



New South Wales

Crimes Legislation Amendment Act 2003 No 27

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New South Wales

Crimes Legislation Amendment Act 2003 No 27

Act No 27, 2003

An Act to amend certain Acts with respect to criminal offences and proceedings for criminal offences; and for other purposes. [Assented to 8 July 2003]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Legislation Amendment Act 2003*.

2 Commencement

- (1) This Act commences on the date of assent, except as provided by subsection (2).
- (2) The provisions of Schedules 6 [6]–[8], 7 [3], 8 [2]–[7], 9 and 13 [2]–[5] commence on a day or days to be appointed by proclamation.

3 Amendment of Acts

The Acts set out in Schedules 1–15 are amended as set out in those Schedules.

4 Explanatory notes

Matter appearing under the heading “Explanatory note” in any of the Schedules does not form part of this Act.

Schedule 1 Amendment of Bail Act 1978 No 161

(Section 3)

Section 32 Criteria to be considered in bail applications

Insert “and, in that regard, is not bound by the principles or rules of law governing the admission of evidence” after “circumstances” in section 32 (3).

Explanatory note

This Schedule amends section 32 of the *Bail Act 1978* so as to make it clear that the principles and rules of law governing the admission of evidence do not apply to matters taken into consideration under that section for the purpose of making a determination as to the grant of bail. This will also make it clear that section 4 (1) (a) of the *Evidence Act 1995* does not operate in relation to the making of such a determination.

**Schedule 2 Amendment of Child Protection
(Prohibited Employment) Act 1998 No 147**
(Section 3)

Section 6 Offences relating to prohibited persons

Omit “12 months” from section 6 (1). Insert instead “2 years”.

Explanatory note

This Schedule amends section 6 of the *Child Protection (Prohibited Employment) Act 1998* so as to double the maximum period for which a prohibited person may be sentenced to imprisonment for the offence of applying for, undertaking or remaining in child-related employment. This will bring the period of imprisonment into line with the maximum period of imprisonment that may be imposed on a convicted child sexual offender under section 11G of the *Summary Offences Act 1988* for the offence of loitering near a school or a public place frequented by children.

Schedule 3 Amendment of Crimes Act 1900 No 40

(Section 3)

[1] Section 52B Dangerous navigation: substantive matters

Omit “to the public” wherever occurring in section 52B (1) (b) and (c) and (3) (b) and (c).

Insert instead “to another person or persons”.

[2] Section 63 Common law offences of rape and attempted rape abolished

Insert “1A,” after “Parts” in section 63 (2).

[3] Section 308G Producing, supplying or obtaining data with intent to commit serious computer offence

Insert after section 308G (3):

- (4) It is not an offence to attempt to commit an offence against this section.

[4] Section 308H Unauthorised access to or modification of restricted data held in computer (summary offence)

Insert “, being data” before “to which” in the definition of *restricted data* in section 308H (3).

[5] Section 474C Consideration of petitions

Omit “provisions, and” from section 474C (3) (a) (ii).

Insert instead “provisions, or”.

[6] Section 474C (3) (a) (iii) and (iv)

Insert after section 474C (3) (a) (ii):

- (iii) has been the subject of a right of appeal (or a right to apply for leave to appeal) by the convicted person but no such appeal or application has been made, or

- (iv) has been the subject of appeal proceedings commenced by or on behalf of the convicted person (including proceedings on an application for leave to appeal) where the appeal or application has been withdrawn or the proceedings have been allowed to lapse, and

[7] Section 474C (3) (b)

Insert “Governor or the” before “Minister”.

[8] Section 474E Consideration of applications

Omit “provisions, and” from section 474E (3) (a) (ii).

Insert instead “provisions, or”.

[9] Section 474E (3) (a) (iii) and (iv)

Insert after section 474E (3) (a) (ii):

- (iii) has been the subject of a right of appeal (or a right to apply for leave to appeal) by the convicted person but no such appeal or application has been made, or
- (iv) has been the subject of appeal proceedings commenced by or on behalf of the convicted person (including proceedings on an application for leave to appeal) where the appeal or application has been withdrawn or the proceedings have been allowed to lapse, and

[10] Eleventh Schedule Savings and transitional provisions

Insert before Part 1:

Part 1A Crimes (Sexual Assault) Amendment Act 1981

1A Application of section 30 of Interpretation Act 1987

Section 30 of the *Interpretation Act 1987* applies to and in respect of the abolition by section 63 of the common law offences of rape and attempted rape in the same way as it applies to and in respect of the repeal of an Act or statutory rule.

1B Construction of certain references

In any other Act or instrument made under an Act:

- (a) a reference to rape, the crime of rape, the offence of rape or an offence under section 63 is to be read and construed as a reference to an offence under section 61B, 61C or 61D, and
- (b) a reference to attempted rape, attempting to commit rape, attempting to commit the crime of rape, attempting to commit the offence of rape or an offence under section 65 is to be read and construed as a reference to the offence of attempting to commit an offence under section 61B, 61C or 61D,

but a reference to a crime or misdemeanour which was punishable by death immediately before the commencement of the *Crimes (Amendment) Act 1955* is to be read and construed as not including a reference to an offence under section 61B, 61C or 61D.

