.
- (3) The reference in section 44 (1) (c1), as applied by this clause, to the Court's jurisdictional limit is to be read as a reference to the amount that was the Court's jurisdictional limit for the purposes of section 44 (1) (a) (ii) at the time concerned.

Explanatory note

Section 44 (1) (a) of the *District Court Act 1973* confers jurisdiction on the District Court over actions, which if brought in the Supreme Court, would be assigned to the Common Law Division of the Supreme Court. In *Forsyth v Deputy Commissioner of Taxation* (2007) 231 CLR 531, the High Court decided that section 44 (1) (a) confers jurisdiction by reference to what was assigned to the Common Law Division of the Supreme Court when the Divisions of the Supreme Court were restructured on 2 February 1998. As part of that restructuring, the Commercial Division of the Supreme Court was abolished. Subject to some exceptions, proceedings arising out of commercial transactions were assigned to the Commercial Division.

The Supreme Court in *The NTF Group Pty Ltd v PA Putney Finance Australia Pty Ltd* [2017] NSWSC 1194 and *Nova 96.9 Pty Ltd v Natvia Pty Ltd* [2018] NSWSC 1288 has held that section 44 (1) (a) did not confer jurisdiction on the District Court to determine certain actions arising out of commercial transactions because those kinds of actions were assigned to the abolished Commercial Division of the Supreme Court rather than the Common Law Division.

Item [1] of the proposed amendments to the *District Court Act 1973* makes it clear that the District Court has jurisdiction to determine actions arising out of a commercial transaction in which the amount (if any) claimed does not exceed the Court's jurisdictional limit.

Item [3] ensures that the District Court is to be treated as having had this jurisdiction since 2 February 1998. Item [2] enables further savings and transitional regulations to be made about these amendments if required.

1.17 Drug Court Act 1998 No 150

[1] Section 12A

Insert after section 12:

12A Special jurisdiction—traffic matters

- (1) If a drug offender's program is terminated, the Drug Court may, on application by the drug offender, exercise the same functions as the Local Court under Division 3A of Part 7.4 of Chapter 7 of the *Road Transport Act 2013* in relation to any licence disqualifications to which the drug offender is then subject.
- (2) Accordingly, the Drug Court may make any order under section 221B of that Act removing all licence disqualifications to which the drug offender is then subject in the circumstances provided for by that Division.
Note. Section 221B of the *Road Transport Act 2013* permits licence disqualifications to be removed on application by a disqualified person if the Court considers it appropriate to do so. Licence disqualifications may be removed only if the disqualified person has not been convicted of any driving offence for conduct during the relevant offence-free period.
- (3) Division 3A of Part 7.4 of Chapter 7 of the *Road Transport Act 2013* applies to the Drug Court as if a reference to the Local Court included a reference to the Drug Court.
- (4) No appeal under the *Crimes (Appeal and Review) Act 2001* or section 5AF of the *Criminal Appeal Act 1912* lies against a decision of the Drug Court under that Division.
- (5) The rules of court may include provisions relating to the practice and procedure for applications and orders by the Drug Court under this section.

[2] Section 18A Definitions

Omit "probation and parole officer" from paragraph (b) of the definition of *multi-disciplinary team*.

Insert instead "community corrections officer (within the meaning of the *Crimes (Administration of Sentences) Act 1999*)".

[3] Section 18A, definition of "probation and parole officer"

Omit the definition.

[4] Section 27 Rules of court

Insert at the end of section 27 (b):

, and

- (c) any matter for or with respect to which a power to make rules is conferred by this Act.

Explanatory note

Item [1] of the proposed amendments confers on the Drug Court the same powers as the Local Court has under Division 3A of Part 7.4 of Chapter 7 of the *Road Transport Act 2013* to remove all licence disqualifications to which a disqualified person is subject. The power may be exercised by the Drug Court after it terminates a drug offender's program. On terminating a drug offender's program, the Drug Court must determine the final sentence of the drug offender. The proposed section will enable the Drug Court to remove licence disqualifications in conjunction with determining the final sentence of the drug offender (instead of referring any outstanding licence disqualifications to the Local Court). The proposed section also enables the Drug Court to make rules about the practice and procedure to be adopted in relation to removal of licence disqualifications. Item [4] is a consequential amendment. Items [2] and [3] update references to Corrective Services NSW staff.

1.18 Interpretation Act 1987 No 15

Section 76 Service by post

Omit “fourth” from section 76 (1) (b). Insert instead “seventh”.

Explanatory note

The proposed amendment provides that a document served by post is presumed to have been served on the seventh working day after it is posted, rather than on the fourth working day, as a consequence of changes to Australia Post delivery times.

1.19 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Section 210M Application for stock mustering order

Omit “a legal practitioner” from section 210M (5).

Insert instead “an Australian legal practitioner or police prosecutor”.

Explanatory note

The proposed amendment makes it clear that the Commissioner of Police or a police officer may be represented by a police prosecutor in proceedings for a stock mustering order. The amendment also clarifies a reference to legal practitioners, so that it is clear that the reference is to an Australian legal practitioner (as defined in the *Interpretation Act 1987*).

1.20 Local Court Act 2007 No 93

[1] Section 29 Jurisdictional limit of Court

Omit “\$10,000” from section 29 (1) (b). Insert instead “\$20,000”.

[2] Schedule 4 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering:

Part Provision consequent on enactment of Justice Legislation Amendment Act (No 3) 2018

Changes to jurisdictional limit

The amendment made to section 29 by the *Justice Legislation Amendment Act (No 3) 2018* does not apply to proceedings instituted in the Court before the commencement of the amendment.

Explanatory note

Item [1] of the proposed amendments increases the jurisdiction of the Small Claims Division of the Local Court from \$10,000 to \$20,000. Item [2] is a transitional provision.

1.21 Parole Orders (Transfer) Act 1983 No 190

Section 10A Definitions

Omit “, compliance and monitoring officer or probation and parole officer” from the definition of *local law enforcement officer*.

Insert instead “or community corrections officer”.

Explanatory note

The proposed amendment updates references to Corrective Services NSW staff.

