



New South Wales

Crimes and Courts Legislation Amendment Act 2013 No 80

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Crimes and Courts Legislation Amendment Act 2013 No 80

Act No 80, 2013

An Act to make miscellaneous amendments to certain legislation with respect to crimes, courts, civil and criminal procedure, justices of the peace, oaths and statutory declarations and to effect minor statute law revision. [Assented to 29 October 2013]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes and Courts Legislation Amendment Act 2013*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Explanatory notes

The matter appearing under the heading “Explanatory note” in a Schedule does not form part of this Act.

Schedule 1 Amendment of Coroners Act 2009 No 41

[1] Section 101B Interpretation

Omit the definition of *domestic violence death* from section 101B (1). Insert instead:

domestic violence death means the death of a person caused directly or indirectly by a person (the *perpetrator*) where, at the time of the death:

- (a) the deceased person was in a domestic relationship with the perpetrator and the death occurred in the context of domestic violence, or
- (b) the deceased person was in a domestic relationship with a person who was or had been in a domestic relationship with the perpetrator and the death occurred in the context of domestic violence, or
- (c) the perpetrator mistakenly believed that the deceased person was in a domestic relationship with a person who was or had been in a domestic relationship with the perpetrator and the death occurred in the context of domestic violence, or
- (d) the deceased person was a witness to or present at, or attempted to intervene in, domestic violence between the perpetrator and a person who was or had been in a domestic relationship with the perpetrator.

[2] Section 101C Meaning of “domestic relationship”

Omit “a deceased person” wherever occurring. Insert instead “another person”.

[3] Section 101C

Omit “the deceased person” wherever occurring. Insert instead “the other person”.

[4] Section 101C (1) (d)

Omit “and there have been previous episodes of domestic violence between them”.

[5] Section 101E Members of Team

Omit section 101E (3). Insert instead:

- (3) The Team is to include representatives of each of the following:
 - (a) the Department of Family and Community Services,
 - (b) NSW Health,
 - (c) the NSW Police Force,
 - (d) the Department of Education and Communities,
 - (e) the Department of Attorney General and Justice,
 - (f) Community Services, within the Department of Family and Community Services,
 - (g) Aboriginal Affairs, within the Department of Education and Communities,
 - (h) Housing NSW, within the Department of Family and Community Services,
 - (i) Juvenile Justice NSW, within the Department of Attorney General and Justice,
 - (j) Ageing, Disability and Home Care, within the Department of Family and Community Services,

- (k) Women NSW, within the Department of Family and Community Services,
- (l) Corrective Services NSW, within the Department of Attorney General and Justice.

[6] Section 101M Confidentiality of information

Omit “Human Services” from section 101M (1) (c) (ii).

Insert instead “Family and Community Services”.

Explanatory note

Item [1] of the proposed amendments to the *Coroners Act 2009* replaces the definition of **domestic violence death** for the purposes of investigations of deaths by the Domestic Violence Death Review Team in two respects. First, where the deceased was in a domestic relationship with the perpetrator, the death must be in the context of domestic violence. Second, the definition is expanded to include deaths of persons who were bystanders to the domestic violence or who were the new partner (or mistakenly believed by the perpetrator to be the new partner) or who were a relative or kin of a person who was in a domestic relationship with the perpetrator, where the death occurred in a domestic violence context. **Items [2] and [3]** make consequential amendments to the definition of **domestic relationship** in section 101C of that Act.

Item [4] amends the definition of **domestic relationship** for the purposes of investigations of deaths by the Domestic Violence Death Review Team as it applies to persons who are relatives of perpetrators to remove the qualification that there must have been previous episodes of domestic violence between the person and the perpetrator.

Item [5] replaces the list of members of the Domestic Violence Death Review Team to reflect the change in names for certain positions and Departments and to include a representative of Corrective Services NSW as a member of the team.

Item [6] updates a reference to the Department of Family and Community Services.

Schedule 2 Amendment of Crimes (Appeal and Review) Act 2001 No 120

[1] Section 4 Applications to Local Court

Omit section 4 (1). Insert instead:

- (1) An application for annulment of a conviction or sentence made or imposed by the Local Court may be made to the Local Court sitting at the place at which the original Local Court proceedings were held.
- (1A) An application may be made by the defendant or by the prosecutor. However, an application by the defendant may be made only if:
 - (a) in the case of an application for an annulment of a conviction—the defendant was not in appearance before the Local Court when the conviction was made, or
 - (b) in the case of an application for an annulment of a sentence—the defendant was not in appearance before the Local Court when the sentence was imposed.
- (1B) A defendant may not make an application for annulment of a conviction or sentence under this section if the defendant had lodged a notice in writing under section 182 of the *Criminal Procedure Act 1986* in respect of the offence for which the defendant was convicted or the sentence was imposed.