1C Statement for purposes of section 30A of Interpretation Act 1987

- (1) Clauses 1A and 1B re-enact (with modifications) section 4 of the *Crimes (Sexual Assault) Amendment Act 1981*.
- (2) Clauses 1A and 1B are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.
- (3) Clauses 1A and 1B are taken to have commenced on the commencement of the *Crimes (Sexual Assault) Amendment Act 1981*.

Explanatory note

Item [1] brings section 52B of the *Crimes Act 1900* (which relates to dangerous navigation) into line with section 52A of that Act (which relates to dangerous driving).

Item [3] makes it clear that an attempt to commit an offence against section 308G of the *Crimes Act 1900* (which relates to the production, supply or obtaining of data with intent to commit a serious computer offence) is not itself an offence, and so brings that section into line with a corresponding provision of the *Cybercrime Act 2001* of the Commonwealth.

Item [4] clarifies the meaning of the definition of **restricted data** in section 308H of the *Crimes Act 1900*.

Items [6] and [9] amend sections 474C and 474E of the *Crimes Act 1900* so as to provide that a petition to the Governor or application to the Supreme Court may be declined in relation to a conviction or sentence if the convicted person has failed to lodge an appeal (or an application for leave to appeal) or has lodged such an appeal

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Schedule 3 Amendment of Crimes Act 1900 No 40

or application but subsequently withdrawn it or allowed the appeal proceedings to lapse. Items [5], [7] and [8] are consequential amendments.

Item [10] transfers a savings and transitional provision from the *Crimes (Sexual Assault) Amendment Act 1981* to the *Crimes Act 1900*, so enabling the 1981 Act to be repealed. Item [2] is a consequential amendment.

Schedule 4 Amendment of Crimes (Forensic Procedures) Act 2000 No 59

(Section 3)

[1] Section 54 Presence of interview friend or legal representative—children and incapable persons

Omit section 54 (3). Insert instead:

- (3) An interview friend (other than a legal representative) of the suspect may be excluded from the place where the forensic procedure is being carried out if:
 - (a) the interview friend unreasonably interferes with or obstructs the carrying out of the procedure, or
 - (b) the investigating police officer forms a belief based on reasonable grounds that the presence of the interview friend could be prejudicial to the investigation of an offence because the interview friend may be a co-offender of the suspect or may be involved in some other way, with the suspect, in the commission of the offence.
- (4) If an interview friend is excluded under subsection (3), a suspect may choose another person to act as his or her interview friend. If the suspect does not choose another person as an interview friend, the police officer may arrange for any person who may act as an interview friend under section 4 to be present as an interview friend.

[2] Section 55 Presence of interview friend or legal representative—Aboriginal persons and Torres Strait Islanders

Omit section 55 (4). Insert instead:

- (4) An interview friend (other than a legal representative) of the suspect may be excluded from the place where the forensic procedure is being carried out if:
 - (a) the interview friend unreasonably interferes with or obstructs the carrying out of the procedure, or
 - (b) the investigating police officer forms a belief based on reasonable grounds that the presence of the interview friend could be prejudicial to the investigation of an offence because the interview friend may be a co-

offender of the suspect or may be involved in some other way, with the suspect, in the commission of the offence.

- (5) If an interview friend is excluded under subsection (4), a suspect may choose another person to act as his or her interview friend. If the suspect does not waive his or her right to have an interview friend present and does not choose another person as an interview friend, the police officer may arrange for any person who may act as an interview friend under section 4 to be present as an interview friend.

[3] Section 95 Definitions

Omit the definition of *corresponding law*. Insert instead:

corresponding law means a law of the Commonwealth, or of a State or Territory, that substantially corresponds to Part 11, and includes those provisions of such a law as are prescribed by the regulations to be a corresponding law for the purposes of this Act.

[4] Section 97 Database information

Omit section 97 (1). Insert instead:

- (1) The Minister may enter into arrangements with a responsible Minister of a participating jurisdiction under which:
- (a) information from the DNA database system of this State is to be transmitted to an appropriate authority in the participating jurisdiction for the purposes of the investigation of, or the conduct of proceedings for, an offence against the law of this State or the law of the participating jurisdiction, and
 - (b) information from a DNA database system of the participating jurisdiction is to be transmitted to the Commissioner of Police for the purposes of the investigation of, or the conduct of proceedings for, an offence against the law of this State or the law of the participating jurisdiction.
- (1A) Without limiting subsection (1), the Minister may enter into arrangements with a responsible Minister of the Commonwealth under which information from the DNA

database system of this State is transmitted to an appropriate authority in the Commonwealth for the purpose of the authority:

- (a) comparing the information so transmitted with information supplied to it from the DNA database system of a participating jurisdiction, and
- (b) identifying to the Commissioner of Police and to the appropriate authority in the participating jurisdiction any matches that are found as a result of the comparison.

[5] Section 109 Disclosure of information

Insert after section 109 (2) (c):

- (c1) the purposes of any arrangement of the kind referred to in section 97 (1) or (1A),

[6] Section 109 (2) (d)

Insert “other” before “arrangement”.

Explanatory note

Items [1] and [2] amend sections 54 and 55 of the *Crimes (Forensic Procedures) Act 2000*, in the same terms as previous amendments to section 10 of that Act, so as to extend the class of persons who can be excluded as a suspect’s interview friends to persons who may be co-offenders with the suspect or may otherwise be involved in the commission of the alleged offence.

Item [3] amends the definition of **corresponding law** in section 95 of the *Crimes (Forensic Procedures) Act 2000* so as to limit the ambit of the definition to laws that are prescribed by the regulations.

