

Passed by both Houses



New South Wales

# Criminal Legislation Amendment Bill 2007

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*I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2007*



New South Wales

## **Criminal Legislation Amendment Bill 2007**

Act No , 2007

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

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*I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.*

*Assistant Speaker of the Legislative Assembly.*

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

**1 Name of Act**

This Act is the *Criminal Legislation Amendment Act 2007*.

**2 Commencement**

- (1) Sections 1–3, 5, Schedule 1 [1], [11], [12] and [15] and Schedule 3 [1] and [3]–[6] commence on the date of assent to this Act.
- (2) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (1).

**3 Amendment of Acts**

The Acts specified in Schedules 1–4 are amended as set out in those Schedules.

**4 Repeal of Drug Misuse and Trafficking Amendment Act 2006 No 39**

The *Drug Misuse and Trafficking Amendment Act 2006* is repealed.

**5 Repeal of Act**

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

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## **Schedule 1      Amendment of Criminal Procedure Act 1986 No 209**

(Section 3)

**[1] Section 6 Certain offences to be dealt with summarily**

Omit section 6 (1) (c). Insert instead:

- (c) an offence for which the maximum penalty that may be imposed is not, and does not include, imprisonment for more than 2 years, excluding the following offences:
  - (i) an offence that under any other Act is required or permitted to be dealt with on indictment,
  - (ii) an offence listed in Table 1 or 2 to Schedule 1.

**[2] Section 136 Court may order pre-trial disclosure in particular case**

Insert “one or more of the following matters” after “having regard to” in section 136 (2).

**[3] Section 136 (2) (a) and (b)**

Omit “and” wherever occurring.

**[4] Section 143 Requirements as to notices**

Insert after section 143 (4):

- (5) A party required to give a notice under this Division must file a copy of the notice with the court as soon as practicable after giving it, or as otherwise required by the court.

**[5] Section 147**

Omit the section. Insert instead:

**147 Exemption for matters previously disclosed**

- (1) The prosecutor is not required to include in a notice under this Division anything that has already been included in a brief of evidence in relation to the matter served on the accused person in accordance with this or any other Act.
- (2) However, the prosecutor must include in the notice a list identifying the statements of those witnesses who are proposed to be called at the trial by the prosecutor.

**[6] Section 150 Notice of alibi**

Insert “to the Director of Public Prosecutions and files a copy of the notice with the court” after “particulars of the alibi” in section 150 (2).

**[7] Section 150 (8), definition of “prescribed period”**

Omit “21 days”. Insert instead “42 days”.

**[8] Section 151 Notice of intention to adduce evidence of substantial mental impairment**

Insert “to the Director of Public Prosecutions and files a copy of the notice with the court” after “raise that contention” in section 151 (1).

**[9] Section 205 Order dismissing matter to be made**

Insert after section 205 (2):

- (3) This section does not apply to a matter that is taken to be dismissed because of section 208.

**[10] Section 208 Dismissal of matter if matter withdrawn**

Insert at the end of the section:

- (2) The dismissal of a matter because of its withdrawal by the prosecutor does not prevent any later proceedings in any court for the same matter against the same person.

**[11] Section 259**

Omit the section. Insert instead:

**259 Offences to which this Chapter applies**

- (1) This Chapter applies to the offences listed in Tables 1 and 2 to Schedule 1.
- (2) All the offences listed in Tables 1 and 2 to Schedule 1 are indictable offences, subject to the provisions of this Chapter.

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

Omit “30 November 2008” from section 344A (3).

Insert instead “31 May 2009”.

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**[13] Schedule 1 Indictable offences triable summarily**

Insert after clause 30A in Table 1:

**30B Offences involving possession of prohibited drug precursors**

An offence referred to in section 24B of the *Drug Misuse and Trafficking Act 1985*.

**[14] Schedule 1**

Insert “or (2)” after “section 93FA (1)” in clause 6 of Table 2.

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

Insert at the end of clause 1 (1):

*Criminal Legislation Amendment Act 2007*

**[16] Schedule 2**

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

**Part Provisions consequent on enactment of  
Criminal Legislation Amendment Act 2007**

**Changes to pre-trial disclosure requirements**

- (1) The amendments made to Division 3 of Part 3 of Chapter 3 by the *Criminal Legislation Amendment Act 2007* do not apply in respect of any pre-trial disclosure that is carried out pursuant to an order made by the court under section 136 before the commencement of the amendments.
- (2) The amendments made to sections 150 and 151 by the *Criminal Legislation Amendment Act 2007* do not apply in respect of a trial that was listed for hearing before the commencement of the amendments.

