



New South Wales

# Crimes and Courts Legislation Amendment Bill 2005

## 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 *Bail Act 1978* as a consequence of the omission of various drug offences from the *Customs Act 1901* of the Commonwealth and the insertion of a wider range of drug offences in the *Criminal Code* of the Commonwealth (the relevant provisions of the *Bail Act 1978* deal with presumptions against or in favour of bail in respect of Commonwealth drug offences),
- (b) to amend the *Drug Court Act 1998* to make further provision with respect to the referral of persons to the Drug Court,
- (c) to amend the *Electronic Transactions Act 2000* to provide for the extension of the kinds of hearings that may be conducted by electronic communication,
- (d) to amend the *Law Enforcement (Powers and Responsibilities) Act 2002* as follows:
  - (i) to clarify that general drug detection warrants and domestic violence entry warrants are generally subject to the same conditions as search warrants in relation to expiry and extension,

- (ii) to modify the grounds on which a general drug detection warrant may be issued or extended for more than 72 hours,
  - (iii) to provide that an application for the extension of a warrant is not required to be in writing and made in person if it is impractical for the applicant to appear before an authorised officer before the warrant expires,
  - (iv) to make further provision with respect to the powers that may be exercised at a crime scene including by ensuring that the crime scene powers set out in section 95 of that Act may be exercised by any police officer provided that a crime scene has been established, whether or not the police officer established the crime scene,
  - (v) to provide that certain crime scene powers set out in section 95 of that Act may be exercised by a police officer with the aid of any member of NSW Police responsible for examining or maintaining a crime scene,
  - (vi) to provide that a police officer can apply for a crime scene warrant that authorises any police officer to enter premises and exercise crime scene powers,
  - (vii) to provide that the regulations are to prescribe the information that is to be recorded in relation to detained intoxicated persons,
  - (viii) to change the meaning of *person of non-English speaking background*,
  - (ix) to make various consequential amendments and amendments by way of statute law revision,
- (e) to amend the *Listening Devices Act 1984* to update a definition as a consequence of the omission of various drug offences from the *Customs Act 1901* of the Commonwealth and the insertion of a wider range of drug offences in the *Criminal Code* of the Commonwealth,
- (f) to amend the *Independent Commission Against Corruption Act 1988* as a consequence of the amendments to the *Law Enforcement (Powers and Responsibilities) Act 2002*,
- (g) to make various other consequential amendments and amendments by way of statute law revision.

## 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, with specified exceptions, on the date of assent to the proposed Act.

**Clause 3** is a formal provision that gives effect to the amendments to the Acts and regulation specified in Schedules 1–6 as set out in those Schedules.

## **Schedule 1      Amendment of Bail Act 1978 No 161**

**Schedule 1 [1] and [2]** amend sections 8A and 9 of the *Bail Act 1978* as a consequence of the omission of various drug offences from the *Customs Act 1901* of the Commonwealth and the insertion of a wider range of drug offences in the *Criminal Code* of the Commonwealth. The sections amended provide for the application of the presumption against bail, or in favour of bail, to drug offences under the *Criminal Code* of the Commonwealth.

**Schedule 1 [3]** provides that section 8A of the *Bail Act 1978* continues to apply in respect of the various drug offences omitted from the *Customs Act 1901* of the Commonwealth and that those offences continue to be excluded from the operation of section 9 of the *Bail Act 1978*.

## **Schedule 2      Consequential amendment of Bail Regulation 1999**

**Schedule 2** amends a form as a consequence of the amendment in Schedule 1 [2].

## **Schedule 3      Amendment of Drug Court Act 1998 No 150**

**Schedule 3 [1]** amends section 18B of the *Drug Court Act 1998* to provide that the duty imposed by section 18B of that Act on a court (to consider whether a person should be referred to the Drug Court when sentencing a person to imprisonment or confirming a sentence of imprisonment on appeal) does not apply to an appeal court if the person whose sentence is confirmed in the appeal is already the subject of a compulsory drug treatment order as a consequence of a referral made to the Drug Court. However, the duty imposed by section 18B applies to an appeal court if the person whose sentence is confirmed by the appeal court is not already the subject of a compulsory drug treatment order.

