

Passed by both Houses



New South Wales

# Criminal Legislation Amendment Bill 2009

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Acts	3

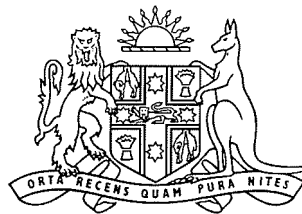
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*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Legislative Council*  
2009

*Clerk of the Parliaments*



New South Wales

## **Criminal Legislation Amendment Bill 2009**

Act No     , 2009

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An Act to make miscellaneous amendments to legislation relating to crimes, criminal procedure and other matters.

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Criminal Legislation Amendment Act 2009*.

**2 Commencement**

This Act commences on the date of assent to this Act.

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## **Schedule 1      Amendment of Acts**

### **1.1    Child Protection (Offenders Registration) Act 2000 No 42**

**[1]    Section 9B When new initial report must be made by person whose previous reporting obligations have ceased**

Omit “28 days” wherever occurring. Insert instead “7 days”.

**[2]    Section 9B (4)**

Omit “14 days”. Insert instead “7 days”.

**[3]    Schedule 2 Savings, transitional and other provisions**

Insert after Part 5:

### **Part 6    Provisions consequent on enactment of Criminal Legislation Amendment Act 2009**

**18    Initial report by person whose previous reporting obligations have ceased**

Section 9B, as amended by the *Criminal Legislation Amendment Act 2009*, does not apply in respect of the following registrable persons, and that section, as in force immediately before the commencement of that amendment, continues to apply in respect of any such person:

- (a) a person referred to in section 9B (1) who was sentenced for the registrable offence, or ceased to be in government custody, (whichever is applicable) before that commencement,
- (b) a person referred to in section 9B (2) who became a corresponding registrable person, or ceased to be in government custody, (whichever is applicable) before that commencement,
- (c) a person referred to in section 9B (3), if the order under section 16 ceased to have effect or the person ceased to be in government custody (whichever is applicable) before that commencement.

## **1.2 Confiscation of Proceeds of Crime Act 1989 No 90**

### **Section 4 Definitions**

Insert after paragraph (a) of the definition of *drug trafficking offence* in section 4 (1):

- (a1) section 23A (offences with respect to enhanced indoor cultivation of prohibited plants in presence of children),

## **1.3 Crimes Act 1900 No 40**

### **[1] Sections 66A (3) (i) and 66C (5) (i)**

Insert at the end of sections 66A (3) (h) and 66C (5) (h):

, or

- (i) the alleged offender breaks and enters into any dwelling-house or other building with the intention of committing the offence or any other serious indictable offence.

### **[2] Schedule 11 Savings and transitional provisions**

Insert at the end of the Schedule (with appropriate Part and clause numbers):

## **Part Criminal Legislation Amendment Act 2009**

### **Application of amendments**

An amendment made to this Act by the *Criminal Legislation Amendment Act 2009* applies only in respect of an offence committed, or alleged to have been committed, on or after the commencement of the amendment.

## **1.4 Crimes (Domestic and Personal Violence) Act 2007 No 80**

### **[1] Section 13 Stalking or intimidation with intent to cause fear of physical or mental harm**

Insert after section 13 (4):

- (5) A person who attempts to commit an offence against subsection (1) is guilty of an offence against that subsection and is punishable as if the offence attempted had been committed.

### **[2] Section 14 Offence of contravening apprehended violence order**

Insert “or (9)” after “subsection (1)” wherever occurring in section 14 (8) (a) and (b).

**[3] Section 14 (8)**

Omit “that subsection” wherever occurring. Insert instead “either subsection”.

**[4] Section 14 (9)**

Insert after section 14 (8):

- (9) A person who attempts to commit an offence against subsection (1) is guilty of an offence against that subsection and is punishable as if the offence attempted had been committed.

**1.5 Crimes (Sentencing Procedure) Act 1999 No 92**

**[1] Part 4 Sentencing procedures for imprisonment**

Omit “—child under 10” from item 9B of the Table to Division 1A.

**[2] Section 100I Constitution of New South Wales Sentencing Council**

Omit “13 members” from section 100I (2). Insert instead “15 members”.