1.22 Relationships Register Act 2010 No 19

Section 16A

Insert after section 16:

16A Registrar may provide celebratory services

- (1) The Registrar may, at the request of an applicant for registration, provide or arrange for the provision of celebratory services in connection with registration of the person's relationship under this Act.
- (2) The Registrar may charge a fee for providing or arranging for the provision of those services.
- (3) If the regulations do not prescribe a fee for providing or arranging for the provision of those services, the fee (if any) for those services is the fee fixed by negotiation between the Registrar and the person who requests the services.

Explanatory note

The proposed amendment enables the Registrar of Births, Deaths and Marriages to provide, or to arrange for the provision of, celebratory services in connection with registration of a relationship under the *Relationships Register Act 2010*.

1.23 Road Transport Act 2013 No 18

[1] Section 221A Definitions

Omit "if any of those licence disqualifications was imposed because the person was convicted of" from paragraph (a) of the definition of *relevant offence-free period*.

Insert instead "if the person has been convicted of any of the following offences within the period of 4 years before the determination of the person's application by the Local Court under this Division (whether or not the licence disqualification imposed for that offence has been completed)".

[2] Schedule 4 Savings, transitional and other provisions

Insert after clause 65 (2):

- (2A) In particular, section 220, as in force immediately before its repeal by the amending Act, continues to apply with the following modifications:
 - (a) a person who was declared to be a habitual traffic offender by operation of section 217 (as in force immediately before its repeal by the amending Act) may, on or after the repeal of section 220, apply to the Local Court for the declaration to be quashed, even if the Local Court was not the court that convicted the person of the relevant offence,
 - (b) the Local Court may determine the application to quash the person's habitual traffic offender declaration, as if section 220 had not been repealed, even if the Local Court was not the court that convicted the person of the relevant offence.

[3] Schedule 4

Insert at the end of the Schedule, with appropriate Part and clause numbering:

**Part Provision consequent on enactment of Justice
Legislation Amendment Act (No 3) 2018**

Relevant offence-free period for licence disqualification removals

Section 221A, as amended by the *Justice Legislation Amendment Act (No 3) 2018*, extends to an application under Division 3A of Part 7.4 made to the Local Court before the commencement of the amendment to that section but not finally determined immediately before that commencement.

Explanatory note

Item [1] of the proposed amendments clarifies the definition of **relevant offence-free period**, being the period during which a person disqualified from holding a driver licence must not commit a driving offence and after which the Local Court may remove any outstanding licence disqualifications, if it considers it appropriate to do so. The 4-year relevant offence-free period applies to a person convicted of certain serious driving offences, whether or not the licence disqualification for that offence has been completed. Item [3] is a transitional provision.

Item [2] makes it clear that a person who was declared to be a habitual traffic offender before the abolition of the habitual traffic offender scheme in 2017 may apply to the Local Court to have the declaration quashed, and the Local Court may determine the application, despite the abolition of the scheme and even if the Local Court was not the court that convicted the person of the offence that gave rise to the habitual traffic offender declaration.

1.24 Succession Act 2006 No 80

Schedule 1 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering:

**Part Provisions consequent on enactment of Justice
Legislation Amendment Act (No 3) 2018**

Definitions

In this Part:

recognised divorce or annulment means a divorce or annulment of a recognised same sex marriage, being a divorce or annulment:

- (a) that occurred before 9 December 2017, and
- (b) was recognised as valid in Australia on 9 December 2017 because of the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* of the Commonwealth.

recognised same sex marriage means a marriage that:

- (a) was solemnised before 9 December 2017, and
- (b) was recognised as valid in Australia on 9 December 2017 because of Part 5 of Schedule 1 to the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* of the Commonwealth, and
- (c) would not have been recognised apart from that Part.

Note. 9 December 2017 is the day on which Part 5 of Schedule 1 to the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* of the Commonwealth commenced.

Recognition of same sex marriages entered into before 9 December 2017

- (1) Section 12 (1) extends to a recognised same sex marriage, subject to this clause.
- (2) A will made by a testator before 9 December 2017 is taken to have been revoked under section 12 (1) by the marriage of the testator if:
 - (a) the marriage of the testator was solemnised after the will was made, and
 - (b) the marriage is a recognised same sex marriage.
- (3) The will is taken to have been revoked on 9 December 2017, even if by that date the recognised same sex marriage had been annulled or had ended in divorce.
- (4) However, section 12 (1) does not apply to a recognised same sex marriage of a testator if the testator died before 9 December 2017.
- (5) A will made after the date on which a recognised same sex marriage was solemnised is not revoked under section 12 (1) because of the marriage, even if the marriage did not become a recognised same sex marriage until after the date the will was made.
- (6) This clause is subject to the exceptions provided for in section 12.
- (7) If a will was made before the commencement of this Act (1 March 2008) and the marriage was solemnised before that date, section 15 of the *Probate and Administration Act 1898* (as in force immediately before that date) applies in relation to the will in the same way as section 12 of this Act applies under the modifications provided for by this clause.

Note. Accordingly, a same sex marriage that was solemnised before 9 December 2017 and that, from 9 December 2017, became recognised in Australia as valid is taken to have revoked a will that was made before the marriage was solemnised, unless the testator died before 9 December 2017.

Recognition of same sex divorces and annulments before 9 December 2017

- (1) Section 13 (1) extends to a recognised divorce or annulment, subject to this clause.
- (2) A disposition, appointment or grant in a will made before 9 December 2017 is taken to be revoked under section 13 (1) by the divorce of the testator or the annulment of the testator's marriage if:
 - (a) the divorce or annulment occurred after the will was made, and
 - (b) the divorce or annulment is a recognised divorce or annulment.
- (3) The disposition, appointment or grant is taken to have been revoked on 9 December 2017.
- (4) However, section 13 (1) does not apply to a recognised divorce or annulment if the testator died before 9 December 2017.
- (5) If a will was made after the date on which a recognised divorce or annulment occurred, a disposition, appointment or grant made by the will is not revoked under section 13 (1), even if the divorce or annulment did not become a recognised divorce or annulment until after the date the will was made.
- (6) This clause is subject to the exceptions provided for in section 13.
- (7) If a will was made before the commencement of this Act (1 March 2008) and the divorce or annulment occurred before that date, section 15A of the *Probate and Administration Act 1898* (as in force immediately before that date) applies

in relation to the will in the same way as section 13 of this Act applies under the modifications provided for by this clause.