**Schedule 3 [2]** amends section 18B of the *Drug Court Act 1998* to provide that a court's decision to refer or not refer a person to the Drug Court is not appealable.

**Schedule 3 [3]** allows savings and transitional regulations to be made as a consequence of the amendments.

## **Schedule 4      Amendment of Electronic Transactions Act 2000 No 8**

**Schedule 4** amends section 14I of the *Electronic Transactions Act 2000*, which authorises the conduct of hearings before an ECM court (a court in respect of which the use of an electronic case management system is authorised) by electronic communication under the CourtLink or other authorised system (subject to rules of court). The section is currently limited to hearings authorised or required to be

conducted in private. The amendment will extend the section to all ECM court hearings other than those conducted for the purpose of receiving oral evidence.

## **Schedule 5      Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103**

**Schedule 5 [4]** substitutes section 73 of the *Law Enforcement (Powers and Responsibilities) Act 2002* and inserts proposed section 73A into that Act so that it is clear that general drug detection warrants and domestic violence entry warrants are generally subject to the same conditions as search warrants in relation to expiry and extension. However, the test for the issue or extension of a general drug detection warrant for more than 72 hours is modified so that the authorised officer who issues the warrant must be satisfied that the purposes for which the warrant was issued cannot be satisfied within 72 hours (rather than being satisfied that the warrant cannot be executed within 72 hours). Proposed section 73A also provides that an application for the extension of a warrant need not be made in writing by application in person if it is impractical for the applicant to appear before an authorised officer before the warrant expires.

**Schedule 5 [2] and [3]** make amendments consequential on the amendments in Schedule 5 [4].

**Schedule 5 [5]** substitutes section 92 of the *Law Enforcement (Powers and Responsibilities) Act 2002* to ensure that the powers set out in section 95 (1) (a)–(f) (powers that may be exercised at a crime scene) may, in accordance with section 92, be exercised by any police officer provided that the police officer or another police officer has established a crime scene and the police officer suspects that it is necessary to exercise the power in order to preserve evidence. Section 92 also ensures that the other crime scene powers set out in section 95 may, in accordance with section 92, be exercised by any police officer provided that the police officer or another police officer has established a crime scene and applied for a crime scene warrant and the police officer suspects that it is necessary to immediately exercise the power in order to preserve evidence. Section 92 (5) provides that those other crime scene powers may be exercised by a police officer with the aid of any member of NSW Police responsible for examining or maintaining a crime scene.

**Schedule 5 [6]** substitutes section 94 of the *Law Enforcement (Powers and Responsibilities) Act 2002* to provide that a police officer can apply for a crime scene warrant that authorises any police officer to enter premises and exercise crime scene powers.

**Schedule 5 [8]** substitutes section 209 of the *Law Enforcement (Powers and Responsibilities) Act 2002* to provide that the regulations are to prescribe the information that is to be recorded in relation to detained intoxicated persons.

**Schedule 5 [1]** changes the meaning of *person of non-English speaking background* so that only persons who are born outside Australia can be considered to be of non-English speaking background for the purposes of the Act.

**Schedule 5 [7]** makes an amendment by way of statute law revision.

## **Schedule 6      Consequential amendment of Listening Devices Act 1984 No 69**

**Schedule 6 [1]** amends the definition of *serious narcotics offence* in the *Listening Devices Act 1984* as a consequence of the omission of various drug offences from the *Customs Act 1901* of the Commonwealth and the insertion of a wider range of drug offences in the *Criminal Code* of the Commonwealth.

**Schedule 6 [2]** provides that an offence punishable as provided by section 235 of the *Customs Act 1901* of the Commonwealth continues to be a serious narcotics offence for the purposes of the *Listening Devices Act 1984* despite the amendment of the definition of *serious narcotics offence*.

## **Schedule 7      Consequential amendment of Independent Commission Against Corruption Act 1988 No 35**

**Schedule 7** amends a reference in the *Independent Commission Against Corruption Act 1988* to certain provisions of the *Law Enforcement (Powers and Responsibilities) Act 2002* as a consequence of the amendments in Schedule 5 [4].

