

Passed by both Houses



New South Wales

# Crimes Legislation Further Amendment Bill 2003

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Acts	2
Schedule 1 Amendment of Crimes Act 1900 No 40	3
Schedule 2 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92	4
Schedule 3 Amendment of Criminal Appeal Act 1912 No 16	6
Schedule 4 Amendment of Criminal Procedure Act 1986 No 209	9
Schedule 5 Amendment of Firearms Act 1996 No 46	10
Schedule 6 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103	12
Schedule 7 Amendment of Mental Health (Criminal Procedure) Act 1990 No 10	15

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Crimes Legislation Further Amendment Bill 2003

Contents

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Page

*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*  
2003

*Clerk of the Parliaments*



New South Wales

## **Crimes Legislation Further Amendment Bill 2003**

Act No      , 2003

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An Act to amend certain Acts with respect to criminal offences and proceedings for criminal offences; and for other purposes.

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

**1 Name of Act**

This Act is the *Crimes Legislation Further Amendment Act 2003*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Acts**

The Acts specified in Schedules 1–7 are amended as set out in those Schedules.

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**Schedule 1 Amendment of Crimes Act 1900 No 40**

(Section 3)

**Section 43 Exposing or abandoning child under 7**

Omit “two years”. Insert instead “7 years”.

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## **Schedule 2 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92**

(Section 3)

### **[1] Section 58**

Omit the section. Insert instead:

#### **58 Limitation on consecutive sentences imposed by Local Courts**

- (1) A Local Court may not impose a new sentence of imprisonment to be served consecutively (or partly concurrently and partly consecutively) with an existing sentence of imprisonment if the date on which the new sentence would end is more than 5 years after the date on which the existing sentence (or, if more than one, the first of them) began.
- (2) Any period for which an existing sentence has been extended under this or any other Act is to be disregarded for the purposes of this section.
- (3) This section does not apply if:
  - (a) the new sentence relates to:
    - (i) an offence involving an escape from lawful custody, or
    - (ii) an offence involving an assault or other offence against the person, being an offence committed (while the offender was a convicted inmate) against a correctional officer or (while the offender was a person subject to control) against a juvenile justice officer, and
  - (b) either:
    - (i) the existing sentence (or, if more than one, any of them) was imposed by a court other than a Local Court or the Children's Court, or
    - (ii) the existing sentence (or, if more than one, each of them) was imposed by a Local Court or the Children's Court and the date on which the new sentence would end is not more than 5 years and 6 months after the date on which the existing sentence (or, if more than one, the first of them) began.

(4) In this section:

*existing sentence* means an unexpired sentence, and includes any expired sentence or unbroken sequence of expired sentences with which the unexpired sentence is being served consecutively (or partly concurrently and partly consecutively).

*sentence of imprisonment* includes an order referred to in section 33 (1) (g) of the *Children (Criminal Proceedings) Act 1987*.

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

Insert at the end of clause 1 (1):

*Crimes Legislation Further Amendment Act 2003* (but only to the extent that it amends this Act)

**[3] Schedule 2**

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

**Part Provisions consequent on enactment of Crimes Legislation Further Amendment Act 2003**

**Power of Local Court to impose further consecutive sentences**

- (1) Section 58, as in force immediately before its substitution by the *Crimes Legislation Further Amendment Act 2003*, continues to apply to offences for which proceedings had commenced before its substitution.
- (2) Section 58, as substituted by the *Crimes Legislation Further Amendment Act 2003*, extends to offences committed before the commencement of that section, other than offences for which proceedings had commenced before its substitution.

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## **Schedule 3 Amendment of Criminal Appeal Act 1912 No 16**

(Section 3)

**[1] Section 5AA Appeal in criminal cases dealt with by Supreme Court in its summary jurisdiction**

Insert “, or whose application for an order for costs is dismissed” after “made” in section 5AA (1) (b).

**[2] Section 5AA (1) (c)**

Insert at the end of section 5AA (1) (b):

or

(c) in whose favour an order for costs is made,

**[3] Section 5AA (1A)**

Insert after section 5AA (1):

(1A) An appeal against an order referred to in subsection (1) (c) may only be made with the leave of the Court of Criminal Appeal.

