



New South Wales

Criminal Legislation Amendment Bill 2009

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to make miscellaneous amendments to legislation relating to crimes, criminal procedure and other matters.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Acts

Schedule 1.1 [1] and [2] amend the *Child Protection (Offenders Registration) Act 2000* to specify 7 days as the period within which an initial report of the person's relevant personal information must be made to the Commissioner of Police, regardless of whether the person has previously been required to report. Currently the period is 7 days in the case of a person who becomes a registrable person for the first time and 14 or 28 days in the case of a person whose reporting obligations have

expired or are suspended and who is then required to report because of a new offence or because the suspension is revoked. **Schedule 1.1 [3]** provides for transitional arrangements with respect to the proposed amendments.

Schedule 1.2 amends the *Confiscation of Proceeds of Crime Act 1989* to provide that an offence under section 23A (offences with respect to enhanced indoor cultivation of prohibited plants in presence of children) of the *Drug Misuse and Trafficking Act 1985*, involving more than a small quantity of a prohibited plant within the meaning of that Act, is a drug trafficking offence for the purposes of the *Confiscation of Proceeds of Crime Act 1989*.

Schedule 1.3 [1] amends the *Crimes Act 1900* to include an additional circumstance of aggravation in respect of the offences of sexual intercourse with a child under the age of 10 and sexual intercourse with a child aged between 10 and 16 years. The additional circumstance of aggravation occurs if the alleged offender breaks and enters into any dwelling-house or other building with the intention of committing the offence or any other serious indictable offence. **Schedule 1.3 [2]** provides for transitional arrangements with respect to the proposed amendments.

Schedule 1.4 [1] and [4] amend the *Crimes (Domestic and Personal Violence) Act 2007* to make it an offence to attempt to commit an offence under section 13 (1) or 14 (1) of that Act. Those sections create offences of stalking or intimidating another person with the intention of causing the other person to fear physical or mental harm (maximum penalty, imprisonment for 5 years or a fine of \$5,500, or both) and knowingly contravening a prohibition or restriction specified in an apprehended violence order (maximum penalty, imprisonment for 2 years or a fine of \$5,500, or both). A person who attempts to commit such an offence is liable to the same penalty as if the person had committed the offence itself. **Schedule 1.4 [2] and [3]** make consequential amendments.

Schedule 1.5 [1] removes an incorrect reference to a child under 10 from item 9B of the Table to Division 1A of Part 4 of the *Crimes (Sentencing Procedure) Act 1999*. That item provides for a standard non-parole period in relation to an offence against section 61M (2) of the *Crimes Act 1900*. That subsection, which deals with aggravated indecent assault, was recently amended by the *Crimes Amendment (Sexual Offences) Act 2008* so that the subsection now applies to persons under 16 years rather than to persons under 10 years of age.

Schedule 1.5 [2]–[5] amend the *Crimes (Sentencing Procedure) Act 1999* to increase the membership of the New South Wales Sentencing Council from 13 to 15 members. The two additional members are to be appointed by the Attorney General. One of the new members is to have expertise or experience in criminal law or sentencing and the other is to have academic or research expertise or experience of relevance to the functions of the Sentencing Council.

Schedule 1.6 amends the *Criminal Procedure Act 1986* to provide that the Ombudsman's report under section 344A of that Act is to be provided to the Attorney General and the Minister for Police by 31 August 2009 rather than 31 May 2009 as

is currently the case. The report relates to the impact of penalty notices on Aboriginal and Torres Strait Islander communities.

Schedule 1.7 [1] amends the *Inclosed Lands Protection Act 1901* to omit a redundant provision.

Schedule 1.7 [2] amends the *Inclosed Lands Protection Act 1901* to remove the 2 month time limit for the commencement of criminal proceedings under that Act. Section 179 of the *Criminal Procedure Act 1986* will now apply in respect of any such proceedings requiring them to be commenced within 6 months after the offence is alleged to have been committed.

Schedule 1.7 [3] amends the *Inclosed Lands Protection Act 1901* to provide for particulars to be furnished to a defendant who is charged with an offence under that Act.

Schedule 1.7 [4] amends the *Inclosed Lands Protection Act 1901* to omit a redundant Schedule, to permit regulations of a savings and transitional nature to be made and to provide for transitional arrangements with respect to the amendments proposed to be made by Schedule 1.7 [2] and [3].

Schedule 1.8 [1] amends the *Law Enforcement (Powers and Responsibilities) Act 2002* to update a cross-reference to a renumbered provision.

Schedule 1.8 [2]–[4] and [6] make consequential amendments to the *Law Enforcement (Powers and Responsibilities) Act 2002* as a result of the repeal of the *Liquor Act 1982* and its replacement by the *Liquor Act 2007*.