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Explanatory note

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New South Wales

# Crimes and Courts Legislation Amendment Bill 2005

No. , 2005

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## **A Bill for**

An Act to make miscellaneous amendments relating to bail, courts and law enforcement; 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 and Courts Legislation Amendment Act 2005</i> .	3
<b>2 Commencement</b>	4
(1) This Act commences on the date of assent to this Act, except as provided by this section.	5 6
(2) Schedules 1, 2 and 6 commence on the date of assent to this Act or 6 December 2005, whichever is the later.	7 8
(3) Schedule 3 commences on the date of assent to this Act or the commencement of section 18B of the <i>Drug Court Act 1998</i> , whichever is the later.	9 10 11
(4) Schedules 5 [1]–[7] and 7 commence on the date of assent to this Act or 1 December 2005, whichever is the later.	12 13
(5) Schedule 5 [8] commences on a day to be appointed by proclamation.	14
<b>3 Amendment of Acts and regulation</b>	15
The Acts and regulation specified in Schedules 1–7 are amended as set out in those Schedules.	16 17

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## Schedule 1      Amendment of Bail Act 1978 No 161

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(Section 3)

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### [1]    Section 8A Presumption against bail for certain offences

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Omit section 8A (1) (b). Insert instead:

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(b) to an offence under section 302.2, 303.4, 304.1, 305.3, 307.1, 307.5 or 307.8 of the *Criminal Code* of the Commonwealth, or an offence under Division 11 of Part 2.4 of the *Criminal Code* of the Commonwealth where that offence relates to any of the specified sections, and

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(b1) to an offence under section 302.3, 302.4, 303.5, 303.6, 304.2, 304.3, 305.4, 305.5, 306.2, 306.3, 306.4, 307.2, 307.3, 307.6, 307.9, 307.11, 307.12, 307.13, 309.2, 309.3, 309.4, 309.7, 309.8, 309.10, 309.11, 309.12, 309.13, 309.14 or 309.15 of the *Criminal Code* of the Commonwealth, or an offence under Division 11 of Part 2.4 of the *Criminal Code* of the Commonwealth where that offence relates to any of the specified sections, but only if the goods or substances concerned are alleged to be of a nature and quantity required for an offence referred to in paragraph (a), and

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### [2]    Section 9 Presumption in favour of bail for certain offences

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Omit section 9 (1) (e). Insert instead:

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(e) offences under section 302.3, 302.4, 303.5, 303.6, 304.2, 304.3, 305.4, 305.5, 306.2, 306.3, 306.4, 307.2, 307.3, 307.6, 307.9, 307.11, 307.12, 307.13, 309.2, 309.3, 309.4, 309.7, 309.8, 309.10, 309.11, 309.12, 309.13, 309.14 or 309.15 of the *Criminal Code* of the Commonwealth, or an offence under Division 11 of Part 2.4 of the *Criminal Code* of the Commonwealth where that offence relates to any of the specified sections, but only if the goods or substances concerned are alleged to be of a nature and quantity required for an offence referred to in paragraph (d),

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<b>[3] Schedule 1 Savings and transitional provisions</b>	1
Insert after Part 14:	2
<b>Part 15 Crimes and Courts Legislation Amendment Act 2005</b>	3 4
<b>32 Application of amendments</b>	5
(1) Section 8A, as in force immediately before the commencement of Schedule 1 to the <i>Crimes and Courts Legislation Amendment         Act 2005</i> , continues to apply in respect of offences under the <i>Customs Act 1901</i> of the Commonwealth to which that section applied immediately before the commencement of Schedule 1 to the <i>Crimes and Courts Legislation Amendment Act 2005</i> .	6 7 8 9 10 11
(2) Offences under the <i>Customs Act 1901</i> of the Commonwealth excluded from the operation of section 9 immediately before the commencement of Schedule 1 to the <i>Crimes and Courts         Legislation Amendment Act 2005</i> continue to be excluded from the operation of that section despite those amendments.	12 13 14 15 16

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## Schedule 2 Consequential amendment of Bail Regulation 1999

(Section 3)

### Schedule 1 Forms

Omit clause 1 (b) (xii) from Form 2. Insert instead:

- (xii) an offence under section 302.3, 302.4, 303.5, 303.6, 304.2, 304.3, 305.4, 305.5, 306.2, 306.3, 306.4, 307.2, 307.3, 307.6, 307.9, 307.11, 307.12, 307.13, 309.2, 309.3, 309.4, 309.7, 309.8, 309.10, 309.11, 309.12, 309.13, 309.14 or 309.15 of the *Criminal Code* of the Commonwealth (being serious drug offences), or an offence under Division 11 of Part 2.4 of the *Criminal Code* of the Commonwealth where that offence relates to any of the specified sections, but only if the goods or substances concerned are alleged to be of a nature and quantity required for an offence referred to in paragraph (ix) or (x) above,

**Note.** In addition, offences excluded from the operation of section 9 of the *Bail Act 1978* immediately before the commencement of Schedule 1 to the *Crimes and Courts Legislation Amendment Act 2005* (that is, an offence under section 231 (1), 233A or 233B of the *Customs Act 1901* of the Commonwealth, or an offence under Division 11 of Part 2.4 of the *Criminal Code* of the Commonwealth where that offence relates to section 233B of the *Customs Act 1901*) continue to be excluded from the operation of that section despite those amendments.

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<b>Schedule 3</b>	<b>Amendment of Drug Court Act 1998</b>	1
	<b>No 150</b>	2
	(Section 3)	3
<b>[1]</b>	<b>Section 18B Courts to refer eligible convicted offenders to Drug Court (as inserted by the Compulsory Drug Treatment Correctional Centre Act 2004 No 42)</b>	4
	Insert after section 18B (2):	5
		6
	(2A) The duty imposed on a court by this section does not apply to a court on determining an appeal (an <i>appeal court</i> ) if the person whose sentence is confirmed in the appeal is already the subject of a compulsory drug treatment order as a consequence of a referral made to the Drug Court by the court that imposed the sentence confirmed by the appeal court.	7
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	(2B) However, if the person whose sentence is confirmed by the appeal court is not already the subject of a compulsory drug treatment order, the duty imposed by this section applies to the appeal court, whether or not the court that imposed the sentence confirmed by the appeal court referred the person to the Drug Court under this section.	14
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<b>[2]</b>	<b>Section 18B (5) and (6)</b>	20
	Insert after section 18B (4):	21
	(5) No appeal lies against a court's decision to refer or not to refer a person to the Drug Court for a determination as to whether the person should be the subject of a compulsory drug treatment order.	22
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	(6) For the purposes of this section, an <i>appeal</i> includes an application for annulment of sentence in so far as it relates to a decision referred to in subsection (5).	26
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<b>[3]</b>	<b>Schedule 2 Savings, transitional and other provisions</b>	29
	Insert at the end of clause 1 (1):	30
	<i>Crimes and Courts Legislation Amendment Act 2005</i>	31

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**Schedule 4      Amendment of Electronic Transactions  
                         Act 2000 No 8**

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(Section 3)

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**Section 14I Use of ECM system for the conduct of certain hearings**

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Omit section 14I (1). Insert instead:

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- (1) This section applies to any hearing of proceedings before an ECM court, other than a hearing conducted for the purpose of receiving oral evidence.

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**Schedule 5 Amendment of Law Enforcement  
(Powers and Responsibilities) Act 2002  
No 103**

(Section 3) 4

**[1] Section 3 Interpretation** 5

Omit the definition of *person of non-English speaking background* from section 3 (1). 6  
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Insert instead: 8

*person of non-English speaking background* means a person 9  
who is born in a country outside Australia and whose first 10  
language is not English. 11

**[2] Section 46 Definitions** 12

Omit the definition of *telephone warrant* from section 46 (1). 13

Insert instead in alphabetical order: 14

*telephone crime scene warrant* means a crime scene warrant that 15  
is a telephone warrant. 16

*telephone warrant* means a warrant applied for by telephone as 17  
provided by section 61. 18

**[3] Section 59 Application of Division** 19

Omit “73 (6) (d)” wherever occurring from section 59 (2) and (3). 20

Insert instead “73A (6) (e)”. 21

**[4] Sections 73 and 73A** 22

Omit section 73 (as amended by the *Crimes Legislation Further Amendment Act 2003* No 85). 23  
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Insert instead: 25

