

Passed by both Houses



New South Wales

Crimes Legislation Amendment Bill 2012

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2012*



New South Wales

Crimes Legislation Amendment Bill 2012

Act No , 2012

An Act to amend certain legislation with respect to criminal offences and procedure;
and for other purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Legislation Amendment Act 2012*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Crimes Act 1900 No 40

[1] Section 66F Sexual offences—cognitive impairment

Omit “an established de facto partner” from section 66F (7) (a) (ii).

Insert instead “the de facto partner”.

[2] Section 73 Sexual intercourse with child between 16 and 18 under special care

Insert “or the de facto partner of a parent, guardian or foster parent of the victim” after “victim” in section 73 (3) (a).

[3] Section 86 Kidnapping

Insert after section 86 (1) (a):

- (a1) with the intention of committing a serious indictable offence, or

[4] Schedule 3 Abolished common law offences and rules

Insert after clause 6:

7 Person who fails to disclose crime committed by the person’s husband or wife or de facto partner

- (1) Any common law rule that a person cannot be found guilty of an offence involving failing to disclose a crime committed by the person’s husband or wife or de facto partner is abolished.
- (2) This clause applies only to or in respect of an offence involving failing to disclose such a crime if the offence is committed, or alleged to have been committed, on or after the commencement of this clause.

[5] Schedule 11 Savings and transitional provisions

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

Part Crimes Legislation Amendment Act 2012

Application of amendments

An amendment to section 73 or 86 made by the *Crimes Legislation Amendment Act 2012* applies only in respect of an offence committed, or alleged to have been committed, on or after the commencement of the amendment.

Schedule 2 Amendment of Criminal Procedure Act 1986 No 209

[1] Section 281B Sensitive evidence—meaning

Insert after section 281B (1):

- (1A) For the purposes of this Part, an audio recording of a person committing an offence against another person (the *protected person*) is *sensitive evidence* if:
- (a) the contents of the audio recording are obscene or indecent, or
 - (b) providing a copy of the audio recording to another person without the protected person's consent would interfere with the protected person's privacy.
- (1B) The contents of an audio recording are not obscene or indecent merely because they include obscene or indecent language.

[2] Section 281B (2)

Insert "or (1A)" after "subsection (1)".

[3] Section 281B (2) (b)

Omit "a video, held or seized by a prosecuting authority, showing".

Insert instead "a video or audio recording, held or seized by a prosecuting authority, of".

[4] Section 281D Procedures for giving access to sensitive evidence to accused person

Insert "or listen to" after "view" in section 281D (2) (d).

[5] Section 281D (2) (e)

Omit "such a viewing".

Insert instead "the viewing of, or listening to, the thing".

[6] Section 281D (4)

Insert "or listen to" after "view".

[7] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Crimes Legislation Amendment Act 2012

[8] Schedule 2

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

**Part Provision consequent on enactment of
Crimes Legislation Amendment Act 2012**

Sensitive evidence—audio recordings

The amendments made to Part 2A of Chapter 6 by the *Crimes Legislation Amendment Act 2012* extend to a criminal investigation instituted, or criminal proceedings instituted or partly heard, before the commencement of Schedule 2 to that Act.

Schedule 3 Amendment of other legislation

3.1 Crimes (Domestic and Personal Violence) Act 2007 No 80

[1] Section 48 Making of application for an order

Insert after section 48 (2) (a):

- (a1) the guardian of the person for whose protection the order would be made, in the case of a person in respect of whom a guardianship order within the meaning of the *Guardianship Act 1987* is in force, or

[2] Section 48 (7)

Insert after section 48 (6):

- (7) A reference in sections 52, 55 (2), 73 (4), 77 (7), 78 (1) and 84 (6) to a protected person includes a reference to the guardian of the person in the case of an application for an order made by the guardian of a person on the person's behalf (as referred to in subsection (2) (a1)).

[3] Section 72 Application for variation or revocation of final apprehended violence orders

Insert after section 72 (2) (a):

- (a1) the guardian of the protected person, in the case of a protected person in respect of whom a guardianship order within the meaning of the *Guardianship Act 1987* is in force, or

3.2 Crimes (Sentencing Procedure) Act 1999 No 92

[1] Sections 32 (4) (c) and 35A (3)

Insert "or by a person, or a person belonging to a class of persons, prescribed by the regulations" after "Prosecutions" wherever occurring.

[2] Section 32 (5)

Omit the subsection. Insert instead:

- (5) A list of additional charges is taken to be signed on behalf of the Director of Public Prosecutions if it is signed by a person who is authorised to do so by means of a written order signed by the Director of Public Prosecutions or who belongs to a class of persons so authorised.

[3] Section 35A (4)

Omit the subsection. Insert instead:

- (4) A certificate is taken to be signed on behalf of the Director of Public Prosecutions if it is signed by a person who is authorised to do so by means of a written order signed by the Director of Public Prosecutions or who belongs to a class of persons so authorised.