Item [4] amends section 97 of the *Crimes (Forensic Procedures) Act 2000* so as to clarify the purposes for which the Minister administering that Act may enter into arrangements for the transmission of DNA data between this State and other jurisdictions, and so as to enable DNA data to be transmitted to the CrimTrac Agency (a Commonwealth agency) for the purpose of matching DNA data from different jurisdictions.

Item [5] amends section 109 of the *Crimes (Forensic Procedures) Act 2000* so as to ensure that the provisions of that Act that prohibit disclosure of information do not apply to the transmission of DNA data in accordance with arrangements under section 97 of that Act. Item [6] is a consequential amendment.

Schedule 5 Amendment of Crimes (Local Courts Appeal and Review) Act 2001 No 120

(Section 3)

Section 3 Definitions

Insert after paragraph (a) (iii) of the definition of *sentence* in section 3 (1):

- (iiia) any non-association order or place restriction order under section 17A of the *Crimes (Sentencing Procedure) Act 1999*, and

Explanatory note

This Schedule amends the definition of *sentence* in the *Crimes (Local Courts Appeal and Review) Act 2001* so as to ensure that appeals under that Act may be made in relation to non-association and place restriction orders under section 17A of the *Crimes (Sentencing Procedure) Act 1999* in the same way as they could formerly be made under the provisions of the *Justices Act 1902* replaced by the 2001 Act.

Schedule 6 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92

(Section 3)

[1] Section 12 Suspended sentences

Insert “the whole of” after “suspending execution of” in section 12 (1) (a).

[2] Section 59 Court may vary commencement of sentence on quashing or varying other sentence

Omit “consecutive” from section 59 (1). Insert instead “other”.

[3] Section 59 (2)

Omit “consecutive”.

[4] Section 59 (2)

Omit “each such sentence”. Insert instead “each of them”.

[5] Section 59 (3) and (4)

Omit “consecutive” wherever occurring.

[6] Section 65B

Insert after section 65A:

65B Periodic detention not available for certain sexual offences

- (1) A periodic detention order may not be made in respect of a sentence of imprisonment for a prescribed sexual offence.
- (2) In subsection (1), *prescribed sexual offence* means:
 - (a) an offence under Division 10 or 10A of Part 3 of the *Crimes Act 1900*, being:
 - (i) an offence committed on a person under the age of 16 years, or
 - (ii) an offence, committed on a person of any age, the elements of which include sexual intercourse (as defined by section 61H of that Act), or
 - (b) an offence that includes the commission, or an intention to commit, an offence referred to in paragraph (a), or

- (c) an offence that, at the time it was committed, was a prescribed sexual offence within the meaning of this definition, or
- (d) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraph (a), (b) or (c).

[7] Section 98 Proceedings for breach of good behaviour bond

Insert at the end of section 98 (1) (b):

or

- (c) with the offender's consent, any other court of superior jurisdiction,

[8] Section 98 (1C)

Insert after section 98 (1B):

- (1C) For the purposes of subsection (1) (c), a court is of superior jurisdiction to the court with which an offender has entered into a good behaviour bond if it is a court to which the offender has (or has had) a right of appeal with respect to the conviction or sentence from which the bond arises.

[9] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

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[10] Schedule 2

Insert in appropriate order with appropriate Part and clause numbers:

Part Provisions consequent on enactment of Crimes Legislation Amendment Act 2003

Application of amendments

- (1) Section 65B, as inserted by the *Crimes Legislation Amendment Act 2003*, does not apply to proceedings commenced before the commencement of that section.

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- (2) For the purposes of this clause, proceedings on indictment following an accused person's committal for trial for an offence are taken to have commenced when committal proceedings for the offence were first commenced.
- (3) Section 65B, as inserted by the *Crimes Legislation Amendment Act 2003*, extends to offences committed before the commencement of that section and, for that purpose, a **prescribed sexual offence** is taken to include:
- (a) an offence committed before 13 June 2003 under Division 10 or 10A of Part 3 of the *Crimes Act 1900*, as in force from time to time before that date, being:
 - (i) an offence committed on a person under the age of 16 years, or
 - (ii) an offence, committed on a person of any age, the elements of which include sexual intercourse (as defined by section 61H of that Act), homosexual intercourse (as defined by section 78G of that Act) or carnal knowledge (as defined by section 62 (2) of that Act), and
 - (b) an offence committed before 17 March 1991 under section 61B, 61C, 61D, 61E or 61F of the *Crimes Act 1900*, as in force from time to time before that date, being:
 - (i) an offence committed on a person under the age of 16 years, or
 - (ii) an offence, committed on a person of any age, the elements of which include sexual intercourse (as defined by section 61A of that Act), and
 - (c) the offence of rape committed before 14 July 1981 as referred to in section 63 or 65 of the *Crimes Act 1900*, as in force from time to time before that date.

Explanatory note

Item [1] amends section 12 of the *Crimes (Sentencing Procedure) Act 1999* so as to make it clear that an order suspending execution of a sentence of imprisonment may be made in respect of the whole of the sentence only, and not for a part of the sentence.

Items [2]–[5] amend section 59 of the *Crimes (Sentencing Procedure) Act 1999* so as to enable a court that quashes or varies a person's sentence of imprisonment to vary the commencement of other sentences of imprisonment to which the person is subject, whether concurrent or consecutive, and not just consecutive sentences (as is currently the case).

