



New South Wales

# Crime and Criminal Procedure Legislation Amendment Bill 2023

## Explanatory note

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

## Overview of Bill

The object of this Bill is to make various amendments to the following Acts relating to crime and criminal procedure—

- (a) *Children (Detention Centres) Act 1987*,
- (b) *Crimes (Administration of Sentences) Act 1999*,
- (c) *Crimes (Domestic and Personal Violence) Act 2007*,
- (d) *Criminal Appeal Act 1912*,
- (e) *Criminal Procedure Act 1986*,
- (f) *Drug Misuse and Trafficking Act 1985*,
- (g) *Law Enforcement (Powers and Responsibilities) Act 2002*,
- (h) *Medicines, Poisons and Therapeutic Goods Act 2022*.

## 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.

**Clause 3** provides that an explanatory note in a schedule of the proposed Act does not form part of the proposed Act.

**Schedules 1–8** contain amendments to the Acts specified in the overview and an explanatory note for these amendments is contained within each respective schedule.



New South Wales

# Crime and Criminal Procedure Legislation Amendment Bill 2023

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New South Wales

# Crime and Criminal Procedure Legislation Amendment Bill 2023

No. \_\_\_\_\_, 2023

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## A Bill for

An Act to amend various Acts relating to crime and criminal procedure.

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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>Crime and Criminal Procedure Legislation Amendment Act 2023</i> .	3
<b>2 Commencement</b>	4
This Act commences on the date of assent to this Act.	5
<b>3 Explanatory notes</b>	6
An explanatory note in a schedule of this Act does not form part of this Act.	7

<b>Schedule 1</b>	<b>Amendment of Children (Detention Centres) Act</b>	1
	<b>1987 No 57</b>	2
	<b>Section 50 Release under parole order</b>	3
	Omit section 50(2) and (3). Insert instead—	4
	(2) A juvenile offender who is released on parole under this part may be released from custody—	5
	(a) at any time on the parole day, or	6
	(b) at any time during the 24 hours immediately preceding the parole day, or	7
	(c) if the parole day is a Saturday, Sunday or public holiday—on the last day before the parole day that is not a Saturday, Sunday or public holiday.	8
	(3) In this section—	9
	<i>parole day</i> means the release day specified in the juvenile offender’s parole order.	10
	<b>Explanatory note</b>	11
	The proposed amendment provides for greater alignment with the <i>Children (Detention Centres) Act 1987</i> , section 31, which provides for the early discharge of a juvenile offender.	12
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<b>Schedule 2</b>	<b>Amendment of Crimes (Administration of Sentences) Act 1999 No 93</b>	1
		2
<b>[1] Section 4 Application of Part</b>		3
	Omit “(2A)” from section 4(1)(g). Insert instead “8A”.	4
<b>[2] Section 8 Release from custody</b>		5
	Omit “(the <i>release date</i> )” from section 8(1).	6
<b>[3] Section 8(2)–(2B)</b>		7
	Omit the subsections. Insert instead—	8
	(2) An inmate may be released from custody—	9
	(a) at any time on the day the current sentence expires, or	10
	(b) if the current sentence expires on a day that is not a working day and the inmate requests it—at any time during the next working day.	11
		12
<b>[4] Section 8(3)</b>		13
	Omit “as at the release date for the current sentence”.	14
	Insert instead “on the day the current sentence expires”.	15
<b>[5] Section 8(3)(a) and (b)</b>		16
	Omit “the release date for” wherever occurring. Insert instead “the expiry of”.	17
<b>[6] Section 8(4)</b>		18
	Insert after section 8(3)—	19
	(4) In this section—	20
	<i>working day</i> means a day that is not—	21
	(a) a Saturday or Sunday, or	22
	(b) a public holiday or a bank holiday.	23
<b>[7] Section 8A</b>		24
	Insert after section 8—	25
<b>8A Delayed release from custody</b>		26
	(1) An inmate may be released from custody at any time during the period of 4 days after the inmate’s release date if—	27
	(a) there is, in the opinion of the Commissioner, a good reason to delay the release, and	28
	<b>Example—</b> a lack of transport	29
	(b) the inmate requests or consents to the delay.	30
		31
	(2) In this section—	32
	<i>release date</i> , in relation to an inmate, means the day on which the inmate is authorised, under this Act or another Act or law, to be released from custody.	33
		34
		35
<b>[8] Section 44 Conveyance and detention of full-time detainees from ACT</b>		36
	Omit section 44(2) and (3). Insert instead—	37
	(2) The governor of a correctional centre may—	38

