

[Act 2000 No 43]



New South Wales

# Crimes Legislation Amendment Bill 2000

## Explanatory note

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

### Overview of Bill

The objects of this Bill are:

- (a) to revise the law with respect to the geographical reach of criminal offences punishable in the State (generally to ensure their application to events that occur in the State or to events elsewhere that have an effect in the State), and
  - (b) to create a separate offence of sabotage (maximum penalty: 25 years imprisonment) and threatened sabotage (maximum penalty: 14 years imprisonment), and
  - (c) to repeal the obligation of private individuals to arrest anyone who offers to sell or give them stolen property, and
  - (d) to extend the sentencing options of the Children's Court to include the suspension or deferral of sentences for the purposes of rehabilitation ("Griffiths bonds") and for other purposes, and
-

- (e) to clarify a number of matters arising from the re-enactment in 1999 of sentencing legislation, and
- (f) to ensure that the *Listening Devices Act 1984* applies to sound recordings made by video cameras or by devices that are also capable of tracking a person's movements, and
- (g) to put beyond doubt the application of the *Search Warrants Act 1985* in respect of indictable offences committed outside the State, and
- (h) to enable the Victims of Crime Bureau to provide services to members of the family of a missing person, and
- (i) to make other miscellaneous changes to crimes legislation.

## 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 a day or days to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the *Crimes Act 1900*, the *Children (Criminal Proceedings) Act 1987*, the *Crimes (Sentencing Procedure) Act 1999*, the *Criminal Appeal Act 1912*, the *Criminal Procedure Act 1986*, the *Listening Devices Act 1984*, the *Search Warrants Act 1985* and the *Victims Rights Act 1996* set out in Schedules 1–8.

## Schedule 1 Amendment of Crimes Act 1900

**Schedule 1 [1]** repeals section 3A of the Act as a consequence of the enactment of proposed Part 1A to be inserted in the Act by Schedule 1 [3] to deal with geographical jurisdiction.

**Schedule 1 [2]** repeals section 3B of the Act as a consequence of the enactment of proposed Part 1A to be inserted in the Act by Schedule 1 [3], and of the amendments to be made by Schedule 1 [6] and [7], to deal with geographical jurisdiction.

**Schedule 1 [3]** inserts proposed Part 1A into the Act to replace section 3A. The proposed Part revises the law with respect to the geographical reach of criminal offences punishable in the State (generally to ensure their application to events that occur in the State or to events elsewhere that have an effect in the State). The provisions are in line with those recommended by the Model Criminal Code Officers Committee of the Standing Committee of Attorneys General and are

Explanatory note

---

intended to overcome the limitations placed on the operation of the existing provisions in recent cases (such as *Catanzariti's* case (1995) 81 A Crim R 584).

The Part does not affect special provisions made with respect to the geographical reach of criminal offences, such as the following:

Section 45 (2) (Prohibition of female genital mutilation)

Section 66EA (Persistent sexual abuse of a child)

Section 93IG (Offences relating to contamination of goods)

Sections 178BA (3) and 178BB (2) (Misuse of public property by public officials outside the State)

**Schedule 1 [4]** omits section 78F (2) of the Act and is consequent on the amendment to section 118 of the *Criminal Procedure Act 1986* to be effected by proposed Schedule 5. The amendment transfers to that Act the mandatory requirement for incest proceedings to be held in private.

**Schedule 1 [5]** is consequent on proposed Part 1A to be inserted into the Act by Schedule 1 [3].

**Schedule 1 [6]** and **[7]** amend sections 178BA and 178BB of the Act to continue the special rule as to geographical jurisdiction contained in section 3B (which is to be replaced generally by the provisions of proposed Part 1A).

**Schedule 1 [8]** inserts sections 203A–203C into the Act to create separate offences of sabotage (maximum penalty: 25 years imprisonment) and threatened sabotage (maximum penalty: 14 years imprisonment). Sabotage refers to damage to public facilities, with the intent to cause that damage and to cause extensive destruction of property or major economic loss. Public facilities are defined widely, and include government facilities, public infrastructure facilities, public transport facilities and public places.

**Schedule 1 [9]** repeals section 353 of the Act, which provides that any person who is offered to be sold or given property which the person reasonably suspects is stolen (or with respect to which any other offence has been committed) may arrest the person offering the property and bring the person before a court. The section places an obligation on the person to arrest the offender if it is within the person's power to do so. The repeal of the section does not affect the general powers of arrest of police officers and private individuals conferred by the Act.

**Schedule 1 [10]** ensures that the provisions of proposed Part 1A relating to geographical jurisdiction with respect to offences applies to all statutory and common law offences and to all courts in which they are tried.

**Schedule 1 [11]** makes a transitional provision so that the amendments relating to geographical jurisdiction have prospective operation only.

### **Schedule 2 Amendment of Children (Criminal Proceedings) Act 1987**

**Schedule 2 [1]** replaces the expression “serious indictable offence” in the Act with the expression “serious children’s indictable offence” to avoid confusion with the expression “serious indictable offence” defined differently in the *Crimes Act 1900* and the *Interpretation Act 1987*.

**Schedule 2 [2]** amends section 33 of the Act to extend the sentencing options of the Children’s Court to include the deferral of the imposition of a penalty for the purposes of rehabilitation (“Griffiths bonds”) and for other purposes. This sentencing option is similar to that available with respect to adult offenders under section 11 of the *Crimes (Sentencing Procedure) Act 1999*.

**Schedule 2 [3] and [4]** amend section 33 of, and insert section 41A into, the Act to extend the sentencing options of the Children’s Court to include the suspension of an order for detention in a juvenile detention centre, subject to compliance with a good behaviour bond. This sentencing option is similar to that available with respect to adult offenders under section 12 of the *Crimes (Sentencing Procedure) Act 1999*.