Item [6] inserts a new section 65B into the *Crimes (Sentencing Procedure) Act 1999*. The new section prohibits a periodic detention order from being made in relation to a sentence of imprisonment that has been imposed for certain offences under Division

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Schedule 6 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92

10 (sexual assault) or Division 10A (sexual servitude) of Part 3 of the *Crimes Act 1900*, or for former offences of the same kind. Items [9] and [10] make consequential savings and transitional provisions.

Item [7] amends section 98 of the *Crimes (Sentencing Procedure) Act 1999* so as to allow proceedings for breach of an offender's good behaviour bond to be dealt with by a court having superior jurisdiction to the court with which the offender entered into the bond, but only if the offender consents to the matter being dealt with by that court. Currently, such proceedings can only be dealt with by the court with which the offender entered into the bond or another court of like jurisdiction. Item [8] further amends section 98 so as to provide that, for the purposes of the new provision, a court is of superior jurisdiction to the court with which an offender has entered into a bond if it is a court to which the offender has (or has had) a right of appeal with respect to the conviction or sentence from which the bond arises.

Schedule 7 Amendment of Criminal Appeal Act 1912 No 16

(Section 3)

[1] Section 2 Definitions

Insert “or 11” after “10” in paragraph (b) of the definition of *Sentence* in section 2 (1).

[2] Section 2 (1), definition of “Sentence”

Omit “11, 12 or 17A” from paragraph (c). Insert instead “12 or 17A”.

[3] Section 7 Powers of court in special cases

Omit section 7 (1A). Insert instead:

- (1A) If on an appeal against a sentence under section 5 (1), 5D, 5DA or 5DB, the court quashes or varies the sentence passed at trial on any count or part of an indictment, the court may quash or vary any other sentence passed at the trial:
- (a) in relation to any offence charged in any other count or part of the same indictment, or
 - (b) in relation to any offence charged in any count or part of any other indictment, or
 - (c) in relation to any offence dealt with under section 105 of the *Criminal Procedure Act 1986*, or
 - (d) in relation to any back up offence or related offence dealt with under section 167 of the *Criminal Procedure Act 1986*,

and pass such sentence, whether more or less severe, in substitution for the other sentence as the court thinks proper, and as may be warranted in law, in respect of the offence.

Explanatory note

Items [1] and [2] amend the definition of *Sentence* in section 2 (1) of the *Criminal Appeal Act 1912* so as to recognise that orders under section 11 of the *Crimes (Sentencing Procedure) Act 1999* (formerly made on conviction) are now made on a finding of guilt.

Section 7 (1A) of the *Criminal Appeal Act 1912* allows the Court of Criminal Appeal, when quashing or varying a sentence the subject of an appeal, to quash or vary other sentences passed in connection with the same indictment. Item [3] amends section 7 (1A) so as to allow the Court to also quash or vary other sentences passed at the same time.

Schedule 8 Amendment of Criminal Procedure Act 1986 No 209

(Section 3)

[1] Section 3 Definitions

Insert “66EA,” after “66D,” in paragraph (a) of the definition of *prescribed sexual offence* in section 3 (1).

[2] Section 91 Witness may be directed to attend

Insert at the end of section 91:

- (8) A direction may not be given under this section so as to require the attendance of the complainant in proceedings for a child sexual assault offence if the complainant:
 - (a) was under the age of 16 years:
 - (i) on the earliest date on which, or
 - (ii) at the beginning of the earliest period during which,

any child sexual assault offence to which the proceedings relate was allegedly committed, and
 - (b) is currently under the age of 18 years.
- (9) For the purposes of subsection (8):
child sexual assault offence means:
 - (a) a prescribed sexual offence, or
 - (b) an offence under section 73, 78A, 78B, 80D, 80E, 91A, 91B, 91D, 91E, 91F or 91G of the *Crimes Act 1900*, or
 - (c) an offence under section 66, 74, 78N, 78O or 78Q of the *Crimes Act 1900*, as in force immediately before 13 June 2003 (the date of commencement of the *Crimes Amendment (Sexual Offences) Act 2003*), or
 - (d) an offence that, at the time it was committed, was a child sexual assault offence for the purposes of subsection (8), or
 - (e) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraph (a), (b), (c) or (d).

complainant, in relation to any proceedings for an offence, means the person, or any of the persons, on whom the offence is alleged to have been committed.

[3] Section 166 Certification and transfer of back up and related offences

Insert “or sentence” after “trial” wherever occurring.

[4] Section 167 Manner of dealing with back up and related offences

Insert “, following a plea of guilty by an accused person to an indictable offence or” after “If” in section 167 (1).

[5] Section 167 (2)

Insert after section 167 (1A):

- (2) If a court is dealing with an accused person for an indictable offence following the person’s committal for sentence, 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 offence be dismissed, and
 - (b) may deal with any back up offence the charge for which is not dismissed under paragraph (a) and any related offence with which the accused person has been charged in accordance with this Part, unless to do so would not be in the interests of justice.

[6] Section 265 Information to be given to person charged (Table 1 offences)

Insert after section 265 (1):

- (1A) Subsection (1) does not apply if the person charged with an indictable offence is represented by a legal practitioner.

[7] Section 265 (2)

Omit “the person charged”. Insert instead “a person charged”.

