

[Act 1999 No 94]



New South Wales

# Crimes Legislation Amendment (Sentencing) Bill 1999

## Explanatory note

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

This Bill is cognate with the *Crimes (Sentencing Procedure) Bill 1999*.

## Overview of Bill

This Bill, the *Crimes (Sentencing Procedure) Bill 1999* and the *Crimes (Administration of Sentences) Bill 1999* comprise a package of cognate Bills that:

- (a) repeal and re-enact (in the proposed *Crimes (Sentencing Procedure) Act 1999* and the proposed *Crimes (Administration of Sentences) Act 1999*) the provisions of various Acts dealing with the sentencing of offenders and the administration of sentences imposed on offenders, and
- (b) transfer to the *Criminal Procedure Act 1986* the provisions of various Acts dealing with criminal procedure, and

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\* Amended in committee—see table at end of volume.

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- (c) transfer to the *Crimes Act 1900* and the *Summary Offences Act 1988* various offences created by the provisions of other Acts, and
- (d) abolish the distinction between offences that are felonies and offences that are misdemeanours, and
- (e) abolish the punishment of penal servitude and the punishment of imprisonment with hard or light labour.

The object of this Bill is to amend the *Criminal Procedure Act 1986*, the *Crimes Act 1900* and certain other Acts so as to rationalise provisions relating to criminal procedure, to abolish the penalty of penal servitude and the distinction between felonies and misdemeanours, and to make consequential amendments in connection with the enactment of the proposed *Crimes (Sentencing Procedure) Act 1999* and the proposed *Crimes (Administration of Sentences) Act 1999*.

## 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 repeals 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 amendments to the *Crimes Act 1900* set out in Schedule 3.

**Clause 6** is a formal provision giving effect to the amendments to other Acts and instruments set out in Schedule 4.

**Clause 7** is a formal provision giving effect to the further amendments to other Acts and instruments set out in Schedule 5.

## Schedule 1 Repeals

It is proposed to repeal the Acts and instruments listed in Schedule 1. The Acts and instruments to be repealed are all to be superseded by the proposed *Crimes (Sentencing Procedure) Act 1999*, the proposed *Crimes (Administration of Sentences) Act 1999* and by regulations under those proposed Acts.

## **Schedule 2 Amendment of Criminal Procedure Act 1986**

### **Criminal procedure**

It is proposed to transfer to the *Criminal Procedure Act 1986* certain provisions of the *Crimes Act 1900* (Schedule 2 [10], [19], [26], [29], [30], [31] and [36])—proposed sections 13, 34, 48, 49 and 57–132) and certain provisions of the *Correctional Centres Act 1952* (Schedule 2 [44])—proposed sections 147–151). These provisions deal with criminal procedure. In substance they remain basically unchanged.

### **Felonies and misdemeanours**

It is proposed to insert certain provisions into the *Criminal Procedure Act 1986* consequent on the abolition of the distinction between felonies and misdemeanours (Schedule 2 [8])—proposed sections 7, 8 and 9). These provisions will determine which offences are to be dealt with on indictment and which are to be dealt with summarily.

### **Miscellaneous**

The remaining provisions of Schedule 2 insert appropriate definitions into section 3 (Schedule 2 [1]), enact savings and transitional provisions (Schedule 2 [62] and [63]), make consequential amendments in relation to certain uncommenced Acts (Schedule 2 [30]–[33]) and amend the remaining provisions of the *Criminal Procedure Act 1986* to accommodate the proposed insertions and deletions (Schedule 2 [2]–[7], [9], [11]–[18], [20]–[25], [27], [28], [37]–[43] and [45]–[63]).

## **Schedule 3 Amendment of Crimes Act 1900**

### **Part 1 Amendments consequent on enactment of Crimes (Sentencing Procedure) Act 1999 and Crimes (Administration of Sentences) Act 1999**

It is proposed to transfer to the *Crimes Act 1900* certain provisions of the *Correctional Centres Act 1952* (Schedule 3 [1])—proposed sections 310A–310H). These provisions deal with offences relating to places of detention. In substance they remain basically unchanged. It is further proposed to repeal provisions of the

*Crimes Act 1900* that are to be superseded by the proposed *Crimes (Sentencing Procedure) Act 1999* (Schedule 3 [2]–[7]).

## **Part 2 Amendments consequent on transfer of provisions from Crimes Act 1900 to Criminal Procedure Act 1986**

It is proposed to repeal the provisions of the *Crimes Act 1900* that are to be superseded by the provisions to be inserted into the *Criminal Procedure Act 1986* in relation to criminal procedure (Schedule 3 [8]–[18]). It is also proposed to make consequential amendments to the Second Schedule to the *Crimes Act 1900* (Schedule 3 [19]).

## **Part 3 Amendments abolishing penal servitude and distinction between felony and misdemeanour**

It is proposed to abolish the distinction between felonies and misdemeanours (Schedule 3 [68]—proposed section 580E), and (where necessary) to replace references to felonies with references to serious indictable offences (meaning indictable offences punishable by imprisonment for 5 years or more) and to replace references to misdemeanours with references to minor indictable offences (meaning any other indictable offence).

It is further proposed to amend the *Crimes Act 1900* to abolish the punishment of penal servitude (Schedule 3 [68]—proposed section 580F), and (where necessary) to replace references to penal servitude with references to imprisonment.

