

[Act 1999 No 40]



New South Wales

Crimes Legislation Amendment Bill 1999

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 make it clear that certain offences relating to corruptly receiving commissions and other corrupt practices extend to members of local government councils,
- (b) to allow certain court officials to make an interim apprehended violence order when the complainant and the defendant both consent to the order being made, and to make it clear that courts may also make interim apprehended violence orders with consent,
- (c) to enable an authorised justice to issue a summons or warrant for a person who has been released by the Children's Court on condition that the person

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

complies with an outcome plan and who has failed to comply with the outcome plan,

- (d) to ensure that a record of an official warning given to a child cannot be tendered in criminal proceedings as part of the child's criminal history,
- (e) to make other minor miscellaneous amendments.

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 *Children (Criminal Proceedings) Act 1987* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Crimes Act 1900* set out in Schedule 2.

Clause 5 is a formal provision giving effect to the amendments to the *Justices Act 1902* set out in Schedule 3.

Clause 6 is a formal provision giving effect to the amendments to the *Young Offenders Act 1997* set out in Schedule 4.

Schedule 1 Amendment of Children (Criminal Proceedings) Act 1987

At present an authorised justice may, on being given information on oath by a police officer or an authorised officer that a person has failed to comply with a condition of the person's recognizance or probation, issue a summons or warrant for the arrest of the person. The amendments ensure that any authorised justice may issue such a summons or warrant, whether or not the information concerned was sworn before that authorised justice. (See Schedule 1 [2])

The amendments also enable an authorised justice to issue a summons or warrant for the arrest of a person who has been released by the Children's Court on condition that the person complies with an outcome plan determined at conference under the *Young Offenders Act 1997* and who has failed to comply with the outcome plan. (See Schedule 1 [1], [3], [4], [5], [6] and [7]) A consequential amendment is made to the *Young Offenders Act 1997*. (See Schedule 4 [1])

Schedule 2 Amendment of Crimes Act 1900

Corruptly receiving commissions and other corrupt practices

Part 4A of the *Crimes Act 1900* sets out various offences relating to corrupt practices by agents, such as the offence of corruptly receiving a benefit as an inducement for doing or not doing something in relation to the affairs or business of the agent's principal. The amendments make it clear that a councillor (which means any person elected or appointed to civic office, including a mayor) is considered to be an agent in relation to the council to which he or she was elected or appointed. Accordingly, those offences will apply to councillors. (See Schedule 2 [3])

Apprehended violence orders made with consent

At present a court may, on complaint, make an apprehended violence order without conducting a hearing into the matters alleged in the complaint if the court is satisfied that the parties concerned consent to the order being made. The amendments make it clear that a court may also make an interim apprehended violence order with the consent of the parties. The court is not to conduct a hearing in relation to the complaint if the order proposed to be made is an interim order and is consented to by the parties. (See Schedule 2 [5] and [6])

The amendments will also enable the clerk of a Local Court or the registrar of the Children's Court (referred to here as a clerk of a court) to make an interim apprehended violence order with the consent of the parties. (At present a clerk of a court can, with the consent of the parties, extend the period during which an interim apprehended violence order remains in force, but cannot make an interim apprehended violence order.) An interim apprehended violence order made by a clerk of a court will have the same effect as an interim apprehended violence order made by a court, and remains in force only until it is confirmed or revoked by a court. It will also be appealable in the same way as an order made by a Local Court or the Children's Court. (See Schedule 2 [7], [8], [9] and [10])

The registrar of the District Court will not be able to make an interim apprehended violence order or extend an interim apprehended violence order. (See Schedule 2 [4], [7] and [8]) At present the District Court may make an apprehended violence order only if a complaint for an apprehended violence order has been dismissed by a Local Court or the Children's Court.

Other amendments

Section 77 of the *Crimes Act 1900* provides that consent is not a defence to certain sexual offences committed against children, except in limited circumstances. Consent is a defence if the child was over the age of 14 years at the time of the alleged offence and the person charged had reasonable cause to believe and did in fact believe that the child was of or above the age of 16 years. The amendment makes it clear that a child is considered to be over the age of 14 years when the child is of or above the age of 14 years. (See Schedule 2 [2])

Amendments are made to section 61O of the *Crimes Act 1900* (Aggravated act of indecency) so that the language used is consistent with that used in section 61N (Act of indecency). At present it is an offence for a person to commit an act of indecency with or towards a person or to incite a person to an act of indecency with or towards that or another person. The amendment makes it clear that the offence of aggravated act of indecency applies if a person incites another person to an act of indecency with *or towards* the person or another person in circumstances of aggravation (at present the offence refers only to acts of indecency with the person or another person). (See Schedule 2 [1])

Schedule 3 Amendment of Justices Act 1902

The amendment makes it clear that the requirements relating to service of a brief of evidence under the *Justices Act 1902* apply to indictable offences dealt with summarily under Part 3 of the *Children (Criminal Proceedings) Act 1987*.

Schedule 4 Amendment of Young Offenders Act 1997

The *Young Offenders Act 1997* allows a child who has committed or is alleged to have committed a summary offence covered by that Act to be dealt with by warning. An investigating official must make a record of the warning. The amendment provides that such a record is inadmissible in any proceedings before the Children's Court. (See Schedule 4 [2])