[8] Schedule 1 Indictable offences triable summarily

Insert “or maliciously destroying or damaging property” after “stealing” wherever occurring in clauses 6, 7 and 8 in Table 1.

[9] Schedule 1, Table 1, clauses 6 and 8

Insert “or destroyed, or the value of the damage to the property,” after “stolen” wherever occurring.

Explanatory note

Section 91 of the *Criminal Procedure Act 1986* (as to be inserted by the *Criminal Procedure Amendment (Justices and Local Courts) Act 2001*) allows the Magistrate before whom committal proceedings are being heard to direct any person whose written statement has been tendered in evidence in the proceedings to attend the proceedings for the purpose of being cross-examined. Item [2] amends section 91 so as to prevent such a direction being given so as to require the attendance of a person who is under the age of 18 years in respect of a child sexual assault offence allegedly committed on the person when the person was under the age of 16 years. Item [1] adds the offence of persistent sexual abuse of a child to the list of offences in the definition of **prescribed sexual offence** in section 3 (1) of that Act. That definition is referred to in the proposed definition of **child sexual assault offence**, and is also referred to in a number of other contexts.

Section 166 of the *Criminal Procedure Act 1986* requires the prosecutor to inform the court from which a person is committed for trial of any back up or related offences with which the person has been charged, and requires the proceedings on those offences to be transferred to the court to which the person is committed. Item [3] extends these requirements to persons who are committed for sentence.

Section 167 of the *Criminal Procedure Act 1986* allows a court before which a person is tried for an indictable offence to deal with any back up or related offences if it finds the person guilty of the offence. Item [4] amends section 167 so as to allow the court to deal with back up or related offences following a plea of guilty. Item [5] further amends section 167 so as to require the court to which a person is committed for sentence pursuant to the amendments referred to in item [3] to dismiss any back up offences that are not appropriate to be dealt with, and to deal with any remaining back up or related offences.

Section 265 of the *Criminal Procedure Act 1986* requires a Local Court before which a person is charged with a “Table 1 offence” (that is, an indictable offence that will be dealt with summarily unless the person, or the prosecutor, elects to have the offence dealt with on indictment) to inform the person of, and give the person written notice concerning, the person’s right to make such an election. Item [6] amends section 265 so as to omit this requirement in relation to a person who is legally represented. Item [7] is a consequential amendment.

Schedule 1 to the *Criminal Procedure Act 1986* provides that an offence of entering premises with intent to steal may be dealt with summarily unless the accused person or the prosecutor elects for the offence to be dealt with on indictment. Items [8] and [9] amend Schedule 1 so as to make similar provision for an offence of entering premises with intent to destroy or damage property.

Schedule 9 Amendment of Drug Court Act 1998 No 150

(Section 3)

[1] Section 4 Definitions

Omit the definitions of *drug offender*, *initial sentence*, *program*, *referring court* and *suspension order* from section 4 (1).

Insert in alphabetical order:

drug offender means a person who has been dealt with under section 7 or 8AB.

initial sentence means any sentence imposed on a person in accordance with section 7 or 8AB, and includes any sentence that is added to the initial sentence in accordance with section 8AC.

program means the program of supervision and control that arises from the conditions accepted by a person and imposed by the Drug Court under section 7 (3) (a) or 8AB (6) (a).

referring court means the court by which a person has been referred to the Drug Court under section 6 or 8AA.

suspension order means an order under section 7 (3) (b) or 8AB (6) (b) by which a person's initial sentence is suspended for the duration of the person's program.

[2] Part 2, Division 1, heading

Insert "during proceedings for offence" after "program".

[3] Section 7 Persons accepted into program

Omit "may, under this section, convict and sentence a person who has pleaded guilty to the offence for which the person has been referred (whether before the referring court or the Drug Court)" from section 7 (2).

Insert instead "may deal with a person under this section in relation to an offence".

[4] Section 7 (2) (a1)

Insert after section 7 (2) (a):

- (a1) that the person has pleaded guilty to the offence (whether before the referring court or the Drug Court) and has been found guilty of the offence,

[5] Section 7 (2A)

Insert after section 7 (2):

- (2A) The Drug Court deals with a person under this section in relation to an offence by convicting the person and sentencing the person in accordance with the *Crimes (Sentencing Procedure) Act 1999*.

[6] Section 8 Persons not accepted into program

Omit “convicted and sentenced” from section 8 (1).

Insert instead “dealt with”.

[7] Section 8 (2) and (2A)

Omit section 8 (2). Insert instead:

- (2) The Drug Court may deal with a person under this section in relation to an offence if, and only if, it is satisfied as to each of the following matters:
- (a) that the person has pleaded guilty to the offence (whether before the referring court or the Drug Court) and has been found guilty of the offence,
 - (b) that the person consents to being dealt with under this section.
- (2A) The Drug Court deals with a person under this section in relation to an offence by convicting the person and sentencing the person in accordance with the *Crimes (Sentencing Procedure) Act 1999*.

[8] Part 2, Division 1A

Insert after Division 1 of Part 2:

Division 1A Acceptance into program during proceedings for breach of good behaviour bond

8AA Courts may refer persons to Drug Court

- (1) This section applies to such courts and proceedings as are prescribed by the regulations.

