



New South Wales

# Courts and Crimes Legislation Amendment Bill 2011

## Explanatory note

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

## Overview of Bill

The object of this Bill is:

- (a) to amend the *Criminal Procedure Act 1986* and the *Criminal Procedure Regulation 2010*:
  - (i) to provide a uniform limit on the maximum term of imprisonment that may be imposed by the Local Court when dealing summarily with an indictable offence (other than in relation to certain offences under the *Drug Misuse and Trafficking Act 1985*), and
  - (ii) to increase the maximum amount of fine that may be imposed by the Local Court when dealing summarily with certain indictable offences under the *Crimes Act 1900*, and
  - (iii) to include certain indictable fraud offences under the *Conveyancers Licensing Act 2003* and the *Property, Stock and Business Agents Act 2002* as offences that may be dealt with summarily by the Local Court, and
  - (iv) to change the requirements for the use of random samples of child abuse material in proceedings for offences relating to use of children in the

- production of child abuse material and the production, dissemination and possession of such material, and
- (v) to clarify certain matters in relation to the provisions dealing with the protection of communications made in confidence to counsellors by the victims of sexual assault and to alter the regulation-making powers in relation to certain subpoenas, and
  - (b) to amend the *Director of Public Prosecutions Act 1986* to ensure that a person who holds the office of the Director of Public Prosecutions and to whom the *Judges' Pensions Act 1953* applies is entitled to receive a pension under that Act if the person retires on account of ill-health and that the spouse of such a person who dies while holding that office is entitled to receive such a pension, and
  - (c) to amend the *Fines Act 1996* to make it clear that an automated computer system may be used to refer overdue court imposed fines to the State Debt Recovery Office for the making of a court fine enforcement order.

## 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 legislation

### Schedule 1.1 Criminal Procedure Act 1986 No 209

#### Amendments relating to indictable offences dealt with summarily

**Schedule 1.1 [1]–[4]** provide for a uniform limit on the term of imprisonment that may be imposed in relation to an indictable offence that is dealt with summarily by the Local Court of 2 years or the maximum term provided by law for the offence, whichever is the shorter term (other than in relation to certain offences under the *Drug Misuse and Trafficking Act 1985*).

The maximum fine that may be imposed by the Local Court when dealing summarily with offences under sections 56, 61 and 61N of the *Crimes Act 1900* (being offences dealing with certain assaults and acts of indecency) is increased from 20 penalty units to 50 penalty units.

**Schedule 1.1 [14] and [15]** include offences under sections 152 and 153 of the *Conveyancers Licensing Act 2003* and sections 211 and 212 of the *Property, Stock and Business Agents Act 2002* (relating to certain fraudulent conduct) in the list of indictable offences that may be dealt with summarily before the Local Court unless the prosecutor or the person charged with the offence elects to have the offence dealt with on indictment, but only in circumstances where the offence involves an amount exceeding \$5,000.

**Schedule 1.1 [16]** includes offences under sections 152 and 153 of the *Conveyancers Licensing Act 2003* and sections 211 and 212 of the *Property, Stock and Business Agents Act 2002* in the list of indictable offences that may be dealt with summarily before the Local Court unless the prosecutor elects to have the offence dealt with on indictment, but only in circumstances where the offence does not involve an amount exceeding \$5,000.

**Schedule 1.1 [17] and [18]** contain provisions of a savings or transitional nature.

### **Amendments relating to use of random sample evidence in child abuse material proceedings**

**Schedule 1.1 [5] and [6]** change the provisions relating to the examination of a random sample of material in proceedings relating to child abuse material offences (that is, certain offences under the *Crimes Act 1900* relating to the production, dissemination or possession of child abuse material). Those provisions are intended to facilitate proceedings where a large quantity of material is being considered by investigating police officers and allows for evidence of the classification of a random sample of that material to be presented to the court. Currently, an analyst authorised by the Attorney General or the Director of Public Prosecutions may examine a random sample of child abuse material in proceedings and the findings of the analyst as to the nature and content of the sample are admissible as evidence of the nature and content of the whole of the material from which the sample is taken. The amendments will instead allow a person prescribed by the regulations as an authorised classifier to conduct those examinations. **Schedule 1.2** makes a consequential amendment to the *Criminal Procedure Regulation 2010*.

**Schedule 1.1 [6]–[10]** remove the requirement that such a random sample must be taken from child abuse material that is the subject of the proceedings (which would require the child abuse material to be extracted firstly from all the material) to enable the sample to be taken from material in the possession of the police some of which is alleged child abuse material the subject of the proceedings. A random sample is only admissible as evidence if the accused person has been given an opportunity to view all of the material from which the sample was taken.