(8) In this clause:

disposition, appointment or grant means a disposition, appointment or grant referred to in section 13 (1) (a), (b) or (c) respectively.

Validation

Anything done or omitted to be done by a person on or after 9 December 2017 that would have been lawful if this Part had applied at the time concerned is taken to be (and to always have been) lawful.

Explanatory note

The proposed amendments clarify the circumstances in which a will, or part of a will, made before 9 December 2017 is revoked by a same sex marriage or divorce or annulment of a same sex marriage that became recognised as valid in Australia on 9 December 2017.

The *Marriage Amendment (Definition and Religious Freedoms) Act 2017* of the Commonwealth enabled same sex partners to marry, on and from 9 December 2017, and provided for the recognition in Australia of some same sex marriages that were solemnised before 9 December 2017 (generally marriages that took place overseas).

The proposed amendments clarify the effect of this recognition on wills made before 9 December 2017, with the object of ensuring that a same sex marriage, divorce or annulment that became recognised on 9 December 2017 has the same effect on a will as a marriage, divorce or annulment of marriage of a man and a woman.

The proposed amendments provide for the following:

- (a) a will, or part of a will, made before 9 December 2017 is revoked by a marriage that is solemnised after the will is made, or by a divorce or annulment that occurs after the will is made, if the marriage, divorce or annulment became recognised as valid in Australia on 9 December 2017 as a result of the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* of the Commonwealth,
- (b) the revocation has effect on 9 December 2017 (when recognition had effect),
- (c) a will, or part of a will, made before 9 December 2017 is not revoked by a same sex marriage, divorce or annulment that occurred before the will was made, even if recognition did not occur until after the will was made,
- (d) the recognition of a same sex marriage, divorce or annulment has no effect on the will of a testator if the testator died before 9 December 2017,
- (e) the validation of anything done or omitted on or after 9 December 2017 that would have been lawful if the proposed amendments had been in force at the time concerned.

1.25 Sydney Bethel Union Extension Act 1908

Section 1A

Insert after section 1:

1A Company as trustee

- (1) Any property that, immediately before the appointed day, was vested in the trustees under this Act is, on that day, divested from the trustees and is, to the extent that it was so vested, vested (without conveyance) in Sydney Bethel Union Pty Ltd (ACN 617 974 688) (the **new Trust**).
- (2) The vesting of the property in the new Trust does not affect:
 - (a) any reservation, mortgage, charge, encumbrance, lien or lease that affected the property immediately before the vesting, or
 - (b) any trust on which the property was held immediately before the vesting.
- (3) The new Trust has the functions that are conferred or imposed on a trustee by this Act.

- (4) In this section, *appointed day* means the day on which this section commences.

Explanatory note

The proposed amendment vests the property held by the individual trustees of the Sydney Bethel Union in Sydney Bethel Union Pty Ltd. Sydney Bethel Union Pty Ltd will have the functions of the individual trustees under the *Sydney Bethel Union Extension Act 1908*.

1.26 Victims Rights and Support Act 2013 No 37

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

victims group means an organisation that provides support services for victims of crime.

[2] Section 10 Functions of Commissioner

Insert after section 10 (1) (b):

(b1) to provide funding to victims groups approved by the Commissioner,

[3] Section 16 Payments from Fund

Insert after section 16 (c):

(c1) any funding provided to victims groups approved by the Commissioner,

Explanatory note

The proposed amendments enable the Commissioner of Victims Rights to provide funding from the Victims Support Fund to organisations that provide support services for victims of crime that are approved by the Commissioner.

Schedule 2 Amendments relating to retirement age for judicial officers

2.1 Director of Public Prosecutions Act 1986 No 207

[1] Schedule 1 Provisions relating to Senior Officers

Insert in alphabetical order in clause 1:

increased retirement age day means the day on which the amendments made to section 44 (Retirement of judicial officers) of the *Judicial Officers Act 1986* by the *Justice Legislation Amendment Act (No 3) 2018* commenced.

[2] Schedule 1, clause 2A (1)

Omit “72 years”. Insert instead “75 years”.

[3] Schedule 1, clause 4 (1) (c) and (c1)

Omit clause 4 (1) (c). Insert instead:

- (c) when the Officer is the Director—reaches the age of:
 - (i) if the Director was appointed or reappointed before the increased retirement age day—72 years, or
 - (ii) if the Director was appointed or reappointed on or after that day—75 years, or
- (c1) when the Officer is not the Director—reaches the age of 72 years, or

[4] Schedule 1, clause 4 (4)

Omit “the age of 72 years”.

Insert instead “the applicable retirement age referred to in subclause (1) (c) or (c1)”.

[5] Schedule 1, clause 10 (1) (b)

Omit the paragraph. Insert instead:

- (b) section 4 of that Act applies as follows:
 - (i) for a person appointed Director before the increased retirement age day—section 4 (1) applies to the person if the person ceased to hold office as Director after having reaching the age of 60 years and serving as Director for not less than 10 years as if a reference in that subsection to retiring at the mandatory judicial retirement age were a reference to having vacated office under clause 4 (1) (c),
 - (ii) for a person appointed Director on or after the increased retirement age day—section 4 (2) applies to the person if the person ceased to hold office as Director after having attained the age of 65 years and serving as Director for not less than 10 years as if a reference in that subsection to retiring at the mandatory judicial retirement age were a reference to having vacated office under clause 4 (1) (c), and

[6] Schedule 1, clause 10 (1) (c) and (d)

Omit “age of 72 years” wherever occurring.

Insert instead “mandatory judicial retirement age”.

[7] Schedule 1, clause 10 (2) (a) (ia)

Insert after clause 10 (2) (a) (i):

- (ia) for a person who was appointed as Director before the increased retirement age day—section 4 (1) of the *Judges' Pensions Act 1953* applies to the person instead of section 4 (2) of that Act even if the person was appointed as a judge on or after that day, and

[8] Schedule 1, clause 10 (2) (b) (ia)

Insert after clause 10 (2) (b) (i):

- (ia) for a person who was appointed as a judge before the increased retirement age day—section 4 (1) of the *Judges' Pensions Act 1953* as applied by this clause applies to the person instead of section 4 (2) of that Act even if the person was appointed as Director on or after that day, and

Explanatory note

Item [2] of the proposed amendments increases the retirement age for the Director of Public Prosecutions from 72 years to 75 years in conformity with the new retirement age for judicial officers. Items [1], [3] and [4] make consequential amendments.