-
- (2) It is the duty of a court before whom an offender appears under section 98 of the *Crimes (Sentencing Procedure) Act 1999* in connection with an alleged failure to comply with the conditions of a good behaviour bond:
 - (a) to ascertain whether the person appears to be an eligible person, and
 - (b) if so, to ascertain whether the person is willing to be referred to the Drug Court to be dealt with for the alleged failure, and
 - (c) if so, to refer the person to the Drug Court to be dealt with for the alleged failure.
 - (3) The power conferred on a court by this section is to be exercised as soon as practicable after the person's first appearance before the court in relation to the alleged failure.
 - (4) This section does not apply to an offender who, at the time of his or her appearance before the court, is in custody under a sentence of full-time imprisonment.
 - (5) In relation to an offender who is remanded in custody in connection with proceedings for an offence, a court may, but only in such circumstances as the regulations prescribe, defer taking action under this section until it has disposed of those proceedings.

8AB Persons accepted into program

- (1) This section applies to a person:
 - (a) who has been referred to the Drug Court under section 8AA, or
 - (b) who has been called on by the Drug Court to appear before it under section 98 of the *Crimes (Sentencing Procedure) Act 1999*,not being a person who is currently participating in a program into which the person has been accepted as a result of previous proceedings under this Act.
- (2) The Drug Court may deal with a person under this section in relation to an alleged failure to comply with the conditions of the relevant good behaviour bond if, and only if, it is satisfied as to each of the following matters:
 - (a) that the person is an eligible person,

- (b) that the person admits to having failed, and has in fact failed, to comply with the conditions of the bond,
 - (c) that, having regard to the person's antecedents, it would be appropriate for the person to participate in a program under this Act,
 - (d) that facilities to supervise and control the person's participation in such a program are available, and have been allocated to the person, in accordance with the guidelines prescribed by the regulations,
 - (e) that the person accepts the conditions imposed by this Act and the conditions that the Drug Court proposes to impose on the person (whether immediately or at some later date) as a consequence of his or her being dealt with under this section,
 - (f) that the person has been informed of the Drug Court's powers under Division 2 and of the respective consequences, as regards the sentence to be imposed under section 12, of the person's compliance or non-compliance with a program,
 - (g) that any person (an *affected person*) with whom it is likely the person would reside during the period of the person's participation in a program under this Act has consented in writing to the person residing with the affected person during that period.
- (3) Subject to subsections (4) and (5), the Drug Court deals with a person under this section in relation to a failure to comply with the conditions of a good behaviour bond by revoking the bond, and convicting and sentencing the person, in accordance with the *Crimes (Sentencing Procedure) Act 1999*.
- (4) Section 99 of the *Crimes (Sentencing Procedure) Act 1999* does not apply to a good behaviour bond that is revoked under subsection (3).
- (5) For the purposes of this Act, the sentence of imprisonment in relation to which a good behaviour bond referred to in section 12 of the *Crimes (Sentencing Procedure) Act 1999* was entered into under that Act is taken to be the sentence imposed under subsection (3) in relation to the bond.

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- (6) On or within 14 days after sentencing the person, the Drug Court:
- (a) must make an order imposing on the person the conditions that the person has accepted as referred to in subsection (2) (e) (the person's *program*), and
 - (b) must make an order suspending execution of the sentence for the duration of the person's program (the person's *suspension order*).
- (7) An order referred to in subsection (6) (a) or (b) may be made in the absence of the person in respect of whom it is made.
- (8) The kinds of conditions that the Drug Court may impose on the person under this section are as follows:
- (a) conditions relating to conduct and good behaviour,
 - (b) conditions relating to attendance for counselling or other treatment,
 - (c) conditions relating to the supervision of the person for the duration of a program under this Act,
 - (d) conditions relating to drug testing that the person must undergo,
 - (e) conditions relating to residence, association with other persons or attendance at specified locations,
 - (f) conditions relating to involvement in activities, courses, training or employment for the purpose of promoting the re-integration of the person into the community,
 - (g) conditions relating to conferring rewards of the kind referred to in section 16 (1),
 - (h) conditions relating to the imposition of sanctions of the kind referred to in section 16 (2),
 - (i) any other kinds of conditions that may be prescribed by the regulations,
 - (j) such other conditions as the Drug Court considers appropriate in the circumstances.
- (9) Nothing in this Act entitles a person to be convicted and sentenced under this section, and no appeal lies against any decision by the Drug Court not to convict or sentence a person under this section.

- (10) A suspension order does not operate to suspend any period of disqualification from holding a driver licence imposed by or under the road transport legislation within the meaning of the *Road Transport (General) Act 1999*.
- (11) For the purposes of subsection (2) (g):
 - (a) the consent of children below a prescribed age, and
 - (b) the consent of persons suffering a prescribed disability,may be given on their behalf by such other persons as the regulations may determine or may, if the regulations so provide, be dispensed with.

