



New South Wales

# Crimes Legislation Amendment Bill 2014

## 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 *Crimes Act 1900*:
  - (i) to apply the statutory definition of **consent** to attempts to commit sexual assault offences, and
  - (ii) to negate consent to sexual intercourse in circumstances where consent has been given under a mistaken belief that the sexual intercourse is for health purposes, and
  - (iii) to make it an offence to possess a distress signal or distress flare in a public place without a reasonable excuse,
- (b) to amend the *Crimes (Domestic and Personal Violence) Act 2007* to provide a regulation-making power to prescribe the form of the application notice in respect of an application for an apprehended personal violence order,
- (c) to amend the *Crimes (Forensic Procedures) Act 2000* to deem certain members of the NSW Police Force who carried out forensic procedures under that Act before 24 December 2013 to have been appropriately qualified to carry out that forensic procedure,
- (d) to amend the *Crimes (Sentencing Procedure) Act 1999* to require a court that imposes an aggregate sentence when sentencing for two or more offences to make a written record of the sentence that would have been imposed, and the non-parole period that would have been set for any offence to which a standard non-parole period applied, for each offence had it imposed separate sentences,
- (e) to amend the *Criminal Appeal Rules* to update a reference to legislation,

- (f) to amend the *Criminal Procedure Act 1986*:
  - (i) to clarify that the Local Court can hear and finally determine a matter in an accused person's absence on the first return date or on a subsequent day when the matter is listed for mention or hearing if the accused person has been given notice of the proceedings, and
  - (ii) to remove the requirement that a court must obtain the consent of an accused person to the summary disposal of proceedings if a scientific examination certificate is tendered by the prosecution in the proceedings,
- (g) to amend the *Drug Misuse and Trafficking Act 1985*:
  - (i) to make offences involving the manufacture, production, possession or supply of Schedule 9 substances summary offences (including offences already committed), and
  - (ii) to provide that a substance that is represented as being a Schedule 9 substance is deemed a Schedule 9 substance,
- (h) to amend the *Graffiti Control Act 2008* to specify that the limitation period for bringing proceedings under that Act is 2 years,
- (i) to amend the *Inclosed Lands Protection Act 1901* to create a new offence relating to entering inclosed lands that are an event venue while an organised event is being held there in contravention of a re-entry prohibition,
- (j) to amend the definition of **certifying officer** in the *Telecommunications (Interception and Access) (New South Wales) Act 1987* to make it consistent with the *Telecommunications (Interception and Access) Act 1979* of the Commonwealth and to update certain references relating to the NSW Crime Commission,
- (k) to amend the *Terrorism (Police Powers) Act 2002* to prevent the disclosure of certain communications made between a detained person and that person's lawyer.

## 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** makes it clear that the explanatory notes contained in Schedule 1 do not form part of the proposed Act.

## Schedule 1 Amendment of legislation

**Schedule 1** makes the amendments described above in the Overview. The amendments are explained in detail in the explanatory note that relates to the Act concerned.



New South Wales

# Crimes Legislation Amendment Bill 2014

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New South Wales

# Crimes Legislation Amendment Bill 2014

No. , 2014

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## **A Bill for**

An Act to make miscellaneous amendments to various Acts with respect to criminal offences and procedure; and for other purposes.

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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>Crimes Legislation Amendment Act 2014</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
The matter appearing under the heading “Explanatory note” in Schedule 1 does not form part of this Act.	7
	8

