

[Act 1997 No 135]



New South Wales

Crimes Legislation Further Amendment Bill 1997

Explanatory note

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

Overview of Bill

The objects of this Bill are to amend the *Crimes Act 1900*, the *Criminal Procedure Act 1986* and the *Criminal Procedure Regulation 1995* so as:

- (a) to add the circumstance of being very substantially impaired by being under the influence of a drug or a combination of drugs to the circumstances in which a person may be convicted under the *Crimes Act 1900* of an **aggravated** offence relating to dangerous driving or navigation occasioning death or grievous bodily harm,
 - (b) to insert a general regulation-making power in the *Crimes Act 1900* and to repeal certain specific regulation-making powers in that Act,
 - (c) to expand the category of offences in respect of which the Supreme Court and the District Court may receive and consider victim impact statements under the *Criminal Procedure Act 1986*,
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- (d) to require the Children's Court and a Local Court to receive a victim impact statement under the *Criminal Procedure Act 1986* if the statement is given by a *family victim* (within the meaning of that Act) for consideration in such a court,
- (e) to bring 2 offences involving assaults on police officers within the scope of Part 9A (Summary disposal of indictable offences by Local Courts) of the *Criminal Procedure Act 1986* so as to allow those offences to be dealt with summarily by a Local Court in certain cases,
- (f) to make a consequential amendment to the *Criminal Procedure Regulation 1995*.

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 a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Crimes Act 1900* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Criminal Procedure Act 1986* set out in Schedule 2.

Clause 5 is a formal provision giving effect to the amendment to the *Criminal Procedure Regulation 1995* set out in Schedule 3.

Schedule 1 Amendment of Crimes Act 1900

Dangerous driving and dangerous navigation

Section 52A (2) of the *Crimes Act 1900* provides that a person is guilty of the offence of aggravated dangerous driving occasioning death if the person commits the offence of dangerous driving occasioning death in *circumstances of aggravation*. Section 52A (4) is to the same effect with regard to the offence of aggravated dangerous driving occasioning grievous bodily harm. Section 52A (7) specifies the *circumstances of aggravation*.

Schedule 1 [1] amends section 528 (7) so as to add to those circumstances of aggravation the circumstance in which the accused's ability to drive was, at the time of the relevant impact, very substantially impaired by the fact that

the accused was under the influence of a drug or a combination of drugs. **Schedule 1 [2]** makes a consequential amendment to section 52A (8) (which provides that it is a defence to a charge under section 52A if the death or grievous bodily harm occasioned by the impact was not in any way attributable to the relevant circumstance of aggravation).

Section 52B (2), (4), (7) and (8) parallel section 52A (2), (4), (7) and (8) in relation to dangerous navigation. **Schedule 1 [3]** and **[4]** make the requisite parallel amendments to section 52B (7) and (8).

Regulation-making power

At present, the *Crimes Act 1900* does not contain a general regulation-making power. **Schedule 1 [9]** inserts such a power in the usual terms, and **Schedule 1 [5]** and **[8]** repeal various powers to make specific regulations. **Schedule 1 [6]** and **[7]** make consequential amendments.

Schedule 2 Amendment of Criminal Procedure Act 1986

Victim impact statements

Schedule 2 [3] inserts proposed section 23AA (Application of Part) in Part 6A (Sentencing—victim impact statements) of the *Criminal Procedure Act 1986*. Part 6A currently applies only in relation to the Supreme Court and the District Court and only in respect of an indictable offence that involves an act of actual or threatened violence (including sexual assault) that is being dealt with on indictment. The proposed section both expands the category of offences in respect of which the Part applies and extends the application of the Part (in a limited way) to the Children's Court and the Local Court.

Schedule 2 [1], [2], [4] and **[5]** make consequential amendments.

Schedule 2 [6] adds a proposed subsection to section 23C (When victim impact statements may be received and considered by court) in Part 6A. The proposed subsection has the effect of requiring the Children's Court and a Local Court to receive a victim impact statement given by a family victim (that is, a statement containing particulars of the impact of the death of the primary victim of the relevant offence on the members of his or her immediate family) for consideration in such a court. However, because of the operation of the remainder of section 23C, the court must not consider the statement in connection with the determination of the punishment for the offence unless the court considers that it is appropriate to do so.

Assault of police officers

The Crimes Amendment (Assault of *Police Officers*) Act 1997 inserted section 60 (Assault of police officers) in the Crimes Act 1900. Section 60 (1) creates the offences of assaulting, stalking, harassing and intimidating a police officer while in the execution of the officer's duty where no actual bodily harm is occasioned to the officer. Section 60 (2) creates the offence of assaulting a police officer while in the execution of the officer's duty and by the assault occasioning actual bodily harm. Section 60 (3) creates the offence of maliciously by any means wounding, or inflicting grievous bodily harm on, a police officer while in the execution of the officer's duty. All 3 offences are currently wholly indictable offences.

Schedule 2 [8] inserts a reference to section 60 (2) in Table 1 to Part 9A of the *Criminal Procedure Act 1986*. The effect of this is to require the offence under that subsection to be dealt with summarily by a Local Court unless the prosecuting authority or the person charged with the offence elects to have it dealt with on indictment.

Schedule 2 [9] inserts a reference to section 60 (1) in Table 2 to that Part. The effect of this is to require the offence under that subsection to be dealt with summarily by a Local Court unless the prosecuting authority elects to have it dealt with on indictment.

Schedule 2 [7] inserts a reference to section 60 (1) in section 33K (2) (a) of the *Criminal Procedure Act 1986*. The effect of this is to limit the penalty that the Local Court can impose for an offence under section 60 (1) to imprisonment for 2 years, or a fine of 50 penalty units, or both. (By the operation of section 33J, the maximum term of imprisonment that the Local Court can impose for an offence under section 60 (2) is 2 years, and the maximum fine it can impose for such an offence is 100 penalty units.)

Schedule 3 Amendment of Criminal Procedure Regulation 1995

Schedule 3 amends clause 11B of the *Criminal Procedure Regulation 1995* as a consequence of the amendment made to the *Criminal Procedure Act 1986* by Schedule 2 [6].