[2] Section 23 Appeals as of right

Omit section 23 (3). Insert instead:

- (3) An appeal against a sentence or an order for costs must be made within 28 days after the relevant sentence is imposed or the order for costs is made.

Explanatory note

Item [1] of the proposed amendments to the *Crimes (Appeal and Review) Act 2001* makes it clear that an application for the annulment of a conviction or sentence by a defendant may only be made if the defendant was not in appearance when the conviction was made or the sentence was imposed. The proposed amendment also provides that a defendant is not able to make such an application if the defendant had lodged a written plea in relation to the proceedings.

Item [2] makes it clear that appeal against an order for costs must be made within 28 days of the making of the order.

Schedule 3 Amendment of Crimes (Forensic Procedures) Act 2000 No 59

Section 3 Interpretation

Omit paragraph (j) of the definition of *non-intimate forensic procedure* in section 3 (1).

Insert instead:

- (j) the taking of measurement of a person's body or any part of a person's body (other than the person's private parts) whether or not involving the marking of the person's body.

Explanatory note

The proposed amendment to the *Crimes (Forensic Procedures) Act 2000* makes it clear that the taking of measurements of the whole or any part of a person's body (other than the person's private parts) is a *non-intimate forensic procedure* that may be carried out by order of a senior police officer or Magistrate if the person has been asked to consent the procedure and has not consented. The proposed amendment also removes the requirement that the taking of such measurements must be for the purposes of "biomechanical analysis".

Schedule 4 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92

Section 43 Court may reopen proceedings to correct sentencing errors

Omit “or suspension” from paragraph (e) of the definition of *impose a penalty* in section 43 (6).

Insert instead “, suspension or variation”.

Explanatory note

The proposed amendment to the *Crimes (Sentencing Procedure) Act 1999* makes it clear that a court may reopen proceedings to correct an order or direction relating to the variation of a licence or privilege (such as the variation of a driver licence pursuant to a driver licence order under section 13C of the *Graffiti Control Act 2008*).

Schedule 5 **Amendment of Criminal Procedure Act 1986 No 209**

Section 306M Definitions

Insert after paragraph (d) of the definition of *personal assault offence* in section 306M (1):

- (d1) an offence under section 13 or 14 of the *Crimes (Domestic and Personal Violence) Act 2007*,

Explanatory note

The proposed amendment to the *Criminal Procedure Act 1986* includes certain offences under the *Crimes (Domestic and Personal Violence) Act 2007* relating to stalking, intimidation or the contravention of an apprehended violence order as **personal assault offences** for the purposes of Part 6 of Chapter 6 of the *Criminal Procedure Act 1986*. That Part provides special rules relating to the giving of evidence by vulnerable persons in certain proceedings relating to personal assault offences.

Schedule 6 Amendment of Drug Misuse and Trafficking Act 1985 No 226

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

drug encapsulator means a device that is capable of being used to produce a prohibited drug in a capsule or similar form, and includes a unique part of any such device.

tablet press means a device that is capable of being used to produce a prohibited drug in a pill, tablet or other similar form, and includes a unique part of such a device.

[2] Section 11B Possession of tablet press or drug encapsulator

Omit “tablet press that is capable of being used to produce a prohibited drug in tablet form” from section 11B (1).

Insert instead “tablet press or drug encapsulator”.

[3] Section 11B (2)

Omit “tablet press” wherever occurring. Insert instead “tablet press or drug encapsulator”.

[4] Section 11B (2) (a)

Omit “to produce tablets”.

Explanatory note

The proposed amendments to the *Drug Misuse and Trafficking Act 1985* make it clear that it is an offence to possess a **tablet press** (a device that is capable of being used to produce a prohibited drug in a pill, tablet or other similar form) or a **drug encapsulator** (a device that is capable of being used to produce a prohibited drug in a capsule or similar form) including any unique part of such a press or encapsulator.

Schedule 7 Amendment of Drug Misuse and Trafficking Regulation 2011

Schedule 3 Drug manufacture or production apparatus—section 24A and clause 7

Omit “Pill or tablet press (whether manual or mechanical)”. Insert instead:

Tablet press

Drug encapsulator

Explanatory note

The proposed amendment to the *Drug Misuse and Trafficking Regulation 2011* replaces a reference to a pill or tablet press with references to a tablet press and drug encapsulator as a consequence of the amendments made to the *Drug Misuse and Trafficking Act 1985* by the proposed Act.