3.3 Crimes (Sentencing Procedure) Regulation 2010

[1] Clause 4 Lists of additional charges

Omit “section 32 (5) (b)” from clause 4 (2). Insert instead “section 32 (4) (c)”.

[2] Clause 4 (2) (k)

Insert after clause 4 (2) (j):

- (k) the Chief Executive Officer of the Food Authority.

[3] Clause 7A Consultation with victim and police in relation to charge negotiations

Omit “section 35A (4) (b)”. Insert instead “section 35A (3)”.

3.4 Crimes (Serious Sex Offenders) Act 2006 No 7

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

Omit “111, 112 or 113” from section 5 (1) (b).

Insert instead “86 (1) (a1), 111, 112, 113 or 114 (1) (a), (c) or (d)”.

[2] Schedule 2 Savings, transitional and other provisions

Omit clause 1 (1). Insert instead:

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.

[3] Schedule 2, Part 6

Insert after Part 5:

**Part 6 Provision consequent on enactment of
Crimes Legislation Amendment Act 2012**

9 Application of amendment

The amendment made to section 5 by the *Crimes Legislation Amendment Act 2012* applies only to and in respect of an offence committed on or after the commencement of Schedule 3.4 to that Act.

3.5 Young Offenders Act 1997 No 54

[1] Sections 4 (definition of “Director-General”), 46 (1), 47 (2) (e), 62A and 66 (2) (e) and (4) (definition of “authorised officer of the Department of Human Services”)

Omit “Department of Human Services” wherever occurring.

Insert instead “Department of Attorney General and Justice”.

[2] Section 17 Records of warnings

Insert after section 17 (3) and the note:

- (4) This section does not require a record made under this section and held by the Bureau of Crime Statistics and Research to be destroyed or expunged if the record was divulged to the Bureau in accordance with section 66.

[3] Section 66 Disclosure of records

Insert after section 66 (2) (e):

- (f) records of, or relating to, warnings, cautions and conferences under this Act may (subject to any regulations made for the purposes of subsection (3)) be divulged to a person employed in the Bureau of Crime Statistics and Research.

[4] Section 66 (3)

Insert “or (f)” after “subsection 2 (e)”.

[5] Schedule 3 Savings and transitional provisions

Omit clause 1 (1). Insert instead:

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.

[6] Schedule 3, Part 4

Insert after Part 3:

Part 4 Provision consequent on enactment of Crimes Legislation Amendment Act 2012

7 Destruction and disclosure of records

- (1) Anything done or omitted to be done before the commencement of Schedule 3.5 to the *Crimes Legislation Amendment Act 2012* in relation to the destruction of records of warnings or the disclosure of records of, or relating to, warnings, cautions and conferences to the Bureau of Crime Statistics and Research that could have been validly done or omitted to be done if the amendments made to this Act by that Subschedule had been in force when it was done or omitted to be done, is taken to have been validly done or omitted to be done.
- (2) Section 17 (4), as inserted by Schedule 3.5 to the *Crimes Legislation Amendment Act 2012*, extends to records of warnings divulged to the Bureau of Crime Statistics and Research before the commencement of that Subschedule.

3.6 Young Offenders Regulation 2010

[1] Clauses 14 and 16

Omit “Department of Human Services” wherever occurring.

Insert instead “Department of Attorney General and Justice”.

[2] Clause 15 Disclosure of records relating to cautions and conferences to Department of Attorney General and Justice

Omit “Department of Human Services” wherever occurring.

Insert instead “Department of Attorney General and Justice”.

[3] Clause 15A

Insert after clause 15:

15A Disclosure of records relating to warnings, cautions and conferences to Bureau of Crime Statistics and Research

For the purposes of section 66 (2) (f) of the Act, a record of, or relating to, a warning, caution or conference under the Act may be divulged to a person employed in the Bureau of Crime Statistics and Research if:

- (a) the information contained in the record will only be used in research by that Bureau, the production of statistics by that Bureau and the publication of those statistics and of reports relating to that research, and
- (b) any such publication does not name or otherwise identify the child to whom the record relates.

[4] Clause 16 Authorised officers

Insert after clause 16 (b):

- (b1) an Assistant Regional Director,

Schedule 4 Repeal of legislation and consequential amendments

4.1 Crimes (Appeal and Review) Act 2001 No 120

Section 3 Definitions

Omit paragraph (f) from the definition of *sentence* in section 3 (1).

4.2 Criminal Appeal Act 1912 No 16

Section 2 Definitions

Omit paragraph (j) from the definition of *Sentence* in section 2 (1).

4.3 Law Enforcement (Powers and Responsibilities) Amendment (Detained Person's Property) Act 2008 No 88

The Act is repealed.

4.4 Sporting Venues (Offenders Banning Orders) Act 2005 No 67

The Act is repealed.