



New South Wales

# Mental Health Legislation Amendment Bill 2024

## Explanatory note

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

## Overview of Bill

The objects of this Bill are to—

- (a) amend the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* to provide for the composition of the Mental Health Review Tribunal (the **Tribunal**) when making certain orders for leave in relation to forensic patients, and
- (b) amend the *Mental Health Act 2007* to clarify the remuneration and other entitlements of—
  - (i) Magistrates appointed as the President of the Tribunal (the **President**) or a full-time Deputy President of the Tribunal (the **Deputy President**), and
  - (ii) Judges appointed as a full-time Deputy President of the Tribunal (also a **Deputy President**).

## Outline of provisions

**Clause 1** sets out the name, also called the short title, of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act.

## Schedule 1      **Amendment of Mental Health and Cognitive Impairment Forensic Provisions Act 2020 No 12**

**Schedule 1**[1] provides that the Tribunal may impose prohibitions or restrictions on the use of social media or other forms of online communication when making an order for the release of a forensic patient.

**Schedule 1[2]** provides that the Tribunal must not make an order for the release of a forensic patient or an order granting leave of absence to a forensic patient unless the Tribunal is constituted by at least 1 member, including the President or Deputy President who is the holder or former holder of a judicial office. This does not apply to an order granting leave of absence to a forensic patient only if escorted by a person employed at the mental health facility or place of detention. **Schedule 1[3]** inserts a definition for *judicial office*.

## **Schedule 2      Amendment of Mental Health Act 2007 No 8**

**Schedule 2[1]** provides that a person who holds or has held office as a Magistrate is eligible to be appointed as the President or Deputy President.

**Schedule 2[2]** provides for the calculation of remuneration for a President or full-time Deputy President who is the holder of a judicial office. **Schedule 2[3]** makes a consequential amendment.

**Schedule 2[4]–[7], [9] and [10]** provide that a Magistrate who is appointed as the President or full-time Deputy President retains the Magistrate’s judicial appointment and other entitlements. **Schedule 2[8]** makes it clear that amendments made by the proposed Act extend to a Magistrate who is appointed as the President or full-time Deputy President at the time of commencement of the proposed Act.



New South Wales

# Mental Health Legislation Amendment Bill 2024

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*This PUBLIC BILL, originated in the LEGISLATIVE COUNCIL and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.*

*Legislative Council*

*Clerk of the Parliaments*



New South Wales

# **Mental Health Legislation Amendment Bill 2024**

No. \_\_\_\_\_, 2024

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## **A Bill for**

An Act to amend the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* and the *Mental Health Act 2007* to make miscellaneous amendments.

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*The LEGISLATIVE ASSEMBLY has this day agreed to this Bill with/without amendment.*

*Legislative Assembly*

*Clerk of the Legislative Assembly*

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**Tabling copy**

**The Legislature of New South Wales enacts—**

1

**1 Name of Act**

2

This Act is the *Mental Health Legislation Amendment Act 2024*.

3

**2 Commencement**

4

This Act commences on a day or days to be appointed by proclamation.

5

<b>Schedule 1</b>	<b>Amendment of Mental Health and Cognitive Impairment Forensic Provisions Act 2020 No 12</b>	1
		2
<b>[1] Section 85</b>	<b>Conditions that may be imposed by Tribunal on release of forensic patients</b>	3
		4
	Insert after section 85(1)(h)—	5
	(h1) prohibitions or restrictions on the use of social media or other forms of online communication,	6
		7
<b>[2] Section 148</b>	<b>Forensic Division to exercise functions</b>	8
		9
	Omit section 148(3). Insert instead—	9
	(3) The Tribunal must not make either of the following orders unless the Tribunal is constituted by at least 1 member, including the President or a Deputy President, who is the holder or former holder of a judicial office—	10
		11
		12
	(a) an order for the release of a forensic patient,	13
	(b) an order granting leave of absence to a forensic patient.	14
	(3A) Subsection (3)(b) does not apply if the order grants leave of absence to a forensic patient only if escorted by a person employed at the mental health facility or place of detention.	15
		16
		17
<b>[3] Section 148(6)</b>		18
		19
	Insert after section 148(5)—	19
	(6) In this section—	20
	<i>judicial office</i> has the same meaning as in the <i>Mental Health Act 2007</i> , Schedule 5, clause 5A.	21
		22

<b>Schedule 2</b>	<b>Amendment of Mental Health Act 2007 No 8</b>	1
<b>[1] Schedule 5 Provisions relating to members of Tribunal</b>		2
	Omit “clause.” from clause 1(c). Insert instead—	3
	clause, or	4
	(d) a person who holds or has held office as a Magistrate.	5
<b>[2] Schedule 5, clause 5(1A)</b>		6
	Omit the subclause. Insert instead—	7
	(1A) However, a President or Deputy President who is a full-time member of the Tribunal and the holder of a judicial office is entitled to be paid the higher of the following—	8
	(a) remuneration and allowances in accordance with subclause (1),	9
	(b) remuneration and allowances as the holder of that judicial office.	10
<b>[3] Schedule 5, clause 5(3)</b>		11
	Insert after clause 5(2)—	12
	(3) In this clause—	13
	<i>judicial office</i> has the same meaning as in clause 5A.	14
<b>[4] Schedule 5, clause 5A, heading</b>		15
	Omit “as President”.	16
	Insert instead “or Magistrate as President or full-time Deputy President”.	17
<b>[5] Schedule 5, clause 5A(1)</b>		18
	Omit “The”. Insert instead “Subject to clause 5(1A), the”.	19
<b>[6] Schedule 5, clause 5A(1), note</b>		20
	Insert at the end of clause 5A(1)—	21
	<b>Note—</b> This subclause preserves the tenure, rights and privileges of a person who is a President or full-time Deputy President of the Tribunal and also the holder of a judicial office. However, the preservation of the rights in relation to remuneration and allowances is subject to clause 5(1A). Under clause 5(1A), a person who is a President or full-time Deputy President of the Tribunal and the holder of a judicial office is entitled to the higher of the remuneration and allowances under this schedule or as the holder of the judicial office, but not remuneration and allowances in both capacities.	22
<b>[7] Schedule 5, clause 5A(1) and (2)</b>		23
	Insert “or full-time Deputy President” after “President” wherever occurring.	24
<b>[8] Schedule 5, clause 5A(3A)</b>		25
	Insert after clause 5A(3)—	26
	(3A) The amendments made to this clause by the <i>Mental Health Legislation Amendment Act 2024</i> extend to a person who, at the commencement of this subclause, is a current President or full-time Deputy President and the holder of the office of Magistrate.	27
<b>[9] Schedule 5, clause 5A(4)</b>		28
	Insert “or Magistrate” after “of judge”.	29

**[10] Schedule 5, clause 5A(4)**

Insert “or acting Magistrate” after “acting judge”.

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