



New South Wales

Crimes Legislation Amendment Act 1998 No 53

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New South Wales

Crimes Legislation Amendment Act 1998 No 53

Act No 53, 1998

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 29 June 1998]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Legislation Amendment Act 1998*.

2 Commencement

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

3 Amendment of Bail Act 1978 No 161

The *Bail Act 1978* is amended as set out in Schedule 1.

4 Amendment of Children (Criminal Proceedings) Act 1987 No 55

The *Children (Criminal Proceedings) Act 1987* is amended as set out in Schedule 2.

5 Amendment of Crimes Act 1900 No 40

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

6 Amendment of Criminal Appeal Act 1912 No 16

The *Criminal Appeal Act 1912* is amended as set out in Schedule 4.

7 Amendment of Criminal Procedure Act 1986 No 209

The *Criminal Procedure Act 1986* is amended as set out in Schedule 5.

8 Amendment of Justices Act 1902 No 27

The *Justices Act 1902* is amended as set out in Schedule 6.

Schedule 1 Amendment of Bail Act 1978

(Section 3)

[1] Section 16A

Insert after section 16:

16A Requirement to appear before a court

- (1) For the purposes of sections 7 and 11, the time at which a person is *required to appear* before a court is the time at which the matter relating to the relevant offence is called at the court premises (whether or not the matter is dealt with at that time).
- (2) If the person is present in the courtroom or other part of the court premises at that time, the person is in the custody of the court (except during such additional periods of bail as may be granted under this Act) on and from the calling of the matter concerned until:
 - (a) bail is dispensed with, or
 - (b) bail is continued under section 43, or
 - (c) the court completes its dealing with the matter.

[2] Section 42 Discharge of liability of other persons

Omit “is not then in custody or before the court” from section 42 (2).

Insert instead “is not then before the court or otherwise in custody”.

[3] Schedule 1 Savings and transitional provisions

Insert in Schedule 1 (with appropriate Part and clause numbers)

Part Crimes Legislation Amendment Act 1998 Requirement to appear before a court

Section 16A extends to apply to a person who, on the commencement of that section, is at liberty on bail granted before that commencement.

Schedule 2 Amendment of Children (Criminal Proceedings) Act 1987

(Section 4)

[1] Section 18 Other indictable offences

Insert after section 18 (2):

- (3) If a court, in exercising the functions of the Children's Court under subsection (2), makes:
 - (a) an order of recognizance under section 33 (1) (b) or (d), or
 - (b) an order of probation under section 33 (1) (e),the court may, on referral from the Children's Court under section 40 (1 A), deal with the order in the same way as the Children's Court may deal with it under section 40.

[2] Section 40 Variation of recognizance or probation

Insert after section 40 (1):

- (1A) Alternatively, if the order was made by a court exercising the functions of the Children's Court under section 18 (2), the Children's Court may (but is not obliged to) refer the application to the court concerned to be dealt with by that court.

[3] Section 41 Enforcement of conditions of recognizance or probation

Insert after section 41 (5):

- (6) Despite subsections (3), (4) and (5). if the order under section 33 (1) that released the person on probation, or on condition that the person enter into recognizance, was made by a court other than the Children's Court or the

Local Court, the Children's Court or the Local Court before which the person is brought under this section may (but is not obliged to) order that the person is to be brought before the court concerned to be dealt with by that court instead of the Children's Court or the Local court.

- (7) If a person is brought before a court other than the Children's Court or the Local Court pursuant to an order under subsection (6), the court concerned may deal with the person in any manner in which the person could have been dealt with by that court in relation to the offence for which the person entered the recognizance or was released on probation, as the case may be.

[4] Schedule 2 Savings and transitional provisions

Insert "or provisions of Acts" after "Acts" in clause 1 (1).

[5] Schedule 2, clause 1

Insert at the end of clause 1 (1):

Schedule 2 to the *Crimes Legislation Amendment Act 1998*.

[6] Schedule 2, Part 3

Insert after clause 5:

Part 3 Crimes Legislation Amendment Act 1998

6 Orders of recognizance and probation made before commencement of amendments

Sections 18, 40 and 41, as amended by the *Crimes Legislation Amendment Act 1998*, extend to:

- (a) an order of recognizance under section 33 (1) (b) or (d), and
- (b) an order of probation under section 33 (1) (e), made by a court exercising the functions of the Children's Court under section 18 (2), before the commencement of those amendments.

Schedule 3 Amendment of Crimes Act 1900

(Section 5)

Section 347A

Insert after section 347:

347A Wife may be accessory after fact to husband's felony

- (1) The common law rule granting immunity to a wife against prosecution as an accessory after the fact to a felony committed by her husband is abolished.
- (2) This section does not apply in respect of any act of, or omission by, a wife if the act or omission occurred before the commencement of this section.