Items [5]–[8] make amendments that are consequential on amendments made to the *Judges' Pensions Act 1953* by the proposed Act. In particular, a distinction is drawn between persons appointed before the change in the retirement age and those appointed after the change.

2.2 District Court Act 1973 No 9

[1] Section 4 Definitions: general

Insert in alphabetical order in section 4 (1):

mandatory judicial retirement age means the maximum age at which a Judge is required by law to retire.

Note. Section 44 of the *Judicial Officers Act 1986* provided for a maximum retirement age for Judges of 72 years before its amendment by the *Justice Legislation Amendment Act (No 3) 2018*.

Section 44 of the *Judicial Officers Act 1986*, as amended, has increased the maximum retirement age for Judges to 75 years. Clause 9 of Schedule 6 to the *Judicial Officers Act 1986* provides that the new retirement age does not apply to Judges holding office who were appointed before the amendments commenced unless they consent to the change applying to them as required by section 55 (2) of the *Constitution Act 1902*. The retirement age of 72 years continues to apply to Judges who do not consent to the increased retirement age applying to them.

[2] Section 18 Acting Judges

Omit “age of 72 years” and “77 years” wherever occurring in section 18 (4), (4A) and (4B).

Insert instead “mandatory judicial retirement age” and “78 years”, respectively.

Explanatory note

The proposed amendments enable acting Judges of the District Court to be appointed up to the age of 78 years even if they have reached the mandatory retirement age for Judges. Currently, acting Judges can only be appointed up to the age of 77 years.

2.3 Judges' Pensions Act 1953 No 41

[1] Section 2 Definitions

Insert in alphabetical order in section 2 (1):

increased retirement age day means the day on which the amendments made to section 44 (Retirement of judicial officers) of the *Judicial Officers Act 1986* by the *Justice Legislation Amendment Act (No 3) 2018* commenced.

mandatory judicial retirement age, in relation to a judge, means the maximum age at which the judge is required by law to retire.

Note. Before the increased retirement age day, section 44 of the *Judicial Officers Act 1986* provided for a maximum retirement age for judges of 72 years.

Section 44 of the *Judicial Officers Act 1986* was amended on the increased retirement age day by the *Justice Legislation Amendment Act (No 3) 2018* to increase the maximum retirement age for judges to 75 years. Clause 9 of Schedule 6 to the *Judicial Officers Act 1986* provides that the new retirement age does not apply to judges holding office who were appointed before the increased retirement age day unless they consent to the change applying to them as required by section 55 (2) of the *Constitution Act 1902*. The retirement age of 72 years continues to apply to judges who do not consent to the increased retirement age applying to them.

[2] Section 3 Pension for certain judges who retired, or retire, at mandatory judicial retirement age

Insert at the end of section 3 (1):

Note. Section 55 (2) of the *Judicial Officers Act 1986* provides for the reference in this section to the *Judges Retirement Act 1918* to be read as a reference to the *Judges Retirement Act 1918* or the *Judicial Officers Act 1986*.

[3] Section 4

Omit the section. Insert instead:

4 Pension for certain judges retiring voluntarily before mandatory judicial retirement age

- (1) A judge appointed before the increased retirement age day who is at least 60 years of age and has served as a judge for not less than 10 years:
 - (a) may retire voluntarily from the judge's judicial office, and
 - (b) on retiring, is entitled to the annual pension to which the judge would have been entitled if the judge had retired from the office in accordance with law at the mandatory judicial retirement age.
- (2) A judge appointed on or after the increased retirement age day who is at least 65 years of age and has served as a judge for not less than 10 years:
 - (a) may retire voluntarily from the judge's judicial office, and
 - (b) on retiring, is entitled to the annual pension to which the judge would have been entitled if the judge had retired from the office in accordance with law at the mandatory judicial retirement age.

[4] Section 5 Pension for judge who retires on account of ill-health

Omit "age of 72 years" from section 5 (2).

Insert instead "mandatory judicial retirement age".

[5] Section 6 Pension for surviving spouse of judge or retired judge

Omit "age of 72 years" from section 6 (5).

Insert instead "mandatory judicial retirement age".

[6] Section 7A Pension in respect of children on death of judge or retired judge

Omit "age of 60 years" from section 7A (2) (b).

Insert instead "age of 60 years (if appointed before the increased retirement age day) or 65 years (if appointed on or after that day)".

[7] Section 7B Pension in respect of children on death of surviving spouse of judge or retired judge

Omit “age of 60 years” from section 7B (3) (b).

Insert instead “age of 60 years (if appointed before the increased retirement age day) or 65 years (if appointed on or after that day)”.

[8] Section 7C Pension in respect of certain children where judge or retired judge dies without leaving a surviving spouse

Omit “age of 60 years” from section 7C (3) (b) (ii).

Insert instead “age of 60 years (if appointed before the increased retirement age day) or 65 years (if appointed on or after that day)”.

[9] Schedule 1 Savings and transitional provisions

Insert after clause 4:

5 Change of maximum judicial retirement age does not affect existing beneficiaries

This Act, as in force before its amendment by the *Justice Legislation Amendment Act (No 3) 2018*, continues to apply in respect of judges and acting judges who retired or died before the increased retirement age day (and their spouses and children).

Explanatory note

The proposed amendments to the *Judges' Pensions Act 1953* (the **Act**) are consequential on the increasing of the retirement age for judicial officers from 72 years to 75 years.

Item [2] inserts a note that explains why section 3 of the Act extends to retirements under the *Judicial Officers Act 1986*.

Item [3] enables judges to take early retirement after 10 years of service if they are at least 60 years old (for those appointed before the retirement age increased) or at least 65 years old (for those appointed after that time). Items [6]–[8] make consequential amendments.

Items [4] and [5] make amendments to recognise that the mandatory retirement age for judges will depend on when they were appointed. Item [1] makes a consequential amendment.

Item [9] makes it clear that the proposed amendments do not affect the entitlements under the Act of judges and acting judges who have already retired or died or the entitlements of their spouses and children.

