

[Act 2002 No 130]



New South Wales

Crimes Legislation Amendment Bill 2002

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Bail Act 1978*:
 - (i) to clarify the extent to which the Supreme Court may review bail conditions imposed by other courts, and
 - (ii) to remove the presumption in favour of bail if a person is in custody for another offence at the time the offence concerned is alleged to have been committed, and
 - (iii) to ensure that the presumption against bail for drug offences extends to various new Commonwealth offences, and
 - (iv) to make it clear that the provisions of the Act that refer to applications for bail, the granting of bail and the giving of undertakings extend to justices,
- (b) to amend the *Children (Criminal Proceedings) Act 1987*:

* Amended in committee—see table at end of volume.

- (i) to provide that children who have committed offences under the *Firearms Act 1996* relating to the manufacture or sale of firearms are to be dealt with according to law (and not by the Children's Court) if the offences are punishable by imprisonment for 20 years, and
 - (ii) to specify the criteria that a court must take into account in deciding whether to sentence a child who has committed an indictable offence according to law or in accordance with the provisions of Division 4 of Part 3 of the Act,
- (c) to amend the *Confiscation of Proceeds of Crime Act 1989* to make it clear that a court, in making a confiscation order under that Act, may take into account any property or other benefit provided for a defendant who has committed a serious offence (or for another person at the defendant's request or direction) for exploiting his or her notoriety as a criminal,
- (d) to amend the *Crimes Act 1900*:
 - (i) to remove a possible anomaly in respect of when murder may be reduced to manslaughter, and
 - (ii) to provide that Crown Prosecutors, Acting Crown Prosecutors, sheriff's officers and solicitors employed by the Director of Public Prosecutions are law enforcement officers for the purposes of Division 8A (Assaults and other actions against police and other law enforcement officers) of Part 3 of the Act, and
 - (iii) to provide that generally the residential address of a health care provider who applies or is granted an apprehended personal violence order does not need to be specified on the application or order and that a work address may be specified instead, and
 - (iv) to provide that a person cannot be detained under Part 10A for a continuous period of time that is not reasonable in all the circumstances,
- (e) to amend the *Crimes (Sentencing Procedure) Act 1999*:
 - (i) to enable a Local Court to impose a sentence of imprisonment that is consecutive on another sentence of imprisonment imposed by a Local Court that will result in a total accumulated sentence of up to 3 years and 6 months if the new sentence relates to an offence involving an assault on a correctional officer committed by the offender while a convicted inmate of a correctional centre, and
 - (ii) to clarify the operation of certain transitional provisions dealing with applications for re-determinations of existing life sentences made under the *Sentencing Act 1989*,

- (f) to amend the *Criminal Procedure Act 1986* (as amended by the *Criminal Procedure Amendment (Justices and Local Courts) Act 2001*) to clarify the power of Magistrates to issue warrants for the arrest of accused persons who are not present at committal hearings or summary proceedings or who abscond from any such proceedings,
- (g) to amend the *Justices Act 1902* to clarify the power of Magistrates to issue warrants for the arrest of accused persons who are not present at committal proceedings or summary hearings or who abscond from any such proceedings,
- (h) to amend the *Mental Health Act 1990* to provide for the transfer back to correctional centres of inmates who have completed treatment for mental illness,
- (i) to amend the *Mental Health (Criminal Procedure) Act 1990*:
 - (i) to enable a person who breaches a condition of a discharge by a Magistrate under section 32 of the Act to be brought back before the Magistrate, and
 - (ii) to clarify the categories of persons who may be dealt with under section 32, and
 - (iii) to enable the making of community treatment orders under the *Mental Health Act 1990* where a Magistrate finds that a defendant is a mentally ill person, without an inquiry under that Act being held,
- (j) to amend the *Search Warrants Act 1985* to enable a person who is arrested at premises that are being searched under the authority of a search warrant to be detained by police officers on the premises for a limited time.

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 that gives effect to the amendments to the Acts referred to in the Overview and set out in Schedules 1–10.

Clause 4 provides that any matter appearing under the heading “Explanatory note” in any of the Schedules does not form part of the proposed Act.

The amendments made in each of the Schedules are explained in detail in the explanatory notes set out at the end of each of the Schedules.