

# Criminal Legislation Amendment Act 2001 No 117

[2001-117]



New South Wales

## Status Information

### Currency of version

Repealed version for 29 November 2002 to 21 July 2003 (accessed 22 December 2024 at 20:13)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Repeal**

The Act was repealed by the [Statute Law \(Miscellaneous Provisions\) Act 2003 No 40](#), Sch 3 with effect from 22.7.2003.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 22 July 2003

# Criminal Legislation Amendment Act 2001 No 117



New South Wales

## Contents

<b>Long title</b> .....	4
1 Name of Act .....	4
2 Commencement .....	4
3 Amendment of Acts .....	4
<b>Schedule 1 Amendment of Children (Community Service Orders) Act 1987</b> .....	4
<b>Schedule 2 Amendment of Children (Criminal Proceedings) Act 1987</b> .....	8
<b>Schedule 3 Amendment of Crimes Act 1900</b> .....	9
<b>Schedule 4 Amendment of Crimes (Administration of Sentences) Act 1999</b> .....	12
<b>Schedule 5 Amendment of Crimes (Sentencing Procedure) Act 1999</b> .....	15
<b>Schedule 6 Amendment of Criminal Appeal Act 1912</b> .....	18
<b>Schedule 7 Amendment of Criminal Procedure Act 1986</b> .....	20
<b>Schedule 8 Amendment of Drug Misuse and Trafficking Act 1985</b> .....	22

<b>Schedule 9 Amendment of Evidence (Children) Act 1997</b> .....	22
<b>Schedule 10 Amendment of Occupational Health and Safety Act 2000</b> ...	23
<b>Schedule 11 (Repealed)</b> .....	23
<b>Schedule 12 Amendment of Summary Offences Act 1988</b> .....	23
<b>Schedule 13 Amendment of Young Offenders Act 1997</b> .....	24

# Criminal Legislation Amendment Act 2001 No 117



New South Wales

An Act to make various amendments to criminal legislation to improve the administration of the criminal law.

## 1 Name of Act

This Act is the *Criminal Legislation Amendment Act 2001*.

## 2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) The following commence on the date of assent:
  - (a) Schedule 5 [1]-[8], [13] and [14],
  - (b) Schedule 10.

## 3 Amendment of Acts

The Acts specified in Schedules 1-13 are amended as set out in those Schedules.

## Schedule 1 Amendment of **Children (Community Service Orders) Act 1987**

(Section 3)

### [1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

**relevant maximum period**, in relation to a children's community service order, means the period of 12 months commencing on the date on which the order was made or, if that period is extended pursuant to section 20A, that period as so extended.

**required number of hours**, in relation to a children's community service order,

means the number of hours of community service work that the person to whom the order relates is required by the order to perform.

**[2] Section 19 Duration of children's community service orders**

Omit section 19 (b). Insert instead:

(b) the expiration of the relevant maximum period, or

**[3] Sections 20 and 20A**

Omit section 20. Insert instead:

**20 Increase in hours of children's community service orders**

- (1) The Director-General may from time to time direct that a person's required number of hours under a children's community service order be increased if the Director-General is of the opinion:
  - (a) that the person has failed, without reasonable excuse, to comply with the order or with any requirements made by or under this Act in respect of the order, and
  - (b) that the failure to comply was trivial in nature, or there are other good reasons why the failure to comply should be dealt with by increasing the person's required number of hours.
- (2) A person's required number of hours, as increased under this section, must not exceed the required number of hours specified in the person's children's community service order by more than 10 hours.
- (3) The person may apply for a review of the increase under this section to the court that made the order and, following the review, that court may confirm or revoke the direction.

**20A Extension of period of children's community service orders**

- (1) An application for an extension of the relevant maximum period for a children's community service order may be made to the Director-General by:
  - (a) the person in respect of whom the order was made, or
  - (b) the assigned officer,on the grounds that it would (having regard to circumstances that have arisen since the order was made) be in the interests of justice to extend that period.
- (2) Such an application may be made even if the relevant maximum period has

expired.

- (3) If satisfied that the applicant has established the grounds on which the application is made, the Director-General:
  - (a) may extend the relevant maximum period, and
  - (b) in that event, must cause notice of the extension to be sent to the assigned officer.
- (4) For the purposes of determining an application for extension of a children's community service order, the order is taken to be in force even if the relevant maximum period has expired.