Schedule 1.8 [5] amends section 198 of the *Law Enforcement (Powers and Responsibilities) Act 2002*. That section provides police officers with a power to give directions relating to the dispersal of groups of intoxicated persons in public places. The proposed amendment replaces the definition of *intoxicated person* (a person who appears to be seriously affected by alcohol or any drug) with a definition of *intoxicated* (a person is intoxicated if the person's speech, balance, co-ordination or behaviour is noticeably affected and it is reasonable in the circumstances to believe that the affected speech, balance, co-ordination or behaviour is the result of the consumption of alcohol or any drug).

Schedule 1.9 makes an amendment to section 37 (b) of the *Mental Health (Forensic Provisions) Act 1990* as a consequence of amendments to that Act by the *Mental Health Act 2007*. Section 43 of the *Mental Health (Forensic Provisions) Act 1990* (which was inserted by the *Mental Health Legislation Amendment (Forensic Provisions) Act 2008*) provides that the Mental Health Review Tribunal must not make an order for the release of a forensic patient unless it is satisfied, on the evidence available to it, that the safety of the patient or any member of the public will not be seriously endangered by the patient's release.

First print



New South Wales

Criminal Legislation Amendment Bill 2009

Contents

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Acts	3



New South Wales

Criminal Legislation Amendment Bill 2009

No. , 2009

A Bill for

An Act to make miscellaneous amendments to legislation relating to crimes, criminal procedure and other matters.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Criminal Legislation Amendment Act 2009</i> .	3
2 Commencement	4
This Act commences on the date of assent to this Act.	5

Schedule 1	Amendment of Acts	1
1.1	Child Protection (Offenders Registration) Act 2000 No 42	2
[1]	Section 9B When new initial report must be made by person whose previous reporting obligations have ceased	3 4
	Omit “28 days” wherever occurring. Insert instead “7 days”.	5
[2]	Section 9B (4)	6
	Omit “14 days”. Insert instead “7 days”.	7
[3]	Schedule 2 Savings, transitional and other provisions	8
	Insert after Part 5:	9
Part 6	Provisions consequent on enactment of Criminal Legislation Amendment Act 2009	10 11
18	Initial report by person whose previous reporting obligations have ceased	12 13
	Section 9B, as amended by the <i>Criminal Legislation Amendment Act 2009</i> , does not apply in respect of the following registrable persons, and that section, as in force immediately before the commencement of that amendment, continues to apply in respect of any such person:	14 15 16 17 18
	(a) a person referred to in section 9B (1) who was sentenced for the registrable offence, or ceased to be in government custody, (whichever is applicable) before that commencement,	19 20 21 22
	(b) a person referred to in section 9B (2) who became a corresponding registrable person, or ceased to be in government custody, (whichever is applicable) before that commencement,	23 24 25 26
	(c) a person referred to in section 9B (3), if the order under section 16 ceased to have effect or the person ceased to be in government custody (whichever is applicable) before that commencement.	27 28 29 30

1.2 Confiscation of Proceeds of Crime Act 1989 No 90	1
Section 4 Definitions	2
Insert after paragraph (a) of the definition of <i>drug trafficking offence</i> in section 4 (1):	3 4
(a1) section 23A (offences with respect to enhanced indoor cultivation of prohibited plants in presence of children),	5 6
1.3 Crimes Act 1900 No 40	7
[1] Sections 66A (3) (i) and 66C (5) (i)	8
Insert at the end of sections 66A (3) (h) and 66C (5) (h):	9
, or	10
(i) the alleged offender breaks and enters into any dwelling-house or other building with the intention of committing the offence or any other serious indictable offence.	11 12 13 14
[2] Schedule 11 Savings and transitional provisions	15
Insert at the end of the Schedule (with appropriate Part and clause numbers):	16
Part Criminal Legislation Amendment Act 2009	17
Application of amendments	18
An amendment made to this Act by the <i>Criminal Legislation Amendment Act 2009</i> applies only in respect of an offence committed, or alleged to have been committed, on or after the commencement of the amendment.	19 20 21 22
1.4 Crimes (Domestic and Personal Violence) Act 2007 No 80	23
[1] Section 13 Stalking or intimidation with intent to cause fear of physical or mental harm	24 25
Insert after section 13 (4):	26
(5) A person who attempts to commit an offence against subsection (1) is guilty of an offence against that subsection and is punishable as if the offence attempted had been committed.	27 28 29
[2] Section 14 Offence of contravening apprehended violence order	30
Insert “or (9)” after “subsection (1)” wherever occurring in section 14 (8) (a) and (b).	31 32

