

**CRIMES (APPLICATION OF CRIMINAL LAW) AMENDMENT
ACT 1992 No. 83**

NEW SOUTH WALES



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**CRIMES (APPLICATION OF CRIMINAL LAW) AMENDMENT
ACT 1992 No. 83**

NEW SOUTH WALES



Act No. 83, 1992

An Act to amend the Crimes Act 1900 to clarify the territorial application of the criminal law of New South Wales. [Assented to 27 November 1992]

Crimes (Application of Criminal Law) Amendment Act 1992 No. 83

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Crimes (Application of Criminal Law) Amendment Act 1992.

Commencement

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

Amendment of Crimes Act 1900 No. 40

3. The Crimes Act 1900 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 1 (**Short title and contents of Act**):

After the matter relating to Part 1 (3), insert:

(3A) Territorial application of the criminal law of the State—s. 3A

(2) Section 3A:

After section 3, insert:

Territorial application of the criminal law of the State

Territorial application of the criminal law of the State

3A. (1) An offence against the law of the State is committed if:

- (a) all elements necessary to constitute the offence (disregarding territorial considerations) exist; and
- (b) a territorial nexus exists between the State and at least one element of the offence.

(2) A territorial nexus exists between the State and an element of an offence if:

- (a) the element is or includes an event occurring in the State; or
- (b) the element is or includes an event that occurs outside the State but while the person alleged to have committed the offence is in the State.

SCHEDULE 1—AMENDMENTS—*continued*

(3) The existence of the territorial nexus required by subsection (1) (b) (the "**necessary territorial nexus**") is to be presumed and the presumption is conclusive unless rebutted under subsection (4).

(4) If a person charged with an offence disputes the existence of the necessary territorial nexus, the court is to proceed with the trial of the offence in the usual way and if at the conclusion of the trial the court, or, in the case of a jury trial, the jury, is satisfied on the balance of probabilities that the necessary territorial nexus does not exist, it must, subject to subsection (5), make or return a finding to that effect and the charge is to be dismissed.

(5) If the court, or, in the case of a jury trial, the jury, would, disregarding territorial considerations, find the person not guilty of the offence (but not on the ground of mental illness) the court or jury must make or return a finding of not guilty.

(6) The issue of whether the necessary territorial nexus exists must, if raised before the trial, be reserved for consideration at the trial.

(7) A power or authority exercisable on reasonable suspicion that an offence has been committed may be exercised in the State if the person in whom the power or authority is vested suspects on reasonable grounds that the elements necessary to constitute the offence exist (whether or not that person suspects or has any ground to suspect that the necessary territorial nexus with the State exists).

(8) This section applies to offences committed before or after the commencement of this section but does not apply to an offence if:

- (a) the law under which the offence is created makes the place of commission (explicitly or by necessary implication) an element of the offence; or
 - (b) the law under which the offence is created is a law of extraterritorial operation and explicitly or by necessary implication excludes the requirement for a territorial nexus between the State and an element of the offence;
- or

SCHEDULE 1—AMENDMENT—*continued*

- (c) proceedings are pending at the commencement of this section in relation to the offence.
- (9) This section is in addition to and does not derogate from any other basis on which the courts of the State may exercise criminal jurisdiction.
- (10) In this section:
- “**event**” means any act, omission, occurrence, circumstance or state of affairs (not including intention, knowledge or any other state of mind);
- “**the State**” includes:
- (a) the territorial sea adjacent to the State; and
 - (b) the sea on the landward side of the territorial sea that is not within the limits of the State.
- (11) If a person charged with a particular offence could be found guilty on that charge of some other offence or offences, that person is, for the purposes of this section, taken to be charged with each offence.
- (12) To avoid doubt, a reference in this section to a trial (whether or not a jury trial) includes a reference to a special hearing within the meaning of the Mental Health (Criminal Procedure) Act 1990.
- (3) **Section 25 (Trial where the death or cause of death occurs out of New South Wales):**
Omit the section.
- (4) **Second Schedule (Application of certain Parts and sections of Act):**
Omit “Sections 4 to 10”, insert instead “Sections 3A to 10”.

*[Minister's second reading speech made in—
Legislative Assembly on 15 October 1992
Legislative Council on 19 November 1992]*