Schedule 4 Amendment of Criminal Appeal Act 1912

(Section 6)

[1] Section 5AE

Insert after section 5AD:

5AE Point of law stated during summary proceedings

- (1) At any time before the completion of proceedings before the Supreme Court in its summary jurisdiction, the Land and Environment Court in its summary jurisdiction or a Court of Coal Mines Regulation in its summary jurisdiction, the judge hearing the proceedings may, or if requested by the Crown must, submit any question of law arising at or in reference to the proceedings to the Court of Criminal Appeal for determination.
- (2) The Court of Criminal Appeal may make any such order or give any such direction to the court concerned as it thinks fit.

[2] Section 5A Point of law stated by judge

Omit section 5A (1A).

[3] Section 5A (2) (9) and (g)

Omit “this section” wherever occurring.
Insert instead “this subsection”.

[4] Schedule 1 Savings and transitional provisions

Insert in Schedule 1 (with the appropriate clause number):

Crimes Legislation Amendment Act 1998

- (1) In this clause, *amending Act* means the *Crimes Legislation Amendment Act 1998*.

- (2) Section 5AE, as inserted by the amending Act, extends to proceedings commenced but not completed before the commencement of that section.
- (3) However, section 5A, as in force immediately before the repeal of section 5A (1A) by the amending Act, applies to any question of law submitted, under that section before that repeal, to the court for determination.

Schedule 5 Amendment of Criminal Procedure Act 1986

(Section 7)

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

Omit “or an attempt to commit any such offence” from clauses 1, 3, 4 and 6 wherever occurring.

[2] Part 9A, Table 2, clauses 11–13

Insert after clause 10:

Part 7 Attempts,, accessories and abettors

11 Attempts

Attempting to commit any offence mentioned in a preceding Part of this Table.

12 Accessories

Being an accessory before or after the fact to any offence mentioned in a preceding Part of this Table (if the offence is a felony).

13 Abettors

Aiding, abetting, counselling or procuring the commission of any offence mentioned in a preceding Part (other than Part 3) of this Table (if the offence is a misdemeanour).

[3] Part 10, heading

Omit the heading to the Part. Insert instead:

Part 10 Supreme Court or District Court may deal with certain offences related to indictable offences

[4] Section 34 Definitions and application

Omit the definitions of *back up summary offence* and *related summary offence* from section 34 (1).

Insert instead:

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

- (a) that is:
 - (i) a summary offence, or
 - (ii) an indictable offence that is capable of being dealt with summarily by a Local Court in accordance with the provisions of Part 9A, and
- (b) all the elements of which are elements that are necessary to constitute the first indictable offence, and
- (c) that is to be prosecuted on the same facts as the first indictable offence.

related offence, in relation to an indictable offence, means an offence:

- (a) that is:
 - (i) a summary offence, or
 - (ii) an indictable offence that is capable of being dealt with summarily by a Local Court in accordance with the provisions of Part 9A, and

(b) that arises from substantially the same circumstances as those from which the first indictable offence has arisen,

but does not include a back up offence.

[5] Section 34A Certification of back up and related offences

Omit “summary” wherever occurring.

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

Omit “summary” wherever occurring.

[7] Section 36 Procedures for dealing with certain offences related to indictable offences

Omit “summary” wherever occurring.

[8] Section 36 (1)

Omit “any indictable offence”.

Insert instead “the relevant indictable offence”.

[9] Section 37 Remission of certain offences related to indictable offences to Local Courts

Omit “summary” wherever occurring.

[10] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Schedule 5 to the *Crimes Legislation Amendment Act 1998*

[11] Schedule 1

Insert in Schedule 1 (with appropriate Part and clause numbers)

**Part Provisions consequent on Schedule 5 to
Crimes Legislation Amendment Act 1998**

Application of amendments to Table 2 to Part 9A

Table 2 to Part 9A, as amended by Schedule 5 [1] and [2] to the *Crimes Legislation Amendment Act 1998*, applies to proceedings for an offence with which a person is charged after (but not before) the commencement of those amendments, irrespective of when the offence was alleged to have been committed.

Application of amendments to Part 10

The amendments to this Act made by Schedule 5 [3]–[9] to the *Crimes Legislation Amendment Act 1998* do not apply in respect of a back up offence or a related offence if the person charged with the indictable offence to which the back up offence or the related offence is related is committed for trial for the indictable offence before the commencement of the amendments.

Schedule 6 Amendment of Justices Act 1902

(Section 8)

[1] Section 48E Direction to witness to attend

Omit “(except an offence to the extent that it is listed in Table 1 to Part 9A of the *Criminal Procedure Act 1986*)” from the definition of *offence involving violence* in section 48E (9).

[2] Second Schedule Savings, transitional and other provisions

Insert in the Second Schedule (with appropriate Part and clause numbers):

Part Provisions consequent on enactment of Crimes Legislation Amendment Act 1998

Direction to witness to attend

Section 48E, as in force immediately before the amendment to that section made by the *Crimes Legislation Amendment Act 1998*, applies to and in respect of a person who has made a written statement for the purposes of Subdivision 7A of Division 1 of Part 4 in relation to any committal proceedings that are pending, or that have been commenced but not completed, on the commencement of that amendment.

[Minister's second reading speech made in—
Legislative Council on 3 June 1998
Legislative Assembly on 17 June 1998]