**Withdrawal of matter by prosecutor**

The amendments made to sections 205 and 208 by the *Criminal Legislation Amendment Act 2007* apply only to the dismissal of a matter on or after the commencement of the amendments.

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## Schedule 2 Amendment of Criminal Appeal Act 1912 No 16

(Section 3)

**[1] Section 14A Crown appeals—absence of respondent**

Omit “An appeal under section 5C, 5D, 5DA or 5DB”.

Insert instead “A Crown appeal”.

**[2] Section 14A (2)–(6)**

Insert at the end of section 14A:

- (2) If on a Crown appeal the court decides to impose on a respondent, in the absence of the respondent, a sentence of imprisonment by way of full-time detention, and the respondent is not in custody at the time of that decision, the court may decline to specify a commencement date for the sentence until the respondent appears before the court for sentencing.
- (3) If the court declines to specify a commencement date for a sentence under this section:
  - (a) sections 47 and 48 of the *Crimes (Sentencing Procedure) Act 1999* do not apply until the respondent appears before the court for sentencing, and
  - (b) when the respondent appears before the court for sentencing, sections 47 and 48 of the *Crimes (Sentencing Procedure) Act 1999* apply in respect of the sentence as if the sentence were imposed by the court on the day the respondent so appears.
- (4) The court may, for the purpose of disposing of proceedings on a Crown appeal, or imposing a sentence in such proceedings (including specifying the commencement date for a sentence), issue a warrant to arrest a respondent if the respondent fails to appear before it and the court is satisfied:
  - (a) that the respondent has been given notice of the date on which the proceedings were to be disposed of, or the sentence imposed, or
  - (b) that attempts to give such notice have failed because the respondent’s whereabouts are unknown.
- (5) Part 4 of Chapter 4 of the *Criminal Procedure Act 1986* applies, with any necessary modifications, to warrants issued by the court under this section in the same way as it applies to warrants issued in proceedings to which that Part applies.

(6) In this section:

***Crown appeal*** means an appeal under section 5C, 5D, 5DA, 5DB or 5DC.

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

Insert after clause 11:

**12 Criminal Legislation Amendment Act 2007**

The amendments made to section 14A by the *Criminal Legislation Amendment Act 2007* extend to proceedings on a Crown appeal (within the meaning of that section) that were commenced, but not finally disposed of, before the amendments commenced.



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## Schedule 3 Amendment of Crimes Act 1900 No 40

(Section 3)

**[1] Section 4A**

Insert after section 4:

**4A Recklessness**

For the purposes of this Act, if an element of an offence is recklessness, that element may also be established by proof of intention or knowledge.

**[2] Section 93FA Possession, supply or making of explosives**

Omit section 93FA (2). Insert instead:

- (2) A person who possesses, supplies or makes an explosive, under circumstances that give rise to a reasonable suspicion that the person did not possess, supply or make the explosive for a lawful purpose, is guilty of an offence.

Maximum penalty: Imprisonment for 3 years or 50 penalty units, or both.

**[3] Section 331 Contradictory statements on oath**

Omit “jury” wherever occurring. Insert instead “trier of fact”.

**[4] Section 345 Principals in the second degree—how tried and punished**

Omit “same punishment as the principal”.

Insert instead “same punishment to which the person would have been liable had the person been the principal”.

**[5] Section 346 Accessories before the fact—how tried and punished**

Omit “same punishment as the principal offender”.

Insert instead “same punishment to which the person would have been liable had the person been the principal offender”.

**[6] Section 351B Aiders and abettors punishable as principals**

Omit “the principal offender is liable” from section 351B (2).

Insert instead “the person would have been liable had the person been the principal offender”.

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## **Schedule 4      Amendment of Drug Misuse and                          Trafficking Act 1985 No 226**

(Section 3)

**[1]    Section 11C**

Insert after section 11B:

**11C    Possession of instructions for manufacture or production of  
         prohibited drugs**

- (1) A person who has in his or her possession a document that contains instructions for the manufacture or production of a prohibited drug is guilty of an offence.
- (2) It is a defence to a prosecution for an offence under subsection (1) if the defendant establishes:
  - (a) that the defendant is licensed or authorised under the *Poisons and Therapeutic Goods Act 1966* to manufacture or produce the prohibited drug to which the instructions relate, or
  - (b) that the defendant is acting in accordance with an authority granted by the Director-General of the Department of Health where the Director-General is satisfied that the manufacture or production of the prohibited drug to which the instructions relate is for the purpose of scientific research, instruction, analysis or study, or
  - (c) that the defendant is in possession of the document for the purposes of an activity that is not unlawful, or
  - (d) that the defendant otherwise has a reasonable excuse for possessing the document.