**Schedule 2 [5]** inserts section 50B into the Act to facilitate the use of drug rehabilitation programs for child offenders. The provision is similar to section 31 of the *Drug Court Act 1998* that applies to adult drug offenders undergoing rehabilitation.

**Schedule 2 [6] and [7]** make provision of a savings and transitional nature consequent on the amendments made by the Schedule.

### **Schedule 3 Amendment of Crimes (Sentencing Procedure) Act 1999**

**Schedule 3 [1]** amends section 4 of the Act to clarify the penalty applicable for common law offences and other offences for which a penalty is not specifically provided. Section 4 (2) (b) of the Act at present provides that a penalty of imprisonment for 5 years may be imposed if no penalty for the offence is provided by or under an Act. That provision replaced section 440 of the *Crimes Act 1900*, which applied only to statutory offences (*R v Price* (1885) 6 LR (NSW) 140). In the case of common law offences, a range of penalties would be applicable under the law for offences formerly classified as common law misdemeanours or felonies. Section 4 is being amended to make it clear that the replacement provision

continues to apply only to statutory offences and does not affect the penalty for the remaining common law offences. The amendment does not affect the provisions retained in the *Crimes Act 1900* that ensure that a penalty of 25 years is applicable for common law or other offences formerly punishable by death (section 431) or for common law or other offences (other than murder and certain narcotics offences) formerly punishable by life imprisonment (section 431A).

**Schedule 3 [2]** amends section 10 of the Act, which provides that a good behaviour bond may be imposed under that section when the court finds the offender guilty of the offence but, because of the character of the offender, the trivial nature of the offence and other matters, does not proceed to conviction and the imposition of a penalty (former section 556A of the *Crimes Act 1900*). The section does not limit the period of any good behaviour bond that may be imposed. At present, section 9 authorises the imposition of a good behaviour bond not exceeding 5 years as an alternative to a sentence of imprisonment. Section 12 also authorises the imposition of a good behaviour bond when a sentence of imprisonment is suspended not exceeding the term of the sentence, but not in any case exceeding 2 years. In view of the less serious nature of offences for which a good behaviour bond may be imposed under section 10 (including those for which a fine only may be imposed), the amendment of section 10 limits the maximum term of a good behaviour bond under that section to 2 years.

**Schedule 3 [3]** and **[4]** amend section 11 of the Act to ensure that the sentencing option of deferral of sentencing for the purposes of rehabilitation (“Griffiths bonds”) or for other purposes that is available on conviction is also available where the court finds the person guilty of the offence but determines not to proceed to a conviction.

**Schedule 3 [5]** amends section 12 of the Act to ensure that when a court suspends a sentence of imprisonment following a decision not to make a home detention order, any non-parole period previously set ceases to have effect. Section 12 (3) generally provides that when a sentence is suspended the court is not required to set a non-parole period for the sentence, but such a period is to be set under section 99 should a breach of the good behaviour bond during the suspension result in the removal of the suspension of the sentence.

**Schedule 3 [6]** amends section 25 of the Act (which relates to the prohibition on the imposition of penalties on absent offenders) to make it clear that an absent offender to whom the section applies is an offender who is absent from the court at the time of the imposition of the penalty concerned (rather than at any earlier time when the offender was convicted).

**Schedule 3 [7]** amends section 51 of the Act so as to ensure that the power of a court to impose conditions of parole in relation to supervision are the same as the power of the Parole Board to impose such conditions under the *Crimes (Administration of Sentences) Act 1999*.

#### **Schedule 4 Amendment of Criminal Appeal Act 1912**

The amendment clarifies the provisions relating to appeals to the Court of Criminal Appeal involving sentences imposed on persons convicted or found guilty of offences. The amendment ensures that the right of appeal is not affected because of any delay in the sentence caused by the need to obtain assessment reports or otherwise (eg for consideration of home detention orders) or as a result of re-sentencing (eg following the breach of a good behaviour bond).

#### **Schedule 5 Amendment of Criminal Procedure Act 1986**

**Schedule 5 [1]** transfers to section 118 of the Act (which provides for a court to have a discretion to hold proceedings for incest and other sexual offences in camera) a provision that is currently located in section 78F of the *Crimes Act 1900* (which provides that all proceedings for incest must be held in camera). The transfer of the provision will make it clear that proceedings for the offence of incest or attempted incest must be held in private and will enable the court to permit a support person for a victim to give evidence in the proceedings.

**Schedule 5 [2]** enables the proposed indictable offence of threatening sabotage (proposed section 203C of the *Crimes Act 1900*) to be dealt with summarily by a Local Court unless the prosecuting authority or the person charged elects otherwise.

#### **Schedule 6 Amendment of Listening Devices Act 1984**

The amendments ensure that the Act applies to a device that makes a sound recording of a private conversation even though the device also records or transmits visual images (eg a video camera) or also records or transmits its own position (eg a tracking device with an audio component).

### **Schedule 7 Amendment of Search Warrants Act 1985**

Section 5 of the Act defines an indictable offence, with respect to which a search warrant may be issued, to include an act or omission that if done or omitted in New South Wales would constitute an offence punishable on indictment. Section 24A of the Act provides for Ministerial arrangements with other States and Territories for things seized under a search warrant issued under this Act that may be relevant to an offence against a law of the State or Territory to be transmitted to that State or Territory.

The amendment removes any doubt that may arise that the Act does not in fact authorise the issue of search warrants for extra-territorial offences.

### **Schedule 8 Amendment of Victims Rights Act 1996**

The amendment ensures that the Victims of Crime Bureau, a branch of the Attorney General's Department that is established by the Act with functions with respect to the support of victims of crime, may also exercise those functions to support the immediate family of missing persons.