



New South Wales

Crimes Legislation Amendment Act 1997 No 85

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New South Wales

Crimes Legislation Amendment Act 1997 No 85

Act No 85, 1997

An Act to amend the *Crimes Act 1900* and certain other Acts to make miscellaneous amendments relating to criminal law and procedure; and for other purposes. [Assented to 30 September 1997]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Legislation Amendment Act 1997*.

2 Commencement

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

3 Amendment of Acts

Each Act specified in Schedule 1 is amended as set out in that Schedule.

Schedule 1 Amendment of Acts

(Section 3)

1.1 Bail Act 1978 No 161

[1] Section 6 Grant of bail for certain periods

Omit “and” where lastly occurring in section 6 (g3).

[2] Section 6 (g4)–(g8)

Insert after section 6 (g3):

- (g4) the period between the making and hearing of an application to annul a conviction under section 100A of the *Justices Act 1902*,
- (g5) the period between the referral of a conviction under section 100B of the *Justices Act 1902* and the hearing of the matter referred,
- (g6) the period between the annulment of a conviction under section 100A or 100B of the *Justices Act 1902* and the rehearing of the information in respect of which the conviction was made,
- (g7) the period between an application for review under section 45 of the *Children (Criminal Proceedings) Act 1987* of a decision in respect of an offence and the determination of the application,
- (g8) the period between the determination of an application for review under section 45 of the *Children (Criminal Proceedings) Act 1987* of a decision in respect of an offence and any further proceedings on the information laid or complaint made in relation to the offence, and

[3] Schedule 1 Savings and transitional provisions

Insert after Part 3:

Part 4 Crimes Legislation Amendment Act 1997

7 Application of amendments

Section 6, as amended by the *Crimes Legislation Amendment Act 1997*, extends:

- (a) to applications to annul convictions, and referrals of convictions, made under section 100A and 100B, respectively, of the *Justices Act 1902*, and
- (b) to applications made under section 45 of the *Children (Criminal Proceedings) Act 1987*,

before the commencement of the amendment made to section 6 by the *Crimes Legislation Amendment Act 1997*.

1.2 Crimes Act 1900 No 40

[1] Section 61S Offenders who are minors

Omit “of sections 61H–61U” from section 61S (1).
Insert instead “of any offence”.

[2] Section 309 Unlawful access to data in computer

Insert after section 309 (4):

- (5) A prosecution for an offence under subsection (1) may be commenced at any time within 2 years after the time when the offence is alleged to have been committed.

[3] Section 316 Concealing serious offence

Insert after section 316 (3):

- (4) A prosecution for an offence against subsection (1) is not to be commenced against a person without the approval of the Attorney General if the knowledge or belief that an offence has been committed was formed or the information referred to in the subsection was obtained by the person in the course of practising or following a profession, calling or vocation prescribed by the regulations for the purposes of this subsection.
- (5) The Governor may make regulations, not inconsistent with this Act, prescribing a profession, calling or vocation as referred to in subsection (4).

[4] Section 353A Power to search person, make medical examination, take photograph, finger-prints etc

Omit section 353A (7) (b). Insert instead:

- (b) an offence under section 4 of the *Traffic Act 1909* of driving a motor vehicle upon a public street negligently occasioning death, negligently occasioning grievous bodily harm, furiously or recklessly or at a speed or in a manner that is dangerous to the public,

[5] Section 399 Plea of autrefois convict etc

Insert at the end of the section:

- (2) If an accused pleads autrefois convict or autrefois acquit, a Judge, without the presence of a jury, is to decide the issue.

[6] Eleventh Schedule Savings and transitional provisions

Insert after Part 9:

Part 10 Crimes Legislation Amendment Act 1997

30 Offenders who are minors

The amendment made to section 61S by the *Crimes Legislation Amendment Act 1997* does not apply in respect of an act or omission giving rise to proceedings for an offence that occurred before the amendment commenced.

31 Increase in time limit for prosecutions for offences relating to unlawful access to data in computer

The amendment made to section 309 by the *Crimes Legislation Amendment Act 1997* does not apply in respect of an act or omission giving rise to proceedings for an offence referred to in that section that occurred before that amendment commenced.

