



New South Wales

Crimes Legislation Amendment Act 2021 No 46

Contents

		Page
	1 Name of Act	2
	2 Commencement	2
Schedule 1	Amendments	3



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Act No 46, 2021

An Act to amend the *Crimes Act 1900*, the *Crimes (High Risk Offenders) Act 2006*, the *Law Enforcement (Powers and Responsibilities) Act 2002*, the *Surveillance Devices Act 2007*, the *Terrorism (High Risk Offenders) Act 2017* and the *Terrorism (Police Powers) Act 2002* for particular purposes. [Assented to 8 December 2021]

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Crimes Legislation Amendment Act 2021*.

2 Commencement

- (1) This Act commences on the date of assent to this Act except as provided by subsection (2).
- (2) Schedule 1.1[2] commences on the day that is 6 months after the date of assent or an earlier day or days to be fixed by proclamation.

Schedule 1 Amendments

1.1 Crimes Act 1900 No 40

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

Omit “not later than 12 months from when” from section 308H(4).

Insert instead “within 3 years of the date on which”.

[2] Section 547E

Insert after section 547D—

547E Bestiality or animal crush material

- (1) A person who produces or disseminates bestiality or animal crush material is guilty of an offence.
Maximum penalty—The greater of the following—
 - (a) the maximum penalty for an offence against section 530(1), or
 - (b) imprisonment for 5 years.
- (2) A person who possesses bestiality or animal crush material is guilty of an offence.
Maximum penalty—Imprisonment for 3 years.
- (3) Each of the following are defences in proceedings for an offence against this section—
 - (a) the defendant did not know, and could not reasonably be expected to have known, that the material the defendant produced, disseminated or possessed was bestiality or animal crush material,
 - (b) the conduct engaged in by the defendant—
 - (i) was of public benefit, and
 - (ii) did not extend beyond what was of public benefit,
 - (c) the defendant was, at the time of the offence, a law enforcement officer acting in the course of the defendant’s duties and the conduct of the defendant was reasonable in the circumstances for the purpose of performing the duty,
 - (d) the material concerned was classified, whether before or after the commission of the alleged offence, under the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth, other than as refused classification (RC),
 - (e) the conduct engaged in by the defendant was necessary for or of assistance in conducting scientific, medical or educational research approved, authorised or otherwise permitted under a law of the State or of another State, a Territory or the Commonwealth,
 - (f) for an offence involving possession of bestiality or animal crush material, but without limiting the defences above—the material came into the defendant’s possession unsolicited and the defendant, as soon as the defendant became aware of its nature, took reasonable steps to get rid of it.
- (4) Conduct is of public benefit for subsection (3)(b) only if the conduct is necessary for or of assistance in—

- (a) enforcing or administering a law of the State or of another State, a Territory or the Commonwealth, or
 - (b) monitoring compliance with, or investigating a contravention of, a law of the State, or of another State, a Territory or the Commonwealth, or
 - (c) the administration of justice.
- (5) The question of whether a person's conduct is of public benefit is a question of fact and the person's motives for engaging in the conduct are irrelevant.
- (6) In this section—
- bestiality or animal crush material** means material that—
- (a) depicts or describes—
 - (i) bestiality, or
 - (ii) an animal being crushed, burned, drowned, suffocated, impaled or otherwise killed or subjected to serious injury, and
 - (b) is material that a reasonable person would regard in all the circumstances as being intended or apparently intended to—
 - (i) excite or gratify a sexual interest, or
 - (ii) excite or gratify a sadistic or other perverted interest in violence or cruelty.

data includes—

- (a) information in any form, or
- (b) a program or part of a program.

disseminate bestiality or animal crush material, includes—

- (a) send, supply, exhibit, transmit or communicate the material to another person, or
- (b) make the material available for access by another person, or
- (c) enter into an agreement or arrangement to do so.

material includes a film, printed matter, data or other thing of any kind, including a computer image or another depiction.

possess bestiality or animal crush material includes, in relation to material in the form of data, being in possession or control of data, within the meaning of section 308F(2).

produce bestiality or animal crush material includes—

- (a) film, photograph, print or otherwise make bestiality or animal crush material, or
- (b) alter or manipulate an image for the purpose of making bestiality or animal crush material, or
- (c) enter into an agreement or arrangement to do so.

