

# SUMMARY OFFENCES ACT 1988 No. 25

## NEW SOUTH WALES



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SCHEDULE 1—REPEALS

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**SUMMARY OFFENCES ACT 1988 No. 25**

NEW SOUTH WALES



**Act No. 25, 1988**

An Act with respect to conduct in public and other places; to repeal the Offences in Public Places Act 1979, the Public Assemblies Act 1979 and the Prostitution Act 1979; and for other purposes. [Assented to 6 July 1988]

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See also Justices (Sentencing) Amendment Act 1988.

**The Legislature of New South Wales enacts:****PART 1—PRELIMINARY****Short title**

1. This Act may be cited as the Summary Offences Act 1988.

**Commencement**

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

**Definitions**

3. (1) In this Act—

“building” means a building or structure, or any part of a building or structure;

“church” means—

- (a) a building ordinarily used for Divine worship; and
- (b) any land occupied or used in connection with such a building;

“dwelling” means—

- (a) a building intended for occupation as a residence and being, or capable of being, so occupied, except where it is above, or attached to, a shop or commercial premises; and
- (b) such a building that is part of a retirement village or is among the buildings in which persons live as a religious or other private community; and
- (c) any land occupied or used in connection with a building referred to in paragraph (a) or (b);

“hospital” means—

- (a) a hospital named in the Second, Third or Fifth Schedule to the Public Hospitals Act 1929; or
- (b) a hospital under the control of an area health service constituted under the Area Health Services Act 1986; or
- (c) an establishment within the meaning of the Private Health Establishments Act 1982,

and any land or building occupied or used in connection with such a hospital or establishment;

“premises” includes a structure, building, vehicle, vessel or place, whether built on or not, and any part thereof;

“prostitution” includes acts of prostitution between persons of different sexes or of the same sex, and includes—

- (a) sexual intercourse as defined in section 61A of the Crimes Act 1900; and

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(b) masturbation committed by one person on another, for payment;

“public place” means—

- (a) a place (whether or not covered by water); or
- (b) a part of premises,

that is open to the public, or is used by the public whether or not on payment of money or other consideration, whether or not the place or part is ordinarily so open or used and whether or not the public to whom it is open consists only of a limited class of persons, but does not include a school;

“public street” means a street, road, lane, thoroughfare or footpath that, in each case, is open to, or used by, the public;

“residence” includes a building in which a person resides as part of a private community;

“school” means—

- (a) a school established or registered under the Education and Public Instruction Act 1987; and
- (b) a school providing education (whether secular or religious) at a pre-school or infants’ school level or at a primary or secondary level; and
- (c) a place used for the purposes of an establishment commonly known as a child-minding centre or for similar purposes; and
- (d) the land, and any building, occupied by or in connection with the conduct of such a school or place,

and includes any part of such a school or place, but does not include any building that is occupied or used solely as a residence or solely for a purpose unconnected with the conduct of such a school or place;

“vehicle” means—

- (a) anything constructed as a motor car or motor truck to be propelled by petrol or any other volatile spirit or by steam, gas, oil or electricity, whether or not still capable of being so propelled; or
- (b) a caravan or anything else constructed for being drawn by a vehicle or an animal.

(2) For the purposes of this Act, a person who is in a vehicle in any place shall be taken to be in that place.

(3) Section 8 of the Crimes Act 1900 does not apply in relation to the expression “public place” in this Act.

## PART 2—OFFENCES IN PUBLIC PLACES

### Offensive conduct or language

4. (1) A person shall not—

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- (a) conduct himself or herself in an offensive manner in or near, or within view or hearing from, a public place or a school; or
- (b) use offensive language in or near, or within hearing from, a public place or a school.

Maximum penalty: 6 penalty units or imprisonment for 3 months.

(2) It is a sufficient defence to a prosecution for an offence under this section if the defendant satisfies the court that the defendant had a reasonable excuse for conducting himself or herself in the manner alleged in the information for the offence.

**Obscene exposure**

5. A person shall not, in or within view from a public place or a school, wilfully and obscenely expose his or her person.

Maximum penalty: 10 penalty units or imprisonment for 6 months.

**Obstructing traffic**

6. A person shall not, without reasonable excuse (proof of which lies on the person), wilfully prevent, in any manner, the free passage of a person, vehicle or vessel in a public place.

Maximum penalty: 4 penalty units.

**Damaging fountains**

7. A person shall not wilfully—

- (a) damage or deface; or
- (b) enter upon; or
- (c) cause any foreign material or substance to enter into,

any part of a fountain erected in a public place.