[3] Section 14 (8)	1
Omit “that subsection” wherever occurring. Insert instead “either subsection”.	2
[4] Section 14 (9)	3
Insert after section 14 (8):	4
(9) A person who attempts to commit an offence against subsection (1) is guilty of an offence against that subsection and is punishable as if the offence attempted had been committed.	5 6 7
1.5 Crimes (Sentencing Procedure) Act 1999 No 92	8
[1] Part 4 Sentencing procedures for imprisonment	9
Omit “—child under 10” from item 9B of the Table to Division 1A.	10
[2] Section 100I Constitution of New South Wales Sentencing Council	11
Omit “13 members” from section 100I (2). Insert instead “15 members”.	12
[3] Section 100I (2) (c)	13
Omit “three”. Insert instead “four”.	14
[4] Section 100I (2) (i)	15
Insert at the end of section 100I (2) (h):	16
, and	17
(i) one is to have academic or research expertise or experience of relevance to the functions of the Sentencing Council.	18 19
[5] Schedule 1A Provisions relating to membership and procedure of New South Wales Sentencing Council	20 21
Omit “7 members” from clause 10. Insert instead “8 members”.	22
1.6 Criminal Procedure Act 1986 No 209	23
Section 344A Further review by Ombudsman—Aboriginal and Torres Strait Islander communities	24 25
Omit “31 May 2009” from section 344A (3). Insert instead “31 August 2009”.	26
1.7 Inclosed Lands Protection Act 1901 No 33	27
[1] Section 2 Repeal	28
Omit the section.	29

[2] Section 9 Limitation of civil action	1
Omit “All actions and prosecutions”. Insert instead “Any civil action”.	2
[3] Section 9A	3
Insert after section 9:	4
9A Particulars to be furnished	5
(1) If a defendant charged with an offence under this Act:	6
(a) has requested the informant to furnish to the defendant reasonable particulars of the behaviour or conduct the subject of the charge, and	7 8 9
(b) the informant, or some person on his or her behalf, has not so furnished those particulars,	10 11
the court before which the defendant is charged is to adjourn the charge pending the furnishing of those particulars or may dismiss the charge.	12 13 14
(2) If, at the hearing of a charge for an offence referred to in subsection (1):	15 16
(a) the evidence discloses behaviour or conduct that constitutes such an offence, and	17 18
(b) that behaviour or conduct is different from the behaviour or conduct of which particulars have been given to the defendant under subsection (1),	19 20 21
the court may, on the application of the defendant and if it is of the opinion that the defendant was deceived by those particulars, adjourn the hearing on such terms as it thinks fit.	22 23 24
[4] Schedule 1	25
Omit the Schedule to the Act. Insert instead:	26
Schedule 1 Savings, transitional and other provisions	27 28
Part 1 General	29
1 Regulations	30
(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:	31 32 33
<i>Criminal Legislation Amendment Act 2009</i>	34

(2)	Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.	1 2
(3)	To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:	3 4 5
(a)	to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	6 7 8
(b)	to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.	9 10 11
Part 2	Provisions consequent on enactment of Criminal Legislation Amendment Act 2009	12 13
2	Definition	14
	In this Part:	15
	<i>amending Act</i> means the <i>Criminal Legislation Amendment Act 2009</i> .	16 17
3	Limitation period for prosecutions	18
	Section 9, as amended by the amending Act, does not apply in respect of an offence that is alleged to have been committed before the commencement of that amendment, and that section, as in force immediately before that commencement, continues to apply in respect of any such offence.	19 20 21 22 23
4	Particulars to be furnished	24
	Section 9A, as inserted by the amending Act, does not apply in respect of an offence alleged to have been committed before the commencement of that section.	25 26 27
1.8	Law Enforcement (Powers and Responsibilities) Act 2002 No 103	28 29
[1]	Sections 20 (b), 35 (b) and 42 (3) (b)	30
	Omit “section 545E” wherever occurring. Insert instead “section 93FB”.	31

[2] Section 87A Definitions	1
Omit the definition of <i>licensed premises</i> from section 87A (1). Insert instead:	2
<i>licensed premises</i> means premises licensed or required to be	3
licensed under the <i>Liquor Act 2007</i> for the sale or supply of	4
liquor.	5
[3] Section 87A (1), definition of “liquor”	6
Omit “ <i>Liquor Act 1982</i> ”. Insert instead “ <i>Liquor Act 2007</i> ”.	7
[4] Section 87B Emergency prohibition on sale or supply of liquor	8
Omit the note to section 87B (2).	9
[5] Section 198 Directions relating to dispersal of groups of intoxicated persons in public places	10
Omit section 198 (5). Insert instead:	11
(5) For the purposes of this section, a person is <i>intoxicated</i> if:	12
(a) the person’s speech, balance, co-ordination or behaviour is	13
noticeably affected, and	14
(b) it is reasonable in the circumstances to believe that the	15
affected speech, balance, co-ordination or behaviour is the	16
result of the consumption of alcohol or any drug.	17
[6] Schedule 1 Acts not affected by this Act	18
Omit “ <i>Liquor Act 1982</i> No 147”. Insert instead “ <i>Liquor Act 2007</i> No 90”.	19
1.9 Mental Health (Forensic Provisions) Act 1990 No 10	20
Section 37 Explanation to jury	21
Omit “a recommendation” from section 37 (b). Insert instead “an order”.	22
	23