1.2 Crimes (High Risk Offenders) Act 2006 No 7

[1] Section 5 Definitions of “serious sex offence” and “offence of a sexual nature”

Omit section 5(1)(b4) and (b5). Insert instead—

- (b4) an offence against the Commonwealth Criminal Code, section 272.8, 272.10, 272.11, 272.12, 272.13, 272.14, 272.15, 272.15A, 272.19 or 273.7,

- (b5) an offence against the Commonwealth Criminal Code, section 471.22, 471.24, 471.25, 471.25A, 474.23A, 474.24A, 474.25B, 474.26, 474.27 or 474.27AA,

[2] Section 5(2)(h3) and (h4)

Omit the paragraphs. Insert instead—

- (h3) an offence against the Commonwealth Criminal Code, section 272.9, 272.18, 272.20, 273.6 or 273A.1,
- (h4) an offence against the Commonwealth Criminal Code, section 471.19, 471.20, 471.26, 474.22, 474.22A, 474.23, 474.25A or 474.27A,

[3] Section 28B

Insert after section 28A—

28B Protected records inadmissible

- (1) A protected record, or evidence of the contents of a protected record, is not admissible in proceedings before a court, tribunal, authority or other body or person.
- (2) A person cannot be compelled in the proceedings to—
 - (a) produce a protected record, or a copy of or extract from a protected record, or
 - (b) disclose or give evidence of the contents of a protected record.
- (3) In this section—

protected record means any of the following—

 - (a) the minutes of a meeting of the Assessment Committee or a sub-committee, or a copy of or extract from the minutes,
 - (b) another record of the deliberations of the Assessment Committee or a sub-committee, or a copy of or extract from the record.

sub-committee means a sub-committee formed by the Assessment Committee under section 24AD.

[4] Schedule 2 Savings, transitional and other provisions

Insert at the end of the Schedule—

Part 11 Provisions consequent on enactment of Crimes Legislation Amendment Act 2021

20 Definition

In this Part—

amending Act means the *Crimes Legislation Amendment Act 2021*.

21 Extension of scheme

The amendments made to this Act by the amending Act extend—

- (a) to offences committed before the date of commencement of the amendments, and
- (b) to persons serving a sentence of imprisonment that commenced before the date of commencement of the amendments, and

- (c) to persons subject to an extended supervision order, interim supervision order, continuing detention order or interim detention order immediately before the date of commencement of the amendments.

1.3 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

[1] Section 46A Searchable offences

Omit “and” from the end of section 46A(1)(a)(v).

[2] Section 46A(1)(a)(vi)

Insert after section 46A(1)(a)(v)—

- (vi) a computer offence, and

[3] Section 46A(2)

Insert in alphabetical order—

computer offence means an offence under the *Crimes Act 1900*, Part 6.

[4] Section 60A

Insert after section 60—

60A Applications for warrants by email

- (1) Despite the requirement under section 60(1) that an application for a warrant be made in person, a person may apply for a warrant—
 - (a) by email, or
 - (b) in another way prescribed by the regulations for the purposes of this section.
- (2) The eligible issuing officer must not issue the warrant unless the information given by the applicant in, or in relation to, the application is verified—
 - (a) before the eligible issuing officer on oath or affirmation, or
 - (b) by affidavit.
- (3) The requirement under subsection (2) for information to be verified before an eligible issuing officer is taken to be satisfied if—
 - (a) the applicant appears before the issuing officer by audio visual link or telephone, and
 - (b) the issuing officer administers the oath or affirmation by the same means.
- (4) If the eligible issuing officer issues the warrant on an application made by email, the issuing officer may—
 - (a) email the signed warrant to the applicant, and
 - (b) email the signed occupier’s notice to the applicant.
- (5) If the eligible issuing officer emails the signed warrant or signed occupier’s notice to the applicant, a person executing the warrant may—
 - (a) for the purposes of section 67—serve a copy of the signed occupier’s notice produced by the email transmission, and
 - (b) for the purposes of section 69—produce a copy of the signed warrant produced by the email transmission.
- (6) This section does not apply to telephone warrants.

- (7) Despite section 59(2) and (3)—
 - (a) this section does not apply to notices to produce documents issued under Division 3, and
 - (b) subsections (4) and (5), to the extent that the subsections require or provide for occupier's notices, do not apply to warrants issued under Part 6 or Part 11, Division 2.
- (8) Subsections (2)–(5) apply to detention warrants issued under Part 9.
- (9) This section is repealed at the beginning of the day that is 2 years after it commences.