2.4 Judicial Officers Act 1986 No 100

[1] Section 3 Definitions

Insert after section 3 (7):

(8) Notes included in this Act do not form part of this Act.

[2] Section 44 Retirement of judicial officers

Omit “72 years” wherever occurring in section 44 (1) and (3). Insert instead “75 years”.

[3] Section 44

Insert at the end of the section:

Note. This section provided for a maximum retirement age for judicial officers (including Magistrates) of 72 years before its amendment by the *Justice Legislation Amendment Act (No 3) 2018*.

This section, as amended, has increased the maximum retirement age for judicial officers (including Magistrates) to 75 years. Clause 9 of Schedule 6 provides that the new retirement age does not apply to judicial officers (including Magistrates) holding office who were appointed before the amendments commenced unless they consent to the change applying to them as required by section 55 (2) of the *Constitution Act*

1902. The retirement age of 72 years continues to apply to judicial officers (including Magistrates) who do not consent to the increased retirement age applying to them.

[4] Schedule 6 Savings and transitional provisions

Insert after Part 7:

Part 8 Provision consequent on enactment of Justice Legislation Amendment Act (No 3) 2018

9 Application of new retirement age

- (1) The amendments made to section 44 by the *Justice Legislation Amendment Act (No 3) 2018* changing the retirement age of judicial officers and Magistrates from 72 years of age to 75 years of age do not apply to a person (a **current judicial officer**) who held office as a judicial officer or Magistrate immediately before the commencement of those amendments unless the officer consents to the change applying to the officer as required by section 55 (2) of the *Constitution Act 1902*.

Note. The retirement age of 72 years will continue to apply to current judicial officers who do not consent to the new retirement age applying to them.

- (2) A current judicial officer may communicate whether or not the officer consents to the change applying by:
- (a) for an officer who is a relevant head of jurisdiction—a written notice addressed to the Governor, or
 - (b) for any other officer—written notices addressed to the Governor and the relevant head of jurisdiction in relation to the officer.
- (3) Nothing in this clause prevents a current judicial officer from communicating whether or not the officer consents to the change applying in any other way permitted under section 55 (2) of the *Constitution Act 1902*.

Explanatory note

Item [2] of the proposed amendments increases the retirement age for judicial officers (including Magistrates) from 72 years to 75 years.

Item [4] extends the increased retirement age to current judicial officers, but only with their consent as required by section 55 (2) of the *Constitution Act 1902*. It also provides for a non-exhaustive mechanism for current judicial officers to communicate whether or not they consent to the increased retirement age applying to them. Item [1] makes a consequential amendment concerning the status of a note that is being inserted by item [3].

2.5 Land and Environment Court Act 1979 No 204

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

mandatory judicial retirement age means the maximum age at which a Judge is required by law to retire.

Note. Section 44 of the *Judicial Officers Act 1986* provided for a maximum retirement age for Judges of 72 years before its amendment by the *Justice Legislation Amendment Act (No 3) 2018*.

Section 44 of the *Judicial Officers Act 1986*, as amended, has increased the maximum retirement age for Judges to 75 years. Clause 9 of Schedule 6 to the *Judicial Officers Act 1986* provides that the new retirement age does not apply to Judges holding office who were appointed before the amendments commenced unless they consent to the change applying to them as required by section 55 (2) of the *Constitution Act 1902*. The retirement age of 72 years continues to apply to Judges who do not consent to the increased retirement age applying to them.

[2] Section 11 Acting Judges

Omit “age of 72 years” and “77 years” from section 11 (4).

Insert instead “mandatory judicial retirement age” and “78 years”, respectively.

Explanatory note

The proposed amendments enable acting Judges of the Land and Environment Court to be appointed up to the age of 78 years even if they have reached the mandatory retirement age for Judges. Currently, acting Judges can only be appointed up to the age of 77 years.

2.6 Local Court Act 2007 No 93

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

mandatory judicial retirement age means the maximum age at which a Magistrate is required by law to retire.

Note. Section 44 of the *Judicial Officers Act 1986* provided for a maximum retirement age for Magistrates of 72 years before its amendment by the *Justice Legislation Amendment Act (No 3) 2018*.

Section 44 of the *Judicial Officers Act 1986*, as amended, has increased the maximum retirement age for Magistrates to 75 years. Clause 9 of Schedule 6 to the *Judicial Officers Act 1986* provides that the new retirement age does not apply to Magistrates holding office who were appointed before the amendments commenced unless they consent to the change applying to them as required by section 55 (2) of the *Constitution Act 1902*. The retirement age of 72 years continues to apply to Magistrates who do not consent to the increased retirement age applying to them.

[2] Section 16 Acting Magistrates

Omit “age of 72 years” and “77 years” from section 16 (2).

Insert instead “mandatory judicial retirement age” and “78 years”, respectively.

Explanatory note

The proposed amendments enable acting Magistrates of the Local Court to be appointed up to the age of 78 years even if they have reached the mandatory retirement age for Magistrates. Currently, acting Magistrates can only be appointed up to the age of 77 years.

2.7 Solicitor General Act 1969 No 80

[1] Section 2 Appointment of Solicitor General

Omit “72 years” wherever occurring in section 2 (2), (5) (e) and (8).

Insert instead “75 years”.

[2] Section 6 Pension of Solicitor General

Omit section 6 (2) (g). Insert instead:

- (g) section 4 of that Act applies as follows:
 - (i) for a person appointed Solicitor General before the increased retirement age day—section 4 (1) applies to the person if the person vacates office pursuant to section 2 (5) (d) of this Act after having reaching the age of 60 years and serving as Solicitor General for not less than 10 years as if a reference in section 4 (1) of that Act to retiring at the mandatory judicial retirement age were a reference to having vacated office under section 2 (5) (e) of this Act,
 - (ii) for a person appointed Solicitor General on or after the increased retirement age day—section 4 (2) applies to the person if the person vacates office pursuant to section 2 (5) (d) of this Act after

having attained the age of 65 years and serving as Solicitor General for not less than 10 years as if a reference in section 4 (2) of that Act to retiring at the mandatory judicial retirement age were a reference to having vacated office under section 2 (5) (e) of this Act.

