



New South Wales

Crimes and Courts Legislation Amendment Act 2006 No 107

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New South Wales

Crimes and Courts Legislation Amendment Act 2006 No 107

Act No 107, 2006

An Act to make miscellaneous amendments to legislation relating to crimes, courts and other matters. [Assented to 29 November 2006]

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *Crimes and Courts Legislation Amendment Act 2006*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as otherwise provided by this section.
- (2) The amendments made by Schedule 1 commence on the day or days specified in that Schedule in relation to the amendments concerned. If a commencement day is not specified, the amendments commence on the date of assent to this Act.

3 Amendments

The Acts specified in Schedule 1 are amended as set out in that Schedule.

4 Explanatory notes

The matter appearing under the heading “Explanatory note” in Schedule 1 does not form part of this Act.

5 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendments

(Section 3)

1.1 Bail Act 1978 No 161

[1] Section 6 Grant of bail for certain periods

Omit “section 8” from section 6 (g10). Insert instead “section 7D”.

[2] Section 8A Presumption against bail for certain offences

Omit “23 (2), 24 (2)” from section 8A (1) (a) (i) and (iv) wherever occurring.
Insert instead “23 (1A), 23 (2), 23A (2), 23A (3), 24 (2), 24 (2A)”.

[3] Schedule 1 Savings and transitional provisions

Insert as Part 18:

Part 18 Crimes and Courts Legislation Amendment Act 2006

35 Offences committed before commencement of amendments

The amendment made to section 8A by the *Crimes and Courts Legislation Amendment Act 2006* extends to a grant of bail to a person in respect of an offence committed before the commencement of that amendment, but only if the person is charged with the offence on or after that commencement.

Explanatory note

Item [2] of the proposed amendments to the *Bail Act 1978* creates a presumption against bail for the following offences under the *Drug Misuse and Trafficking Act 1985*:

- (a) the offence relating to enhanced indoor cultivation of prohibited plants for a commercial purpose,
- (b) the offences relating to enhanced indoor cultivation of prohibited plants when a child is exposed to the cultivation process and either a commercial quantity of the plants is involved or the activity is carried out for a commercial purpose,
- (c) the offence relating to manufacture or production of a commercial quantity of a prohibited drug when a child is exposed to the manufacturing process.

Item [3] extends the amendment to the grant of bail in respect of offences committed before the commencement of the amendment in certain circumstances.

Item [1] of the proposed amendments is consequential on the renumbering of provisions of the *Drug Court Act 1998* effected by amendments elsewhere in this Schedule.

1.2 Child Protection (Offenders Prohibition Orders) Act 2004 No 46

Section 13 Contravention of orders

Omit section 13 (3).

Explanatory note

The proposed amendment to the *Child Protection (Offenders Prohibition Orders) Act 2004* removes the requirement for a police officer who arrests a person suspected of contravening a prohibition order to take the person before an authorised person (within the meaning of the *Criminal Procedure Act 1986*) to be dealt with according to law, on the basis that other laws (including the *Bail Act 1978*) render this requirement unnecessary.

1.3 Child Protection (Offenders Registration) Act 2000 No 42

[1] Section 3 Definitions

Omit “section 91D–91G” from paragraph (d) of the definition of *Class 2 offence* in section 3 (1).

Insert instead “section 91D, 91E, 91F, 91G or 91H”.

[2] Section 3 (1), definition of “Class 2 offence”

Omit “or 578C (2A)” from paragraph (e).

Explanatory note

The proposed amendments to the *Child Protection (Offenders Registration) Act 2000* update a cross-reference to an offence under the *Crimes Act 1900* relating to the production, dissemination or possession of child pornography.

1.4 Children (Criminal Proceedings) Act 1987 No 55

Section 42

Insert after section 41A:

42 Action may be taken after good behaviour bond has expired

Action may be taken under this Part in relation to a good behaviour bond even if the term of the bond has expired, but in respect only of matters arising during the term of the bond.

Explanatory note

The proposed amendment to the *Children (Criminal Proceedings) Act 1987* makes it clear that actions in relation to a failure to comply with a good behaviour bond may be taken even if the bond has expired, if the action relates to matters arising during the term of the bond. This parallels section 100 of the *Crimes (Sentencing Procedure) Act 1999*.

1.5 Civil Liability Act 2002 No 22

[1] Section 3B Civil liability excluded from Act

Omit “civil liability in respect of an intentional act that is done with intent to cause injury or death or that is sexual assault or other sexual misconduct” from section 3B (1) (a).

Insert instead “civil liability of a person in respect of an intentional act that is done by the person with intent to cause injury or death or that is sexual assault or other sexual misconduct committed by the person”.

[2] Schedule 1 Savings and transitional provisions

Insert after Part 8:

Part 9 Provisions consequent on enactment of Crimes and Courts Legislation Amendment Act 2006

24 Definition

In this Part, *amending Act* means the *Crimes and Courts Legislation Amendment Act 2006*.

25 Deemed commencement of, and application of, amendments to section 3B (1) (a)

- (1) The amendment to section 3B (1) (a) made by the amending Act extends to civil liability arising, and any award of damages in respect of such civil liability made, before the commencement of that amendment.
- (2) For the avoidance of doubt, any reference to “civil liability in respect of an intentional act that is done with intent to cause injury or death or that is sexual assault or other sexual misconduct” in section 3B (1) (a) before the commencement of this clause is taken to read (and always to have read) “civil liability of a person in respect of an intentional act that is done by the person with intent to cause injury or death or that is sexual assault or other sexual misconduct committed by the person”.
- (3) The provisions of this Schedule that apply to section 3B (1) (a) apply to that paragraph as if it read (and always had read) as provided by subclause (2).
- (4) This clause does not affect any final determination of legal proceedings made by a court or tribunal before the commencement of this clause.

- (5) However, this clause does apply to legal proceedings (being proceedings that have not been finally determined by a court or tribunal) that relate to the application of Division 6 of Part 2A to an award of damages, even if the proceedings that resulted in that award being made have been finally determined by a court or tribunal.

26 Definition of “offender in custody” in section 26A

- (1) The definition of *offender in custody* or *offender* in section 26A (1) includes, and is taken to have always included, the following:
- (a) an inmate within the meaning of the *Correctional Centres Act 1952*,
 - (b) a prisoner within the meaning of the *Prisons Act 1952*,
 - (c) a periodic detainee within the meaning of the *Periodic Detention of Prisoners Act 1981*,
 - (d) an offender for whom a home detention order was made under the *Home Detention Act 1996*,
 - (e) a person performing community service work under, or attending a place in compliance with the requirements of, a community service order as provided by the *Community Service Orders Act 1979*, whether or not the person is an offender in custody under any other paragraph of this definition.
- (2) This clause extends to civil liability arising, and any award of damages in respect of such civil liability made, before the commencement of this clause.
- (3) This clause does not affect any final determination of legal proceedings made by a court or tribunal before the commencement of this clause.
- (4) However, this clause does apply to legal proceedings (being proceedings that have not been finally determined by a court or tribunal) that relate to the application of Division 6 of Part 2A to an award of damages, even if the proceedings that resulted in that award being made have been finally determined by a court or tribunal.

Explanatory note

Section 3B (1) (a) of the *Civil Liability Act 2002* provides that the provisions of that Act (subject to some specified exceptions) do not apply to civil liability in respect of an intentional act that is done with intent to cause injury or death or that is sexual assault or other sexual misconduct. This provision prevents a person who has carried out such an act, when sued by their victim, from benefiting from the provisions of the *Civil Liability Act 2002* that aid defendants.

Item [1] of the proposed amendments amends section 3B (1) (a) of the *Civil Liability Act 2002* to make it clear that the exclusion in that paragraph applies only in relation to the civil liability of the person who carried out the intentional act to a person who suffered from that act. The amendment will make it clear that the exclusion does not apply in other circumstances, for example, where a victim of such an intentional act sues a third party for negligence for failing to prevent the act. (As a more specific example, the exclusion will not apply where an offender in custody, who has been intentionally injured by another offender in custody, sues the Department of Corrective Services for negligence for failing to prevent the intentional injury.) In such a case, the third party defendant will be able to benefit from the provisions of the *Civil Liability Act 2002* that aid defendants.

Item [2] of the proposed amendments inserts savings and transitional provisions (proposed Part 9 (clauses 24–26)) into Schedule 1 to the *Civil Liability Act 2002*.

Proposed clause 25, as far as possible, gives the amendment in item [1] retrospective application so that it applies as if the change it made commenced at the same time as section 3B (1) (a) commenced.

Part 2A of the *Civil Liability Act 2002* contains special provisions relating to offenders in custody. Section 26A of the Act defines the term “offender in custody” or “offender”. The definition includes the following types of person covered by the *Crimes (Administration of Sentences) Act 1999*: inmates, offenders serving their imprisonment by way of periodic detention, offenders serving their imprisonment by way of home detention and persons performing community service work under, or attending a place in compliance with the requirements of, a community service order.