Maximum penalty: 4 penalty units.

**Damaging shrines, monuments or statues**

8. A person shall not wilfully damage or deface any shrine, monument or statue erected in a public place.

Maximum penalty: 4 penalty units.

**Defacing walls**

9. A person shall not—

- (a) affix a placard or paper upon any premises; or
- (b) wilfully mark, by means of chalk, paint or any other material, any premises.

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so that the placard, paper or marking is within view from a public place, unless he or she first obtained the consent, if the premises are occupied, of the occupier or person in charge of the premises or, if the premises are unoccupied, of the owner or person in charge of the premises.

Maximum penalty: 4 penalty units.

**Custody of offensive implement**

10. (1) A person shall not, without reasonable excuse (proof of which lies on the person), have in his or her custody an offensive implement in a public place.

Maximum penalty: 10 penalty units or imprisonment for 6 months.

(2) If a person is convicted of an offence under this section, the court may, in addition to any penalty it may impose, make an order that the offensive implement be forfeited to the Crown, and the implement is forfeited accordingly.

(3) In this section—

“offensive implement” means—

- (a) anything made or adapted for use for causing injury to a person; or
- (b) anything intended, by the person having custody of the thing, to be used to injure or menace a person or damage property.

**Possession of liquor by minors**

11. (1) A person under the age of 18 years is guilty of an offence if the person possesses or consumes any liquor in a public place, unless the person establishes that—

- (a) the person was under the supervision of a responsible adult; or
- (b) the person had a reasonable excuse for possessing or consuming the liquor.

Maximum penalty: \$20.

(2) A member of the Police Force may seize liquor in the possession of a person in a public place, if the member suspects, on reasonable grounds, that—

- (a) the person is under the age of 18 years; and
- (b) the person is not under the supervision of a responsible adult; and
- (c) the person does not have a reasonable excuse for possessing the liquor.

(3) Liquor seized under this section is forfeited to the Crown.

(4) Liquor may be seized under this section from a person's possession even though the person is under the age of criminal responsibility.

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(5) A person may not be arrested for an offence under this section, except so far as may be necessary for the purpose of the administration of a caution by a member of the Police Force in relation to such an offence.

(6) The regulations may make provision for or with respect to—

- (a) the procedure to be followed as regards the seizure of liquor under this section and the procedure to be followed after its seizure; and
- (b) without limiting paragraph (a), prescribing the circumstances in which, and the procedure by which, liquor seized under this section is to be returned; and
- (c) prescribing circumstances in which the other provisions of this section do not apply.

(7) In this section—

“liquor” has the same meaning as in the Liquor Act 1982, and includes any container containing liquor.

**Defence**

12. It is a sufficient defence to a prosecution for an offence under any of the provisions of this Part if the defendant satisfies the court that the act complained of in the information for the offence was done with lawful authority.

**Particulars to be furnished**

13. (1) If a defendant charged with an offence under any of the provisions of this Part—

- (a) has requested the informant to furnish to the defendant reasonable particulars of the behaviour or conduct the subject of the charge; and
- (b) the informant, or some person on his or her behalf, has not so furnished those particulars,

the court before which the defendant is charged shall adjourn the charge pending the furnishing of those particulars or may dismiss the charge.

(2) If, at the hearing of a charge for an offence referred to in subsection (1)—

- (a) the evidence discloses behaviour or conduct that constitutes such an offence; and
- (b) that behaviour or conduct is different from the behaviour or conduct of which particulars have been given to the defendant under subsection (1),

the court may, on the application of the defendant and if it is of the opinion that the defendant was deceived by those particulars, adjourn the hearing on such terms as it thinks fit.



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**PART 3—PROSTITUTION****Exclusion of matters dealt with under certain Acts**

**14.** In this Part—

“premises” does not include—

- (a) the premises of a club registered under the Registered Clubs Act 1976; or
- (b) licensed premises under the Liquor Act 1982.

**Living on earnings of prostitution**

**15. (1)** A person shall not knowingly live wholly or in part on the earnings of prostitution of another person.

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

**(2)** For the purposes of subsection (1), a person who is of or above the age of 18 years and who—

- (a) lives with, or is habitually in the company of, a reputed prostitute; and
- (b) has no visible lawful means of support,

shall be taken knowingly to live wholly or in part on the earnings of prostitution of another person unless he or she satisfies the court before which he or she is charged with an offence under that subsection that he or she has sufficient lawful means of support.