[3] Section 6 (5)

Insert after section 6 (4):

(5) In this section:

increased retirement age day means the day on which the amendments made to section 44 (Retirement of judicial officers) of the *Judicial Officers Act 1986* by the *Justice Legislation Amendment Act (No 3) 2018* commenced.

[4] Schedule 1 Certain rights of Solicitor General

Insert after clause 5 (1):

(1A) The amendments made to section 2 by the *Justice Legislation Amendment Act (No 3) 2018* do not apply in respect of the person holding the office of Solicitor General immediately before the commencement of those amendments.

[5] Schedule 1, clause 5 (2)

Omit “that person”. Insert instead “a person referred to in subclause (1) or (1A)”.

Explanatory note

Item [1] of the proposed amendments increases the retirement age for the Solicitor General from 72 years to 75 years in conformity with the new retirement age for judicial officers.

Item [2] makes an amendment that is consequential on amendments made to the *Judges' Pensions Act 1953* by the proposed Act.

Item [3] ensures that the increased retirement age for the Solicitor General does not apply to the current Solicitor General. Items [4] and [5] make consequential amendments.

2.8 Supreme Court Act 1970 No 52

[1] Section 19 Definitions generally

Insert in alphabetical order in section 19 (1):

mandatory judicial retirement age means the maximum age at which a Judge or associate Judge is required by law to retire.

Note. Section 44 of the *Judicial Officers Act 1986* provided for a maximum retirement age for Judges and associate Judges of 72 years before its amendment by the *Justice Legislation Amendment Act (No 3) 2018*.

Section 44 of the *Judicial Officers Act 1986*, as amended, has increased the maximum retirement age for Judges and associate Judges to 75 years. Clause 9 of Schedule 6 to the *Judicial Officers Act 1986* provides that the new retirement age does not apply to Judges and associate Judges holding office who were appointed before the amendments commenced unless they consent to the change applying to them as required by section 55 (2) of the *Constitution Act 1902*. The retirement age of 72 years continues to apply to Judges and associate Judges who do not consent to the increased retirement age applying to them.

[2] Section 37 Acting Judges

Omit “age of 72 years” and “77 years” wherever occurring in section 37 (4) and (4A).

Insert instead “mandatory judicial retirement age” and “78 years”, respectively.

[3] Section 111 Appointment of associate Judges and acting associate Judges

Omit “age of 72 years” and “77 years” from section 111 (6).

Insert instead “mandatory judicial retirement age” and “78 years”, respectively.

[4] Section 115 Resignation and tenure of associate Judges and acting associate Judges

Omit “age of 72 years” from section 115 (4).

Insert instead “mandatory judicial retirement age”.

Explanatory note

Items [2] and [3] of the proposed amendments enable acting Judges and acting associate Judges of the Supreme Court to be appointed up to the age of 78 years even if they have reached the mandatory retirement age for Judges and associate Judges. Currently, acting Judges and acting associate Judges can only be appointed up to the age of 77 years. Items [1] and [4] make consequential amendments.

Schedule 3 Amendment of Legal Profession Uniform Law application legislation

3.1 Legal Profession Uniform Law Application Act 2014 No 16

[1] Section 49 Trustees of the Public Purpose Fund

Omit “3” from section 49 (2) (a). Insert instead “4”.

[2] Section 49 (2) (a) (ii)

Omit “appropriate qualifications and experience”.

Insert instead “the financial and investment expertise”.

[3] Section 49 (2) (a) (iii)

Insert after section 49 (2) (a) (ii):

- (iii) 1 is to be a person whom the Attorney General considers to have appropriate qualifications and experience to act as a trustee, and

[4] Section 50A

Insert after section 50:

50A Community legal services account

- (1) The Trustees are to establish a separate account (the *community legal services account*) in the Public Purpose Fund for money paid to the Fund:
- (a) from the assets of the Solicitors Mutual Indemnity Fund under clause 12 of Schedule 9, and
- (b) under clause 18 of Schedule 9.
- (2) Payments are not to be made from the capital of the community legal services account other than for the purposes of the investment of amounts in accordance with section 50.
- (3) The income from investment of the community legal services account is to be allocated to that account.

[5] Section 55 Discretionary payments from Fund for other purposes

Insert after section 55 (1):

- (1A) The Trustees may from time to time, with the concurrence of the Attorney General, determine that an amount is to be paid from income earned from the investment of the community legal services account established in the Public Purpose Fund for the purposes of the community legal services program managed by the Legal Aid Commission.
- (1B) Subsection (1A) does not limit the payment of any other money from the Public Purpose Fund under any other provision of this section.

[6] Section 55 (3)

Insert “or a purpose specified in subsection (1A)” after “Legal Aid Fund” where firstly occurring.

[7] Part 8 Professional indemnity insurance

Omit Divisions 2, 3, 4 and 5 from Part 8.

- [8] **Schedule 5 Trustees of the Public Purpose Fund**
Omit “3” from clause 11. Insert instead “4”.
- [9] **Schedule 7 Professional indemnity insurance—provisions relating to HIH insurance**
Insert in alphabetical order in clause 1 (1):
Lawcover Insurance means Lawcover Insurance Pty Limited (ABN 15 095 082 509).
- [10] **Schedule 7, clause 1 (2) and (3)**
Omit the subclauses.
- [11] **Schedule 7, clause 2 (1)**
Omit “the Company from the Indemnity Fund”. Insert instead “Lawcover Insurance”.
- [12] **Schedule 7, clause 2 (2)**
Omit “from the Indemnity Fund, the Company”. Insert instead “, Lawcover Insurance”.
- [13] **Schedule 7, clause 2 (4)**
Omit “The Company”. Insert instead “Lawcover Insurance”.
- [14] **Schedule 7, clause 2 (5)–(8)**
Omit “the Company” wherever occurring. Insert instead “Lawcover Insurance”.
- [15] **Schedule 7, clause 2 (6) and (7)**
Omit “from the Indemnity Fund” wherever occurring.
- [16] **Schedule 7, clause 2 (8)**
Omit “from the Indemnity Fund”. Insert instead “by Lawcover Insurance”.
- [17] **Schedule 7, clause 2 (9) and (10)**
Omit the subclauses.
- [18] **Schedule 7, clause 3**
Omit the clause.
- [19] **Schedule 9 Savings, transitional and other provisions**
Insert at the end of the Schedule:

Part 4 Provisions consequent on enactment of Justice Legislation Amendment Act (No 3) 2018

11 Definitions

In this Part:

amending Act means the *Justice Legislation Amendment Act (No 3) 2018*.

assets means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents.