Proposed clause 26 provides that the definition of **offender in custody** or **offender** in section 26A (1) includes, and is taken to always have included, persons who were “inmates”, “prisoners”, “periodic detainees”, “offenders for whom a home detention order was made” or “persons performing community service work under, or attending a place in compliance with the requirements of, a community service order” under legislation that preceded the commencement of the *Crimes (Administration of Sentences) Act 1999*.

The proposed clauses extend to civil liability arising, and any award of damages in respect of such civil liability made, before the commencement of the clauses. However, those proposed clauses will not affect any final determination of legal proceedings made by a court or tribunal before the commencement of those clauses.

1.6 Civil Procedure Act 2005 No 28

Schedule 3 Rule-making powers

Insert “and other means of obtaining access to information, documents or things” after “inspection” in clause 2.

Explanatory note

The proposed amendment extends the rule-making power in Schedule 3 to the *Civil Procedure Act 2005* so as to enable rules to be made in relation to obtaining access to information, documents or things relating to court proceedings.

1.7 Coroners Act 1980 No 27

[1] Section 4A State Coroners and Deputy State Coroners

Omit “3” from section 4A (1). Insert instead “4”.

[2] Part 4, Division 1A

Insert after Division 1:

Division 1A Coronial investigation scenes

23C Definitions

In this Part:

coronial investigation scene means a coronial investigation scene established under section 23E.

coronial investigation scene power means a function specified in section 23G (1) or (2).

23D Order establishing coronial investigation scene

- (1) If a coroner considers that an investigation should, for the purposes of an inquest or inquiry, be carried out at a particular place, a coroner may issue an order in writing or by telephone to a police officer or other person to:
 - (a) establish a coronial investigation scene at a specified place, and
 - (b) exercise coronial investigation scene powers in accordance with this Division, and
 - (c) enter and stay on the place for those purposes.
- (2) An order may be made:
 - (a) before the commencement, or
 - (b) after the commencement and before the completion, of an inquest or inquiry.
- (3) This Division applies to a place of any kind, whether or not a public place.
- (4) An order issued under this section authorises a police officer or other person specified in the order to enter any place referred to in that order.
- (5) A person acting under the authority of an order issued under this section may, for the purposes of exercising coronial investigation scene powers, obtain the assistance of any other person.

(6) A copy of a telephone order is to be provided to the police officer or other person to whom it is issued.

(7) In this section:
telephone means radio, facsimile or any other communication device.

23E Establishment of a coronial investigation scene

(1) A police officer or other person may establish a coronial investigation scene on a place in any way that is reasonably appropriate in the circumstances.

(2) A police officer or other person who establishes a coronial investigation scene must, if reasonably appropriate in the circumstances, give the public notice that the place is a coronial investigation scene.

23F Exercise of powers at coronial investigation scene

(1) A police officer or other person may exercise any of the coronial investigation scene powers if:

- (a) a coronial investigation scene has been established, and
- (b) the police officer or other person exercising the power suspects on reasonable grounds that it is necessary to do so to preserve evidence relevant to an investigation by the coroner.

(2) A police officer or other person may exercise the coronial investigation scene powers for the period of time specified in the order issued by the coroner.

23G Coronial investigation scene powers

(1) A police officer or other person may, in accordance with this Division and an order issued by a coroner under this Division, exercise the following functions at, or in relation to, a coronial investigation scene:

- (a) direct a person to leave the coronial investigation scene or remove a vehicle, vessel or aircraft from the coronial investigation scene,
- (b) remove from the coronial investigation scene a person who fails to comply with a direction to leave the coronial investigation scene or a vehicle, vessel or aircraft a person fails to remove from the coronial investigation scene,
- (c) direct a person not to enter the coronial investigation scene,

- (d) prevent a person from entering a coronial investigation scene,
 - (e) prevent a person from removing evidence from, or otherwise interfering with, the coronial investigation scene or anything in it and, for that purpose, detain and search the person,
 - (f) remove or cause to be removed an obstruction from the coronial investigation scene,
 - (g) perform any necessary investigation, including, for example, search the coronial investigation scene and inspect anything in it to obtain evidence in relation to the inquest or inquiry,
 - (h) for the purpose of performing any necessary investigation, conduct any examination or process,
 - (i) open anything at the coronial investigation scene that is locked,
 - (j) take electricity, gas or any other utility, for use at the coronial investigation scene,
 - (k) direct the occupier of the place or a person apparently involved in the management or control of the place to maintain a continuous supply of electricity at the place,
 - (l) photograph or otherwise record the coronial investigation scene and anything in it,
 - (m) seize and detain all or part of a thing that might provide evidence in relation to the inquest or inquiry or provide evidence of the commission of an offence,
 - (n) dig up anything at the coronial investigation scene,
 - (o) remove wall or ceiling linings or floors of a building, or panels of a vehicle,
 - (p) take possession of the body of a deceased person on behalf of the coroner, including body tissue, clothing and items apparently in the possession of the deceased person,
 - (q) remove or cause the removal of the body of a deceased person to any location nominated by the coroner,
 - (r) any other function reasonably necessary or incidental to a function conferred by this section.
- (2) The power conferred by this section to seize and detain a thing includes:
- (a) a power to remove the thing from the coronial investigation scene when it is found, and

-
- (b) a power to guard the thing in or on the coronial investigation scene.
- (3) Nothing in this Division prevents a police officer or other person who is lawfully on a place from exercising a coronial investigation scene power or doing any other thing, if the occupier of the place consents.

23H Obstruction or hindrance of person executing coronial investigation scene order

A person who, on production to the person of an order issued under section 23D, obstructs or hinders the person to whom the order was issued in the exercise of his or her powers under this Division arising by virtue of the order is guilty of an offence against this Act.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

23I Division does not limit other powers

Nothing in this Division limits any power that a police officer or other person has to enter a place or to do any other thing when at the place.

[3] Section 25 Order authorising entry of certain places

Omit the section.

[4] Schedule 3 Savings and transitional provisions

Insert at the end of clause 1A (1):

Crimes and Courts Legislation Amendment Act 2006, but only to the extent that it amends this Act

Explanatory note

Section 4A (1) of the *Coroners Act 1980* enables the Governor to appoint up to 3 Deputy State Coroners. Item [1] will enable the Governor to appoint up to 4 Deputy State Coroners.

Item [2] inserts proposed Division 1A of Part 4 into the *Coroners Act 1980*, to extend the powers of police and other persons to investigate a place on the order of a coroner under that Act. The proposed Division details when and how a coronial investigation scene may be established and the powers which may be exercised by police and other persons while at a coronial investigation scene. The search and seizure powers previously conferred on police and other persons are extended by the amendments so as to further facilitate the investigation process.

Item [3] of the proposed amendments removes a redundant provision.

Item [4] enables savings and transitional regulations to be made as a consequence of the proposed amendments.

1.8 Crimes (Local Courts Appeal and Review) Act 2001 No 120

[1] Section 3 Definitions

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

- (ba) any order made by a Local Court revoking a good behaviour bond and any order made as a consequence of the revocation of the good behaviour bond, or

[2] Section 10A

Insert after section 10:

10A Part applies to findings of guilt

- (1) An application for annulment under this Part may be made in relation to a finding of guilt made by a Local Court, whether or not the Court proceeds to conviction, and this Part applies in respect of any such application accordingly.
- (2) For that purpose:
 - (a) a reference in this Part to a *conviction* includes a reference to a finding of guilt, and
 - (b) a reference in this Part to a *sentence* includes any order made under section 10 or 11 of the *Crimes (Sentencing Procedure) Act 1999* on finding a person guilty of an offence.

[3] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Crimes and Courts Legislation Amendment Act 2006, but only in relation to the amendments made to this Act

[4] Schedule 1, Part 5

Insert after Part 4:

Part 5 Provisions consequent on enactment of Crimes and Courts Legislation Amendment Act 2006

10 Application of amendment to definition of “sentence”

The amendment to the definition of *sentence* in section 3 (1) made by the *Crimes and Courts Legislation Amendment Act 2006* extends to orders referred to in paragraph (ba) of that definition

that were made before the commencement of that amendment, but does not affect any appeal proceedings or application under this Act that was finally determined before the commencement of that amendment.

Explanatory note

Item [1] of the proposed amendments to the *Crimes (Local Courts Appeal and Review) Act 2001* ensures that the revocation of a good behaviour bond and any order made as a consequence of that revocation is treated as part of the sentence of a person and can be appealed under that Act. Item [4] ensures that the amendment extends to orders made before the commencement of that amendment.

Item [2] extends the provisions of the *Crimes (Local Courts Appeal and Review) Act 2001* that allow a person to apply for an annulment of a conviction or sentence in certain circumstances so that an application may also be made in respect of a finding of guilt or an order made as a consequence of a finding of guilt (whether or not the court proceeds to conviction).