### **Amendments relating to protected counselling communications by victims of sexual assault**

**Schedule 1.1 [11]** clarifies that the limitations imposed by sections 297 and 298 of the Act in relation to the production and disclosure of certain communications made to counsellors in confidence by victims or alleged victims of sexual assault do not affect the court's powers in circumstances where a question arises that requires the court's consideration of a document or evidence.

**Schedule 1.1 [12] and [13]** change the provision that enables regulations to be made in relation to subpoenas in specified sexual assault proceedings. Instead, regulations will be able to be made in relation to subpoenas in connection with any criminal proceedings, but only subpoenas that require the production of documents recording certain communications made to counsellors in confidence.

### **Schedule 1.2 Criminal Procedure Regulation 2010**

**Schedule 1.2** prescribes as authorised classifiers, for the purposes of the random sample evidence provisions of the *Criminal Procedure Act 1986* referred to above, members of the NSW Police Force who have undertaken training in the classification of child abuse material that is conducted or arranged by the NSW Police Force.

### **Schedule 1.3 Director of Public Prosecutions Act 1986 No 207**

**Schedule 1.3 [3]** amends the provisions that apply the *Judges' Pensions Act 1953* to a person holding office as Director of Public Prosecutions so as to enable such a person to receive a pension under that Act on retirement on grounds of ill-health, or to enable the spouse of such a person to receive a pension under that Act if the person dies in office, even though the person could not have received a normal retirement pension under that Act because the person would have been too young to qualify when his or her 10 year fixed and non-renewable term of office as Director expired.

**Schedule 1.3 [1]** extends those amendments to the person holding the position of Director of Public Prosecutions immediately before the introduction of this Bill into Parliament.

**Schedule 1.3 [2] and [4]** make related amendments.

### **Schedule 1.4 Fines Act 1996 No 99**

**Schedule 1.4** removes the requirement for the registrar of a court to refer unpaid court imposed fines to the State Debt Recovery Office for the making of a court fine enforcement order in circumstances where the court uses an automated electronic system for such referrals.

First print



New South Wales

# Courts and Crimes Legislation Amendment Bill 2011

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New South Wales

# Courts and Crimes Legislation Amendment Bill 2011

No. , 2011

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## **A Bill for**

An Act to make miscellaneous amendments to legislation relating to crimes and court proceedings, the Director of Public Prosecutions and fine enforcement.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Courts and Crimes Legislation Amendment Act 2011</i> .	3
<b>2 Commencement</b>	4
This Act commences on the date of assent to this Act.	5



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<b>Schedule 1</b>	<b>Amendment of legislation</b>	1
<b>1.1</b>	<b>Criminal Procedure Act 1986 No 209</b>	2
<b>[1]</b>	<b>Section 267 Maximum penalties for Table 1 offences</b>	3
	Insert “, subject to this section,” after “offence is” in section 267 (3).	4
<b>[2]</b>	<b>Section 267 (4)</b>	5
	Omit the subsection.	6
<b>[3]</b>	<b>Section 267 (4A)</b>	7
	Omit “12 months”. Insert instead “2 years”.	8
<b>[4]</b>	<b>Section 268 Maximum penalties for Table 2 offences</b>	9
	Omit section 268 (2). Insert instead:	10
	(2) The maximum fine that the Local Court may impose for the following offences is:	11
		12
	(a) for an offence under section 35A (2), 49A, 56, 58, 59, 59A, 60 (1), 60A (1), 60B, 60C, 60E (1) and (4), 61, 61L, 61N or 61O (1) or (1A) of the <i>Crimes Act 1900</i> —50 penalty units,	13
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	(b) for an offence listed in Part 2 or 3 of Table 2 to Schedule 1 (other than an offence under section 154A of the <i>Crimes Act 1900</i> ):	17
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	(i) 50 penalty units, or	20
	(ii) if the value of any property, amount of money or reward concerned does not exceed \$2,000—20 penalty units,	21
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	(c) for an offence under section 154A of the <i>Crimes Act 1900</i> —50 penalty units,	24
		25
	(d) for an offence under section 93G, 93H or 93I of the <i>Crimes Act 1900</i> —50 penalty units,	26
		27
	(e) for an offence under section 7, 7A, 36, 43, 44A, 50, 50AA, 50A (1), 51 (1) or (2), 51A, 51BA, 51D (1), 51E, 58 (2), 62, 63, 64, 66, 70, 71A, 72 (1) or 74 of the <i>Firearms Act 1996</i> —50 penalty units,	28
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		31
	(f) for an offence under section 7, 20, 23 (1), 23A (1), 25A (1), 31 or 34 of the <i>Weapons Prohibition Act 1998</i> —100 penalty units,	32
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(g)	for an offence under section 13 of the <i>Crimes (Domestic and Personal Violence) Act 2007</i> or section 545AB or 562AB of the <i>Crimes Act 1900</i> —50 penalty units,	1 2 3
(h)	for an offence under section 100 (1) of the <i>Rural Fires Act 1997</i> —100 penalty units,	4 5
(i)	for an offence under section 578C (2A) of the <i>Crimes Act 1900</i> —in the case of an individual, 100 penalty units or, in the case of a corporation, 200 penalty units,	6 7 8
(j)	for an offence under section 10 or 20 of the <i>Liens on Crops and Wool and Stock Mortgages Act 1898</i> —50 penalty units,	9 10 11
(k)	for an offence under Part 2 or 5 (other than section 40 (2)) of the <i>Surveillance Devices Act 2007</i> —in the case of an individual, 100 penalty units or, in the case of a corporation, 200 penalty units,	12 13 14 15
(l)	for an offence under section 17 or 18 of the <i>Child Protection (Offenders Registration) Act 2000</i> —100 penalty units,	16 17 18
(m)	for an offence under section 65 of the <i>Electricity Supply Act 1995</i> —100 penalty units,	19 20
(n)	for an offence under section 66 of the <i>Gas Supply Act 1996</i> —100 penalty units.	21 22
(2AA)	A fine may be imposed as referred to in subsection (2) for an offence in addition to or instead of any term of imprisonment that may be imposed by law for the offence.	23 24 25
<b>[5]</b>	<b>Section 289A Definitions</b>	26
	Omit the definition of <i>authorised analyst</i> .	27
<b>[6]</b>	<b>Section 289A</b>	28
	Insert in alphabetical order:	29
	<i>authorised classifier</i> means any person, or person of a class, prescribed by the regulations for the purposes of this definition.	30 31
	<i>seized material</i> , in relation to proceedings for a child abuse material offence, means material:	32 33
	(a) that came into the possession of a police officer in the course of the exercise of functions as a police officer, and	34 35
	(b) some of which is alleged child abuse material that is the subject of the proceedings.	36 37