It is further proposed to abolish the punishments of imprisonment with light or hard labour (Schedule 3 [68]—proposed section 580G).

The remaining amendments (Schedule 3 [20]–[67], [69] and [70]) are consequential on the abolition of the above matters.

## **Schedule 4 Amendment of other Acts and instruments**

### **Part 1 Amendments consequent on enactment of Crimes (Sentencing Procedure) Act 1999 and Crimes (Administration of Sentences) Act 1999**

It is proposed to amend various Acts and instruments consequent on the enactment of the proposed *Crimes (Sentencing Procedure) Act 1999* and the proposed *Crimes (Administration of Sentences) Act 1999*. Significant amendments are those made by the following provisions:

- (a) Schedule 4.4 [6], which applies certain provisions of the proposed *Crimes (Sentencing Procedure) Act 1999* to proceedings before the Children's Court under the *Children (Criminal Proceedings) Act 1987* (corresponding to part of section 43 of the *Sentencing Act 1989*).
- (b) Schedule 4.5 [11], which applies certain provisions of the proposed *Crimes (Administration of Sentences) Act 1999* to detainees under the *Children (Detention Centres) Act 1987* (corresponding to part of section 43 of the *Sentencing Act 1989*).
- (c) Schedule 4.12 [1], which substitutes the definition of *Sentence* in section 2 (1) of the *Criminal Appeal Act 1912*.
- (d) Schedule 4.23 [1], which applies provisions of the proposed *Crimes (Sentencing Procedure) Act 1999* and the proposed *Crimes (Administration of Sentences) Act 1999* to community service orders made under section 79 of the *Fines Act 1996*.
- (e) Schedule 4.23 [8], which applies provisions of the proposed *Crimes (Sentencing Procedure) Act 1999* and the proposed *Crimes (Administration of Sentences) Act 1999* to periodic detention orders made under section 89 of the *Fines Act 1996*.
- (f) Schedule 4.29, which amends the *Imperial Acts Application Act 1969* so as to abolish the power of a justice of the peace "to restrain offenders and to take of them or of persons not of good fame surety for their good behaviour".
- (g) Schedule 4.55 [5], which amends the *Summary Offences Act 1988* so as to re-enact certain offences currently contained in the *Correctional Centres Act 1952*.

The remaining amendments are basically mechanical in nature.

## **Part 2 Amendments consequent on transfer of provisions from Crimes Act 1900 to Criminal Procedure Act 1986**

It is proposed to amend various Acts and instruments consequent on the transfer of provisions from the *Crimes Act 1900* to the *Criminal Procedure Act 1986*. Significant amendments are those made by the following provisions:

- (a) Schedule 4.66 [1] and [2], which amend the *Children (Criminal Proceedings) Act 1987* so as to enable a court to authorise the publication or broadcasting of the name of a child who has been convicted of a serious indictable offence.
- (b) Schedule 4.68, which amends the *Coroners Act 1980* so as to apply to coroners certain provisions of the *Criminal Procedure Act 1986* and the *Justices Act 1902* with respect to documentary evidence (being new provisions that replace provisions in the *Crimes Act 1900* currently applying to coroners).
- (c) Schedule 4.69 [1]–[8], which amend the *Criminal Procedure Act 1986* (in anticipation of the amendments referred to in Schedule 2) so as to allow the Director of Public Prosecutions to intervene in proceedings relating to sentencing guidelines.
- (d) Schedule 4.71 [1], which amends the *Justices Act 1902* so as to re-enact what is currently section 409A (depositions in committal proceedings) of the *Crimes Act 1900*.
- (e) Schedule 4.71 [2], which amends the *Justices Act 1902* so as to re-enact what is currently part of section 360A (with respect to proceedings against corporations) of the *Crimes Act 1900*.
- (f) Schedule 4.72, which amends the *Victims Compensation Act 1996* so as to enhance the powers of a court to make directions for compensation with respect to losses that do not involve an injury within the meaning of that Act.

## **Part 3 Amendments abolishing penal servitude and distinction between felony and misdemeanour**

It is proposed to amend various Acts and instruments to give effect to the abolition of penal servitude and the abolition of the distinction between felonies and misdemeanours arising from proposed sections 580E, 580F and 580G to be inserted in the *Crimes Act 1900* by Schedule 3 [68]. Significant amendments are those made by the following provisions:

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- (a) Schedule 4.90, which amends section 13A (e) of the *Constitution Act 1902* so as to replace the words “is attainted of treason or convicted of felony or any infamous crime” (in a provision establishing the grounds on which the seat of a Member of Parliament becomes vacant) with the words “is convicted of an offence punishable by imprisonment for life or for a term of 5 years or more”.
- (b) Schedule 4.122, which amends the *Interpretation Act 1987* so as to include definitions of *serious indictable offence* (meaning an indictable offence that is punishable by imprisonment for life or for a term of 5 years or more) and *minor indictable offence* (meaning an indictable offence that is not a serious indictable offence).

The remaining amendments are basically mechanical in nature.

## **Schedule 5 Further amendment of other Acts and instruments with respect to abolition of penal servitude**

It is proposed to amend various Act and instruments listed in Schedule 5 so as to remove all references to penal servitude in provisions dealing with vacation of office. Those Acts and instruments are to be amended in accordance with section 7 of the proposed Act. The amendments are basically mechanical in nature.

A list of the various Acts and instruments amended by Schedules 2–5 appears as a note at the end of the proposed Act.