[5] Section 99 Power of police officers to arrest without warrant

Omit section 99(3). Insert instead—

- (3) The arresting police officer or another police officer must, as soon as is reasonably practicable, take the person who has been arrested under this section before an authorised officer to be dealt with according to law.
Note— A police officer may discontinue the arrest of a person at any time and without taking the arrested person before an authorised officer—see section 105.

[6] Section 99(7)

Insert after section 99(6)—

- (7) In this section—
arresting police officer means the police officer arresting a person under this section.

1.4 Surveillance Devices Act 2007 No 64

[1] Section 4 Definitions

Insert in alphabetical order in section 4(1)—

surveillance device warrant particulars—see section 20(1).

[2] Section 17 Application for a surveillance device warrant

Omit section 17(3)–(5). Insert instead—

- (3) The application must be in the form of an affidavit that—
 - (a) includes the information required to complete the surveillance device warrant particulars, and
 - (b) sets out the grounds on which the warrant is sought, and
 - (c) sets out the details of any alternative means of obtaining the evidence or information sought under the warrant and the extent to which those means may assist or prejudice the investigation, and
 - (d) states whether any attempts have been made to use an alternative means and, if so, the result of the attempts, and
 - (e) sets out the details of any previous warrant or emergency authorisation sought or issued under this Act in relation to the relevant offence, and
 - (f) as far as reasonably practicable, identifies persons who may be incidentally recorded by the surveillance device, and
 - (g) includes any information known to the applicant that may be adverse to the warrant application or, if no adverse information is known, a statement to that effect.

- (4) The application may be made in a form other than an affidavit if the law enforcement officer believes that—
 - (a) the immediate use of a surveillance device is necessary for a purpose referred to in subsection (1)(c) or (1A)(c), and
 - (b) it is impracticable for the application to be prepared and sworn in the form of an affidavit for the purpose of making the application as required by subsection (3).
- (5) If subsection (4) applies, the applicant must—
 - (a) provide the eligible Judge or eligible Magistrate with any information the eligible Judge or eligible Magistrate considers is reasonably practicable in the circumstances, and
 - (b) within 72 hours after making the application, send a duly sworn affidavit that includes the information required under subsection (3) to the eligible Judge or eligible Magistrate, whether or not a warrant has been issued.

[3] Section 17(5A)

Omit “in subsections (3) and (3A)”. Insert instead “required under subsection (3)”.

[4] Schedule 1 Savings, transitional and other provisions

Insert at the end of the Schedule—

Part 5 Provisions consequent on enactment of Crimes Legislation Amendment Act 2021

11 Definitions

In this Part—

amended, in relation to a provision, means the provision as in force on and from the date this clause commences.

amending Act means the *Crimes Legislation Amendment Act 2021*.

previous, in relation to a provision, means the provision as in force before the date this clause commenced.

12 Applications for surveillance device warrants made before commencement of Crimes Legislation Amendment Act 2021

- (1) This clause applies to an application for a surveillance device warrant made under section 17, but not decided, before the date this clause commenced.
- (2) Despite the amending Act—
 - (a) amended section 17 does not apply in relation to the application, and
 - (b) previous section 17 continues to apply in relation to the application.

1.5 Terrorism (High Risk Offenders) Act 2017 No 68

Section 71B

Insert after section 71A—

71B Protected records of HRO Assessment Committee inadmissible

- (1) A protected record, or evidence of the contents of a protected record, is not admissible in proceedings before a court, tribunal, authority or other body or person.
- (2) A person cannot be compelled in the proceedings to—
 - (a) produce a protected record, or a copy of or extract from a protected record, or
 - (b) disclose or give evidence of the contents of a protected record.
- (3) In this section—

protected record means any of the following—

 - (a) the minutes of a meeting of the HRO Assessment Committee or an HRO sub-committee, or a copy of or extract from the minutes,
 - (b) another record of the deliberations of the HRO Assessment Committee or an HRO sub-committee, or a copy of or extract from the record.

HRO sub-committee means a sub-committee formed by the HRO Assessment Committee under the *Crimes (High Risk Offenders) Act 2006*, section 24AD.

1.6 Terrorism (Police Powers) Act 2002 No 115

Section 26ZS Sunset provision

Omit “16 December 2021” wherever occurring. Insert instead “16 December 2023”.

[Second reading speech made in—
Legislative Assembly on 21 October 2021
Legislative Council on 12 November 2021]