Item [3] provides for the making of savings and transitional regulations as a consequence of the proposed amendments.

1.9 Crimes (Sentencing Procedure) Act 1999 No 92

[1] Section 10A

Insert after section 10:

10A Conviction with no other penalty

- (1) A court that convicts an offender may dispose of the proceedings without imposing any other penalty.
- (2) Any such action is taken, for the purposes of the *Crimes (Local Courts Appeal and Review) Act 2001* and the *Criminal Appeal Act 1912*, to be a sentence passed by the court on the conviction of the offender.

Note. The *Crimes (Local Courts Appeal and Review) Act 2001* and the *Criminal Appeal Act 1912* provide for appeals against sentence, including (in some circumstances) by the prosecutor.

[2] Section 12 Suspended sentences

Omit “except to the extent to which it deals with setting the non-parole period and the balance of the term of the sentence” from section 12 (3).

[3] Section 99 Consequences of revocation of good behaviour bond

Omit section 99 (1) (c) (ii) and (iii). Insert instead:

- (ii) Part 4 applies to the sentence, as if the sentence were being imposed by the court following revocation of the good behaviour bond, and section 24 applies in relation to the setting of a non-parole period under that Part.

[4] Section 99 (2)

Omit “(disregarding any part that has already been served)”.

[5] Section 100I Constitution of New South Wales Sentencing Council

Omit “10” from section 100I (2). Insert instead “13”.

[6] Section 100I (2) (f)–(h)

Insert at the end of section 100I (2) (e):

, and

- (f) one is to have expertise or experience in corrective services, and
- (g) one is to have expertise or experience in juvenile justice, and
- (h) one is to be a representative of the Attorney General’s Department.

[7] Section 100J Functions of Sentencing Council

Insert after section 100J (1) (d):

- (e) to educate the public about sentencing matters.

[8] Schedule 1A Provisions relating to membership and procedure of New South Wales Sentencing Council

Omit “6 members” from clause 10. Insert instead “7 members”.

[9] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Crimes and Courts Legislation Amendment Act 2006, to the extent that it amends this Act

[10] Schedule 2, Part 16

Insert after Part 15:

Part 16 Provisions consequent on enactment of Crimes and Courts Legislation Amendment Act 2006

56 Application of amendments

- (1) The amendments made to sections 12 and 99 by the *Crimes and Courts Legislation Amendment Act 2006*, and section 10A, as

inserted by that Act, extend to proceedings commenced (but not concluded) before the commencement of the amendments.

- (2) The amendments made to section 99 by the *Crimes and Courts Legislation Amendment Act 2006* extend to proceedings in respect of the revocation of a good behaviour bond entered into before the commencement of the amendments, subject to subclause (3).
- (3) The amendments to section 99 do not require a non-parole period in respect of a sentence of imprisonment to be set on the revocation of a good behaviour bond entered into before the commencement of the amendments if the non-parole period was set at the time that the sentence was suspended.

Commencement

Items [5]–[8] of the amendments to the *Crimes (Sentencing Procedure) Act 1999* commence on a day or days to be appointed by proclamation.

Explanatory note

Item [1] of the proposed amendments to the *Crimes (Sentencing Procedure) Act 1999* makes it clear that a court has power, on convicting a person, to dispose of the proceedings without imposing any further penalty. It also provides that the disposal of the proceedings without further penalty is to be treated as part of the sentence of the offender, for the purposes of Acts that provide for appeals against sentence. This would facilitate an appeal by the Crown in the circumstances provided for in those Acts.

Items [2]–[4] amend the provisions of the Act relating to the suspension of sentences on condition that the offender enter into a good behaviour bond, and any subsequent revocation of that bond. The proposed amendments remove the requirement that the court set a non-parole period at the time of imposing a suspended sentence. Instead, the setting of a non-parole period (and other functions of the court under Part 4 of the Act) are to be exercised by the court if it revokes the good behaviour bond. The amendments also remove a requirement, that is redundant in relation to suspended sentences, that the court disregard any part of a sentence that has already been served when it considers whether a sentence should be served by way of periodic detention or home detention.

Items [5] and [6] provide for the appointment of additional members of the New South Wales Sentencing Council. The 3 additional members are to be:

- (a) a person with expertise or experience in corrective services, and
- (b) a person with expertise or experience in juvenile justice, and
- (c) a representative of the Attorney General's Department.

Item [8] is a consequential amendment.

Item [7] confers an additional function on the Sentencing Council, being the function of educating the public about sentencing matters.

Items [9] and [10] provide for the transitional application of the amendments and enable the making of savings and transitional regulations as a consequence of the amendments.

1.10 Criminal Appeal Act 1912 No 16

[1] Section 2 Definitions

Insert after paragraph (c) in the definition of *Sentence* in section 2 (1):

- (ca) any order made by the court of trial, after a person's conviction for an offence, revoking a good behaviour bond and any order made by the court of trial as a consequence of the revocation of the good behaviour bond, or

[2] Section 5AF

Omit the section. Insert instead:

5AF Appeals by offenders against sentences imposed by the Drug Court

- (1) Section 5AA applies to and in respect of a person sentenced by the Drug Court in the exercise of its jurisdiction under Part 2 of the *Drug Court Act 1998*:
 - (a) in relation to a sentence determined by the Drug Court under section 7D or 7E of that Act, or a final sentence determined by the Drug Court under section 12 of that Act, for an indictable offence, or
 - (b) in relation to a sentence determined by the Drug Court under section 7D or 7E of that Act, or a final sentence determined by the Drug Court under section 12 of that Act, for a summary offence,in the same way as it applies to a person referred to in section 5AA (1).
- (2) For the purposes of this section, a reference in section 5AA to the Supreme Court is to be construed as including a reference to the Drug Court.
- (3) The power of the Court of Criminal Appeal to hear and determine an appeal under this section is to be exercised:
 - (a) in relation to an appeal under subsection (1) (a)—by such 2 or 3 judges of the Supreme Court as the Chief Justice may direct, or
 - (b) in relation to an appeal under subsection (1) (b)—by such single judge of the Supreme Court as the Chief Justice may direct unless the judge, on the application of either party or of his or her own motion, considers that the appeal raises matters of principle or it is otherwise in the interests of justice for the appeal to be dealt with by the full Court of Criminal Appeal and notifies the Chief Justice

accordingly, in which case the appeal is to be heard and determined by such 3 or more judges of the Supreme Court as the Chief Justice may direct.

- (4) Despite section 12 (4) of the *Drug Court Act 1998*, on an appeal against a final sentence imposed by the Drug Court under section 12 of that Act, the Court of Criminal Appeal may pass a more severe sentence than the initial sentence imposed on the relevant offender under section 7A or 7B of that Act.

[3] Section 5D Appeal by Crown against sentence

Insert “or 5DC” after “section 5DA” in section 5D (3).

[4] Section 5DC

Insert after section 5DB:

5DC Appeals by Crown against sentences imposed by Drug 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 Drug Court in the exercise of its jurisdiction under Part 2 of the *Drug Court Act 1998*:
- (a) in relation to a sentence determined by the Drug Court under section 7D or 7E of that Act, or a final sentence determined by the Drug Court under section 12 of that Act, for an indictable offence, or
 - (b) in relation to a sentence determined by the Drug Court under section 7D or 7E of that Act, or a final sentence determined by the Drug Court under section 12 of that Act, for a summary offence.
- (2) The power of the Court of Criminal Appeal to hear and determine an appeal under this section is to be exercised:
- (a) in relation to an appeal under subsection (1) (a)—by such 3 judges of the Supreme Court as the Chief Justice may direct, or
 - (b) in relation to an appeal under subsection (1) (b)—by such single judge of the Supreme Court as the Chief Justice may direct unless the judge, on the application of either party or of his or her own motion, considers that the appeal raises matters of principle or it is otherwise in the interests of justice for the appeal to be dealt with by the full Court of Criminal Appeal and notifies the Chief Justice

accordingly, in which case the appeal is to be heard and determined by such 3 or more judges of the Supreme Court as the Chief Justice may direct.

- (3) Despite section 12 (4) of the *Drug Court Act 1998*, on an appeal against a final sentence imposed by the Drug Court under section 12 of that Act, the Court of Criminal Appeal on appeal may pass a more severe sentence than the initial sentence imposed on the relevant offender under section 7A or 7B of that Act.
- (4) 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 the Court of Criminal Appeal may seem proper,
 - (c) exercise, by order, any power that the Drug Court might have exercised.
- (5) 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 Drug Court.
- (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.