	(a) accept custody of a full-time detainee the subject of an Australian Capital Territory direction, or	1 2
	(b) refuse to accept custody of the full-time detainee.	3
	(3) If custody of a full-time detainee is accepted by the governor of a correctional centre, the detainee must be held in custody in the correctional centre for the period necessary for the detainee’s sentence, as referred to in the Australian Capital Territory direction, to be executed in accordance with the direction.	4 5 6 7
<b>[9]</b>	<b>Section 175 Decision after review</b>	8
	Omit section 175(1A).	9
<b>[10]</b>	<b>Section 277 Definitions</b>	10
	Insert in alphabetical order—	11
	<i>interested person</i> , in relation to an offender, means a person recorded in the Victims Register as an interested person in relation to the offender.	12 13
<b>[11]</b>	<b>Section 279A</b>	14
	Insert after section 279—	15
	<b>279A Interested persons may be recorded in Victims Register</b>	16
	(1) The Commissioner may, on the application of a person, record the person in the Victims Register as an interested person in relation to an offender if satisfied the person’s life or safety is reasonably expected to be endangered because of a connection between the person and the offender.	17 18 19 20
	(2) For, and without limiting, subsection (1), there is a connection between a person and an offender if one or more of the following applies—	21 22
	(a) the offender has a history of mental harm or physical violence against the person,	23 24
	(b) the person has or had a domestic relationship with the offender,	25
	(c) the person shares parental responsibility with the offender,	26
	(d) the person was a witness in proceedings against the offender,	27
	(e) the person provided evidence used in proceedings against the offender,	28
	(f) the person is a victim of a previous serious offence or offence of a sexual nature, within the meaning of the <i>Crimes (High Risk Offenders) Act 2006</i> , committed by the offender,	29 30 31
	(g) the person is or was a Government employee who provides or provided the offender with an ongoing professional service.	32 33
	<b>Example—</b> a treating psychologist	34
	(3) In this section—	35
	<i>domestic relationship</i> has the same meaning as in the <i>Crimes (Domestic and Personal Violence) Act 2007</i> .	36 37
<b>[12]</b>	<b>Sections 281, 285 and 286, headings</b>	38
	Insert “and interested persons” after “victims” or “Victims” wherever occurring.	39
<b>[13]</b>	<b>Sections 281(1), 283(1)(d)(ii), 285(4)(a) and (5) and 286(4)</b>	40
	Insert “or interested person” after “victim” wherever occurring.	41



<b>[14] Section 281(1)(a) and (b)</b>	1
Omit “victim’s” wherever occurring. Insert instead “victim or interested person’s”.	2
<b>[15] Section 283 Regulations</b>	3
Insert “and interested persons” after “victims” in section 283(1)(b).	4
<b>[16] Section 283(1)(d)</b>	5
Insert “or interested persons” after “victims” wherever occurring.	6
<b>[17] Section 284A</b>	7
Insert after section 284—	8
<b>284A Notice to interested persons of re-integration home detention and parole consideration</b>	9
	10
(1) The Commissioner must give notice to an interested person in relation to an offender who is recorded in the Victims Register if—	11
	12
(a) the offender is due for consideration of whether the offender should be released under a re-integration home detention order or on parole, or	13
	14
(b) the offender is eligible for or has applied for release on parole.	15
(2) The notice must be given subject to and in accordance with the regulations.	16
(3) The Commissioner is not required to give notice to an interested person under this section of a matter if the matter is included in another requirement to give notice to the interested person under this Act.	17
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(4) A failure by the Commissioner to comply with this section does not affect the validity of a decision or order.	20
	21
<b>[18] Sections 285(1) and (2) and 286(1) and (2)</b>	22
Insert “, and an interested person in relation to,” after “victim of” wherever occurring.	23
<b>[19] Section 285(3)</b>	24
Omit the subsection. Insert instead—	25
(3) The Commissioner may also give written notice to a victim of, and an interested person in relation to, an adult offender referred to in section 279(2)(b)(i) if the offender is taken into custody while serving a sentence of imprisonment by intensive correction.	26
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<b>Explanatory note</b>	30
Items [3]–[5] of the proposed amendments clarify that an inmate may be released from custody on the day the current sentence expires unless the inmate is subject to another sentence in force before but ending after, or commencing immediately after, the expiry of the current sentence. Items [1], [2] and [6] make consequential amendments.	31
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Item [7] clarifies that an inmate may be released from custody at any time during the period of 4 days after the day on which the inmate is authorised to be released from custody under the <i>Crimes (Administration of Sentences) Act 1999</i> or another Act.	35
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Item [8] removes the requirement for the governor of a correctional centre or another officer on duty at a correctional centre to accept custody of a full-time detainee the subject of an Australian Capital Territory direction and instead provides that the governor may accept or refuse to accept custody of the detainee.	38
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Item [9] omits a redundant provision from the <i>Crimes (Administration of Sentences) Act 1999</i> . Section 175(1A) contains a cross-reference to section 163(4) of that Act, which was repealed and replaced by the <i>Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017</i> .	42
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Item [11] provides that an interested person may be recorded in the Victims Register in relation to an offender if the person’s life or safety is reasonably expected to be endangered because of a	45
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connection between the person and the offender. Item [10] inserts a definition of *interested person*.  
Items [12]–[19] make consequential amendments with the effect of extending, with modification,  
certain provisions applying to victims to interested persons.