Schedule 8 Amendment of Evidence Act 1995 No 25

Section 19

Omit the section. Insert instead:

19 Compellability of spouses and others in certain criminal proceedings

Section 18 does not apply:

- (a) in proceedings for an offence against or referred to in the following provisions of the *Children and Young Persons (Care and Protection) Act 1998*:
 - (i) section 222 (Endangering children in employment),
 - (ii) section 223 (Certain employers of children to be authorised),
 - (iii) section 227 (Child and young person abuse),
 - (iv) section 228 (Neglect of children and young persons), or
- (b) if the person could be compelled to give evidence in proceedings under section 279 (Compellability of spouses to give evidence in certain proceedings) of the *Criminal Procedure Act 1986*.

Note. This section differs from section 19 of the Commonwealth Act.

Explanatory note

The proposed amendment to the *Evidence Act 1995* makes it clear that special rules that apply to the compellability of the spouse or de facto partner of an accused person to give evidence in proceedings for a domestic violence offence or a child assault offence apply only to the compellability of the spouse or de facto partner (and not other family members). The general rules applicable to the compellability of spouses and other family members to give evidence in proceedings continue to apply in respect of offences other than domestic violence offences and child assault offences. The amendment gives effect to the recommendations of the Supreme Court in *LS v Director of Public Prosecutions (NSW) and Anor* [2011] NSWSC 1016.

Schedule 10 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Section 229 Courts having jurisdiction under this Division

Omit "\$40,000" from section 229 (1) (a) and (b) wherever occurring.

Insert instead "\$100,000".

Explanatory note

The proposed amendment to the *Law Enforcement (Powers and Responsibilities) Act 2002* provides that applications in relation to property in police custody with a value of between \$40,000 and \$100,000 may be made to the Local Court rather than to the District Court.

Schedule 11 Amendment of Local Court Act 2007 No 93

Section 33 Certain jurisdiction excluded

Omit section 33 (1) (d).

Explanatory note

The proposed amendment to the *Local Court Act 2007* removes a provision that excludes proceedings relating to goods that are the subject of a hire-purchase agreement or goods that are detained by their owner or by some other person acting on the owner's behalf from the civil jurisdiction of the Local Court.

Schedule 12 Amendment of Minors (Property and Contracts) Act 1970 No 60

[1] Section 40 Jurisdiction

Omit "\$100,000" from section 40 (3). Insert instead "\$750,000".

[2] Section 40 (4)

Omit "\$10,000". Insert instead "\$100,000".

Explanatory note

The proposed amendments to the *Minors (Property and Contracts) Act 1970* increase the jurisdictional limits of the Local Court (increased from matters with a value not exceeding \$10,000 to matters not exceeding \$100,000) and the District Court (increased from matters not exceeding \$100,000 to matters not exceeding \$750,000).

Schedule 13 Amendment of Oaths Act 1900 No 20

[1] Section 24A Declarations by persons unable to read written English

Omit “or illiterate”. Insert instead “, illiterate or otherwise unable to read written English”.

[2] Section 26 Before whom oaths and affidavits may be taken

Omit “in the State of New South Wales” from section 26 (1).

Insert instead “in this or any other State or Territory or the Commonwealth”.

[3] Section 26 (1)

Omit “the said State” wherever occurring. Insert instead “this State”.

[4] Section 26 (1A)

Insert after section 26 (1):

- (1A) A person who takes and receives an oath, declaration or affidavit that is to be made by more than one person, may do so:
 - (a) with two or more of the persons making the oath, declaration or affidavit present at the same time, or
 - (b) with each of the persons making the oath, declaration or affidavit at separate times.

[5] Section 27A Affidavits by persons unable to read written English

Omit “or illiterate”. Insert instead “, illiterate or otherwise unable to read written English”.

[6] Section 34 Identification of person making statutory declaration or affidavit

Insert after section 34 (4):

- (4A) This section does not apply in respect of a person who takes and receives a statutory declaration or affidavit if the declaration or affidavit is made or required to be made:
 - (a) for the purposes of proceedings in:
 - (i) the High Court, or
 - (ii) the Federal Court, or
 - (iii) the Family Court, or
 - (iv) the Federal Circuit Court, or
 - (v) any other court created by the Commonwealth Parliament, or
 - (b) for the purposes of, or in connection with, any matter arising under, a law of the Commonwealth, or
 - (c) in connection with the administration of a Commonwealth Government department or agency.