#### **[4] Sections 21 and 21A**

Omit section 21. Insert instead:

### **21 Application for revocation of children's community service order**

- (1) An application to revoke a children's community service order may only be made:
  - (a) by the assigned officer on the grounds that the person in respect of whom the children's community service order is in force has failed, without reasonable excuse, to comply with the order, or
  - (b) by the person in respect of whom the children's community service order is in force or the assigned officer on the grounds that it would (having regard to circumstances that have arisen since the order was made) be in the interests of justice to revoke the order.
- (2) For the purposes of this section:
  - (a) failure by a person to perform the required number of hours of community service work under a children's community service order within the period for which the order is in force is taken to constitute failure by the person to comply with the order, and
  - (b) failure by a person to comply with one order (the **primary failure**) is taken to constitute failure by the person to comply with every other children's community service order that is in force when the primary failure occurs.
- (3) An application under subsection (1) cannot be made later than one month after the expiry of the relevant maximum period.

## **21A Revocation of children's community service order**

- (1) On receiving an application for revocation of a children's community service order, the Children's Court may:
  - (a) in the case of an order made by the Children's Court:
    - (i) revoke the order, or
    - (ii) revoke the order and deal with the person in respect of whom the order was made, for the offence in respect of which the order was made, in any manner in which the person could have been dealt with for that offence by the Children's Court had the order not been made, or
  - (b) in the case of an order made by some other court, subject to the *Bail Act 1978*, commit the person to custody until the person can appear or be brought before that other court, whether or not that other court is constituted by the same person as that by whom it was constituted when the order was made.
- (2) If, pursuant to subsection (1) (b), a person appears or is brought before a court that made a children's community service order in respect of the person, the court may:
  - (a) revoke the order, or
  - (b) revoke the order and deal with the person, for the offence in respect of which the order was made, in any manner in which the person could have been dealt with for that offence by the court had the order not been made.
- (3) A person on whom a penalty is imposed as a consequence of the revocation of a children's community service order under this section has the same rights of appeal as if the penalty had been imposed when the person was convicted of the offence to which the penalty relates.
- (4) For the purposes only of determining an application for revocation of a children's community service order, the order is taken to be in force even if the relevant maximum period has expired.

### **[5] Part 5 Enforcement of children's community service orders**

Omit the Part.

### **[6] Schedule 1 Savings and transitional provisions**

Insert at the end of clause 1 (1):

*Criminal Legislation Amendment Act 2001*, to the extent that it amends this Act

## **Schedule 2 Amendment of Children (Criminal Proceedings) Act 1987**

(Section 3)

### **[1] Section 11 Publication and broadcasting of names**

Omit section 11 (1). Insert instead:

- (1) The name of any of the following persons must not be published or broadcast in a way that connects the person with the criminal proceedings concerned:
  - (a) any person who:
    - (i) appears as a witness before a court in any criminal proceedings, or to whom any criminal proceedings relate, and
    - (ii) was a child when the offence to which the proceedings relate was committed,
  - (b) any person who is mentioned in any criminal proceedings in relation to something that occurred when the person was a child,
  - (c) any person who is otherwise involved in any criminal proceedings and was a child when the person was so involved.
- (1A) The prohibition in subsection (1) applies to the publication or broadcast of the name of a person:
  - (a) whether the publication or broadcast occurs before or after the proceedings concerned are disposed of, and
  - (b) even if the person is no longer a child at the time of the publication or broadcast.

### **[2] Section 11 (3), (4) (a), (4) (b) (ii), (4) (c), (4B), (4C), (4E) and (5)**

Omit "child" wherever occurring. Insert instead "person".

### **[3] Section 11 (4) (b)**

Omit "name of a child". Insert instead "name of a person".

### **[4] Section 11 (4) (b) (i)**

Omit "child who is". Insert instead "person who is a child".

### **[5] Section 11 (4C) (b)**

Omit "child's name". Insert instead "person's name".



**[6] Section 11 (6)**

Omit “child” where firstly occurring. Insert instead “person”.

**Schedule 3 Amendment of Crimes Act 1900**

(Section 3)

**[1] Part 3, Division 13A**

Omit the heading to the Division as inserted by the *Crimes Amendment (Gang and Vehicle Related Offences) Act 2001 No 84*.