**[2]    Section 24A Possession of precursors and certain apparatus for  
         manufacture or production of prohibited drugs**

Omit section 24A (1). Insert instead:

- (1) A person who has possession of:
  - (a) a precursor, or
  - (b) a drug manufacture apparatus,intended by the person for use in the manufacture or production, by that person or another person, of a prohibited drug is guilty of an offence.

**[3] Section 24A (3)**

Omit the subsection. Insert instead:

(3) In this section:

*drug manufacture apparatus* means an apparatus specified or described in the regulations as a drug manufacture apparatus for the purposes of this section.

*precursor* means a substance specified or described in the regulations as a precursor for the purposes of this section.

**[4] Section 24B**

Insert after section 24A:

**24B Possession of prohibited drug precursors**

(1) A person who has in his or her possession a precursor of a quantity not less than the quantity prescribed by the regulations in relation to that precursor is guilty of an offence.

(2) It is a defence to a prosecution for an offence under subsection (1) if the defendant establishes:

- (a) that the defendant is in possession of the precursor for the purposes of an activity that is not unlawful, or
- (b) that the defendant otherwise has a reasonable excuse for possessing the precursor.

(3) In this section, *precursor* means a substance:

- (a) that is capable of being used to manufacture or produce a prohibited drug, and
- (b) that is specified or described in the regulations as a precursor for the purposes of this section.

**[5] Section 31 Indictable offences—summary disposal of unless prosecution or accused elects otherwise**

Insert “or 24B” after “section 24A” in section 31 (1A).

**[6] Section 33AB Penalties for offences involving possession of prohibited drug precursors**

Insert at the end of the section:

(2) The penalty for an offence under section 24B is a fine of 1,000 penalty units or imprisonment for a term of 5 years, or both, except as provided by section 31.

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**[7] Section 35A**

Insert after section 35:

**35A Defence to certain offences involving substances used in industry**

Despite any other provision of this Act, it is not an offence against this Act for:

- (a) a person to manufacture, produce, possess or supply a substance listed in Schedule 2 if the substance is contained in a product from which the substance cannot be readily extracted or readily synthesized, or
- (b) a person to manufacture, produce, possess or supply a substance listed in Schedule 2 if the substance is contained in a product that is not for human consumption and the person manufactures, produces, possesses or supplies the product in connection with an activity that is not unlawful, or
- (c) a person to possess or supply a substance listed in Schedule 2 if the person possesses or supplies the substance for the purpose of its disposal as waste or its destruction.

**[8] Section 40A Proof of certain matters**

Omit “or 25 (4)” from section 40A (2). Insert instead “, 25 (4) or 35A”.

**[9] Section 44A**

Insert after section 44:

**44A Amendment of Schedule 2**

The Governor may, from time to time, by regulation amend Schedule 2:

- (a) by adding the name or description of or relating to a substance, or
- (b) by amending a name or description of or relating to a substance for the purpose of more accurately describing the substance.

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Schedule 4      Amendment of Drug Misuse and Trafficking Act 1985 No 226

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**[10] Schedule 1**

Insert in appropriate order:

1,4-Butanediol	30.0g	10.0g	50.0g	1.0kg	4.0kg	—
Gamma butyrolactone	30.0g	10.0g	50.0g	1.0kg	4.0kg	—

**[11] Schedule 1**

Omit “, except 4-Hydroxy-butanoic acid lactone (also known as gamma butyrolactone as referred to in Schedule 2 to the *Drug Misuse and Trafficking Regulation 2000*)” from the matter relating to 4-Hydroxybutanoic acid.

**[12] Schedule 2**

Insert after Schedule 1:

**Schedule 2      Industry use defence substances**

(Sections 35A and 44A)

1,4-Butanediol (also known as hydroxybutanol or 1,4 BD)

Gamma butyrolactone (also known as 4-hydroxybutanoic acid lactone or GBL)