Explanatory note

Items [1] and [5] of the proposed amendments to the *Oaths Act 1900* make it clear that the existing provisions relating to statutory declarations and affidavits given by persons who are blind or illiterate extend to all persons who are unable to read written English.

Items [2] and [3] provide that the authority of a person to take and receive an oath, declaration or affidavit extends to the taking of an oath, declaration or affidavit for use in jurisdictions other than New South Wales.

Item [4] makes it clear that a person who takes and receives a statutory declaration from more than one deponent may do so with two or more of the deponents present at the same time or with each of the deponents separately.

Item [6] provides that the requirement that a person who takes and receives a statutory declaration or affidavit must see the face of the person making the declaration or affidavit for the purpose of identification does not extend to a declaration or affidavit made for the purposes of proceedings in, or a law of, the Commonwealth.

Schedule 14 Amendment of Telecommunications (Interception and Access) (New South Wales) Act 1987 No 290

[1] Section 3 Definitions

Omit the definition of *restricted record* from section 3 (1). Insert instead:

restricted record means a record, other than a copy, that was obtained by means of an interception, whether or not in contravention of section 7 (1) of the Commonwealth Act, of a communication passing over a telecommunications system.

[2] Section 4 Eligible authority to keep documents connected with issue of warrants

Omit section 4 (c).

Explanatory note

Item [1] of the proposed amendments to the *Telecommunications (Interception and Access) (New South Wales) Act 1987 (the Act)* amends the definition of *restricted record* to be consistent with the *Telecommunications (Interception and Access) Act 1979* of the Commonwealth.

Item [2] removes a requirement that the chief officer of an eligible authority cause a certified true copy of each instrument revoking a warrant to be kept in the authority's records.

Schedule 15 Amendment of Young Offenders Act 1997 No 54

[1] Section 17 Records of warnings

Omit section 17 (4). Insert instead:

- (4) This section does not require that a record made under this section be destroyed or expunged if the record is held by one of the following:
- (a) the Australian Bureau of Statistics,
 - (b) the Australian Institute of Criminology,
 - (c) the Bureau of Crime Statistics and Research,
 - (d) the Ombudsman.

[2] Section 66 Disclosure of records

Insert after section 66 (2) (f):

- (f1) records of, or relating to, warnings, cautions and conferences under this Act may (subject to any regulations made for the purposes of subsection (3)) be divulged to a person employed in the Australian Bureau of Statistics or the Australian Institute of Criminology, but only if the name and other information identifying a person to whom any such record relates have been removed,

[3] Schedule 3 Savings and transitional provisions

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

Part Provision consequent on enactment of Crimes and Courts Legislation Amendment Act 2013

Disclosure of records

Anything done or omitted to be done before the amendments of sections 17 and 66 by the *Crimes and Courts Legislation Amendment Act 2013*, that could have been validly done or omitted to be done if the amendments had been in force when it was done or omitted to be done, is taken to have been validly done or omitted to be done.

Explanatory note

Item [2] of the proposed amendments to the *Young Offenders Act 1997 (the Act)* allows for the disclosure of records relating to warnings, cautions and conferences under the Act to the Australian Bureau of Statistics and the Australian Institute of Criminology, but only if the name and other information identifying a person to whom any such record relates have been removed from the record.

Item [1] provides that a record held by the Australian Bureau of Statistics or the Australian Institute of Criminology relating to a warning given under Part 3 of the Act is not required to be destroyed when the person to whom the record relates reaches the age of 21 years.

Item [3] validates the disclosure of records to the Australian Bureau of Statistics and the Australian Institute of Criminology before the commencement of the amendments made by items [1] and [2], if the records could have been validly disclosed had the amendments been in force at the time of the disclosure.

Schedule 16 Amendment of Young Offenders Regulation 2010

Clause 15B

Insert after clause 15A:

15B Disclosure of records relating to warnings, cautions and conferences to the Australian Bureau of Statistics and the Australian Institute of Criminology

For the purposes of section 66 (2) (f1) of the Act, a record of, or relating to, a warning, caution or conference under the Act may be divulged to a person employed in the Australian Bureau of Statistics or the Australian Institute of Criminology if:

- (a) the information contained in the record will only be used by that Bureau or Institute in research, the production of statistics and the publication of those statistics and of reports relating to that research, and
- (b) any such publication does not name or otherwise identify the person to whom the record relates.

Explanatory note

The proposed amendment to the *Young Offenders Regulation 2010* limits the circumstances in which records relating to warnings, cautions and conferences may be divulged to the Australian Bureau of Statistics or the Australian Institute of Criminology.

[Second reading speech made in—
Legislative Assembly on 12 September 2013
Legislative Council on 23 October 2013]