Insert instead:

Division 14 **Kidnapping**

**[2] Section 85A Kidnapping**

Renumber the section as section 86.

**[3] Old Division 14, heading, old sections 86-91**

Omit the heading to old Division 14 of Part 3 and sections 86-91.

Insert instead:

**87 Child abduction**

- (1) A person who takes or detains a child with the intention of removing or keeping the child from the lawful control of any person having parental responsibility for the child, without the consent of that person, is liable to imprisonment for 10 years.
- (2) A person who takes or detains a child with the intention of stealing from the child is liable to imprisonment for 10 years.
- (3) In this section:
  - child** means a child under the age of 12 years.
  - detaining a child** includes causing the child to remain where he or she is.
  - taking a child** includes causing the child to accompany a person and causing the child to be taken.
- (4) In this section, a reference to a person who has parental responsibility for a child is a reference to:
  - (a) a person who has, in relation to a child, all the duties, powers, responsibilities and authority that, by law, parents have in relation to their

children, or

- (b) a person authorised to be the carer of the child under an Act relating to the care and protection of children.

**[4] Part 3, Division 14A**

Insert before section 91A:

Division 14A **Procuring for prostitution**

**[5] Part 3D**

Insert after Part 3C:

## **Part 3D Public order offences relating to bomb and other hoaxes**

### **93IH Conveying false information that a person or property is in danger**

(1) A person who conveys information:

- (a) that the person knows to be false or misleading, and
- (b) that is likely to make the person to whom the information is conveyed fear for the safety of a person or of property, or both,

is guilty of an offence.

Maximum penalty: Imprisonment for 5 years.

- (2) This section extends to conveying information by any means including making a statement, sending a document, or transmitting an electronic or other message.
- (3) In this section, a reference to the safety of a person includes the safety of the person who conveys the information and the person to whom it is conveyed.

### **93II Leaving or sending an article with intent to cause alarm**

(1) A person:

- (a) who leaves in any place, or sends by any means, a substance or article, and
- (b) who intends to induce a false belief that the substance or article is likely to be a danger to the safety of a person or of property, or both,

is guilty of an offence.

Maximum penalty: Imprisonment for 5 years.

- (2) For the purposes of this section, a false belief that a substance or article is likely to be a danger includes a false belief that the substance or article is likely to explode, ignite, or contain, consist of or discharge a dangerous matter.

**[6] Section 203 False statement that a person or property is in danger**

Omit the section.

**[7] Section 562H Telephone interim orders**

Insert after section 562H (9):

- (9A) **Extended period in special circumstances** Despite subsection (9), a telephone interim order may be made under subsection (3) for an extended period lasting until midnight on the twenty-eighth day after the order is made (unless it is revoked or it otherwise ceases to have effect) if the authorised justice is satisfied that the Local Court closest to the place at which the application for the order is made is not sitting within the fourteen-day period following the making of the order.
- (9B) **Objection by defendant to extended period** An order may not be made under subsection (9A) for the extended period if the defendant:
- (a) is present at the place where the application is made, and
  - (b) objects, verbally or otherwise, when the application is made to the making of the order for the extended period.
- (9C) **Notification of defendant** A police officer must notify the defendant:
- (a) at the time the application is made if the defendant is present at the place the application is made, of the defendant's right to object under subsection (9B) to the making of the order for an extended period, and
  - (b) at the time the order is served, of the defendant's right to apply to have the extended period of the order reduced, or the terms of the order varied under subsection (9D).
- (9D) **Application for reduction or variation of extended period of the order** If the defendant objects to the extended period of the order, the defendant may apply to:
- (a) the authorised justice who made the order or any other authorised justice, or
  - (b) a Local Court,
- to have the extended period reduced, or the terms of the order varied.
- (9E) **Reduction or variation of extended period** On application by the defendant, an authorised justice or a Local Court may reduce the extended period of the order or

vary the terms of the order.

(9F) **Notification of application for reduction or variation** The extended period of a telephone interim order must not be reduced, or the terms of the order varied, unless notice of the application has been served on the Commissioner of Police.

(9G) **Notice of reduction or variation** Notice of any reduction or variation is to be served on the defendant, the protected person and the Commissioner of Police.

**[8] 562H (16)**

Omit the definition of *working day*.

**[9] 578B Possession of child pornography**

Omit "6 months" from section 578B (4) (a). Insert instead "2 years".

