

Justice Legislation Amendment Act 2018 No 4

[2018-4]



New South Wales

Status Information

Currency of version

Historical version for 22 March 2018 to 16 April 2018 (accessed 22 November 2024 at 10:56)

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Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **Note**

Amending Acts and amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

Authorisation

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File last modified 13 April 2018

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Justice Legislation Amendment Act 2018 No 4



New South Wales

An Act to amend various Acts relating to courts and crimes and other related matters.

1 Name of Act

This Act is the *Justice Legislation Amendment Act 2018*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by this section.
- (2) Schedule 1.4 [3] and [4], 1.5 [2]-[9], 1.7, 1.8 and 1.11 [3] and [4] commence on a day or days to be appointed by proclamation.

3 Explanatory notes

The matter appearing under the heading “Explanatory note” in Schedule 1 does not form part of this Act.

Schedule 1 Amendments

1.1-1.3

(Repealed)

1.4 Crimes Act 1900 No 40

[1], [2] (Repealed)

[3] Section 94 Robbery or stealing from the person

Insert “(a)” before “robs”.

[4] Section 94

Insert “(b)” before “steals”.

Explanatory note

Items [1] and [2] of the proposed amendments expand an existing provision that makes it an offence for a person (the

offender to have sexual intercourse with a person aged between 16 and 18 years (the **victim**) if the offender is the victim's school teacher. The offence will now extend to any member of the teaching staff at the school at which the victim is a student, including teachers, the principal or deputy principal and any other person employed at the school who has students at the school under his or her care or authority. The offence continues to apply to other special care relationships, including where the offender has an established personal relationship with the victim in connection with the provision of religious, sporting, musical or other instruction to the victim.

Items [3] and [4] are law revision amendments and are consequential on amendments to the *Criminal Procedure Act 1986* in Schedule 1.5 [2], [4] and [8].

1.5 Criminal Procedure Act 1986 No 209

[1] (Repealed)

[2] Schedule 1 Indictable offences triable summarily

Omit "section 94" from clause 3 (b) in Table 1. Insert instead "section 94 (b)".

[3] Schedule 1, Table 1, clause 3 (c)

Insert "193B (3)," after "192,".

[4] Schedule 1, Table 1, clause 3A

Insert after clause 3:

3A Robbery

An offence under section 94 (a) of the *Crimes Act 1900*.

[5] Schedule 1, Table 1, clause 15 (2)

Insert "319," after "317,".

[6] Schedule 1, Table 1, clause 29A

Insert after clause 29:

29A Supply prohibited drug involving more than indictable quantity but less than commercial quantity

An offence under section 25 (1) of the *Drug Misuse and Trafficking Act 1985* where the amount of prohibited drug concerned is more than the applicable indictable quantity but less than the applicable commercial quantity.

[7] Schedule 1, Table 1, clause 30

Omit "section 32 (1) (a)-(f)". Insert instead "section 32 (1) (a), (b), (c1), (d), (e) or (f)".

[8] Schedule 1, Table 2, clause 3 (b)

Omit “section 94”. Insert instead “section 94 (b)”.

[9] Schedule 1, Table 2, clause 3 (c)

Insert “193B (3),” after “192,”.

[10] (Repealed)

Explanatory note

Item [1] of the proposed amendments provides that a Magistrate, rather than the Local Court, is to be responsible for determining whether a court attendance notice is to be signed and issued in the case of a private prosecution for a summary offence, where a registrar has already refused to sign the notice.

Items [3]-[6] provide that the following indictable offences are to be dealt with summarily unless the prosecutor or person charged elects to have the offence dealt with on indictment:

- (a) robbery (section 94 of the *Crimes Act 1900*),
- (b) recklessly dealing with proceeds of crime (section 193B (3) of the *Crimes Act 1900*) where the value of the proceeds is more than \$5,000,
- (c) perverting the course of justice (section 319 of the *Crimes Act 1900*),
- (d) supplying a prohibited drug (section 25 (1) of the *Drug Misuse and Trafficking Act 1985*) where the quantity of the prohibited drug involved is less than the commercial quantity.

Items [2], [7] and [8] are consequential amendments.

Item [9] provides that the offence of recklessly dealing with proceeds of crime (section 193B (3) of the *Crimes Act 1900*), where the value of the proceeds is \$5,000 or less, is to be dealt with summarily by the Local Court unless the prosecutor elects to have the offence dealt with on indictment.

Item [10] is a transitional provision.

1.6

(Repealed)

1.7 Drug Misuse and Trafficking Act 1985 No 226

[1] Section 32 Penalty for certain offences dealt with on indictment

Omit section 32 (1) (c). Insert instead:

- (c) an offence under section 25 (1),
- (c1) an offence under section 25 (1A),

[2] Section 32 (1) (d) and (e)

Omit “or (c)” wherever occurring. Insert instead “, (c) or (c1)”.

[3] Section 32 (2)

Omit the subsection.

[4] Section 32, note

Insert at the end of the section:

Note—

Offences referred to in this section may be dealt with summarily in certain cases. See Chapter 5 of and Schedule 1 to the *Criminal Procedure Act 1986*.

Explanatory note

Item [1] of the proposed amendments enables the offence of supplying a prohibited drug under section 25 (1) to be dealt with summarily under the *Criminal Procedure Act 1986* (see Schedule 1.5 [6] and [7]). **Item [2]** is a consequential amendment.

Item [3] is a law revision amendment that omits a provision that is unnecessary because of the operation of Chapter 5 of the *Criminal Procedure Act 1986*. **Item [4]** is a consequential amendment.

1.8 Evidence Act 1995 No 25

Section 160 Postal articles

Omit “fourth” from section 160 (1). Insert instead “seventh”.

Explanatory note

The proposed amendment provides that a postal article is presumed to have been received 7 working days after it is sent, rather than 4 working days, as a consequence of changes to Australia Post delivery times.

1.9, 1.10

(Repealed)

1.11 Succession Act 2006 No 80

[1], [2] (Repealed)

[3] Section 58 When an application may be made

Insert “or the parties to the proceedings consent to the application being made out of time” after “shown” in section 58 (2).

[4] Section 64

Omit the section. Insert instead:

64 Orders may affect property outside jurisdiction

A family provision order may be made in respect of property situated outside New

South Wales when, or at any time after, the order is made, only if the deceased person was, at the time of death, domiciled in New South Wales.

[5] (Repealed)

Explanatory note

Item [2] of the proposed amendments provides that the Registrar of the Supreme Court may sign a will, being a will that is made or altered by an order of the Supreme Court for a person without testamentary capacity, for the purposes of executing the will, even after the death of the person in relation to whom the order was made.

Item [3] enables an application for a family provision order to be made later than 12 months after the death of the deceased person if the parties to the proceedings consent to the application being made out of time.

Item [4] clarifies that a family provision order may be made in respect of property outside New South Wales only if the deceased person lived in New South Wales at the time of death.

Item [5] clarifies that the statutory legacy (payable to a surviving spouse of an intestate, where there are also surviving issue who are not the issue of the surviving spouse) is to be shared between multiple spouses in the same way as other property is shared.

Item [1] corrects a grammatical error.