Indemnity Fund means the Solicitors Mutual Indemnity Fund established under section 101 of this Act (as in force immediately before the repeal day).

insolvent insurer agreements means the following agreements entered into on 27 November 2001:

- (a) the LawCover scheme loan and claims authority agreement between CIC Insurance Limited (in liquidation), Lawcover Pty Limited, the Law Society of New South Wales and Anthony McGrath and Alexander Macintosh as liquidators,
- (b) the LawCover scheme loan and claims authority agreement between HIH Casualty and General Insurance Limited (in liquidation), Lawcover Pty Limited, the Law Society of New South Wales and Anthony McGrath and Alexander Macintosh as liquidators,
- (c) the LawCover scheme loan and claims authority agreement between FAI General Insurance Company Limited (in liquidation), Lawcover Pty Limited, the Law Society of New South Wales and Anthony McGrath and Alexander Macintosh as liquidators.

instrument means an instrument (other than this Act or an instrument made under this Act) or any other document that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order, process or other instrument issued by a court or tribunal.

Lawcover Insurance means Lawcover Insurance Pty Limited (ABN 15 095 082 509).

Lawcover Pty Ltd means Lawcover Pty Limited (ABN 48 003 326 618).

liabilities means any liabilities, debts or obligations (whether present or future, whether vested or contingent and whether personal or assignable).

repeal day means the day on which Division 3 of Part 8 of this Act is repealed by the amending Act.

rights means any rights, powers, privileges or immunities (whether present or future, whether vested or contingent and whether personal or assignable).

12 Closure of Indemnity Fund and transfer of contents

- (1) On the repeal day, the following has effect:
 - (a) half of the monetary assets of the Indemnity Fund are transferred to, and become the assets of, the Law Society,
 - (b) half of the monetary assets of the Indemnity Fund are transferred to, and become the assets of, the Public Purpose Fund,
 - (c) all assets of the Indemnity Fund that are not monetary assets are transferred to, and become the assets of, Lawcover Insurance.
- (2) On the repeal day, the following has effect:
 - (a) the rights and liabilities arising in connection with the monetary assets transferred to the Law Society vest in the Law Society,
 - (b) the rights and liabilities arising in connection with the monetary assets transferred to the Public Purpose Fund vest in the Trustees of the Public Purpose Fund,
 - (c) all other rights and liabilities arising in connection with the Indemnity Fund or assets of the Indemnity Fund, and of Lawcover Pty Ltd as manager of the Indemnity Fund, vest in Lawcover Insurance.

- (3) Without limiting subclause (2) (c), the rights or liabilities transferred to Lawcover Insurance include any rights or liabilities relating to the Indemnity Fund, and Lawcover Pty Ltd as the manager of that Fund, under the insolvent insurer agreements.
- (4) Assets, rights and liabilities may be transferred to the Public Purpose Fund, the Law Society or Lawcover Insurance under this Part despite any other law or agreement (including the insolvent insurer agreements) and whether or not the consent of the Trustees of the Public Purpose Fund, the Law Society or Lawcover Insurance has been obtained.
- (5) In this clause:
monetary assets means money and any property that may be realised as money.

13 Vesting of assets, rights and liabilities in transferees

- (1) The following provisions apply to assets, rights or liabilities transferred under this Part:
 - (a) the assets vest by virtue of clause 12 and without the need for any further conveyance, transfer, assignment or assurance,
 - (b) the rights or liabilities become by virtue of clause 12 the rights or liabilities of the transferee,
 - (c) all proceedings relating to the assets, rights or liabilities commenced before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee,
 - (d) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the transferor or a predecessor of the transferor is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,
 - (e) the transferee has all the entitlements and obligations of the transferor in relation to those assets, rights and liabilities that the transferor would have had but for the transfer, whether or not those entitlements and obligations were actual or potential at the time the transfer took effect,
 - (f) a reference in any Act, in any instrument made under any Act or in any document of any kind to:
 - (i) the transferor, or
 - (ii) any predecessor of the transferor,to the extent to which the reference relates to those assets, rights or liabilities, is taken to be, or include, a reference to the transferee.
- (2) No attornment to the transferee by a lessee from the transferor is required.
- (3) In this clause:
transferee, in relation to assets, rights or liabilities, means a person to whom the assets, rights or liabilities are transferred under this Part.
transferor means Lawcover Pty Ltd in its capacity as the manager of the Indemnity Fund.

14 No compensation payable

No compensation is payable to any person or body in connection with a transfer under this Part.

15 Confirmation of vesting

- (1) The Minister may, by notice in writing, confirm a transfer of particular assets, rights or liabilities under this Part.
- (2) The notice is conclusive evidence of the transfer.

16 Law Society to subscribe for shares in Lawcover Insurance

- (1) The Law Society must, on or after the repeal day, subscribe to an amount of capital in Lawcover Insurance that is not less than the value, on the repeal day, of the monetary assets transferred to the Law Society under this Part.
- (2) The Law Society may deduct from that amount any costs incurred by the Law Society relating to the subscription.

17 Effect of amendment of Schedule 7

Schedule 7, as amended by the amending Act, has effect despite any other law or agreement (including the insolvent insurer agreements).

18 Payment of amounts to be shared with Public Purpose Fund

- (1) If an amount is recovered by Lawcover Insurance as a result of the exercise of its functions under Schedule 7 or this Part (including functions under the insolvent insurer agreements that are conferred under that Schedule or this Part):
 - (a) half the amount is to be retained by Lawcover Insurance, and
 - (b) half the amount is to be paid into the Public Purpose Fund.
- (2) This clause does not apply to an amount that is payable to another person under any other Act or law or the insolvent insurer agreements (subject to this Part).

19 Operation of Part

The operation of this Part, or the operation of Schedule 7 as amended by the amending Act, is not to be regarded:

- (a) as a breach of contract or confidence or otherwise as a civil wrong, or
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
- (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability, or
- (d) as an event of default under any contract or other instrument.