**73 Expiry of warrant** 26

(1) A warrant ceases to have effect, unless it is sooner withdrawn or 27  
extended, as follows: 28

(a) in the case of any warrant (other than a telephone warrant 29  
or crime scene warrant)—when it has been executed, or at 30  
the time specified in it for its expiry, whichever first 31  
occurs, 32



- (b) in the case of a telephone warrant (other than a telephone crime scene warrant)—when it has been executed, or at the expiry of 24 hours after the time of its issue, whichever first occurs, 1  
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    - (c) in the case of a crime scene warrant (other than a telephone crime scene warrant)—at the time specified in it for its expiry, 5  
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    - (d) in the case of a telephone crime scene warrant—at the expiry of 24 hours after the time of its issue. 8  
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  - (2) An authorised officer who issues a warrant (other than a telephone warrant) must specify in the warrant the time when the warrant is to expire. 10  
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  - (3) The time so specified is to be 72 hours after the issue of the warrant or, if the issue of the warrant for a period exceeding 72 hours is permitted by this section, at any time within a further period not exceeding 72 hours. 13  
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  - (4) The issue of a warrant for a period exceeding 72 hours is permitted by this section if: 17  
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    - (a) in the case of a warrant issued under Division 2 of Part 11—the authorised officer is satisfied that the purpose for which the warrant was issued cannot be satisfied within 72 hours, or 19  
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    - (b) in any other case—the authorised officer is satisfied that the warrant cannot be executed within 72 hours. 23  
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  - (5) If no time of expiry is specified in a warrant (other than a telephone warrant), the warrant expires 72 hours after its issue. 25  
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- 73A Extension of warrant** 27
- (1) A warrant (other than a telephone warrant) that expires 72 hours after its issue may be extended by the authorised officer who issued the warrant: 28  
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    - (a) in the case of a warrant issued under Division 2 of Part 11—if the authorised officer is satisfied that the purpose for which the warrant was issued cannot be satisfied within 72 hours, and 31  
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    - (b) in any other case—if the authorised officer is satisfied that the warrant cannot be executed within 72 hours. 35  
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  - (2) A telephone crime scene warrant may be extended, for up to 60 hours at a time, by the authorised officer who issued the warrant. 37  
38
  - (3) Any other telephone warrant may not be extended. 39

(4)	The time for expiry of a warrant that can be extended (other than a telephone crime scene warrant) may be extended only once.	1 2
(5)	The time for expiry of a telephone crime scene warrant may be extended twice.	3 4
(6)	Any extension of a warrant under this section:	5
(a)	must not extend the period for which the warrant has effect beyond 144 hours after its issue, and	6 7
(b)	must be made on the application of the person to whom the warrant was issued or any other person who is authorised to execute the warrant, and	8 9 10
(c)	must be made on a written application made in person, unless it is impractical for the applicant to appear before an authorised officer before the warrant expires, and	11 12 13
(d)	must be made before the expiry of the warrant, and	14
(e)	must be made by issuing a replacement warrant (specifying the new time for expiry of the warrant) and replacement occupier's notice.	15 16 17
<b>[5] Section 92</b>		18
	Omit the section. Insert instead:	19
<b>92 Exercise of powers at crime scene</b>		20
(1)	A police officer may exercise any of the crime scene powers set out in section 95 (1) (a)–(f) if:	21 22
(a)	a crime scene has been established by the police officer or another police officer, and	23 24
(b)	the police officer exercising the power suspects on reasonable grounds that it is necessary to do so to preserve evidence of the commission of an offence in relation to which the crime scene was established.	25 26 27 28
(2)	A police officer may exercise any of the other powers set out in section 95 (1), but only if:	29 30
(a)	a crime scene has been established by the police officer or another police officer, and	31 32
(b)	the police officer or another police officer applies for a crime scene warrant in respect of the crime scene, and	33 34
(c)	the police officer suspects on reasonable grounds that it is necessary to immediately exercise the power to preserve evidence of the commission of an offence.	35 36 37