**Prostitution or soliciting in massage parlours etc.**

**16.** A person shall not use, for the purpose of prostitution or of soliciting for prostitution, any premises held out as being available—

- (a) for the provision of massage, sauna baths, steam baths or facilities for physical exercise; or
- (b) for the taking of photographs; or
- (c) as a photographic studio,

or for services of a like nature.

Maximum penalty: 5 penalty units or imprisonment for 3 months.

**Allowing premises to be used for prostitution**

**17. (1)** A person, being the owner, occupier or manager, or a person assisting in the management, of any premises held out as being available—

- (a) for the provision of massage, sauna baths, steam baths or facilities for physical exercise; or
- (b) for the taking of photographs; or
- (c) as a photographic studio,

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or for services of a like nature, shall not knowingly suffer or permit the premises to be used for the purpose of prostitution or of soliciting for prostitution.

Maximum penalty: 50 penalty units or imprisonment for 12 months.

(2) A conviction under subsection (1) does not exempt the offender from any penalty or other punishment to which he or she may be liable for keeping or being concerned in keeping a brothel or disorderly house, or for the nuisance occasioned by it.

**Advertising premises used for prostitution**

18. A person shall not, in any manner—

- (a) publish or cause to be published an advertisement; or
- (b) erect or cause to be erected any sign,

indicating that any premises are used or are available for use, or that a person is available, for the purposes of prostitution.

Maximum penalty: 6 penalty units or imprisonment for 3 months.

**Soliciting**

19. (1) A person in a public street shall not, near or within view from a dwelling, school, church or hospital, solicit another person for the purpose of prostitution.

Maximum penalty: 6 penalty units or imprisonment for 3 months.

(2) A person shall not, in a school, church or hospital, solicit another person for the purpose of prostitution.

Maximum penalty: 6 penalty units or imprisonment for 3 months.

(3) A person shall not, in or near, or within view from, a dwelling, school, church, hospital or public place, solicit another person, for the purpose of prostitution, in a manner that harasses or distresses the other person.

Maximum penalty: 8 penalty units or imprisonment for 3 months.

(4) The provisions of this section are in addition to, and do not derogate from, any other law (including section 4).

**Public acts of prostitution**

20. (1) Each of the persons taking part in an act of prostitution—

- (a) in, or within view from, a school, church, hospital or public place;  
or
- (b) within view from a dwelling,

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is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 6 months.

(2) Each of the persons taking part in an act of prostitution in a vehicle that is—

- (a) in, or within view from, a school, church, hospital or public place; or
- (b) within view from a dwelling,

is guilty of an offence, whether or not the act of prostitution can be seen from outside the vehicle.

Maximum penalty: 10 penalty units or imprisonment for 6 months.

(3) A person is not liable to be punished for an offence under both subsections (1) and (2) in respect of the same act of prostitution.

(4) The provisions of this section are in addition to, and do not derogate from, any other law (including sections 4 and 5).

(5) In this section—

“act of prostitution” includes sexual activity between persons of different sexes or of the same sex, comprising—

- (a) sexual intercourse as defined in section 61A of the Crimes Act 1900; or
- (b) masturbation committed by one person on another, for payment.

### **Search warrant**

21. (1) A member of the Police Force may apply to an authorised justice for the issue of a search warrant if the member of the Police Force has reasonable grounds for believing that section 16 or 17 is being contravened with respect to any premises.

(2) An authorised justice to whom an application is made under subsection (1) may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising any member of the Police Force—

- (a) to enter and search the premises; and
- (b) to arrest, search and bring before a justice of the peace any person who is, or appears to have been, contravening either section 16 or 17; and
- (c) to seize any article that may be evidence of such a contravention.

(3) Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(4) In this section—

“authorised justice” means—

- (a) a Magistrate; or
- (b) a justice of the peace employed in the Attorney General's Department.

#### **PART 4—PUBLIC ASSEMBLIES**

##### **Definitions**

**22. In this Part—**

“Commissioner” means the Commissioner of Police;

“Court” means the Supreme Court or the District Court;

“organiser”, in relation to a public assembly in respect of which a notice has been given to the Commissioner as referred to in section 23 (1), means the person referred to in section 23 (1) (e) (i) by whom the notice is signed;

“public assembly” means an assembly held in a public place, and includes a procession so held;

“public place” means a public road, public reserve or other place which the public are entitled to use.