**[10] 578B (5) (a)**

Omit the paragraph. Insert instead:

(a) that the defendant did not know, or could not reasonably be expected to have known, that the film, publication or computer game concerned is or contains pornographic material involving a child under 16, or

**[11] 578C Publishing child pornography and indecent articles**

Insert after section 578C (5):

(5A) Proceedings for an offence under subsection (2A) are not to be commenced later than 2 years after the date of the alleged offence.

## **Schedule 4 Amendment of Crimes (Administration of Sentences) Act 1999**

(Section 3)

**[1] Section 138 Decision of Parole Board**

Omit section 138 (1) (a). Insert instead:

(a) must make an order directing the release of the offender on parole on:

(i) the day on which the offender becomes eligible for release on parole (the **earliest parole date**) or a specified day occurring not later than 7 days after the earliest parole date, or

- (ii) if the order is made after the earliest parole date, a specified day occurring not later than 7 days after the order is made, or

**[2] Section 138 (1A) and (1B)**

Insert after section 138 (1):

(1A) In determining a day on which to release a violent offender under subsection (1) (a), the Parole Board must take into account the potential trauma to a victim and the victim's family if the offender is released on the anniversary of the commission of the offence against the victim.

(1B) For the purposes of this section, a **violent offender** means an offender who is serving a sentence for an offence involving violence against a person, including any type of sexual assault referred to in clause 6 of Schedule 1 to the *Victims Support and Rehabilitation Act 1996*.

**[3] Section 141 Decision following review**

Omit section 141 (3). Insert instead:

- (3) If the Parole Board decides that the offender should be released on parole, the Parole Board must make an order directing the release of the offender on parole on:
  - (a) the day on which the offender becomes eligible for release on parole (the **earliest parole date**) or a specified day occurring not later than 7 days after the earliest parole date, or
  - (b) if the order is made after the earliest parole date, a specified day occurring not later than 7 days after the order is made.

(3A) In determining a day on which to release a violent offender under subsection (3), the Parole Board must take into account the potential trauma to a victim and the victim's family if the offender is released on the anniversary of the commission of the offence against the victim.

(3B) For the purposes of this section, a **violent offender** means an offender who is serving a sentence for an offence involving violence against a person, including any type of sexual assault referred to in clause 6 of Schedule 1 to the *Victims Support and Rehabilitation Act 1996*.

**[4] Section 151 Day of release**

Omit section 151 (1). Insert instead:

- (1) The day of release to be specified in a parole order under section 149 or 150 is to

be:

- (a) a specified date that is more than 7 and less than 14 days after the order is made, or
- (b) if this would result in the offender being released before the day on which the offender becomes eligible for parole, a specified day occurring not later than 7 days after the day on which the offender becomes eligible for parole.

**[5] Section 151 (1A) and (1B)**

Insert after section 151 (1):

(1A) In determining a day on which to release a violent offender under subsection (1), the Parole Board must take into account the potential trauma to a victim and the victim's family if the offender is released on the anniversary of the commission of the offence against the victim.

(1B) For the purposes of this section, a **violent offender** means an offender who is serving a sentence for an offence involving violence against a person, including any type of sexual assault referred to in clause 6 of Schedule 1 to the *Victims Support and Rehabilitation Act 1996*.

**[6] Schedule 5 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Criminal Legislation Amendment Act 2001*, to the extent that it amends this Act

**[7] Schedule 5**

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

**Part Provisions consequent on enactment of [Criminal Legislation Amendment Act 2001](#)**

**Release dates of offenders**

An amendment made to a provision of this Act by the *Criminal Legislation Amendment Act 2001* applies only to and in respect of a determination of the Parole Board that occurs on or after the commencement of the amendment.

## Schedule 5 Amendment of **Crimes (Sentencing Procedure) Act 1999**

(Section 3)

### [1] Section 36 Definitions

Omit “containing guidelines” from the definition of **guideline judgment**.

Insert instead “that is expressed to contain guidelines”.

### [2] Section 36, definition of “guideline proceedings”

Omit the definition. Insert instead:

**guideline proceedings** means:

- (a) proceedings under section 37 on an application for a guideline judgment referred to in that section, and
- (b) that part of proceedings that relates to the giving of a guideline judgment under section 37A.

### [3] Section 37 Guideline judgments on application of Attorney General

Omit “apart from this section” from section 37 (4).