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<b>Schedule 3</b>	<b>Amendment of Crimes (Domestic and Personal Violence) Act 2007 No 80</b>	1
		2
<b>[1] Section 29 Provisional order taken to be application for court order</b>		3
Insert after section 29(1)—		4
(1A) If the application taken to be made under Part 10 is withdrawn or dismissed, the provisional order is revoked.		5 6
<b>[2] Section 32</b>		7
Omit the section. Insert instead—		8
<b>32 Powers of court in relation to provisional order</b>		9
(1) On the first return date, if a provisional order is in force, the court may—		10
(a) dismiss the application taken to be made under Part 10, or		11
(b) revoke the provisional order, or		12
(c) make, in the same terms as the provisional order or with variations—		13
(i) an interim court order, or		14
(ii) a final apprehended violence order.		15
(2) If the court does none of the things in subsection (1)(a)–(c)—		16
(a) the provisional order becomes an interim court order—		17
(i) made on the first return date, and		18
(ii) on the same terms as the provisional order, and		19
(b) further service of the order is not required.		20
(3) If the court makes an interim court order or a final apprehended violence order, the provisional order is revoked.		21 22
(4) Revocation of a provisional order under subsection (3) occurs—		23
(a) if the defendant is present at court—when the interim court order or final apprehended violence order is made, or		24 25
(b) otherwise—when the defendant is served, in accordance with this Act, with a copy of the interim court order or final apprehended violence order.		26 27 28
<b>[3] Section 34 Purported renewal or continuance</b>		29
Omit section 34(2).		30
<b>[4] Section 40 Interim apprehended violence order must be made on charge for certain offences</b>		31 32
Omit section 40(5)(c). Insert instead—		33
(c) an offence under, or mentioned in, the <i>Crimes Act 1900</i> , section 33 or 35, or		34 35
(c1a) a prescribed sexual offence within the meaning of the <i>Criminal Procedure Act 1986</i> , or		36 37
<b>[5] Section 40(5)(d)</b>		38
Insert “, (c1a)” after “, (c)”.		39

<b>[6] Section 40(5)(f)</b>	1
Insert “(cla),” after “(c),”.	2
<b>Explanatory note</b>	3
Item [2] clarifies that a provisional apprehended violence order becomes an interim court order if, on the first return date, the court does not dismiss the application, revoke the provisional order or make an interim court order or a final apprehended violence order. Items [1] and [3] make consequential amendments.	4 5 6 7
Item [4] expands the definition of <b>serious offence</b> to include all prescribed sexual offences within the meaning of the <i>Criminal Procedure Act 1986</i> . Items [5] and [6] make consequential amendments.	8 9

<b>Schedule 4</b>	<b>Amendment of Criminal Appeal Act 1912 No 16</b>	1
<b>[1] Section 5D Appeal by Crown against sentence</b>		2
Insert after section 5D(1A)—		3
(1B)	A relevant regulator may appeal to the Court of Criminal Appeal against a sentence imposed by the Supreme Court or the District Court in proceedings, other than appeals, for a work health and safety offence if the proceedings were started or carried on by the relevant regulator.	4 5 6 7
(1C)	If the Court of Criminal Appeal allows an appeal under subsection (1B), the Court may impose a sentence it considers appropriate.	8 9
<b>[2] Section 5D(2B)</b>		10
Insert after section 5D(2A)—		11
(2B)	In this section—	12
	<b>relevant regulator</b> means—	13
	(a) the NSW Resources Regulator, within the meaning of the <i>Work Health and Safety (Mines and Petroleum Sites) Act 2013</i> , or	14 15
	(b) SafeWork NSW.	16
	<b>work health and safety offence</b> means an offence under—	17
	(a) the <i>Work Health and Safety Act 2011</i> , or	18
	(b) the <i>Work Health and Safety (Mines and Petroleum Sites) Act 2013</i> .	19
<b>Explanatory note</b>		20
	Item [1] allows the NSW Resources Regulator and SafeWork NSW to commence their own appeals against sentences to the Court of Criminal Appeal in work health and safety prosecutions.	21 22
	Item [2] makes consequential amendments.	23

## Schedule 5 Amendment of Criminal Procedure Act 1986 No 209

### [1] Section 102 Disposal of proceedings by higher court

Insert “, on the basis of a court attendance notice, indictment or charge certificate,” after “may” in section 102(1).