8AC Persons allowed to continue in program

- (1) This section applies to a person:
 - (a) who has been referred to the Drug Court under section 8AA, or
 - (b) who has been called on by the Drug Court to appear before it under section 98 of the *Crimes (Sentencing Procedure) Act 1999*,being a person who is currently participating in a program into which the person has been accepted as a result of previous proceedings under this Act.
- (2) The Drug Court may deal with a person under this section in relation to an alleged failure to comply with the conditions of the relevant good behaviour bond if, and only if, it is satisfied as to each of the following matters:
 - (a) that the person is an eligible person,
 - (b) that the person admits to having failed, and has in fact failed, to comply with the conditions of the bond,
 - (c) that, having regard to the person's antecedents, it would be appropriate for the person to continue to participate in a program under this Act,
 - (d) that the person consents to being dealt with under this section.
- (3) Subject to subsections (4), (5) and (6), the Drug Court deals with a person under this section in relation to a failure to comply with the conditions of a good behaviour bond:

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- (a) by revoking the bond, and convicting and sentencing the person, in accordance with the *Crimes (Sentencing Procedure) Act 1999*, and
 - (b) by adding the new sentence to the person's initial sentence.
- (4) Section 99 of the *Crimes (Sentencing Procedure) Act 1999* does not apply to a good behaviour bond that is revoked under subsection (3) (a).
 - (5) For the purposes of this Act, the sentence of imprisonment in relation to which a good behaviour bond referred to in section 12 of the *Crimes (Sentencing Procedure) Act 1999* was entered into under that Act is taken to be the sentence imposed under subsection (3) (a) in relation to the bond.
 - (6) Any penalty in the new sentence that comprises a term of imprisonment or a community service order is taken to be subject to a direction that it be served consecutively with any other penalty of the same kind in the initial sentence.
 - (7) Nothing in this Act entitles a person to be convicted and sentenced under this section, and no appeal lies against any decision by the Drug Court not to convict or sentence a person under this section.

8AD Persons not accepted into program

- (1) This section applies to a person:
 - (a) who has been referred to the Drug Court under section 8AA, or
 - (b) who has been called on by the Drug Court to appear before it under section 98 of the *Crimes (Sentencing Procedure) Act 1999*,but whom the Drug Court has not dealt with under section 8AB or 8AC.
- (2) The Drug Court is to deal with a person to whom this section applies in accordance with sections 98 and 99 of the *Crimes (Sentencing Procedure) Act 1999*.

[9] Section 17 Immunity from prosecution for certain offences

Insert "or 1A" after "Division 1" in section 17 (a).

[10] Section 24 Jurisdiction of Drug Court

Insert after section 24 (2):

- (3) For the purposes of section 98 (1) (b) and (c) of the *Crimes (Sentencing Procedure) Act 1999*:
 - (a) the Drug Court is a court of like jurisdiction in relation to the District Court, and
 - (b) the Drug Court is a court of superior jurisdiction in relation to a Local Court.

Explanatory note

Item [8] inserts a new Division 1A into Part 2 of the *Drug Court Act 1998*. The new Division makes provision with respect to offenders who are called up by a court in relation to an alleged failure to comply with a good behaviour bond. The Division provides for the referral of offenders to the Drug Court for assessment (proposed section 8AA), allows the Drug Court to accept an offender into a drug program (proposed section 8AB), allows the Drug Court to permit an offender who is already in a drug program to remain in the program (proposed section 8AC) and allows the Drug Court to deal with an offender who it has not accepted into, or permitted to remain in, a drug program (proposed section 8AD). Items [1]–[7] and [9] are consequential amendments.

Section 98 of the *Crimes (Sentencing Procedure) Act 1999* (proceedings for breach of good behaviour bond) allows action under that section to be taken by the court with which an offender has entered into a good behaviour bond or any other court of like jurisdiction. Schedule 6 [7] proposes to amend that section so as to allow such action to also be taken by any other court of superior jurisdiction. Item [10] amends section 24 of the *Drug Court Act 1998* so as to provide that, for the purposes of section 98 of the *Crimes (Sentencing Procedure) Act 1999*, the Drug Court is taken to be of like jurisdiction to the District Court and of superior jurisdiction to a Local Court.

Schedule 10 Amendment of Evidence (Children) Act 1997 No 143

(Section 3)

[1] Section 11 Child entitled to give evidence in chief in form of recording

Insert “The child must not be present in, or be visible or audible to the court by closed-circuit television or by means of any similar technology, while it is viewing or hearing the recording.” after “the court.” in section 11 (1).

[2] Section 11 (1AA)

Insert after section 11 (1):

(1AA) Despite subsection (1), a child may, if the child so chooses, be present in court while it is viewing or hearing a recording as referred to in that subsection.

[3] Section 11 (2)

Insert “subsequently” after “must”.

[4] Section 15A

Insert after section 15:

15A Transcripts of recordings

The court may order that a transcript be supplied to the court or, if there is a jury, to the jury, or both, of all or part of evidence of a previous representation to which this Part applies made by a child that is given in the form of a recording if it appears to the court that a transcript would be likely to aid its or the jury’s comprehension of the evidence.

[5] Section 23 Use of closed-circuit television or similar technology

Insert “under this Part” after “technology used”.

[6] Schedule 2 Savings, transitional and other provisions

Insert after clause 2:

3 Evidence in chief in form of recording

The amendments made to section 11 by the *Crimes Legislation Amendment Act 2003* extend to evidence in chief given in a proceeding after the commencement of the amendments, regardless of whether the proceeding commenced before or after the commencement of the amendments.

Explanatory note

Section 11 of the *Evidence (Children) Act 1997* creates a presumption that a child is entitled to give evidence in chief of a previous representation made to an investigating official in the form of a recording.

Items [1], [2] and [3] make it clear that the child must not be present in the court (unless the child so chooses) or be visible or audible to the court by means of closed-circuit television or any other similar technology while the recording is being viewed or heard.

Item [4] enables a court to order that a transcript of all or part of a recording be supplied to aid its or a jury's comprehension of the evidence concerned.