32 Orders under section 353A (4)

Section 353A (7) (b), as amended by the *Crimes Legislation Amendment Act 1997*, does not apply in relation to an offence found proved before the commencement of the amendment made to that paragraph by that Act.

33 Plea of autrefois convict or autrefois acquit

Section 399 (2), as inserted by the *Crimes Legislation Amendment Act 1997*, does not apply to a plea of autrefois convict or autrefois acquit made before the commencement of that subsection.

1.3 Criminal Appeal Act 1912 No 16

[1] Section 5DB

Insert after section 5DA:

5DB Appeals by Crown against sentences for related summary offences in criminal cases dealt with by the Supreme Court or District Court

- (1) The Attorney General or the Director of Public Prosecutions may appeal to the Court of Criminal Appeal against any sentence imposed by the Supreme Court or District Court on the conviction of a person for a related summary offence in the exercise of its jurisdiction under Part 10 of the *Criminal Procedure Act 1986*.
- (2) The Court of Criminal Appeal may, in its discretion, do any one or more of the following:
 - (a) confirm, quash, set aside or vary the sentence,
 - (b) impose such sentence as to the Court of Criminal Appeal may seem proper,
 - (c) exercise, by order, any power that the Supreme Court or District Court might have exercised.
- (3) Any sentence varied or imposed, or any order made, by the Court of Criminal Appeal under this section is to have the same effect and be enforced in the same manner as if it had been imposed by the Supreme Court or District Court.
- (4) The Court of Criminal Appeal may not:
 - (a) vary a sentence so that the sentence as varied could not have been imposed by the Supreme Court or District Court, or
 - (b) impose a sentence that could not have been imposed by the Supreme Court or District Court, as the case may be.

- (5) The power of the Court of Criminal Appeal to hear and determine an appeal under this section is to be exercised by such single judge of the Supreme Court as the Chief Justice may direct unless:
 - (a) the judge considers that the appeal should be dealt with by **2** or more judges and notifies the Chief Justice accordingly, or
 - (b) an appeal is lodged under this Act in relation to the related indictable offence.
- (6) On an appeal under this section against a sentence, new evidence or information may be given with the leave of the Court of Criminal Appeal. However new evidence or information may be given by the prosecution only in exceptional circumstances.
- (7) Except as provided by subsection (6), nothing in this section limits section 12.

[2] Section 10 Time for appealing

Omit “or under” from section 10 (4). Insert instead “under”.

[3] Section 10 (4)

Insert “or under section 5DB” after “or 5AD”.

[4] Section 14A Crown appeals—absence of respondent

Omit “or 5DA”. Insert instead “, 5DA or 5DB”.

[5] Section 22 Powers of a judge sitting alone

Insert at the end of section 22 (1):

- (k) the power to dismiss an appeal as incompetent.

[6] Schedule 1 Savings and transitional provisions

Insert after clause 2:

3 Crimes Legislation Amendment Act 1997

The amendments to this Act made by Schedule 1.3 [1]–[4] to the *Crimes Legislation Amendment Act 1997* do not enable an appeal to be brought against a sentence imposed in proceedings in respect of an offence committed before the commencement of the amendments.

1.4 Criminal Procedure Act 1986 No 209

[1] Section 3C

Insert after section 3B:

3C Savings, transitional and other provisions

Schedule 1 has effect.

[2] Part 9A, Table 1 Indictable offences that are to be dealt with summarily unless prosecuting authority or person charged elects otherwise

Omit clause 13. Insert instead:

13 False instruments

An offence under section 300, 301 or 302 of the *Crimes Act 1900* (other than an offence listed in clause 4B of Table 2 to this Part) or an offence under section 302A of that Act.

[3] Part 9A, Table 2 Indictable offences that are to be dealt with summarily unless prosecuting authority elects otherwise

Insert before the heading to Part 3:

48 False instruments

An offence under section 300,301 or 302 of the *Crimes Act 1900* where the value of the property, or amount of remuneration, greater remuneration or financial advantage, in respect of which the offence is charged does not exceed \$5,000.