**[3] Section 100I (2) (c)**

Omit “three”. Insert instead “four”.

**[4] Section 100I (2) (i)**

Insert at the end of section 100I (2) (h):

, and

- (i) one is to have academic or research expertise or experience of relevance to the functions of the Sentencing Council.

**[5] Schedule 1A Provisions relating to membership and procedure of New South Wales Sentencing Council**

Omit “7 members” from clause 10. Insert instead “8 members”.

**1.6 Criminal Procedure Act 1986 No 209**

**Section 344A Further review by Ombudsman—Aboriginal and Torres Strait Islander communities**

Omit “31 May 2009” from section 344A (3). Insert instead “31 August 2009”.

**1.7 Inclosed Lands Protection Act 1901 No 33**

**[1] Section 2 Repeal**

Omit the section.

**[2] Section 9 Limitation of civil action**

Omit “All actions and prosecutions”. Insert instead “Any civil action”.

**[3] Section 9A**

Insert after section 9:

**9A Particulars to be furnished**

- (1) If a defendant charged with an offence under this Act:
  - (a) has requested the informant to furnish to the defendant reasonable particulars of the behaviour or conduct the subject of the charge, and
  - (b) the informant, or some person on his or her behalf, has not so furnished those particulars,the court before which the defendant is charged is to adjourn the charge pending the furnishing of those particulars or may dismiss the charge.
- (2) If, at the hearing of a charge for an offence referred to in subsection (1):
  - (a) the evidence discloses behaviour or conduct that constitutes such an offence, and
  - (b) that behaviour or conduct is different from the behaviour or conduct of which particulars have been given to the defendant under subsection (1),the court may, on the application of the defendant and if it is of the opinion that the defendant was deceived by those particulars, adjourn the hearing on such terms as it thinks fit.

**[4] Schedule 1**

Omit the Schedule to the Act. Insert instead:

**Schedule 1 Savings, transitional and other provisions**

**Part 1 General**

**1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Criminal Legislation Amendment Act 2009*



- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Provisions consequent on enactment of Criminal Legislation Amendment Act 2009**

### **2 Definition**

In this Part:

*amending Act* means the *Criminal Legislation Amendment Act 2009*.

### **3 Limitation period for prosecutions**

Section 9, as amended by the amending Act, does not apply in respect of an offence that is alleged to have been committed before the commencement of that amendment, and that section, as in force immediately before that commencement, continues to apply in respect of any such offence.

### **4 Particulars to be furnished**

Section 9A, as inserted by the amending Act, does not apply in respect of an offence alleged to have been committed before the commencement of that section.

## **1.8 Law Enforcement (Powers and Responsibilities) Act 2002 No 103**

### **[1] Sections 20 (b), 35 (b) and 42 (3) (b)**

Omit “section 545E” wherever occurring. Insert instead “section 93FB”.

**[2] Section 87A Definitions**

Omit the definition of *licensed premises* from section 87A (1). Insert instead:  
*licensed premises* means premises licensed or required to be licensed under the *Liquor Act 2007* for the sale or supply of liquor.

**[3] Section 87A (1), definition of “liquor”**

Omit “*Liquor Act 1982*”. Insert instead “*Liquor Act 2007*”.

**[4] Section 87B Emergency prohibition on sale or supply of liquor**

Omit the note to section 87B (2).

**[5] Section 198 Directions relating to dispersal of groups of intoxicated persons in public places**

Omit section 198 (5). Insert instead:

- (5) For the purposes of this section, a person is *intoxicated* if:
  - (a) the person’s speech, balance, co-ordination or behaviour is noticeably affected, and
  - (b) it is reasonable in the circumstances to believe that the affected speech, balance, co-ordination or behaviour is the result of the consumption of alcohol or any drug.

**[6] Schedule 1 Acts not affected by this Act**

Omit “*Liquor Act 1982* No 147”. Insert instead “*Liquor Act 2007* No 90”.

**1.9 Mental Health (Forensic Provisions) Act 1990 No 10**

**Section 37 Explanation to jury**

Omit “a recommendation” from section 37 (b). Insert instead “an order”.