<b>Schedule 1</b>	<b>Amendment of legislation</b>	1
<b>1.1</b>	<b>Crimes Act 1900 No 40</b>	2
<b>[1]</b>	<b>Section 61HA Consent in relation to sexual assault offences</b>	3
	Insert “, or attempts to commit the offences,” after “the offences” in section 61HA (1).	4
<b>[2]</b>	<b>Section 61HA (5) (c)</b>	5
	Omit “medical”. Insert instead “health”.	6
<b>[3]</b>	<b>Section 93FB Possession of dangerous articles other than firearms</b>	7
	Insert at the end of section 93FB (1) (c):	8
	or	9
	(d) a distress signal, or distress flare, that operates by emitting a bright light,	10
	<b>Explanatory note</b>	11
	Item [1] applies the statutory definition of <i>consent</i> to attempts to commit sexual assault offences.	12
	Item [2] negates consent to sexual intercourse in circumstances where consent has been given under a mistaken belief that the sexual intercourse is for health purposes. This expands the circumstances in section 61HA (5) (c) in which consent is negated, which are currently limited to medical or hygienic purposes.	13 14 15 16
	Item [3] makes it an offence to possess a distress signal, or distress flare, that operates by emitting a bright light in a public place without a reasonable excuse.	17 18
<b>1.2</b>	<b>Crimes (Domestic and Personal Violence) Act 2007 No 80</b>	19
	<b>Section 50 Commencement of proceedings by application notice</b>	20
	Insert at the end of the section:	21
	(2) The regulations may make provision for the form of an application notice for an apprehended personal violence order under this Division (a <i>personal violence application notice</i> ) or for the information to be included in a personal violence application notice.	22 23 24 25
	(3) Without limiting subsection (2), the regulations may require inclusion of the following information in a personal violence application notice:	26 27
	(a) whether there is an existing commercial relationship between the applicant and the defendant,	28 29
	(b) whether there is an outstanding debt owed by the defendant to the applicant or by the applicant to the defendant,	30 31
	(c) whether there have been previous civil or criminal proceedings between the applicant and the defendant,	32 33
	(d) that it is an offence under the Act to make a statement in the application that the applicant knows is false or misleading in a material particular.	34 35
	<b>Explanatory note</b>	36
	The proposed amendment to the <i>Crimes (Domestic and Personal Violence) Act 2007</i> provides a regulation-making power to prescribe the form of the application notice to be issued and filed in respect of an application for an apprehended personal violence order, including the power to require certain information to be disclosed in the application.	37 38 39 40

<b>1.3 Crimes (Forensic Procedures) Act 2000 No 59</b>	1
<b>Schedule 2 Savings, transitional and other provisions</b>	2
Insert after Part 6:	3
<b>Part 7 Crimes Legislation Amendment Act 2014</b>	4
<b>15 Validation of certain forensic procedures</b>	5
(1) A police officer who had completed a training course in carrying out forensic procedures conducted by the NSW Police Force before carrying out a forensic procedure is taken to have been appropriately qualified to carry out the forensic procedure.	6 7 8 9
(2) This clause applies only to forensic procedures carried out before 24 December 2013.	10 11
<b>Explanatory note</b>	12
The proposed amendment to the <i>Crimes (Forensic Procedures) Act 2000</i> gives retrospective authorisation to certain forensic procedures that were carried out before 24 December 2013. A police officer who carried out such a forensic procedure who had, before carrying out the procedure, completed a forensic procedures training course conducted by the NSW Police Force is taken to have been appropriately qualified to carry out that procedure.	13 14 15 16 17
<b>1.4 Crimes (Sentencing Procedure) Act 1999 No 92</b>	18
<b>[1] Section 53A Aggregate sentences of imprisonment</b>	19
Insert “written” before “record” in section 53A (2).	20
<b>[2] Section 54B Consideration of standard non-parole period in sentencing</b>	21
Insert “and make a written record of” after “indicate” in section 54B (4).	22
<b>Explanatory note</b>	23
The proposed amendments to the <i>Crimes (Sentencing Procedure) Act 1999</i> require a court that imposes an aggregate sentence when sentencing for two or more offences to make a written record of the sentence that would have been imposed, and the non-parole period that would have been set for any offence to which a standard non-parole period applied, for each offence had it imposed separate sentences.	24 25 26 27 28
<b>1.5 Criminal Appeal Rules</b>	29
<b>Rule 86 Application for guideline judgment</b>	30
Omit “section 174 of the <i>Criminal Procedure Act 1986</i> ” from rule 86 (1).	31
Insert instead “section 37 of the <i>Crimes (Sentencing Procedure) Act 1999</i> ”.	32
<b>Explanatory note</b>	33
The proposed amendment to the <i>Criminal Appeal Rules</i> updates a cross-reference to the section and Act that deals with guideline judgments on the application of the Attorney General.	34 35
<b>1.6 Criminal Procedure Act 1986 No 209</b>	36
<b>[1] Section 190 Time for hearing</b>	37
Insert “or at any subsequent mention of the proceedings” after “date” in section 190 (3).	38