[4] Section 34 Definitions and application

Insert in alphabetical order in section 34 (1):

back up summary offence, in relation to an indictable offence, means a summary offence:

- (a) all the elements of which are elements that are necessary to constitute the indictable offence, and
- (b) that is to be prosecuted on the same facts as the indictable offence.

[5] Section 34, definition of “related summary offence”

Insert “but does not include a back up summary offence” after “arisen”.

[6] Section 34A

Insert after section 34:

34A Certification of related summary offences

- (1) On committal for trial of a person charged with an indictable offence:
 - (a) the prosecuting authority must inform the Magistrate (or justice or justices) as to whether or not the person has been charged with any back up summary offence or related summary offence, and

- (b) if the person has been charged with any back up summary offence or related summary offence, the prosecuting authority is to produce to the court a certificate specifying each back up summary offence and related summary offence with which the person has been charged.
- (2) This section does not prevent the person referred to in subsection (1) being charged with any summary offence after committal.

[7] Section 35 Manner of dealing with certain summary offences related to indictable offences

Omit section 35 (1). Insert instead:

- (1) If at the conclusion of the trial of an accused person for an indictable offence, a court finds the accused person guilty of the offence, the court:
 - (a) is (unless it considers it inappropriate in the circumstances to do so) to order that the charge in relation to each back up summary offence be dismissed, and
 - (b) may deal with any back up summary offence the charge for which is not dismissed under paragraph (a) and any related summary offence with which the accused person has been charged in accordance with this Part.
- (1 A) If at the conclusion of the trial of an accused person for an indictable offence, a court finds the accused person not guilty of the offence, the court may deal with any back up summary offence or related summary offence with which the person has been charged in accordance with this Part.

[8] Section 35 (2)

Insert “any back up summary offence referred to in subsection (1) (b) or (1A) or” after “deal with”.

[9] Section 35 (3)

Omit “Nothing”.

Insert instead “Except as provided by subsection (1), nothing”.

[10] Section 35 (3) and (4)

Insert “back up summary offence or” after “deal with a” wherever occurring.

[11] Section 35 (4)

Insert “back up summary offence or” after “relation to a”.

[12] Sections 36 and 37

Insert “back up summary offence or” before “related summary offence” wherever occurring.

[13] Section 36 (4)

Insert “back up summary offences or” after “respect to”.

[14] Schedule 1

Insert after section 56:

Schedule 1 Savings, transitional and other provisions

(Section 3C)

Part 1 Preliminary

1 Regulations

- (1) The regulations may include provisions of a savings or transitional nature consequent on the enactment of the following Acts or provisions of Acts:

Schedule 1.4 to the *Crimes Legislation Amendment Act 1997*

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State), in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on Schedule 1.4 to Crimes Legislation Amendment Act 1997

2 Application of amendments to Part 10

The amendments to this Act made by Schedule 1.4 [4]–[13] to the *Crimes Legislation Amendment Act 1997* do not apply in respect of a summary offence if the person charged with the indictable offence to which the summary offence is related is committed for trial for the indictable offence before the commencement of the amendments.

1.5 Justices Act 1902 No 27

Section 39 Documents to be transmitted for trial

Insert “the certificate mentioned in section 34A of the *Criminal Procedure Act 1986* (if any),” after “witnesses,” in section 39 (1).

1.6 Listening Devices Act 1984 No 69

[1] Section 13 Inadmissibility of evidence of private conversations when unlawfully obtained

Insert “(including proceedings for or in connection with the grant of bail)” after “criminal proceedings” in section 13 (1).

[2] Section 13 (2) (d)

Omit “if”.

Insert instead “(or in proceedings for or in connection with the grant of bail in any such proceedings) if”.

[3] Section 14 Admissibility of evidence of private conversation when obtained inadvertently pursuant to warrant

Insert “(including proceedings for or in connection with the grant of bail)” after “criminal proceedings” in section 14 (1).

[Minister’s second reading speech made in —
Legislative Assembly on 7 May 1997
Legislative Council on 24 September 1997]