Insert instead “under section 37A”.

### [4] Section 37 (6)

Omit the subsection.

### [5] Sections 37A and 37B

Insert after section 37:

#### **37A Guideline judgments on own motion**

- (1) The Court may give a guideline judgment on its own motion in any proceedings considered appropriate by the Court, and whether or not it is necessary for the purpose of determining the proceedings.
- (2) The Court is to give the Senior Public Defender, Director of Public Prosecutions and Attorney General an opportunity to appear as referred to in sections 38, 39 and 39A before giving a guideline judgment.

#### **37B Review, variation and revocation of guideline judgments**

A guideline judgment given in proceedings under section 37 or 37A may be

reviewed, varied or revoked in a subsequent guideline judgment of the Court, whether or not given under the same section.

**[6] Section 39A**

Insert after section 39:

**39A Attorney General may intervene**

- (1) The Attorney General, or a nominee of the Attorney General who is a legal practitioner, may appear in that part of proceedings that relates to the giving of a guideline judgment under section 37A.
- (2) Without limiting subsection (1), the Attorney General or his or her nominee may do any one or more of the following:
  - (a) oppose or support the giving of the guideline judgment by the Court,
  - (b) make submissions with respect to the framing of the guidelines,
  - (c) inform the Court of any relevant pending appeal with respect to sentence,
  - (d) assist the Court with respect to any relevant matter.
- (3) Nothing in any other Act or law prevents, or in any way limits, the exercise of any function conferred on the Attorney General, or on any nominee of the Attorney General, under this section.

**[7] Section 42 Use of evidence in giving guideline judgments**

Omit “(whether or not on an application under this Division)” from section 42 (1).

**[8] Section 42A**

Insert after section 42:

**42A Relationship of guidelines and other sentencing matters**

A guideline that is expressed to be contained in a guideline judgment:

- (a) is in addition to any other matter that is required to be taken into account under Division 1 of Part 3, and
- (b) does not limit or derogate from any such requirement.

**[9] Section 51 Court may impose conditions on parole order**

Insert after section 51 (1A):



(1B) Despite subsection (1A):

- (a) the conditions of a parole order with respect to a sentence of imprisonment to be served by way of periodic detention may not include conditions requiring that the offender be subject to supervision, and
- (b) if an offender subsequently serves a sentence by way of periodic detention, any condition of the parole order that requires the offender to be subject to supervision ceases to have effect.

**[10] Section 55 Sentences for offences generally**

Insert “(whether or not the escape was from a correctional centre)” after “correctional centre” in section 55 (5) (b).

**[11] Section 57 Sentences for offences involving escape by inmates**

Insert “(whether or not the escape was from a correctional centre)” after “correctional centre” in section 57 (1).

**[12] Section 95 Good behaviour bonds**

Omit section 95 (b). Insert instead:

- (b) must contain a condition to the effect that, during the term of the bond, the person under bond will be of good behaviour, and

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

Insert at the end of clause 1 (1):

*Criminal Legislation Amendment Act 2001*, to the extent that it amends this Act

**[14] Schedule 2, Part 5**

Insert after Part 4:

## **Part 5 Provisions consequent on enactment of **Criminal Legislation Amendment Act 2001****

### **41 Validation of guideline judgments**

Any guideline judgment given by the Court of Criminal Appeal before the commencement of section 37A that would have been validly given had section 37A commenced before it was given has, and is taken always to have had, the same force and effect as it would have had if section 37A had commenced before it was

given.

## **42 Application of amendments**

Section 37B extends to any guideline judgment given before the commencement of that section (whether under Division 4 of Part 3 or apart from that Division).

### **[15] Schedule 2**

Insert at the end of the Schedule:

## **43 Parole orders**

Section 51 (1B) (b) applies to a parole order regardless of whether the order was made before, on or after the commencement of that provision.

## **Schedule 6 Amendment of [Criminal Appeal Act 1912](#)**

(Section 3)

### **[1] Section 7 Powers of court in special cases**

Insert after section 7 (1):

(1A) If on an appeal against a sentence under section 5 (1), 5D, 5DA or 5DB, the court quashes or varies the sentence passed at trial on any count or part of the indictment, the court may quash or vary the sentence passed at the trial on any other count or part of the indictment and pass such sentence, whether more or less severe, in substitution for it as the court thinks proper, and as may be warranted in law by the conviction on that other count or part of the indictment.