20 Additional matters relating to insolvent insurer agreements

- (1) For the purposes of this Part, and the transfer of assets, rights and liabilities under this Part that arise under the insolvent insurer agreements:
 - (a) references in the agreements to Lawcover Pty Ltd acting in its capacity as the manager of the Indemnity Fund are taken to be references to Lawcover Insurance, and
 - (b) references in the agreements to the payment of amounts to or from the Indemnity Fund are taken to be references to payment of amounts to or from an account of Lawcover Insurance nominated by Lawcover Insurance for that purpose.
- (2) The amendments made to this Act by the amending Act do not affect:
 - (a) the operation of the insolvent insurer agreements, except as provided by or under this Schedule or Schedule 7, or
 - (b) the power of the Law Society and Lawcover Insurance to enter into amendments to those agreements to reflect the effect of the amendments made to this Act by the amending Act.

21 Law Society consent to change in functions

The Law Society is taken to consent to the exercise by Lawcover Insurance of functions conferred on Lawcover Insurance under this Part or as a result of the amendments made to this Act by the amending Act.

22 Displacement of Corporations legislation

This Part and Schedule 7 are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to section 477 of the Corporations legislation.

Note. Section 5G of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

Explanatory note

Item [1] of the proposed amendments increases the number of trustees of the Public Purpose Fund appointed by the Attorney General from 3 to 4. Items [2] and [3] require that 1 of the trustees appointed by the Attorney General is to be a person whom the Attorney General considers has the financial and investment expertise to act as a trustee and 1 trustee is to be a person whom the Attorney General considers has appropriate qualifications and experience to act as trustee. Item [8] makes a consequential amendment relating to the quorum for a meeting of the trustees.

Item [4] requires a community legal services account to be established in the Public Purpose Fund and for money received from assets of the Solicitors Mutual Indemnity Fund (the **Indemnity Fund**), which is being abolished by the proposed Act, to be allocated to the account. Money received from claims made against certain insolvent insurers will also be paid to the community legal services account. The only purpose for which the capital of the community legal services account may be used is investment and income from any such investment is to be allocated to the account.

Item [5] enables the trustees of the Public Purpose Fund, with the concurrence of the Attorney General, to pay amounts from income earned from the investment of the community legal services account for the purposes of the community legal services program managed by the Legal Aid Commission.

Item [6] prevents the requirement to consider whether adequate provision has been made from the Public Purpose Fund for the supplementation of the Legal Aid Fund before making a payment from the Public Purpose Fund from applying to payments for a purpose for which the income from investment of the community legal services account may be used.

Item [7] omits provisions relating to the establishment and use of the Indemnity Fund as well as provisions enabling contributions to the Fund to be obtained from legal practitioners.

Items [9]–[18] amend provisions relating to a scheme for indemnifying legal practitioners who obtained professional indemnity insurance from the insolvent HIH insurance group companies. The scheme, which formerly provided for payments to be made from the Indemnity Fund under the management of Lawcover Pty Ltd in its capacity as manager of the Indemnity Fund and conferred rights of recovery against the liquidators of the insurance group, will now provide for payments to be made directly by Lawcover Insurance Pty Ltd (**Lawcover Insurance**) from funds nominated by it and for the rights to be conferred on Lawcover Insurance. The proposed amendments also repeal a provision that enabled contributions to the Indemnity Fund to be required from solicitors or former solicitors.

Item [19] inserts savings, transitional and other provisions consequent on the abolition of the Indemnity Fund. The amendments:

- (a) transfer half of the monetary assets of the Indemnity Fund (and related rights and liabilities) to the Law Society and half to the Public Purpose Fund, and
- (b) transfer non-monetary assets to Lawcover Insurance, and the rights or liabilities relating to all the non-monetary assets of the Indemnity Fund to Lawcover Insurance, including the previous rights and liabilities of Lawcover Pty Ltd as manager of the Indemnity Fund that are specified under agreements entered into with the liquidators of the HIH insurance group, and
- (c) set out the effect of the transfers, and
- (d) provide that no compensation is payable in connection with the transfers, and
- (e) confer on the Attorney General the power to conclusively confirm a transfer of assets, rights or liabilities under the proposed amendments, and
- (f) require the Law Society to subscribe to an amount of capital in Lawcover Insurance that is not less than the monetary assets of the Indemnity Fund transferred to the Law Society, and
- (g) require half of all amounts payable to Lawcover Insurance under agreements entered into with the liquidators of the HIH insurance group to be paid by Lawcover Insurance to the Public Purpose Fund and indirectly amend references to the Indemnity Fund and Lawcover Insurance in those agreements, and
- (h) provide for the operation of the proposed amendments in relation to existing agreements and instruments, and
- (i) deem the Law Society to have consented to the exercise by Lawcover Insurance of the functions conferred by the proposed amendments, and
- (j) make a declaration for the purposes of the *Corporations Act 2001* of the Commonwealth that has the effect of providing that section 477 of that Act does not apply to the extent that it is inconsistent with the *Legal Profession Uniform Law Application Act 2014* as amended by the amending Act. In particular, the effect of the displacement of section 477 is to remove any requirement that the indirect amendments to the agreements made with the liquidators of the HIH insurance group require further approval by the Supreme Court (as may have been required if that section had continued to operate).

3.2 Legal Profession Uniform Law Application Regulation 2015

[1] Clause 12 Applicable period

Omit “12 months ending on 31 March” from clause 12 (1).

Insert instead “3 months ending on 31 March, 30 June, 30 September or 31 December”.

[2] Clause 12 (2)

Omit the subclause. Insert instead:

- (2) However, in relation to a law practice that commences to practise or provide legal services after the commencement of an applicable period, the first applicable period is the period starting on the commencement of the practice or the provision of legal services and ending at the end of the applicable period.

Explanatory note

Item [1] of the proposed amendments changes the intervals at which a law practice must make a statutory deposit from its general trust account with the Law Society from 12 months to every quarter.

Item [2] provides that, if a law practice commences practice part way through a quarter, the payment period for the statutory deposit is to be the period starting when practice commences and ending at the end of the quarter.

[Second reading speech made in—

Legislative Assembly on 24 October 2018

Legislative Council on 20 November 2018]