##### **Authorised public assemblies**

**23. (1)** For the purposes of this Part, a public assembly is an authorised public assembly if—

- (a) notice, in writing, of intention to hold the public assembly, addressed to the Commissioner, has been served on the Commissioner; and
- (b) if a form of notice has been prescribed, the notice is in or to the effect of the prescribed form; and
- (c) the notice contains the following particulars:
  - (i) the date on which it is proposed to hold the public assembly;
  - (ii) if the proposed public assembly is not a procession, a statement specifying the time and place at which it is intended that persons gather to participate in the proposed public assembly;
  - (iii) if the proposed public assembly is a procession, a statement specifying the time at which it is intended that the procession commence and the proposed route of the procession and, if it is intended that the procession should stop at places along that route for the purpose of enabling persons participating in the procession to be addressed or for any other purpose, a statement specifying those places;
  - (iv) the purpose for which the proposed public assembly is to be held;
  - (v) such other particulars as may be prescribed; and

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- (d) the notice specifies the number of persons who are expected to be participants in the proposed public assembly; and
- (e) the notice—
  - (i) is signed by a person who indicates in the notice that he or she takes responsibility for organising and conducting the proposed public assembly; and
  - (ii) specifies the address of that person for the service on him or her of any notice for the purposes of this Part; and
- (f) the Commissioner has notified the organiser of the public assembly that the Commissioner does not oppose the holding of the public assembly or—
  - (i) if the notice was served on the Commissioner at least 7 days before the date specified in the notice as the date on which it is proposed to hold the public assembly—the holding of the public assembly is not prohibited by a Court under section 25 (1); or
  - (ii) if the notice was served on the Commissioner less than 7 days before that date—the holding of the public assembly is authorised by a Court under section 26.

(2) Without prejudice to any other method of serving a notice referred to in subsection (1) on the Commissioner, such a notice may be served by leaving it with any member of the Police Force or such other person as may be prescribed at the address prescribed as the address of the office of the Commissioner.

**Participation in authorised public assembly**

24. If an authorised public assembly is held substantially in accordance with the particulars furnished with respect to it under section 23 (1) (c) and with any prescribed requirements, a person is not, by reason of any thing done or omitted to be done by the person for the purpose only of participating in that public assembly, guilty of any offence relating to participating in an unlawful assembly or the obstruction of any person, vehicle or vessel in a public place.

**Prohibition by a Court of a public assembly**

25. (1) The Commissioner may apply to a Court for an order prohibiting the holding of a public assembly in respect of which a notice referred to in section 23 (1) has been served if the notice was served 7 days or more before the date specified in the notice as the date on which it is proposed to hold the public assembly.

(2) The Commissioner shall not apply for an order under subsection (1) relating to a public assembly in respect of which a notice referred to in section 23 (1) has been served unless—

- (a) the Commissioner has caused to be served on the organiser of the public assembly a notice, in writing, inviting the organiser to confer with respect to the public assembly with a member of the Police Force specified in the notice at a time and place so specified, or to make written representations to the Commissioner, with respect to the public assembly, within a time so specified; and
  - (b) if the organiser has, in writing, informed the Commissioner that he or she wishes so to confer, the Commissioner has made available to confer with the organiser at the time and place specified in the notice—
    - (i) the member of the Police Force specified in the notice; or
    - (ii) if that member of the Police Force is for any reason unavailable so to confer, another member of the Police Force; and
  - (c) the Commissioner has taken into consideration any matters put by the organiser at the conference and in any representations made by the organiser.
- (3) A notice referred to in subsection (2) (a) may be served on the organiser—
- (a) personally; or
  - (b) by telegram addressed to the organiser at the address, specified in the notice served on the Commissioner under section 23 (1) (e) (ii), as the address for the service of any notice for the purposes of this Part; or
  - (c) by leaving it with any person apparently of or above the age of 16 years at the address so specified.

**Authorisation by a Court of a public assembly****26. If—**

- (a) a notice referred to in section 23 (1) is served on the Commissioner less than 7 days before the date specified in the notice as the date on which it is proposed to hold the public assembly referred to in the notice; and
- (b) the Commissioner has not notified the organiser of the public assembly that the Commissioner does not oppose the holding of the public assembly,

the organiser may apply to a Court for an order authorising the holding of the public assembly.

**Applications under section 25 or 26**

27. (1) The Court to which an application in respect of a public assembly is made under section 25 (1) or 26 shall decide the application with the greatest expedition possible so as to ensure that the application is not frustrated by reason of the decision of the Court being delayed until after the date on which the public assembly is proposed to be held.

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(2) The decision of a Court on an application under section 25 (1) or 26 is final and is not subject to appeal.

(3) Not more than one application may be made under section 25 (1) or 26 in respect of the same public assembly.