<b>[2] Section 190 (3)</b>	1
Omit “the matter on that day”.	2
Insert instead “and determine the matter on the first or a subsequent day on which the matter is listed for mention”.	3 4
<b>[3] Section 190 (4)</b>	5
Insert after section 190 (3):	6
(4) The court may not proceed to hear and determine the matter unless it is satisfied that the accused person had reasonable notice of the first return date or the mention date.	7 8 9
<b>[4] Section 282 Scientific examinations</b>	10
Omit section 282 (3).	11
<b>Explanatory note</b>	12
Items [1]–[3] clarify that the Local Court can hear and finally determine a matter in an accused person’s absence on the first return date or on a subsequent day when the matter is listed for mention or hearing if satisfied that the accused person had reasonable notice of the first return date or mention date.	13 14 15 16
Item [4] removes the requirement that a court must obtain the consent of an accused person to the summary disposal of proceedings if a scientific examination certificate is tendered by the prosecution in the proceedings.	17 18 19
<b>1.7 Drug Misuse and Trafficking Act 1985 No 226</b>	20
<b>[1] Section 3 Definitions</b>	21
Insert in alphabetical order in section 3 (1):	22
<i>Schedule 9 substance</i> means a Schedule 9 substance within the meaning of the <i>Poisons and Therapeutic Goods Act 1966</i> .	23 24
<b>[2] Section 18B</b>	25
Insert after section 18A:	26
<b>18B Manufacture, production, possession and supply of certain Schedule 9 substances</b>	27 28
(1) A person who manufactures or produces, or who knowingly takes part in the manufacture or production of, a Schedule 9 substance (not being a prohibited drug within the meaning of this Act) is guilty of an offence.	29 30 31
(2) A person who supplies, or who knowingly takes part in the supply of, a Schedule 9 substance (not being a prohibited drug within the meaning of this Act) is guilty of an offence.	32 33 34
(3) A person who has in his or her possession a Schedule 9 substance (not being a prohibited drug within the meaning of this Act) is guilty of an offence. Maximum penalty (subsection (3)): 20 penalty units or imprisonment for 12 months, or both.	35 36 37 38
(4) Nothing in this section renders unlawful the manufacture, production, possession or supply of a Schedule 9 substance (not being a prohibited drug) by:	39 40 41
(a) a person licensed or authorised to do so under the <i>Poisons and Therapeutic Goods Act 1966</i> , or	42 43



(b)	a person in accordance with an authorisation given by the Secretary of the Ministry of Health under section 17D of that Act,	1
	or renders unlawful the taking part by any other person in the manufacture, production or supply of such a substance by a person to whom paragraph (a) or (b) applies or the possession of the substance by the other person for those purposes.	2
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		6
[3]	<b>Section 21 Penalties</b>	7
	Insert “, except as otherwise expressly provided by this Division” after “both”.	8
[4]	<b>Section 25B Manufacture, production, possession and supply of certain Schedule 9 substances</b>	9
	Omit the section.	10
		11
[5]	<b>Section 40 Effect of certain representations</b>	12
	Insert after section 40 (1):	13
	(1A) A substance (not being a prohibited drug) which, for the purpose of its being supplied, is represented (whether verbally, in writing or by conduct) as being a Schedule 9 substance or a specified Schedule 9 substance is, for the purposes of this Act and the regulations, taken to be a Schedule 9 substance or the specified Schedule 9 substance, as the case requires.	14
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[6]	<b>Section 46</b>	19
	Insert after section 45:	20
	<b>46 Transitional provision—repeal of section 25B and re-enactment as summary offence</b>	21
		22
	(1) An offence under section 25B, and any related offence, is taken to be, and to always have been, an offence that is required to be prosecuted summarily before the Local Court.	23
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	(2) Subsection (1) does not apply to an offence if an indictment for the offence was presented or filed before the commencement of this section.	26
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	(3) If an indictment for an offence under section 25B, or any related offence, was presented or filed before the commencement of this section and proceedings on the indictment have not commenced, the court may remit the matter to the Local Court to be disposed of summarily if it considers it is in the interests of justice to do so.	28
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	(4) This section does not affect the validity of anything done or omitted before the commencement of this section in connection with proceedings for an offence that, but for subsection (1), would have been validly done or omitted.	33
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	(5) Despite section 179 of the <i>Criminal Procedure Act 1986</i> , proceedings for an offence to which subsection (1) applies may be commenced not later than 6 months after the commencement of this section.	36
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	(6) A reference to section 25B is a reference to section 25B, as in force before its repeal by the <i>Crimes Legislation Amendment Act 2014</i> .	39
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	(7) In this section:	41
	<i>related offence</i> means:	42
	(a) an offence under section 26 of conspiring to commit an offence under section 25B, or	43
		44