### [2] Section 268 Maximum penalties for Table 2 offences

Omit section 268(2). Insert instead—

(2) The maximum fine that the Local Court may impose for an offence is as follows—

(a) for an offence listed in Schedule 1, Table 2, Part 2 or 3—20 penalty units if—

(i) the offence is not an offence under the *Crimes Act 1900*, section 154A, and

(ii) the value of the property, amount of money or reward to which the offence relates does not exceed \$2,000,

(b) for an offence under the *Weapons Prohibition Act 1998*, section 7, 20, 23(1), 23A(1), 25A(1), 25B(1), 25D, 31 or 34—100 penalty units,

(c) for an offence under the *Rural Fires Act 1997*, section 100(1) or (1B)—100 penalty units,

(d) for an offence under the *Surveillance Devices Act 2007*, Part 2 or 5, other than section 40(2)—

(i) for a corporation—200 penalty units, or

(ii) otherwise—100 penalty units,

(e) for an offence under the *Child Protection (Offenders Registration) Act 2000*, section 17 or 18—100 penalty units,

(f) for an offence under the *Electricity Supply Act 1995*, section 65 —100 penalty units,

(g) for an offence under the *Gas Supply Act 1996*, section 66 —100 penalty units,

(h) otherwise—the lesser of—

(i) 50 penalty units, or

(ii) the maximum fine provided by law for the offence.

### [3] Section 281B Sensitive evidence—meaning

Insert after section 281B(1B)—

(1C) For this part, evidence of the kind referred to in section 306S(2) given by a child complainant for proceedings for a prescribed sexual offence is *sensitive evidence*.

### [4] Section 281B(2)

Omit “subsection (1) or (1A)”. Insert instead “subsection (1), (1A) or (1C)”.

#### Explanatory note

Item [1] makes it clear that, if an accused person pleads guilty during committal proceedings, the District Court or Supreme Court may sentence the accused person on the basis of a court attendance notice, indictment or charge certificate.

Item [2] re-enacts a provision that set out the maximum fine payable for certain indictable offences if proceedings for the offence are dealt with in the Local Court. The re-enacted provision includes a default maximum fine and omits a number of redundant provisions.

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Item [3] provides that the prosecuting authority is not required and cannot be required, whether by subpoena or any other procedure, in or in connection with a criminal investigation or proceedings, to give an accused person a copy of an audio or video recording of a child complainant's interview by an investigating official for certain sexual offence proceedings.

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Item [4] makes a consequential amendment.

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<b>Schedule 6</b>	<b>Amendment of Drug Misuse and Trafficking Act 1985 No 226</b>	1
		2
<b>[1] Section 25 Supply of prohibited drugs</b>		3
	Insert after section 25(4)(b)—	4
	(b1) a police officer to a person who has been granted an authority mentioned in section 10(2)(b) to possess the prohibited drug, or	5 6
<b>[2] Section 25(4)</b>		7
	Omit “paragraph (a), (b) or (c)”. Insert instead “this subsection”.	8
<b>[3] Section 42</b>		9
	Omit the section. Insert instead—	10
<b>42 Certificates issued by Health Secretary</b>		11
(1)	In legal proceedings under this Act, the following certificates purporting to be signed by the Health Secretary or an authorised certifier are, without proof of certification, prima facie evidence of the matters stated in the certificate—	12 13 14
(a)	a certificate stating that a person holds, or does not hold, a licence, permit or authority under the <i>Poisons and Therapeutic Goods Act 1966</i> ,	15 16
(b)	a certificate stating that a person holds, or does not hold, an authority under the <i>Drug Misuse and Trafficking Act 1985</i> for the purpose of scientific research, instruction, analysis or study.	17 18 19
(2)	The Health Secretary may authorise a person employed in the department in which the <i>Health Administration Act 1982</i> is administered, generally or specifically, to issue certificates for the purposes of this section.	20 21 22
(3)	In this section—	23
	<b>authorised certifier</b> means a person authorised to issue certificates under subsection (2).	24 25
	<b>Health Secretary</b> means the Secretary of the department in which the <i>Health Administration Act 1982</i> is administered.	26 27
	<b>proof of certification</b> means—	28
(a)	the signature of the person purporting to have signed the certificate, or	29
(b)	the authority of the person purporting to have signed the certificate to sign the certificate.	30 31
<b>[4] Section 43 Certificate evidence</b>		32
	Omit section 43(1). Insert instead—	33
(1)	A certificate of analysis setting out the result of the analysis of a plant or substance submitted to an analyst may be given by the following persons—	34 35
(a)	an analyst who analysed the plant or substance,	36
(b)	an analyst who reviewed the analysis undertaken by a person mentioned in paragraph (a).	37 38
<b>[5] Section 43(2)</b>		39
	Omit “purporting to be signed by an analyst”.	40
	Insert instead “purporting to be signed by a person specified in subsection (1)(a) or (b)”.	41