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<b>[7] Section 289B Use of random sample evidence in child abuse material cases</b>	1
	2
Omit section 289B (1). Insert instead:	3
(1) An authorised classifier may, in connection with any proceedings for a child abuse material offence, conduct an examination of a random sample of seized material.	4
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<b>[8] Section 289B (2), (3), (5) and (8)</b>	7
Omit “authorised analyst” wherever occurring.	8
Insert instead “authorised classifier”.	9
<b>[9] Section 289B (4)</b>	10
Omit the subsection. Insert instead:	11
(4) A certificate of an authorised classifier, that certifies any of the following matters, is admissible in proceedings for a child abuse material offence as evidence of the matters certified:	12
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(a) that the authorised classifier conducted an examination of a random sample of seized material,	15
	16
(b) the findings of the authorised classifier as to the nature and content of the random sample.	17
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<b>[10] Section 289B (6)</b>	19
Omit “child abuse material or alleged child abuse material the subject of the proceedings concerned”.	20
	21
Insert instead “seized material”.	22
<b>[11] Section 299B Determining if there is a protected confidence</b>	23
Insert after section 299B (4):	24
(5) This section has effect despite sections 297 and 298.	25
<b>[12] Section 305A Subpoenas for production of counselling communications</b>	26
Insert “requiring the production of a document recording a counselling communication (within the meaning of section 296)” after “service of subpoenas”.	27
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<b>[13] Section 305A</b>	30
Omit “involving a prescribed sexual offence”.	31

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<b>[14] Schedule 1 Indictable offences triable summarily</b>	1
Insert after clause 18 in Table 1:	2
<b>18AA Conveyancers Licensing Act 2003</b>	3
An offence under section 152 of the <i>Conveyancers Licensing Act 2003</i> where the amount of money in respect of which the offence is charged exceeds \$5,000 or an offence under section 153 of that Act where the account in respect of which the offence is charged relates to an amount that exceeds \$5,000.	4 5 6 7 8
<b>[15] Schedule 1, Table 1</b>	9
Insert after clause 23A:	10
<b>23AAA Property, Stock and Business Agents Act 2002</b>	11
An offence under section 211 of the <i>Property, Stock and Business Agents Act 2002</i> where the amount of money in respect of which the offence is charged exceeds \$5,000 or an offence under section 212 of that Act where the account in respect of which the offence is charged relates to an amount that exceeds \$5,000.	12 13 14 15 16
<b>[16] Schedule 1, Table 2</b>	17
Insert after clause 10C:	18
<b>10D Conveyancers Licensing Act 2003</b>	19
An offence under section 152 of the <i>Conveyancers Licensing Act 2003</i> where the amount of money in respect of which the offence is charged does not exceed \$5,000 or an offence under section 153 of that Act where the account in respect of which the offence is charged relates to an amount that does not exceed \$5,000.	20 21 22 23 24 25
<b>10E Property, Stock and Business Agents Act 2002</b>	26
An offence under section 211 of the <i>Property, Stock and Business Agents Act 2002</i> where the amount of money in respect of which the offence is charged does not exceed \$5,000 or an offence under section 212 of that Act where the account in respect of which the offence is charged relates to an amount that does not exceed \$5,000.	27 28 29 30 31 32
<b>[17] Schedule 2 Savings, transitional and other provisions</b>	33
Insert at the end of clause 1 (1):	34
<i>Courts and Crimes Legislation Amendment Act 2011</i>	35