(b)	an offence under section 27 of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence against section 25B, or	1 2 3
(c)	an offence under section 28 of conspiring to commit an offence under a provision of a law that corresponds to section 25B, or	4 5
(d)	an offence under section 28 of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence under a provision of a law that corresponds to section 25B, or	6 7 8
(e)	an offence under section 43B that is committed if a corporation commits a corporate offence and the corporate offence is an offence under section 25B.	9 10 11
<b>Explanatory note</b>		12
The proposed amendments to the <i>Drug Misuse and Trafficking Act 1985</i> in items [1]–[4] and [6] make offences involving the manufacture, production, possession or supply of substances listed in Schedule 9 of the Poisons Standard (within the meaning of Part 6-3 of the <i>Therapeutic Goods Act 1989</i> of the Commonwealth) (including offences that have already been committed), summary offences. If an indictment for such an offence, or any related offence, has already been presented or filed but proceedings on the indictment have not commenced, the court may remit the matter to the Local Court to be disposed of summarily if it considers it is in the interests of justice to do so.		13 14 15 16 17 18 19
Item [5] provides that a substance that is represented as being a Schedule 9 substance is taken to be a Schedule 9 substance.		20 21
<b>1.8</b>	<b>Graffiti Control Act 2008 No 100</b>	22
	<b>Section 20</b>	23
	Omit the section. Insert instead:	24
	<b>20 Proceedings for offences</b>	25
	Proceedings for an offence under this Act:	26
	(a) may be dealt with summarily before the Local Court, and	27
	(b) must be commenced not later than 2 years from when the offence is alleged to have been committed.	28 29
	<b>Explanatory note</b>	30
	The proposed amendment to the <i>Graffiti Control Act 2008</i> inserts a 2-year limitation period for commencing proceedings for offences under that Act, displacing the 6-month limitation period for commencing proceedings for summary offences imposed by section 179 (1) of the <i>Criminal Procedure Act 1986</i> .	31 32 33 34
<b>1.9</b>	<b>Inclosed Lands Protection Act 1901 No 33</b>	35
	<b>Section 4AA</b>	36
	Insert after section 4:	37
	<b>4AA Unlawful re-entry on inclosed lands</b>	38
	(1) A person who, without reasonable excuse, knowingly enters an event venue during an organised event in contravention of a re-entry prohibition given to the person is guilty of an offence. Maximum penalty: 10 penalty units.	39 40 41 42
	(2) A <i>re-entry prohibition</i> is a direction given by a responsible authority for an organised event, after a person has been directed to leave the organised event, that directs the person:	43 44 45
	(a) not to re-enter the event venue during the organised event, or	46

- (b) not to enter any specified event venue during an organised event for which the responsible authority is the responsible authority, or both.
- (3) A re-entry prohibition may be given orally in person or in writing.
- (4) The responsible authority must, at the time of giving the re-entry prohibition:
- (a) specify the event venue or venues, and organised event or events, to which the re-entry prohibition applies, and
  - (b) specify the duration of the re-entry prohibition, and
  - (c) state the reason why the re-entry prohibition is being given, and
  - (d) warn the person subject to the re-entry prohibition that it is an offence to contravene the re-entry prohibition.
- (5) Proof of reasonable excuse under this section lies on the person charged with the offence.
- (6) If a person who enters an event venue in contravention of a re-entry prohibition is also prohibited or banned from entering the event venue under another Act or law, the person cannot be found guilty of both an offence under this Act and an offence under the other Act or law in respect of the same conduct.
- (7) In this section:
- event organiser** in relation to an organised event means the person in charge or apparently in charge of the organised event and who has the power to admit persons to or exclude persons from attending the organised event.
- event venue** means that part of inclosed lands used for an organised event to which right of entry is conferred by a ticket, membership or similar arrangement.
- organised event** means:
- (a) an organised sporting event, and includes any performance, ceremony or formalities conducted in conjunction with the event, or
  - (b) an organised public exhibition, fair, convention, performance, ceremony, festival or similar event, or
  - (c) an event of a kind prescribed by the regulations.
- responsible authority** for an organised event means:
- (a) the owner, occupier or person apparently in charge of the event venue used or to be used for the organised event, or
  - (b) the event organiser.

**Explanatory note**

The proposed amendment to the *Inclosed Lands Protection Act 1901* creates a new offence of entering inclosed lands in contravention of a re-entry prohibition. A **re-entry prohibition** is a direction by the responsible authority for an organised event, after a person has been directed to leave the organised event, that a person must not enter an event venue or venues during an organised event. The re-entry prohibition can apply just to the event venue and organised event the person was directed to leave or, instead or as well, to any other event venue or organised event for which the responsible authority giving the re-entry prohibition is the responsible authority. The proposed offence is intended to focus on event venues that are primarily or exclusively sporting or entertainment venues. Although a re-entry prohibition could apply to other venues that are not primarily or exclusively used for sporting or entertainment events, application of the provision will be limited to that part of such venue that is being used for a ticketed event and only while the event is taking place, and not to the whole of the venue.