### PART 5—VIOLENT DISORDER

#### Violent disorder

28. (1) If 3 or more persons who are present together use or threaten unlawful violence and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety, each of the persons using or threatening unlawful violence is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 6 months.

(2) It is immaterial whether or not the 3 or more persons use or threaten unlawful violence simultaneously.

(3) No person of reasonable firmness need actually be, or be likely to be, present at the scene.

(4) An offence under subsection (1) may be committed in private as well as in public places.

(5) A person is guilty of an offence under subsection (1) only if he or she intends to use or threaten violence or is aware that his or her conduct may be violent or threaten violence.

(6) Subsection (5) does not affect the determination for the purposes of subsection (1) of the number of persons who use or threaten violence.

(7) In this section—

“violence” means any violent conduct, so that—

- (a) it includes violent conduct towards property as well as violent conduct towards persons; and
- (b) it is not restricted to conduct causing or intended to cause injury or damage but includes any other violent conduct (for example, throwing at or towards a person a missile of a kind capable of causing injury which does not hit or falls short).

### PART 6—GENERAL

#### Penalty notices

29. (1) A member of the Police Force to whom it appears that a person has committed an offence under section 11 may serve on the apparent offender a notice to the effect that, if it is not desired to have the matter determined by a court, the person served may, within a time specified in the notice, pay \$20 to an officer so specified.

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(2) A notice under this section may be served personally or by post.

(3) If the amount of \$20 for an alleged offence under section 11 is paid under this section, no person is liable to any further proceedings for the alleged offence.

(4) Payment under this section shall not be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

(5) This section shall be read as supplementing, and not as derogating from—

- (a) any other provision of this Act or the regulations; or
- (b) a provision of any other Act or of a regulation, by-law or ordinance under any other Act,

in relation to proceedings which may be taken in respect of offences.

**No detention for certain offences**

30. No person shall be imprisoned or detained in a detention centre in consequence of failing to pay a pecuniary penalty for an offence under section 11 or in consequence of failing to pay an amount under a penalty notice issued in relation to such an offence.

**Evidence as to public street etc.**

31. In proceedings for an offence under this Act, evidence that a certain place appeared at the time of the alleged offence to be a public street or public place, or a dwelling, school, church or hospital, is prima facie evidence of that fact.

**Proceedings for offences**

32. Proceedings for an offence under this Act may be taken only before a Local Court constituted by a Magistrate sitting alone.

**Payment towards cost of repairing damage**

33. A person convicted of an offence under this Act is liable to pay such amount not exceeding an amount equal to 20 penalty units as the court may order as the cost of, or contribution to, the repair or restoration of any damage caused by the action which resulted in the conviction.

**Repeals**

34. Each Act specified in Schedule 1 is repealed.

**Regulations**

35. The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.



*Summary Offences 1988***Amendment of Justices Act 1902 No. 27, s.100i (Definitions)**

36. The Justices Act 1902 is amended by inserting (in appropriate alphabetical order) in the statutory provisions listed in paragraph (a) of the definition of "penalty notice" in section 100i the following matter:

Summary Offences Act 1988, section 29;

**Amendment of Supreme Court Act 1970 No. 52, s. 80 (Business in the absence of the public)**

37. The Supreme Court Act 1970 is amended by omitting from section 80 (f1) the matter "section 6 (1) or 7 of the Public Assemblies Act, 1979" and by inserting instead the matter "section 25 or 26 of the Summary Offences Act 1988".

**Amendment of Bail Act 1978 No. 161, s. 8 (Right to release on bail for minor offences)**

38. The Bail Act 1978 is amended by inserting after section 8 (1) (a) the following paragraph:

(a1) offences under the Summary Offences Act 1988 that are punishable by a sentence of imprisonment; and

**Amendment of Search Warrants Act 1985 No. 37, s. 10 (Definitions)**

39. The Search Warrants Act 1985 is amended by omitting from the definition of "search warrant" in section 10 the matter "section 9 of the Prostitution Act, 1979;" and by inserting in appropriate alphabetical order the matter "section 21 of the Summary Offences Act 1988;".

**SCHEDULE 1—REPEALS**

(Sec. 34)

Offences in Public Places Act 1979 No. 63  
 Public Assemblies Act 1979 No. 64  
 Prostitution Act 1979 No. 71  
 Offences in Public Places (Amendment) Act 1987 No. 38  
 Offences in Public Places (Further Amendment) Act 1987 No. 131  
 Offences in Public Places (Juvenile Drinking) Amendment Act 1987 No. 224