[5] Schedule 1 Savings and transitional provisions

Insert after clause 10:

11 Crimes and Courts Legislation Amendment Act 2006

- (1) The amendments made to this Act by Schedule 1.10 [2]–[4] to the *Crimes and Courts Legislation Amendment Act 2006* do not apply to any appeal proceedings commenced before the commencement of those amendments.
- (2) The amendment to the definition of *Sentence* in section 2 (1) made by the *Crimes and Courts Legislation Amendment Act 2006* extends to orders referred to in paragraph (ca) of that definition that were made before the commencement of that amendment, but does not affect any appeal proceedings that were finally determined before the commencement of that amendment.

Explanatory note**Background**

Under the *Drug Court Act 1998*, a person is referred to the Drug Court by another court and is initially dealt with under current section 7 by the Drug Court convicting and sentencing the person. That sentence, the “initial sentence”, is suspended, to allow participation in the Drug Court program. Under section 11 there is provision for the termination of the offender’s program. After a drug offender’s program is terminated, the Drug Court reconsiders the initial sentence and determines a “final sentence” under section 12.

The Court of Criminal Appeal in *R v Toman* [2004] NSWCCA 31 found that the Crown may appeal against any sentence imposed on an offender under the *Drug Court Act 1998* including an initial sentence imposed by the Drug Court under current section 7. However, an offender only has a right to appeal against a final sentence under section 12 of that Act (see section 5AF of the *Criminal Appeal Act 1912*).

The Court in *R v Toman* [2004] NSWCCA 31 also considered section 12 (4) of the *Drug Court Act 1998*, which provides that a final sentence determined for a drug offender in relation to an offence is not to be greater than the initial sentence imposed on the drug offender in relation to that offence. The Court held that section 12 (4) applied to an appeal court in the same way as to a judge of first instance, so as to limit the final sentence imposed on appeal to one no greater than the initial sentence.

Proposed amendments

Items [2]–[5] of the proposed amendments to the *Criminal Appeal Act 1912* revise appeal rights in relation to the Drug Court. The proposed amendments will have the effect that:

- (a) an appeal may not be made, by either the Crown or the offender, against an initial sentence imposed by the Drug Court, and
- (b) where the offender or the Crown appeals against a final sentence imposed on a Drug Court program participant under section 12 of the *Drug Court Act 1998*, the Court of Criminal Appeal may, if it allows the appeal, impose a greater sentence than the Drug Court participant’s initial sentence, despite section 12 (4) of the *Drug Court Act 1998*, and
- (c) appeals by offenders against sentences imposed by the Drug Court on indictment are to be heard and determined by the Court of Criminal Appeal constituted by 2 or 3 judges, and
- (d) Crown appeals against sentences imposed by the Drug Court on indictment are to be heard and determined by the Court of Criminal Appeal constituted by 3 judges, and
- (e) all appeals (whether by the Crown or the offender) against sentences imposed by the Drug Court in matters dealt with summarily are to be determined before a single judge of the Supreme Court, provided that the judge has the discretion to remit the application to the full court of the Court of Criminal Appeal for determination, either on the judge’s own motion or on the application of either party, if the appeal raises matters of principle or it is otherwise in the interests of justice to do so.

Item [1] of the proposed amendments to the *Criminal Appeal Act 1912* ensures that the revocation of a good behaviour bond and any order made as a consequence of that revocation is treated as part of the sentence of an offender and can be appealed under that Act. Item [5] includes a savings and transitional provision that ensures that the amendment extends to orders made before the commencement of that amendment.

1.11 Criminal Procedure Act 1986 No 209

[1] Section 3 Definitions

Insert after section 3 (2):

- (3) In the absence of evidence to the contrary, a person specified in paragraphs (a)–(f) of the definition of *public officer* who purports to exercise a function as a public officer under this Act is presumed to be acting in an official capacity.

[2] Section 48 Commencement of proceedings by police officer or public officer

Insert “under section 14 of this Act or under any other law” after “authorised”.

[3] Section 49 Commencement of private prosecutions

Insert “under section 14 of this Act or under any other law” after “authorised” in section 49 (1).

[4] Section 52 Service of court attendance notices

Insert “or prosecutor” after “police officer” where secondly occurring in section 52 (1).

[5] Section 52 (4)

Omit section 52 (4) and (5). Insert instead:

- (4) A copy of a court attendance notice must be filed in the registry of a court in accordance with the rules.

[6] Section 53 When proceedings commence

Omit section 53 (2).

[7] Section 76 Recordings of interviews with children

Insert after section 76 (5):

- (5A) Section 79 (3) does not apply to or in relation to a written statement certified under this section.

[8] Section 86 Evidence not to be admitted

Insert at the end of the section:

- (2) Despite subsection (1), the Magistrate may admit the evidence sought to be adduced if the Magistrate is satisfied that:
- (a) the non-compliance with this Division or the rules is trivial in nature, or

- (b) there are other good reasons to excuse the non-compliance, and admit the evidence, in the circumstances of the case.

[9] Section 91 Witness may be directed to attend

Omit “tendered as evidence under this Division” from section 91 (1).

Insert instead “that the prosecution intends to tender as evidence in the committal proceedings”.

[10] Section 91 (3)

Omit “A direction may not be given if the written statement has already been admitted in evidence.”.

[11] Section 91 (3A)

Insert after section 91 (3):

- (3A) A direction may not be given for the reasons referred to in subsection (3) if the written statement has already been admitted in evidence. This does not prevent a direction being given merely because the written statement is tendered to the Magistrate for the purpose of determining an application for a direction under this section.

[12] Section 173 Commencement of proceedings by police officer or public officer

Insert “under section 14 of this Act or under any other law” after “authorised”.

[13] Section 174 Commencement of private prosecutions

Insert “under section 14 of this Act or under any other law” after “authorised” in section 174 (1).

[14] Section 177 Service of court attendance notices

Insert “or prosecutor” after “police officer” where secondly occurring in section 177 (1).

[15] Section 177 (4)

Omit section 177 (4) and (5). Insert instead:

- (4) A copy of a court attendance notice must be filed in the registry of a court in accordance with the rules.

[16] Section 178 When proceedings commence

Omit section 178 (2).

[17] Section 179 Time limit for commencement of summary proceedings

Omit “This section” from section 179 (2). Insert instead “Subsection (1)”.

[18] Section 179 (2) (c)

Insert at the end of section 179 (2) (b):

, or

- (c) to an offence involving the death of a person that is or has been the subject of a coronial inquest.

[19] Section 179 (3)

Insert after section 179 (2):

- (3) Proceedings for a summary offence that relate to the death of a person that is or has been the subject of a coronial inquest must be commenced:
 - (a) not later than 6 months after the conclusion of the inquest, or
 - (b) not later than 2 years from when the offence is alleged to have been committed,
 whichever occurs first.

[20] Section 237 Duration of arrest warrants

Omit “is carried out” from section 237 (1). Insert instead “expires”.

[21] Section 237 (1A)–(1C)

Insert after section 237 (1):

- (1A) A warrant to arrest an accused person in respect of an offence specified in the Table below expires at the end of the period specified in the Table in relation to the offence.

Offence	Period
Indictable offences (punishable by imprisonment for life or 25 years or more)	50 years
Indictable offences (punishable by imprisonment for less than 25 years and not less than 5 years)	30 years
Indictable offences not punishable by imprisonment for 5 years or more (where the accused person is not a child)	15 years

Offence	Period
Summary offences (where the accused person is not a child)	10 years
Indictable offences not punishable by imprisonment for 5 years or more (where the accused person is a child)	10 years
Summary offences (where the accused person is a child)	5 years

(1B) A warrant issued for the arrest of a convicted person to bring that person before a court for sentencing expires at the end of 30 years after it is issued.

(1C) Nothing in subsection (1A) or (1B) prevents a new warrant for arrest from being issued in respect of the same offence or offences as a previous arrest warrant.

[22] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Crimes and Courts Legislation Amendment Act 2006, but only to the extent to which it amends this Act.

[23] Schedule 2

Insert at the end of the Schedule with appropriate Part and clause numbering:

Part Provisions consequent on enactment of Crimes and Courts Legislation Amendment Act 2006

Changes to limitation period

Section 179 (3), as inserted by the *Crimes and Courts Legislation Amendment Act 2006*, extends to a summary offence that relates to the death of a person before the commencement of that subsection, but only if the period for commencement of proceedings in relation to the offence under section 179 (1) has not expired on the commencement of section 179 (3).

Existing warrants

Section 237 (1A)–(1C), as inserted by the *Crimes and Courts Legislation Amendment Act 2006*, does not apply to a warrant issued before the commencement of those provisions.

Commencement

Items [20] and [21] of the amendments to the *Criminal Procedure Act 1986* commence on a day or days to be appointed by proclamation.

Explanatory note

The term **public officer** is defined in section 3 of the *Criminal Procedure Act 1986*. Item [1] of the proposed amendments establishes an evidentiary presumption that a person purporting to be a public officer is acting in an official capacity.