<b>1.10 Telecommunications (Interception and Access) (New South Wales) Act 1987 No 290</b>	1 2
<b>[1] Section 3 Definitions</b>	3
Omit the definition of <i>certifying officer</i> from section 3 (1). Insert instead:	4
<i>certifying officer</i> , in relation to an eligible authority, means:	5
(a) in the case of the Police Force:	6
(i) the Commissioner of Police, or	7
(ii) a Deputy Commissioner of Police, or	8
(iii) an officer whose rank is equivalent to that of Assistant Commissioner of the Australian Federal Police, or	9 10
(iv) an officer who is authorised to be a certifying officer of the Police Force under section 5AC (4) of the Commonwealth Act, or	11 12
(b) in the case of the New South Wales Crime Commission:	13
(i) an executive officer of that Commission, or	14
(ii) a member of the staff of that Commission who is authorised to be a certifying officer of the Commission under section 5AC (5) of the Commonwealth Act, or	15 16 17
(c) in the case of the Independent Commission Against Corruption:	18
(i) the Commissioner of that Commission, or	19
(ii) an Assistant Commissioner of that Commission, or	20
(iii) an officer who is authorised to be a certifying officer of that Commission under section 5AC (9A) of the Commonwealth Act, or	21 22 23
(d) in the case of the Police Integrity Commission:	24
(i) the Commissioner of that Commission, or	25
(ii) an Assistant Commissioner of that Commission, or	26
(iii) an officer who is authorised to be a certifying officer of that Commission under section 5AC (8) of the Commonwealth Act, or	27 28 29
(e) in the case of the Police Royal Commission—the Police Royal Commissioner.	30 31
<b>[2] Section 3 (1), definition of “chief officer”</b>	32
Omit “Chairperson” from paragraph (b). Insert instead “Commissioner”.	33
<b>[3] Section 3 (1), definition of “officer”</b>	34
Omit “a member, or” from paragraph (b). Insert instead “an executive officer, or”.	35
<b>Explanatory note</b>	36
Item [1] substitutes the definition of <i>certifying officer</i> to make it consistent with the <i>Telecommunications (Interception and Access) Act 1979</i> of the Commonwealth and items [2] and [3] update certain references relating to the NSW Crime Commission.	37 38 39
<b>1.11 Terrorism (Police Powers) Act 2002 No 115</b>	40
<b>[1] Section 26ZI Monitoring contact with family members, lawyers etc under sections 26ZE, 26ZG, 26ZGA and 26ZH</b>	41 42
Omit section 26ZI (6) (c). Insert instead:	43
(c) the information is protected information, and	44

<b>[2] Section 26ZI (7) (a)</b>	1
Omit “information communicated between the detainee and the detainee’s lawyer for one of the purposes referred to in section 26ZG”.	2 3
Insert instead “protected information”.	4
<b>[3] Section 26ZI (8) and (9)</b>	5
Insert after section 26ZI (7):	6
(8) A person commits an offence if:	7
(a) the person is a lawyer whose advice has been sought under subsection (7) by a monitor, and	8 9
(b) protected information is disclosed to the lawyer by the monitor, and	10
(c) the lawyer discloses that protected information to another person.	11
Maximum penalty: Imprisonment for 5 years.	12
(9) In this section:	13
<i>protected information</i> means information communicated between a detainee and the detainee’s lawyer for a purpose referred to in section 26ZG.	14 15
<b>[4] Section 34 Proceedings for offences</b>	16
Insert “or (8)” after “26ZI (6)”.	17
<b>Explanatory note</b>	18
The proposed amendments to the <i>Terrorism (Police Powers) Act 2002</i> prevent the disclosure of certain communications made between a detained person and the detained person’s lawyer. A person who is detained under a preventative detention order is entitled to consult a lawyer, but only in relation to certain matters relating to that order. The communication that is permitted is <b>protected information</b> . To ensure that only protected information is communicated between the detained person and the person’s lawyer, the communication is monitored by a police officer. The police officer is not permitted to disclose any protected information and commits an offence if he or she does so. In order to determine whether information is protected information (and to determine the police officer’s obligations in relation to that information), the police officer is entitled to consult a lawyer. A lawyer who discloses the protected information commits an offence carrying a maximum penalty of 5 years imprisonment.	19 20 21 22 23 24 25 26 27 28 29