**[4] Section 5AB Appeal in criminal cases dealt with by Land and Environment Court in its summary jurisdiction**

Insert “, or whose application for an order for costs is dismissed” after “made” in section 5AB (b).

**[5] Section 5AB (c)**

Insert after section 5AB (b):

or

(c) in whose favour an order for costs is made,

**[6] Section 5AC Appeal in criminal cases dealt with by Court of Coal Mines Regulation in its summary jurisdiction**

Insert “, or whose application for an order for costs is dismissed” after “made” in section 5AC (b).



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**[7] Section 5AC (c)**

Insert at the end of section 5AC (b):

or

(c) in whose favour an order for costs is made,

**[8] Section 5F Appeal against interlocutory judgment or order**

Insert after section 5F (3):

(3A) The Attorney General or the Director of Public Prosecutions may appeal to the Court of Criminal Appeal against any decision or ruling on the admissibility of evidence, but only if the decision or ruling eliminates or substantially weakens the prosecution's case.

**[9] Section 5F (5)**

Omit the subsection. Insert instead:

(5) The Court of Criminal Appeal:

(a) may affirm or vacate the judgment, order, decision or ruling appealed against, and

(b) if it vacates the judgment, order, decision or ruling, may give or make some other judgment, order, decision or ruling instead of the judgment, order, decision or ruling appealed against.

**[10] Section 10 Method and time for making appeal**

Insert "or, if the rules of court so permit, dispense with the requirement for such a notice" after "to the court" in section 10 (1) (b).

**[11] Schedule 1 Savings and transitional provisions**

Insert after clause 7:

**8 Crimes Legislation Further Amendment Act 2003**

(1) Sections 5AA, 5AB and 5AC, as amended by the *Crimes Legislation Further Amendment Act 2003*, extend to orders for costs, and orders dismissing applications for orders for costs, made before the commencement of the amendments to those sections made by that Act.

Crimes Legislation Further Amendment Bill 2003

Schedule 3      Amendment of Criminal Appeal Act 1912 No 16

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- (2) Section 5F, as amended by the *Crimes Legislation Further Amendment Act 2003*, extends to decisions and rulings made in proceedings that had been commenced, but not finally disposed of, before the commencement of the amendments to that section made by that Act.

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## **Schedule 4 Amendment of Criminal Procedure Act 1986 No 209**

(Section 3)

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

Insert “7A,” after “section 7,” in section 268 (2) (e1) (as substituted by the *Firearms and Crimes Legislation Amendment (Public Safety) Act 2003*).

### **[2] Section 314 Media access to court documents**

Omit section 314 (1). Insert instead:

- (1) On application to the registrar, a media representative is entitled to inspect any document relating to criminal proceedings, at any time from when the proceedings commence until the expiry of 2 working days after they are finally disposed of, for the purpose of compiling a fair report of the proceedings for publication.

### **[3] Section 314 (2)**

Insert “that a media representative is entitled to inspect under this section” after “The documents”.

### **[4] Section 314 (4A)**

Insert after section 314 (4):

- (4A) This section does not limit the operation of any other Act or law under which a person may be permitted to inspect documents relating to criminal proceedings.

### **[5] Section 314 (5)**

Omit the subsection.

### **[6] Schedule 1 Indictable offences triable summarily**

Insert “(as in force before the commencement of Schedule 1 [9] to the *Crimes Amendment (Sexual Offences) Act 2003*), 66C (3) (as in force after the commencement of Schedule 1 [9] to the *Crimes Amendment (Sexual Offences) Act 2003*)” after “66C (1)” in clause 1 of Table 1.

### **[7] Schedule 1, Table 2**

Insert “7A,” after “section 7,” in clause 7 (as substituted by the *Firearms and Crimes Legislation (Public Safety) Act 2003*).

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## **Schedule 5 Amendment of Firearms Act 1996 No 46**

(Section 3)

- [1] **Sections 6 (3), 26, 27 (4), 82A (1) and clause 21 of Schedule 3, and section 84 (2) (as substituted by the Firearms and Crimes Legislation (Public Safety) Act 2003)**

Insert “or 7A” after “section 7” wherever occurring.

- [2] **Section 7 Offence of unauthorised possession or use of prohibited firearms or pistols**

Omit section 7 (1). Insert instead:

- (1) A person must not possess or use a prohibited firearm or pistol unless the person is authorised to do so by a licence or permit.