Sections 48, 49, 173 and 174 of the *Criminal Procedure Act 1986* provide that various authorised persons may commence proceedings. Items [2], [3], [12] and [13] make it clear that section 14 of the *Criminal Procedure Act 1986* or authorisation under any other law is sufficient authorisation for the purposes of those sections.

Sections 52 and 177 of the *Criminal Procedure Act 1986* require a court attendance notice issued by a police officer to be served on the accused by a police officer. Items [4] and [14] provide that a court attendance notice issued by a police officer may also be served by a prosecutor.

Sections 52 (4) and 177 (4) of the *Criminal Procedure Act 1986* require that an endorsement of service be filed with a court when a court attendance notice is issued. It was held in *Sharman v Director of Public Prosecutions* (2006) NSWSC 135 that a failure to comply with this requirement may render the proceedings invalidly commenced. Items [5] and [15] remove the link between service of a court attendance notice and the jurisdiction of the court. Items [6] and [16] remove redundant provisions relating to when proceedings commence.

At present, prosecution evidence in committal proceedings is given in the form of written statements of witnesses that are tendered in evidence at the proceedings. Section 79 of the *Criminal Procedure Act 1986* requires that a written statement be endorsed in accordance with the rules. Item [7] provides an exemption for children from having to endorse a written statement where the statement is a transcript certified under section 76.

Item [8] gives a Magistrate a discretion to admit prosecution evidence in committal proceedings despite a non-compliance with the requirements of the relevant provisions of the Act or the rules if the Magistrate is satisfied that the non-compliance is trivial in nature or that there are other good reasons to excuse the non-compliance and admit the evidence.

Currently, section 91 of the *Criminal Procedure Act 1986* allows a Magistrate to direct a person who has provided a written statement to attend to give oral evidence at the committal proceedings in exceptional circumstances. Item [9] amends section 91 to clarify that a direction may be given in respect of any written statement that the prosecution intends to tender as evidence in the proceedings. Items [10] and [11] remove any doubt that the tendering of the written statement to the Magistrate, for the purpose of a directions hearing under section 91, prevents the Magistrate from giving such a direction.

Items [17], [18] and [19] enable summary offence proceedings relating to a death that is the subject of a coronial inquest to be commenced within 6 months from when the inquest concludes or no later than 2 years after the commission of the offence, whichever occurs first. Item [23] includes a savings and transitional provision that extends the amendment to summary offences committed before the commencement of that amendment if the existing limitation period has not expired.

Currently there is no provision in the *Criminal Procedure Act 1986* that enables a warrant issued under that Act to expire. Items [20] and [21] make provision for the expiration of arrest warrants issued under the Act. Item [23] inserts a savings and transitional provision making it clear that the amendments do not apply to existing warrants.

Item [22] enables savings and transitional regulations to be made as a consequence of the proposed amendments.

1.12 Director of Public Prosecutions Act 1986 No 207

Section 9 Taking over prosecutions or proceedings

Insert after section 9 (4):

- (5) For the purposes of this section, *proceeding* includes any application, appeal or other proceeding commenced under Division 1A of Part 3 of the *Confiscation of Proceeds of Crime Act 1989*.

Commencement

The amendment to the *Director of Public Prosecutions Act 1986* commences on the commencement of Schedule 1 [34] to the *Confiscation of Proceeds of Crime Amendment Act 2005*.

Explanatory note

The proposed amendment to the *Director of Public Prosecutions Act 1986* makes it clear that the Director of Public Prosecutions may take over proceedings relating to the freezing of assets commenced by a police officer under Division 1A of Part 3 of the *Confiscation of Proceeds of Crime Act 1989*.

1.13 District Court Act 1973 No 9

[1] Section 32 Directions as to sittings of Court in its civil jurisdiction

Insert after section 32 (1):

- (1A) The Chief Judge is to consult with the Attorney General before making a direction under subsection (1) that substantially alters the frequency of sittings at a particular place compared with the previous calendar year.

[2] Section 171 Criminal procedure rules

Insert at the end of the section:

- (5) Despite any other provision of this Act, the provisions of Part 3 of Chapter 4 of the *Criminal Procedure Act 1986* and any rules under that Part apply to proceedings in the Court in its criminal jurisdiction.

[3] Section 173 Directions as to sittings of Court in its criminal jurisdiction

Insert after section 173 (1):

- (1A) The Chief Judge is to consult with the Attorney General before making a direction under subsection (1) that substantially alters the frequency of sittings at a particular place compared with the previous calendar year.

Explanatory note

Items [1] and [3] of the proposed amendments provide that the Chief Judge is to consult with the Attorney General before making any substantial alterations to the sitting calendar of the Court in either its civil or criminal jurisdiction.

Item [2] of the proposed amendments makes it clear that the provisions of Part 3 of Chapter 4 of the *Criminal Procedure Act 1986* which relates to subpoenas apply to District Court proceedings so as to achieve consistency in the procedure for dealing with subpoenas between the various jurisdictions.

1.14 Drug Court Act 1998 No 150

[1] Section 4 Definitions

Omit “7 or 8AB” from the definition of *drug offender* in section 4 (1).

Insert instead “7A or 7B”.

[2] Section 4 (1), definition of “initial sentence”

Omit “7 or 8AB”. Insert instead “7A or 7B”.

[3] Section 4 (1), definition of “initial sentence”

Omit “8AC”. Insert instead “7C”.

[4] Section 4 (1), definition of “program”

Omit “7 (3) (a) or 8AB (6) (a)”. Insert instead “7A (5) (a) or 7B (7) (a)”.

[5] Section 4 (1), definition of “referring court”

Omit “8AA”. Insert instead “7”.

[6] Section 4 (1), definition of “suspension order”

Omit “7 (3) (b) or 8AB (6) (b)”. Insert instead “7A (5) (b) or 7B (7) (b)”.

[7] Part 2, Division 1

Omit Divisions 1 and 1A. Insert instead:

Division 1 Acceptance into program

6 Courts may refer persons to Drug Court during proceedings for offence

- (1) This section applies to such courts and proceedings as are prescribed by the regulations.
- (2) It is the duty of a court before which a person is charged with an offence or to which a person appeals against a sentence imposed by some other court:
 - (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 offence, and
 - (c) if so, to refer the person to the Drug Court to be dealt with for the offence.
- (3) The power conferred on a court by this section is to be exercised as soon as practicable after the person first comes before the court in connection with the offence, but may be exercised at any time:
 - (a) in the case of a Magistrate conducting committal proceedings under the *Criminal Procedure Act 1986*, before the Magistrate has committed the person for trial or sentence in relation to that offence, and
 - (b) in any other case, before the person is sentenced or re-sentenced for the offence.

7 Courts may refer persons to Drug Court during proceedings for failure to comply with conditions of good behaviour bond

- (1) This section applies:
 - (a) in relation to a person who is, at the time of his or her appearance in court, participating in a program into which he or she has been accepted as a result of previous proceedings under this Act—to any court before which such a person appears, or
 - (b) in relation to any other person—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 imposed under section 12 of that Act:
 - (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.

7A Persons accepted into program in relation to offence

- (1) This section applies to a person who has been referred to the Drug Court under section 6.
- (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 is an eligible person,
 - (b) 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,
 - (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 conviction and sentence under this section,

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- (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 subsection (4), 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*.
 - (4) Sections 44–48, 50, 51 and 51A of the *Crimes (Sentencing Procedure) Act 1999* do not apply to the conviction and sentencing of a person under this section.
 - (5) 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*).
 - (6) An order referred to in subsection (5) (a) or (b) may be made in the absence of the person in respect of whom it is made.
 - (7) 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.
- (8) A person who is convicted and sentenced by the Drug Court under this section may, at the same time or any later time:
- (a) be convicted and sentenced for any other offence to which he or she has pleaded guilty (other than an offence referred to in section 5 (2)), whether or not the person has been referred to the Drug Court under section 6 in relation to that other offence, or
 - (b) be dealt with in proceedings under section 98 or 99 of the *Crimes (Sentencing Procedure) Act 1999* for sentencing on the revocation of a good behaviour bond, whether or not the person has been referred to the Drug Court under section 7 in relation to the failure to comply with the conditions of the good behaviour bond, or
 - (c) be dealt with under both paragraphs (a) and (b).
- (9) Subsections (5) and (6) apply to a sentence under subsection (8) in the same way as they apply to a sentence under subsection (2).
- (10) 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.
- (11) 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 2005*.
- (12) 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.

- (13) In this section, a reference to the convicting and sentencing of a person is, in the case of a person who is referred to the Drug Court after having been convicted, a reference to the sentencing of the person only.