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<b>[18] Schedule 2</b>	1
Insert at the end of the Schedule with appropriate Part and clause numbers:	2
<b>Part Provisions consequent on enactment of Schedule 1.1 to Courts and Crimes Legislation Amendment Act 2011</b>	3 4 5
<b>Changes in respect of Schedule 1 offences</b>	6
(1) An amendment made to section 267 or 268 by the <i>Courts and Crimes Legislation Amendment Act 2011</i> applies only in respect of an offence that is committed, or alleged to have been committed, on or after the commencement of the amendment.	7 8 9 10
(2) An amendment made to Schedule 1 by the <i>Courts and Crimes Legislation Amendment Act 2011</i> extends to an offence that was committed, or alleged to have been committed, before the commencement of the amendment unless the accused person has been committed for trial or sentence before that commencement.	11 12 13 14 15
<b>Use of random sample evidence</b>	16
(1) The amendments made to Part 4A of Chapter 6 by the <i>Courts and Crimes Legislation Amendment Act 2011</i> extend to proceedings instituted or partly heard before the commencement of the amendments, which were not finally disposed of before that commencement.	17 18 19 20 21
(2) Accordingly, that Part as so amended extends to offences under Division 15A of Part 3 of the <i>Crimes Act 1900</i> alleged to have been committed before the commencement of the amendments to Part 4A of Chapter 6.	22 23 24 25
<b>1.2 Criminal Procedure Regulation 2010</b>	26
<b>Clause 27A</b>	27
Insert after clause 27:	28
<b>27A Authorised classifiers</b>	29
For the purposes of the definition of <i>authorised classifier</i> in section 289A of the Act, members of the NSW Police Force who have undertaken training in the classification of child abuse material that is conducted or arranged by the NSW Police Force are prescribed as authorised classifiers.	30 31 32 33 34

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<b>1.3 Director of Public Prosecutions Act 1986 No 207</b>	1
<b>[1] Section 36 Savings and transitional provisions</b>	2
Insert after section 36 (8):	3
(9) The amendments made to this Act by the <i>Courts and Crimes Legislation Amendment Act 2011</i> :	4
(a) extend to the person holding the office of Director immediately before the day on which the Bill for the <i>Courts and Crimes Legislation Amendment Act 2011</i> was first introduced into Parliament, and	5
(b) do not apply to or in respect of any person who ceased to hold office as Director before that day.	6
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<b>[2] Section 37 Regulations</b>	12
Insert at the end of section 37 (3):	13
<i>Courts and Crimes Legislation Amendment Act 2011</i>	14
<b>[3] Schedule 1 Provisions relating to Senior Officers</b>	15
Omit clause 10 (1) (a) and (b). Insert instead:	16
(a) section 3 of that Act applies to a person who vacated the office of Director under clause 4 (1) (c) after serving as Director for not less than 5 years, and	17
(b) section 4 of that Act applies to a person who ceased to hold office as Director after having attained the age of 60 years and serving as Director for not less than 10 years as if a reference to having attained the age of 72 years and retired were a reference to having vacated office under clause 4 (1) (c), and	18
(c) section 5 of that Act applies to a person who held office as Director as if a reference in section 5 (2) to having attained the age of 72 years and then retired were a reference to having vacated office under clause 4 (1) (c) (regardless of whether the person's term of office would have expired before the person could have attained the age of 72 years), and	19
(d) section 6 of that Act applies to a person who died while holding office as Director as if a reference in section 6 (5) to having attained the age of 72 years and then retired and died were a reference to having vacated office under clause 4 (1) (c) and died (regardless of whether the	20
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person's term of office would have expired before the person could have attained the age of 72 years).	1
	2
<b>[4] Schedule 1, clause 10 (6), definition of "superannuation scheme"</b>	3
Insert in alphabetical order:	4
<i>superannuation scheme</i> has the same meaning as <i>STC fund</i> or <i>STC scheme</i> has in the <i>Superannuation Administration Act 1996</i> .	5
	6
<b>1.4 Fines Act 1996 No 99</b>	7
<b>Section 13 Referral for a court fine enforcement order</b>	8
Insert after section 13 (2):	9
(3) Subsection (1) (a) does not apply to a court that uses an automated electronic system for the referral of unpaid court imposed fines to the State Debt Recovery Office.	10
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	12