### **[2] Section 9 Revesting and restitution of property**

Omit section 9 (1) (a) and (b). Insert instead:

- (a) until the expiration of the time provided by this Act for giving the court notice of intention to appeal or to apply for leave to appeal, and
- (b) if the notice is given within that time, until the determination of the appeal or the refusal of the application (or until the expiration of any time prescribed by the rules of court for making the appeal or application after the giving of the notice),

### **[3] Section 10**

Omit the section. Insert instead:

## **10 Method and time for making appeal**

- (1) The following provisions apply to an appeal, or application for leave to appeal, under this Act against a person's conviction or sentence:
  - (a) The person is required to give the court, in accordance with the rules of court, notice of intention to appeal, or notice of intention to apply for leave to appeal, within 28 days after the conviction or sentence.
  - (b) The court may, at any time, extend the time within which the notice under paragraph (a) is required to be given to the court.
  - (c) The appeal, or application for leave to appeal, is to be made in accordance with the rules of court, which may include:
    - (i) provision with respect to any statement of grounds of appeal, transcripts, exhibits or other documents or things to accompany the appeal or application, and
    - (ii) provision with respect to the timely institution and prosecution of the appeal or application, and
    - (iii) provision with respect to the period during which the notice under paragraph (a) has effect.
- (2) For the purposes of any other Act or statutory instrument (whether enacted or made before or after the commencement of this subsection):
  - (a) the period provided for making or lodging an appeal or notice of appeal to the court against a conviction or sentence is taken to be the period for giving the court notice of intention to appeal or notice of intention to apply for leave to appeal, or
  - (b) an appeal against a conviction or sentence is taken to be pending in the court if notice of intention to appeal or apply for leave to appeal has been duly given to the court (unless the appeal or application has not been made within any time it is required to be made by the rules of court).

### **[4] Section 19 Duties of registrar with respect to notices of appeal**

Omit section 19 (1). Insert instead:

- (1) When an appeal or application for leave to appeal is duly made under this Act, the registrar must take all necessary steps for obtaining a hearing under this Act of the appeal or application.
- (1A) The rules of court may make provision with respect to the transcripts, exhibits or

other documents or things relating to the proceedings in the court of trial that are required for the determination of the appeal or application.

**[5] Section 19 (2)**

Omit “any notice of appeal against a conviction does”.

Insert instead “the appeal papers relating to a conviction do”.

**[6] Section 19 (3)**

Omit “notices of appeal or notices of application under this Act”.

Insert instead “notices of intention to appeal or to make application under this Act”.

**[7] Section 21 Shorthand notes of trial**

Omit “any notice of appeal or application for leave to appeal”.

Insert instead “any notice of intention to appeal or to apply for leave to appeal”.

**[8] Section 22 Powers of a judge sitting alone**

Omit section 22 (1) (b) and (c). Insert instead:

(b) the power to extend the time within which notice of intention to appeal is to be given (or any time within which the appeal is to be made),

(c) the power to extend the time within which notice of intention to apply for leave to appeal is to be given (or any time within which the application is to be made),

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

Insert after clause 6:

**7 Criminal Legislation Amendment Act 2001**

An amendment made by the *Criminal Legislation Amendment Act 2001* does not apply in respect of an appeal pending immediately before the commencement of that amendment.

**Schedule 7 Amendment of Criminal Procedure Act 1986**

(Section 3)

**[1] Section 27 Maximum penalties for Table 1 offences**

Omit section 27 (4AA).

**[2] Section 36 Certification and transfer of back up and related offences**

Omit section 36 (1) (b). Insert instead:

- (b) if the person has been charged with any back up offence or related offence:
  - (i) the prosecuting authority is to produce to the court a certificate specifying each back up offence and related offence with which the person has been charged, and
  - (ii) the proceedings on each back up offence and related offence with which the person has been charged are to be transferred to the court in which the person has been committed to trial (along with the certificate).

**[3] Section 36 (3)**

Insert after section 36 (2):

- (3) Proceedings on a back up offence or related offence that are laid after committal for trial of a person charged with an indictable offence are to be transferred to the court in which the person has been committed to trial.

**[4] Section 37 Manner of dealing with certain offences related to indictable offences**

Omit “may deal” from section 37 (1) (b). Insert instead “is to deal”.