7B Persons accepted into program in relation to failure to comply with conditions of good behaviour bond

- (1) This section applies to a person:
- (a) who has been referred to the Drug Court under section 7, 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) Sections 44–48, 50, 51 and 51A of the *Crimes (Sentencing Procedure) Act 1999* do not apply to the conviction and sentencing of a person under this section.
- (6) 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.
- (7) 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*).
- (8) An order referred to in subsection (7) (a) or (b) may be made in the absence of the person in respect of whom it is made.
- (9) 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,

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- (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.
- (10) 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.
- (11) 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 2005*.
- (12) 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.
- (13) In this section, a reference to the convicting and sentencing of a person is, in the case of a person who is referred to the Drug Court after having been convicted, a reference to the sentencing of the person only.

7C Persons allowed to continue in program in relation to failure to comply with conditions of good behaviour bond

- (1) This section applies to a person:
- (a) who has been referred to the Drug Court under section 7, 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,
 - (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 conviction and sentence under this section.
- (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) Sections 44–48, 50, 51 and 51A of the *Crimes (Sentencing Procedure) Act 1999* do not apply to the conviction and sentencing of a person under this section.
- (6) 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.
- (7) 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*).
- (8) 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.

7D Persons not accepted into program in relation to offence

- (1) This section applies to a person who has been referred to the Drug Court under section 6 but whom the Drug Court has not dealt with under section 7A.
- (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.
- (3) 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*.
- (4) If the person does not consent to being dealt with under this section or in such other circumstances as the Drug Court may determine, the Drug Court is to refer the person back to the referring court.
- (5) In the case of a person who has been referred to the Drug Court for 2 or more offences by 2 or more referring courts, the Drug Court may refer the person back to any one of the referring courts to be dealt with:
 - (a) for the offences for which the person was referred by that court, and
 - (b) for such of the other offences as are within the criminal jurisdiction of that court.
- (6) In dealing with a person for an offence referred to in subsection (5) (b), the court to which the person is referred back is taken to be the referring court for the purposes of subsection (7).

- (7) If the Drug Court refers a person back to the referring court, the proceedings against the person are to be continued before the referring court at a time and place specified in the order, as if:
 - (a) the person had not been referred to the Drug Court, and
 - (b) the proceedings had merely been adjourned to the time and place specified in the order.
- (8) A person who is convicted and sentenced by the Drug Court under this section may, at the same time or any later time:
 - (a) be convicted and sentenced for any other offence to which he or she has pleaded guilty (other than an offence referred to in section 5 (2)), whether or not the person has been referred to the Drug Court under section 6 in relation to that other offence, or
 - (b) be dealt with in proceedings under section 98 or 99 of the *Crimes (Sentencing Procedure) Act 1999* for sentencing on the revocation of a good behaviour bond, whether or not the person has been referred to the Drug Court under section 7 in relation to the failure to comply with the conditions of the good behaviour bond, or
 - (c) be dealt with under both paragraphs (a) and (b).
- (9) In this section, a reference to the convicting and sentencing of a person is, in the case of a person who is referred to the Drug Court after having been convicted, a reference to the sentencing of the person only.

7E Persons not accepted into program in relation to failure to comply with conditions of good behaviour bond

- (1) This section applies to a person:
 - (a) who has been referred to the Drug Court under section 7, 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 7B or 7C.
- (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*.

[8] Section 17 Immunity from prosecution for certain offences

Omit “or 1A” from section 17 (a).

[9] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Crimes and Courts Legislation Amendment Act 2006 (but only to the extent that it amends this Act)

[10] Schedule 2, Part 5

Insert after Part 4:

Part 5 Provisions consequent on enactment of Crimes and Courts Legislation Amendment Act 2006

5 Crimes and Courts Legislation Amendment Act 2006

The amendments made to this Act by the *Crimes and Courts Legislation Amendment Act 2006* do not apply to any proceedings commenced before the commencement of those amendments.

6 References to this Act in the Drug Court Regulation 2005

A reference in the *Drug Court Regulation 2005*:

- (a) to section 8AA of this Act is taken to be a reference to section 7, and
- (b) to section 7 (2) (c) of this Act is taken to be a reference to section 7A (2) (d), and
- (c) to section 8AB (2) (d) of this Act is taken to be a reference to section 7B (2) (d), and
- (d) to section 8AC of this Act is taken to be a reference to section 7C, and
- (e) to section 8 of this Act is taken to be a reference to section 7D.

Explanatory note

Part 2 of the *Drug Court Act 1998* concerns the acceptance of persons into Drug Court programs and the administration of those programs. At present, Division 1 of Part 2 provides for the acceptance of persons into programs during proceedings for offences and Division 1A provides for the acceptance of persons into programs during proceedings for breach of conditions of good behaviour bonds. There is some repetition of provisions in the two Divisions.

Section 7 of the *Drug Court Act 1998* provides that when a person is allowed into the Drug Court program, he or she is given an initial sentence of imprisonment that is suspended to allow participation in the Drug Court program. That sentencing is required to be carried out in accordance with the *Crimes (Sentencing Procedure) Act 1999*. However, that Act provides for certain procedures, such as the setting of a non-parole period, that are not relevant to an initial sentence which is not required to be served. The Drug Court developed a practice of only taking into account the

objective features of the offences, together with the offender's plea of guilty and, where appropriate, any time served in custody prior to initial sentence that was referable to the offence. The Court would leave consideration of subjective matters for consideration at final sentencing, after program termination, to minimise delays in offenders entering the Drug Court program. It was also the practice of the Drug Court not to set a non-parole period at initial sentence such that the sentence imposed only reflected the head sentence in relation to the offence. However, in *R v Rice* [2004] NSWCCA 384, the Court of Criminal Appeal found that section 7 (2A) of the *Drug Court Act 1998* and section 44 of the *Crimes (Sentencing Procedure) Act 1999* did not permit the Drug Court's practice of not setting a non-parole period at initial sentence.

Item [7] of the proposed amendments consolidates Divisions 1 and 1A into one Division that applies to both proceedings for offences and proceedings for breach of conditions of good behaviour bonds, subject to the following modifications:

- (a) proposed section 7 (1) (a) provides that if the person against whom the proceedings are brought is already a Drug Court participant, the duty of a court to refer proceedings under section 98 of the *Crimes (Sentencing Procedure) Act 1999* extends to all courts, not merely prescribed courts (those courts in the Drug Court's catchment area in Western Sydney),
- (b) proposed section 7 (2) provides that 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, to consider the person's eligibility for the Drug Court program applies only to proceedings for the breach of bonds imposed under section 12 (Suspended sentences) of the *Crimes (Sentencing Procedure) Act 1999* (at present the duty applies to the breach of the conditions of any good behaviour bond),
- (c) proposed sections 7A (4) and 7B (5) provide that when imposing an initial sentence on a Drug Court program participant, the Drug Court is not obliged to fix a non-parole period under the *Crimes (Sentencing Procedure) Act 1999* or to comply with other provisions of that Act about commencement dates, release dates and conditions of parole (final sentences, which are the sentences to actually be served, are still required to be full sentences in accordance with the *Crimes (Sentencing Procedure) Act 1999*),
- (d) proposed sections 7A (8) and 7D (8) restate existing sections 7 (4) and 8 (5) (which provide that the Drug Court may, at the same time as convicting and sentencing a person with respect to an offence for which the person has been referred to the Drug Court, convict and sentence that person for any other offence to which he or she has pleaded guilty) so as to provide that the bringing in of other offences and proceedings may occur at the same time as the first mentioned conviction and sentencing or at any later time,
- (e) proposed section 7E (2) provides that the Drug Court may also deal with proceedings under section 98 or 99 of the *Crimes (Sentencing Procedure) Act 1999* in relation to a sentence on the revocation of good behaviour bonds,
- (f) existing section 8AA (5) is not remade because it is redundant,
- (g) existing sections 8AC (3) (b) and 8AC (6), which require that any sentence imposed on breach of bond proceedings that are finalised after the person enters the program to be ordered to be served cumulatively with the initial sentence, are not remade because they limit discretion in sentencing.

Items [1]–[6] and [8] of the proposed amendments make consequential amendments.

Item [9] provides for the making of savings and transitional regulations consequent on the proposed amendments.

Item [10] provides that the proposed amendments do not apply to any proceedings commenced before the commencement of the amendments and updates certain references in a regulation.

1.15 Drug Misuse and Trafficking Act 1985 No 226

[1] Section 11B

Insert after section 11A:

11B Possession of tablet press

- (1) A person who has in his or her possession a tablet press that is capable of being used to produce a prohibited drug in tablet form is guilty of an offence.
- (2) It is a defence to a prosecution for an offence under subsection (1) if the defendant establishes:
 - (a) that the tablet press is used to produce tablets in connection with an activity that is not unlawful, or
 - (b) that the defendant otherwise has a reasonable excuse for possessing the tablet press.

[2] Section 24A Possession of precursors for manufacture or production of prohibited drugs

Omit section 24A (2A).

[3] Section 36TA Definitions

Insert in alphabetical order:

child means a person who is under the age of 16 years.