**Explanatory note**

Item [1] amends the *Drug Misuse and Trafficking Act 1985* to provide that the supply of a prohibited drug is not unlawful if the supply is by a police officer to another person who has been granted an authority by the Secretary of the Ministry of Health to possess prohibited drugs for the purpose of scientific research, instruction, analysis or study. Item [3] provides that, in proceedings under the *Drug Misuse and Trafficking Act 1985*, a certificate purporting to be signed by the Secretary of the Ministry of Health, or by a person with authority from the Secretary, that states that a person holds, or does not hold, an authority under the *Drug Misuse and Trafficking Act 1985* for the purpose of scientific research, instruction, analysis or study is prima facie evidence of the matters stated in the certificate. Item [4] provides that an analyst who reviewed another analyst's analysis of a plant or substance may give a certificate of analysis setting out the result of the analysis. Items [2] and [5] make consequential amendments.

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<b>Schedule 7</b>	<b>Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103</b>	1
		2
<b>[1] Section 46 Interpretation</b>		3
	Insert after section 46(1), definition of <i>eligible applicant</i> , paragraph (c)—	4
	(c1) for a digital evidence access order in connection with a search warrant under the <i>Criminal Assets Recovery Act 1990</i> , section 38 or 45—an authorised officer under the <i>Criminal Assets Recovery Act 1990</i> , or	5 6 7
<b>[2] Section 46(1), definition of “eligible applicant”, paragraph (d2)</b>		8
	Insert after paragraph (d1)—	9
	(d2) for a digital evidence access order in connection with a search warrant under the <i>Law Enforcement Conduct Commission Act 2016</i> , section 79—an authorised person within the meaning of that section, or	10 11 12
<b>[3] Section 76AA Definitions</b>		13
	Insert after the definition of <i>search warrant</i> , paragraph (b)(iia)—	14
	(iib) the <i>Law Enforcement Conduct Commission Act 2016</i> , section 79,	15
<b>[4] Section 76AB General matters for applications for digital evidence access orders</b>		16
	Omit section 76AB(2). Insert instead—	17
	(2) An application for a digital evidence access order is made in connection with a search warrant or crime scene warrant if the application is made—	18 19
	(a) at the same time as the application for the warrant, or	20
	(b) after the warrant has been issued, whether before or after the warrant is executed.	21 22
<b>[5] Section 76AF Information in applications for digital evidence access orders</b>		23
	Insert after section 76AF(1)(d)(ia)—	24
	(ib) for a digital evidence access order in connection with a search warrant under the <i>Law Enforcement Conduct Commission Act 2016</i> —material connected with a matter being investigated under that Act is held in or accessible from the computer to which the application relates, or	25 26 27 28 29
<b>Explanatory note</b>		30
	Item [1] provides that an authorised officer under the <i>Criminal Assets Recovery Act 1990</i> is an eligible applicant for a digital evidence access order in connection with a search warrant under that Act.	31 32
	Item [3] enables a digital evidence access order to be sought in connection with a search warrant under the <i>Law Enforcement Conduct Commission Act 2016</i> , section 79. Items [2] and [5] make consequential amendments.	33 34 35
	Item [4] replaces the method for determining if an application for a digital evidence access order is made in connection with a search warrant or crime scene warrant.	36 37

<b>Schedule 8</b>	<b>Amendment of Medicines, Poisons and Therapeutic Goods Act 2022 No 73</b>	1
		2
	<b>Schedule 4 Amendment of Drug Misuse and Trafficking Act 1985 No 226</b>	3
	Insert at the end of Schedule 4[17], proposed section 25(4)(a)(iii)(B)—	4
	or	5
	(iv) a police officer to a person authorised to have possession of the prohibited drug under the <i>Medicines, Poisons and Therapeutic Goods Act 2022</i> , including under a DMT authority under that Act,	6
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	<b>Explanatory note</b>	10
	The proposed amendment is consequential on the amendments in Schedule 6.	11