Maximum penalty: imprisonment for 14 years.

- [3] **Section 7 (2) (a)**

Omit “a firearm”. Insert instead “a prohibited firearm or pistol”.

- [4] **Section 7 (2) (a)**

Omit “the firearm”. Insert instead “the prohibited firearm or pistol”.

- [5] **Section 7 (3)**

Insert after section 7 (2):

- (3) If, on the trial for an offence under this section, the jury is not satisfied that the accused is guilty of the offence but is satisfied on the evidence that the person is guilty of an offence under section 7A, it may find the person not guilty of the offence but guilty of an offence under section 7A, and the accused is liable to punishment accordingly.

- [6] **Section 7A**

Insert after section 7:

**7A Offence of unauthorised possession or use of firearms generally**

- (1) A person must not possess or use a firearm unless the person is authorised to do so by a licence or permit.

Maximum penalty: imprisonment for 5 years.

- (2) Without limiting the operation of subsection (1), a person who is the holder of a licence is guilty of an offence under this section if the person:
- (a) uses a firearm for any purpose otherwise than in connection with the purpose established by the person as being the genuine reason for possessing or using the firearm, or
  - (b) contravenes any condition of the licence.

**Schedule 6 Amendment of Law Enforcement (Powers  
and Responsibilities) Act 2002 No 103**

(Section 3)

**[1] Section 73 Expiry of warrant**

Omit section 73 (1). Insert instead:

- (1) Unless it is sooner withdrawn or extended:
  - (a) a search warrant (other than a telephone search warrant) ceases to have effect:
    - (i) when it has been executed, or
    - (ii) at the time specified in it for its expiry,whichever first occurs, and
  - (b) a telephone search warrant ceases to have effect:
    - (i) when it has been executed, or
    - (ii) at the expiry of 24 hours after the time of its issue,whichever first occurs, and
  - (c) a crime scene warrant (other than a telephone crime scene warrant) ceases to have effect at the time specified in it for its expiry, and
  - (d) a telephone crime scene warrant ceases to have effect at the expiry of 24 hours after the time of its issue.

**[2] Section 73 (4)**

Insert “(other than a telephone warrant)” after “A warrant”.

**[3] Section 73 (5A), (5B) and (5C)**

Insert after section 73 (5):

- (5A) A telephone crime scene warrant may be extended, for up to 60 hours at a time, by the authorised officer who issued the warrant.
- (5B) The time for expiry of a telephone crime scene warrant may be extended twice.
- (5C) A telephone search warrant may not be extended.

**[4] Section 73 (6) (b)**

Omit “on the application of”.

Insert instead “on the written application of, and made in person by,”.

**[5] Section 201 Supplying police officer’s details and giving warnings**

Omit “, before or at the time of exercising a power referred to in subsection (3) (other than subsection (3) (g), (i) or (j)), or as soon as is reasonably practicable after exercising the power,” from section 201 (1).

**[6] Section 201 (2) and (2A)**

Omit section 201 (2). Insert instead:

(2) A police officer must comply with subsection (1) in relation to a power referred to in subsection (3) (other than subsection (3) (g), (i) or (j)):

- (a) if it is practicable to do so, before or at the time of exercising the power, or
- (b) if it is not practicable to do so, as soon as is reasonably practicable after exercising the power.

(2A) A police officer must comply with subsection (1) in relation to a power referred to in subsection (3) (g), (i) or (j) before exercising the power.

**[7] Sections 202 and 203**

Omit the sections.

**[8] Schedule 5 Savings and transitional provisions**

Insert at the end of clause 1 (1):

*Crimes Legislation Further Amendment Act 2003* (but only to the extent that it amends this Act)

**[9] Schedule 5**

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

**Part                      Provisions consequent on enactment of  
Crimes Legislation Further Amendment  
Act 2003**

**Extension of telephone crime scene warrants**

Section 73, as amended by the *Crimes Legislation Further Amendment Act 2003*, extends to telephone crime scene warrants issued before the commencement of the amendments to that section made by that Act.



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**Schedule 7 Amendment of Mental Health (Criminal Procedure) Act 1990 No 10**

(Section 3)

**Section 32 Persons suffering from mental illness or condition**

Insert after section 32 (4):

- (5) The regulations may prescribe the form of an order under this section.