[4] Section 36Y

Omit the section. Insert instead:

36Y Allowing use of premises as drug premises—offence by owner or occupier

- (1) A person who is the owner or occupier of any premises and who knowingly allows the premises to be used as drug premises is guilty of an offence.
Maximum penalty:
 - (a) for a first offence—50 penalty units or imprisonment for 12 months (or both), and
 - (b) for a second or subsequent offence—500 penalty units or imprisonment for 5 years (or both).

- (2) A person who is the owner or occupier of any premises is guilty of an offence if:
- (a) the person knowingly allows the premises to be used as drug premises, and
 - (b) the person knows that a child has access to the premises and, as a consequence of that access, the child is exposed to:
 - (i) a prohibited drug or prohibited plant, or
 - (ii) a drug supply process, or
 - (iii) any equipment capable of being used to administer a prohibited drug.

Maximum penalty:

- (a) for a first offence—60 penalty units or imprisonment for 14 months (or both), and
 - (b) for a second or subsequent offence—600 penalty units or imprisonment for 6 years (or both).
- (3) It is a defence to a prosecution for an offence under subsection (2) if the defendant establishes that the exposure of the child to a prohibited drug or prohibited plant, to a drug supply process, or to equipment capable of being used to administer a prohibited drug, did not endanger the health or safety of the child.
- (4) If, on the trial of a person for an offence under subsection (2), the jury:
- (a) is not satisfied that the person knew a child had access to the premises, or
 - (b) is not satisfied that a child was exposed to a prohibited drug or prohibited plant, a drug supply process or equipment capable of being used to administer a prohibited drug, or
 - (c) is satisfied that the defence referred to in subsection (3) has been made out,
- the jury may acquit the person of the offence charged and find the person guilty of an offence under subsection (1) and the person is liable to punishment accordingly.
- (5) For the purposes of this section, a ***drug supply process*** is any method used to supply or manufacture prohibited drugs or to cultivate prohibited plants.

[5] Section 36Z

Omit the section. Insert instead:

36Z Offence of organising drug premises

- (1) A person who organises or conducts, or assists in organising or conducting, any drug premises is guilty of an offence.

Maximum penalty:

- (a) for a first offence—50 penalty units or imprisonment for 12 months (or both), and
- (b) for a second or subsequent offence—500 penalty units or imprisonment for 5 years (or both).

- (2) A person who organises or conducts, or assists in organising or conducting, any drug premises is guilty of an offence if the person knows that a child has access to the premises and, as a consequence of that access, the child is exposed to:

- (a) a prohibited drug or prohibited plant, or
- (b) a drug supply process, or
- (c) any equipment capable of being used to administer a prohibited drug.

Maximum penalty:

- (a) for a first offence—60 penalty units or imprisonment for 14 months (or both), and
- (b) for a second or subsequent offence—600 penalty units or imprisonment for 6 years (or both).

- (3) For the purposes of this section, a person assists in organising or conducting drug premises if, for example, the person acts as a lookout, door attendant or guard in respect of any premises that are organised or conducted as drug premises.

- (4) It is a defence to a prosecution for an offence under subsection (1) or (2) if the defendant establishes that he or she did not know, and could not reasonably be expected to have known, that the premises to which the charge relates were being organised or conducted as drug premises.

- (5) It is a defence to a prosecution for an offence under subsection (2) if the defendant establishes that the exposure of the child to a prohibited drug or prohibited plant, to a drug supply process, or to equipment capable of being used to administer a prohibited drug, did not endanger the health or safety of the child.

- (6) If, on the trial of a person for an offence under subsection (2), the jury:
- (a) is not satisfied that the person knew a child had access to the premises, or
 - (b) is not satisfied that a child was exposed to a prohibited drug or prohibited plant, a drug supply process or equipment capable of being used to administer a prohibited drug, or
 - (c) is satisfied that the defence referred to in subsection (5) has been made out,
- the jury may acquit the person of the offence charged and find the person guilty of an offence under subsection (1) and the person is liable to punishment accordingly.
- (7) For the purposes of this section, a *drug supply process* is any method used to supply or manufacture prohibited drugs or to cultivate prohibited plants.

[6] Section 36ZA Proceedings for offences

Insert “(whether or not under the same subsection of the section concerned)” after “36Z” in section 36ZA (2).

[7] Section 39A

Omit the section. Insert instead:

39A Meaning of “minimum amount”

In this Division:

minimum amount means:

- (a) in relation to a prohibited plant, the indictable quantity of that prohibited plant, and
- (b) in relation to a prohibited drug, the traffickable quantity of that prohibited drug.

[8] Sections 39B–39M

Insert “prohibited plant or” before “prohibited drug” wherever occurring.

[9] Section 39PB Order for disposal of substances by certain senior police officers when no likely prosecution

Insert “prohibited plant or” before “prohibited drug” wherever occurring.

[10] Section 39PB (1) (a)

Insert “the indictable quantity of the plant or” before “the traffickable”.

[11] Section 39PB (2) (b)

Insert “the plant,” before “the drug”.

[12] Section 39R Return of prohibited plant or prohibited drug to lawful owner

Insert “prohibited plant or” before “prohibited drug” wherever occurring.

[13] Section 45 Regulations

Insert after section 45 (2):

- (2A) The regulations may make provision for or with respect to prohibiting or regulating the sale and storage of:
- (a) precursors, and
 - (b) any apparatus that is capable of being used in the manufacture or production of a prohibited drug,
being such precursors and apparatus as are prescribed by the regulations for the purposes of this section.

Commencement

Items [1], [2] and [13] of the amendments to the *Drug Misuse and Trafficking Act 1985* commence on a day or days to be appointed by proclamation.

Explanatory note

Item [1] of the proposed amendments to the *Drug Misuse and Trafficking Act 1985* creates a new offence in relation to possessing tablet presses. It will be a defence if the tablet press is being used in connection with a lawful activity or if the person concerned has a reasonable excuse for possessing it. The new offence will have a maximum penalty of \$2,200 or imprisonment for 2 years, or both.

Items [4] and [5] create new aggravated versions of existing offences under the Act of allowing the use of premises as drug premises or organising drug premises. The new offences provide for a higher penalty for such activities if the person who allows the premises to be used as drug premises or organises the drug premises knows that a child has access to the premises and, as a consequence of that access, the child is exposed to prohibited drugs or prohibited plants, a drug supply process or equipment capable of being used to administer prohibited drugs or plants. Item [3] defines a child to be a person under the age of 16 years for the purposes of the new offences. Item [6] is a consequential amendment.

Item [8] extends the provisions relating to pre-trial destruction of prohibited drugs so that they also apply to prohibited plants. Item [7] is a consequential amendment that extends the definition of *minimum amount* so that an indictable quantity of a prohibited plant is a minimum quantity of a prohibited plant for the purposes of the pre-trial destruction provisions.

Items [9], [10] and [11] extends a provision that allows prohibited drugs to be destroyed when there is no likely prosecution so that it also applies to prohibited plants.

Item [12] is a consequential amendment.

At present, the regulation-making power under section 24A (2A) of the Act relates to the sale and storage of certain precursors. Item [13] extends that regulation-making power to include certain apparatus capable of being used in the manufacture or production of a prohibited drug. Item [2] is a consequential amendment.

1.16 Electronic Transactions Act 2000 No 8

Section 14B Establishment of ECM system

Insert after section 14B (1) (g):

- (h) to enable information concerning legal proceedings to be exchanged in electronic form between such persons or bodies as are prescribed by rules of court.

Explanatory note

Section 14B of the *Electronic Transactions Act 2000* provides that the Attorney General may establish an electronic case management system. The amendment extends the application of this system to include the exchange of information between persons or bodies prescribed by rules of court.

1.17 Evidence (Audio and Audio Visual Links) Act 1998 No 105

[1] Section 5BB Appearances of accused detainee (other than accused child detainee) by audio visual link in relevant criminal proceedings

Insert after section 5BB (1) before the note:

- (1A) Subsection (1) does not apply to any bail proceedings that occur during a weekend or on a public holiday.

[2] Section 5BBA Appearances of accused child detainee by audio visual link in preliminary criminal proceedings and relevant criminal proceedings

Insert after section 5BBA (1):

- (1A) Subsection (1) does not apply to any bail proceedings that occur during a weekend or on a public holiday.

Explanatory note

Sections 5BB and 5BBA of the *Evidence (Audio and Audio Visual Links) Act 1998* require a person to physically appear before a court in bail proceedings. Items [1] and [2] amend those sections so as to provide that persons required to attend a bail proceeding that occurs during a weekend or on a public holiday may do so by way of audio visual link.

1.18 Evidence (Children) Act 1997 No 143

Section 9 Ways in which evidence of a child may be given

Insert after section 9 (1) before the note:

- (1A) Evidence given by a child under subsection (1) (a) is not required to be served on a party to any proceeding (including proceedings in relation to apprehended violence commenced under Part 15A of the *Crimes Act 1900*).