(3)	A police officer may exercise the crime scene powers conferred by this section for a period of not more than 3 hours, commencing when the crime scene is established, unless the police officer or another police officer obtains a crime scene warrant.	1 2 3 4
(4)	A crime scene may not be established in the same premises more than once in a 24 hour period (whether by the same or another police officer) unless a crime scene warrant is obtained in respect of the second and any subsequent occasion.	5 6 7 8
(5)	The crime scene powers that may be exercised by a police officer under this section (other than the powers set out in section 95 (1) (a)–(f)) may be exercised by a police officer with the aid of any member of NSW Police responsible for examining or maintaining a crime scene.	9 10 11 12 13
<b>[6]</b>	<b>Section 94</b>	14
	Omit the section. Insert instead:	15
	<b>94 Crime scene warrants</b>	16
(1)	A police officer may apply to an authorised officer for a crime scene warrant if the police officer suspects on reasonable grounds that it is necessary for the police officer or another police officer to exercise crime scene powers at a crime scene for the purpose of preserving, or searching for and gathering, evidence of the commission of:	17 18 19 20 21 22
(a)	a serious indictable offence, or	23
(b)	an offence that is being, or was, or may have been, committed in connection with a traffic accident that has resulted in the death of or serious injury to a person.	24 25 26
(2)	The authorised officer may, if satisfied that there are reasonable grounds for doing so, issue a crime scene warrant authorising any police officer to enter premises and exercise all reasonably necessary crime scene powers at, or in relation to, a specified crime scene.	27 28 29 30 31
(3)	A police officer may, in accordance with the warrant and this Part, exercise all reasonably necessary crime scene powers.	32 33
	<b>Note 1.</b> For provisions relating generally to applications for crime scene warrants and other matters, see section 59.	34 35
	<b>Note 2.</b> A police officer may be assisted in the exercise of crime scene powers—see section 71.	36 37
<b>[7]</b>	<b>Section 116 Determining reasonable time</b>	38
	Omit “section 108” from section 116 (2) (g). Insert instead “section 281”.	39

<b>[8] Section 209</b>	1
Omit the section. Insert instead:	2
<b>209 Records</b>	3
(1) A record, containing the particulars prescribed by the regulations, must be made by:	4
(a) any police officer who detains an intoxicated person under this Part and takes the person to an authorised place of detention, and	5
(b) the person in charge of an authorised place of detention where an intoxicated person is detained (or a person authorised to do so by that person in charge), and	6
(c) a person who, under this Part, searches a detained person.	7
(2) A person who has custody of a record required to be made by this section must retain the record for a period of 3 years after it is made.	8
(3) A person who has the custody of a record made under this section must, when required to do so by a person authorised by the Minister for the purposes of this subsection, make it available for inspection by that person.	9
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<b>Schedule 6</b>	<b>Consequential amendment of Listening Devices Act 1984 No 69</b>	1
		2
	(Section 3)	3
<b>[1] Section 3 Definitions</b>		4
	Omit paragraph (b) of the definition of <i>serious narcotics offence</i> in section 3 (1).	5
		6
	Insert instead:	7
	(b) an offence contained in Part 9.1 of the <i>Criminal Code</i> of the Commonwealth,	8
		9
<b>[2] Schedule 1 Savings and transitional provisions</b>		10
	Insert after clause 8:	11
	<b>9 Definition of “serious narcotics offence”</b>	12
	An offence that was a serious narcotics offence immediately before the commencement of Schedule 6 to the <i>Crimes and Courts Legislation Amendment Act 2005</i> continues to be a serious narcotics offence for the purposes of this Act despite the amendment to the definition of <i>serious narcotics offence</i> by the <i>Crimes and Courts Legislation Amendment Act 2005</i> .	13
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Schedule 7 Consequential amendment of Independent Commission Against Corruption Act 1988 No 35

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<b>Schedule 7</b>	<b>Consequential amendment of Independent Commission Against Corruption Act 1988 No 35</b>	1
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		3
	(Section 3)	4
<b>Section 48 Search warrants</b>		5
Omit “(other than sections 69–73)” from section 48 (1) (as amended by the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> No 103).		6
Insert instead “(other than sections 69–73A)”.		7
		8