Item [5] amends section 23 of the Act to make it clear that it applies only to evidence given by closed circuit-television or similar technology under Part 4 of the Act and not to evidence given by a recording under section 11.

Item [6] makes it clear that the amendments to section 11 extend to evidence in chief given in a proceeding after the commencement of the amendments even if the proceeding commenced before the commencement of the amendments.

Schedule 11 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103

(Section 3)

Section 165 General rules for carrying out internal search

Omit “and except as permitted (expressly or impliedly) by any other provision of this Division, must not be carried out in the presence or view of a person who is of the opposite sex to the suspect” from section 165 (a).

Explanatory note

Division 3 of Part 11 of the *Law Enforcement (Powers and Responsibilities) Act 2002* authorises the use of medical imaging to search suspects for internally concealed drugs. Section 165 of that Act currently prohibits medical imaging from being carried out on a suspect in the presence or view of a person of the opposite sex. This Schedule removes that prohibition.

Schedule 12 Amendment of Mental Health Act 1990 No 9

(Section 3)

Section 24 Detention after apprehension by police

Insert “or any other person” after “himself or herself” wherever occurring in section 24 (1) (b).

Explanatory note

Section 24 of the *Mental Health Act 1990* authorises a police officer to arrest a person who appears to be mentally disturbed, and who appears also to have committed an offence or attempted suicide or serious self-harm, and to take the person to a hospital to be assessed for mental illness or mental disorder. This Schedule amends section 24 so as to allow similar action to be taken in relation to a person who appears to be mentally disturbed and who appears also to have attempted serious harm to another person.

Schedule 13 Amendment of Mental Health (Criminal Procedure) Act 1990 No 10

(Section 3)

[1] Section 31 Application

Insert “and includes any related proceedings under the *Bail Act 1978*,” after “Magistrate,” in section 31 (1).

[2] Section 33 Mentally ill persons

Omit “the court” from section 33 (1) (b). Insert instead “a Magistrate or an authorised officer”.

[3] Section 33 (1D)

Insert after section 33 (1C):

(1D) If, at the commencement or at any time during the course of the hearing of proceedings under the *Bail Act 1978* before an authorised officer, it appears to the authorised officer that the defendant is a mentally ill person within the meaning of Chapter 3 of the *Mental Health Act 1990*, the authorised officer (without derogating from any other order under the *Bail Act 1978* that the officer may make in relation to the defendant):

- (a) may order that the defendant be taken by a police officer to, and detained in, a hospital for assessment, or
- (b) may order that the defendant be taken by a police officer to, and detained in, a hospital for assessment and that, if the defendant is found on assessment at the hospital not to be a mentally ill person or mentally disordered person, the defendant be brought by a police officer back before a Magistrate or an authorised officer.

[4] Section 33 (2)

Insert “or authorised officer” after “Magistrate” where firstly occurring.

[5] Section 33 (6)

Insert after section 33 (5):

- (6) In this section, a reference to an *authorised officer* is a reference to an authorised officer within the meaning of the *Criminal Procedure Act 1986*.

[6] Section 39 Effect of finding and declaration of mental illness

Omit “must”. Insert instead “may”.

[7] Section 39

Insert “or may make such other order (including an order releasing the person from custody, either unconditionally or subject to conditions) as the Court considers appropriate” after “due process of law”.

Explanatory note

Section 33 of the *Mental Health (Criminal Procedure) Act 1990* empowers a Magistrate before whom criminal proceedings are being heard to order (among other things) that the defendant be taken to a hospital for assessment for mental illness or mental disorder. Item [3] confers the same power on an authorised officer within the meaning of the *Criminal Procedure Act 1986*. Items [1], [2], [4] and [5] are consequential amendments.

Section 39 of the *Mental Health (Criminal Procedure) Act 1990* requires a person whom a jury has found not guilty by reason of mental illness to be detained in strict custody until released by due process of law. Items [6] and [7] amend section 39 so as to allow the court concerned to release the person from custody or to make such other order with respect to the person as it considers appropriate.

Schedule 14 Amendment of Police Powers (Internally Concealed Drugs) Act 2001 No 31

(Section 3)

Section 18 General rules for carrying out internal search

Omit “and except as permitted (expressly or impliedly) by any other provision of this Act, must not be carried out in the presence or view of a person who is of the opposite sex to the suspect” from section 18 (a).

Explanatory note

The *Police Powers (Internally Concealed Drugs) Act 2001* authorises the use of medical imaging to search suspects for internally concealed drugs. Section 18 of that Act currently prohibits medical imaging from being carried out on a suspect in the presence or view of a person of the opposite sex. This Schedule removes that prohibition.

Schedule 15 Amendment of Summary Offences Act 1988 No 25

(Section 3)

Section 11G Loitering by convicted child sexual offenders near premises frequented by children

Omit “50 penalty units” from section 11G (1).

Insert instead “100 penalty units”.

Explanatory note

This amendment doubles the monetary penalty that may be imposed on a convicted child sexual offender for the offence of loitering near a school or a public place frequented by children. This will bring the monetary penalty into line with the monetary penalty that may be imposed on a prohibited person under section 6 of the *Child Protection (Prohibited Employment) Act 1998* for the offence of applying for, undertaking or remaining in child-related employment.

[Second reading speech made in—

Legislative Council on 25 June 2003

Legislative Assembly on 2 July 2003]

BY AUTHORITY