Explanatory note

Section 9 of the *Evidence (Children) Act 1997* provides that children may give evidence of a previous representation in the form of a recording, orally or in an alternative manner. The proposed amendment makes it clear that a recording of an interview with a child is not required to be served on a party to a proceeding.

1.19 Land and Environment Court Act 1979 No 204

[1] Section 34 Preliminary conferences

Omit “(other than proceedings in Class 1 that are brought under section 97 of the *Environmental Planning and Assessment Act 1979*)” from section 34 (1).

[2] Section 34 (1A)

Omit section 34 (1A). Insert instead:

- (1A) If proceedings are pending in Class 3 of the Court’s jurisdiction, the registrar may, at any time on the application of the parties or on the registrar’s own motion, arrange a conference between the parties to the proceedings or their representatives, to be presided over by a single Commissioner.

[3] Section 34 (3) (a)

Insert “and is to set out in writing the terms of the decision” after “decision” where lastly occurring.

[4] Section 34 (3A)

Insert after section 34 (3):

- (3A) The Commissioner is to give written reasons for his or her decision under subsection (3) (b) (ii).

[5] Section 34A Proceedings to which on-site hearing procedures apply

Omit section 34A (1). Insert instead:

- (1) This section applies to the following proceedings, if the proceedings have not been disposed of under section 34:
- (a) proceedings in Class 1 of the Court’s jurisdiction that are brought under section 96 of the *Environmental Planning and Assessment Act 1979*,
 - (b) proceedings in Class 1 of the Court’s jurisdiction that are brought under section 96AA of the *Environmental Planning and Assessment Act 1979*,
 - (c) proceedings in Class 1 of the Court’s jurisdiction that are brought under section 97 of the *Environmental Planning and Assessment Act 1979*,

- (d) proceedings in Class 1 of the Court's jurisdiction that are brought under section 121ZK of the *Environmental Planning and Assessment Act 1979*,
- (e) proceedings in Class 1 of the Court's jurisdiction that are brought under section 149F of the *Environmental Planning and Assessment Act 1979*.

[6] Section 34A (2)

Omit "to which this section applies".

Insert instead "under section 97 of the *Environmental Planning and Assessment Act 1979*".

[7] Section 34A (2A)

Insert after section 34 (2):

- (2A) Proceedings to which this section applies (other than proceedings under section 97 of the *Environmental Planning and Assessment Act 1979*) are to be dealt with under section 34B, subject to subsection (6), if the Registrar at the first or a subsequent callover determines that the proceedings:
 - (a) have little or no impact beyond neighbouring properties, and
 - (b) do not involve any significant issue of public interest beyond any impact on neighbouring properties.

[8] Section 34A (4)

Insert "or (2A)" after "(2)".

[9] Section 34A (4)

Insert ", subject to subsection (6)" after "34C".

[10] Section 36 Delegation to Commissioners

Omit "(other than proceedings in Class 1 that are brought under section 97 of the *Environmental Planning and Assessment Act 1979*)" from section 36 (1).

Insert instead "(other than proceedings that are being dealt with under section 34A)".

[11] Section 37 Commissioners sitting with a Judge

Omit “(other than proceedings in Class 1 that are brought under section 97 of the *Environmental Planning and Assessment Act 1979*)” from section 37 (1).

Insert instead “(other than proceedings that are being dealt with under section 34A)”.

Explanatory note

The proposed amendments to the *Land and Environment Court Act 1979*:

- (a) will enable preliminary conferences to be held for all Class 3 matters in the Court rather than only compulsory acquisition matters, and
- (b) will enable an extended range of matters to be dealt with by Commissioners at on-site hearings, namely proceedings under sections 96, 96AA, 97, 121ZK and 149F of the *Environmental Planning and Assessment Act 1979*, and
- (c) make other minor changes.

1.20 Local Courts Act 1982 No 164

[1] Section 11 Sittings of Local Courts

Insert after section 11 (2):

- (2A) The Chief Magistrate must consult with the Attorney General before making a direction under subsection (2) that substantially alters the frequency of sittings at a particular place relative to the previous calendar year.

[2] Section 42 Service of application notice

Omit “not later than 7 days after it is served or within such longer period as the Court may allow and must contain an endorsement as to service” from section 42 (4).

Insert instead “in accordance with the rules”.

Explanatory note

Item [1] amends the *Local Courts Act 1982* so as to provide that the Chief Magistrate is to consult with the Attorney General before making any substantial alterations to the sitting calendar of the Court in either the civil or criminal jurisdiction.

Item [2] amends section 42 of the *Local Courts Act 1982* so as to provide that a copy of an application notice must be filed in a Local Court in accordance with the rules.

1.21 Summary Offences Act 1988 No 25

[1] Section 23 Authorised public assemblies

Insert “(which may include an address for the transmission of facsimiles or the sending of emails to the person)” after “Part” in section 23 (1) (e) (ii).

[2] Sections 24 Participation in authorised public assembly

Omit “section 23 (1) (c) and with”.

Insert instead “section 23 (1) (c) or, if those particulars are amended by agreement between the Commissioner and the organiser, in accordance with those particulars as amended and in accordance with”.

[3] Section 25 Prohibition by a Court of a public assembly

Omit “telegram” from section 25 (3) (b).

Insert instead “registered post, facsimile transmission or email”.

[4] Section 25 (3) (b)

Omit “the address” wherever occurring. Insert instead “an address”.

[5] Section 25 (3) (c)

Omit “the address”. Insert instead “a postal address”.

Explanatory note

Item [2] of the proposed amendments to the *Summary Offences Act 1988* allows the Commissioner of Police and the organiser of a public assembly to negotiate on the particulars of the notice of a public assembly that is given under that Act. As a consequence of the amendments, participation in a public assembly that is held substantially in accordance with the notice, and any amendments to the notice agreed between the Commissioner of Police and the organiser of the public assembly, will be lawful.

Items [1] and [3] update the method by which notices may be served on an organiser of a public assembly under the Act. Items [4] and [5] are consequential amendments.

1.22 Telecommunications (Interception) (New South Wales) Act 1987 No 290

[1] Section 1 Name of Act

Insert “*and Access*” after “*Interception*”.

[2] Section 3 Definitions

Insert “*and Access*” after “*Interception*” in the definition of *the Commonwealth Act* in section 3 (1).

[3] Section 11 Reports

Insert after section 11 (1):

- (1A) The Ombudsman must include in each report under subsection (1) in relation to a financial year (starting with the financial year beginning on 1 July 2006) the following:
- (a) a summary of the inspections conducted in the financial year under section 10,
 - (b) particulars of any deficiencies identified that impact on the integrity of the telecommunications interception regime established by the Commonwealth Act,
 - (c) particulars of the remedial action (if any) taken or proposed to be taken to address those deficiencies.

Note. In complying with this section, the Ombudsman remains bound by section 63 of the Commonwealth Act, which prohibits the disclosure of intercepted information or designated warrant information.

Explanatory note

Item [2] of the proposed amendments to the *Telecommunications (Interception) (New South Wales) Act 1987* updates a reference to the corresponding Commonwealth Act, so as to reflect its new title.

Item [1] of the proposed amendments changes the name of the Act so that it corresponds with the new title of the corresponding Commonwealth Act.

Item [3] of the proposed amendments requires the Ombudsman to include certain details about the Ombudsman's inspections in the Ombudsman's annual report to the Minister. The provision mirrors the reporting requirements imposed on the Commonwealth Ombudsman under the corresponding Commonwealth Act.

1.23 Witness Protection Act 1995 No 87

Section 45

Insert after section 44:

45 Special provisions for former participants in NSW Police Witness Protection Plan

Despite section 17, the Supreme Court is not required to be satisfied of the matters referred to in section 17 (b), (c) and (d) before making a witness protection order if satisfied that:

- (a) the person named in the application as a witness is a former participant in the New South Wales Police Witness Protection Plan in force before the commencement of section 5 or a person who, because of his or her relationship with, or association with, a former participant in that Plan, may require protection or other assistance under this Act, and

- (b) the order is sought for the purpose of confirming an identity established while that Plan was in operation.

Explanatory note

The proposed amendment to the *Witness Protection Act 1995* allows the Supreme Court to make an order authorising a new entry in a register of births, deaths or marriages or the issue of identity documents in respect of a former participant in the New South Wales Police Witness Protection Plan (or a relative or associate of such a participant) without the Commissioner of Police having to satisfy the Supreme Court that the person concerned is a party to a current memorandum of understanding with the Commissioner of Police. The New South Wales Police Witness Protection Plan was the witness protection program operated by police before the commencement of the *Witness Protection Act 1995*.

[Second reading speech made in—
Legislative Assembly on 27 October 2006
Legislative Council on 21 November 2006]

BY AUTHORITY