**[5] Section 37 (1) (b)**

Insert “, unless to do so would not be in the interests of justice” after “this Part”.

**[6] Section 37 (1A)**

Omit “may deal”. Insert instead “is to deal”.

**[7] Section 37 (1A)**

Insert “, unless to do so would not be in the interests of justice” after “this Part”.

**[8] Section 37 (2) and (3)**

Omit the subsections.

**[9] Section 39**

Omit the section. Insert instead:

**39 Remission of certain offences related to indictable offences to Local**

## **Courts**

- (1) A court that is dealing with a back up offence or related offence under this Part may, if it is in the interests of justice to do so, remit the matter to a Local Court.
- (2) Any back up offence or related offence that is not dealt with by a court in accordance with this Part is to be remitted back to a Local Court.

### **[10] Schedule 1 Indictable offences triable summarily**

Insert after clause 10A of Table 1:

#### **10B Offences relating to bomb and other hoaxes**

An offence under section 93IH or 93II of the *Crimes Act 1900*.

### **[11] Schedule 2 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Criminal Legislation Amendment Act 2001*, to the extent that it amends this Act

## **Schedule 8 Amendment of *Drug Misuse and Trafficking Act 1985***

(Section 3)

### **Section 24A Possession of precursors for manufacture or production of prohibited drugs**

Insert after section 24A (2):

- (2A) The regulations may make provision for or with respect to prohibiting or regulating the cash sale of precursors.

## **Schedule 9 Amendment of *Evidence (Children) Act 1997***

(Section 3)

### **[1] Section 11 Child entitled to give evidence in chief in form of recording**

Insert after section 11 (1):

- (1A) Subject to section 15, a child who is 16 or more but less than 18 years of age at the time evidence is given is entitled to give, and may give, evidence as referred to in subsection (1) of a recording of a previous representation to which this Part applies made by the child when the child was less than 16 years of age.

**Note—**

Under section 15 a court may order that a child not give evidence in the form of a recording if it is satisfied that it is not in the interests of justice for the evidence to be given by a recording.

**[2] Section 18 Children have a right to give evidence by closed-circuit television**

Insert after section 18 (1):

(1A) Subject to subsections (3) and (4), a child who is 16 or more but less than 18 years of age at the time evidence is given in a proceeding to which this Part applies is entitled to give the evidence as referred to in subsection (1) if the child was under 16 years of age when the charge for the personal assault offence to which the proceedings relate was laid.

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

Insert at the end of clause 1 (1):

*Criminal Legislation Amendment Act 2001*, to the extent that it amends this Act

**Schedule 10 Amendment of [Occupational Health and Safety Act 2000](#)**

(Section 3)

**Section 125 Guideline judgments on application of Attorney General**

Omit “in a pending proceeding relating to an offence (apart from section 37 of the *Crimes (Sentencing Procedure) Act 1999*)” from section 125 (4).

Insert instead “in a proceeding under section 37A of the *Crimes (Sentencing Procedure) Act 1999*”.

**Schedule 11 (Repealed)**

**Schedule 12 Amendment of [Summary Offences Act 1988](#)**

(Section 3)

**Section 27D Unlawful possession of offensive weapons or instruments**

Insert after section 27D (2):

(2A) In respect of an offence under this section, the powers of arrest of a police officer may be exercised by a correctional officer.

## Schedule 13 Amendment of *Young Offenders Act 1997*

(Section 3)

### [1] Section 8 Offences covered by Act

Omit section 8 (2) (f). Insert instead:

- (f) the offence is an offence under Division 2 of Part 2 of the *Drug Misuse and Trafficking Act 1985* other than:
  - (i) an offence under section 23 (1) (a) or (c) of that Act to which subsection (3) applies, or
  - (ii) an offence under section 27 or 28 of that Act of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence under section 23 (1) (a) or (c) to which subsection (3) applies.

### [2] Section 8 (3)

Insert after section 8 (2):

- (3) An offence under section 23 (1) (a) or (c) of the *Drug Misuse and Trafficking Act 1985* is covered by this Act if in the opinion of the investigating official or prosecuting authority:
  - (a) the offence involves not more than half the small quantity applicable to the prohibited plant within the meaning of the *Drug Misuse and Trafficking Act 1985*, or
  - (b) there are exceptional circumstances in that:
    - (i) the offence involves more than half, but not more than the total, small quantity applicable to the prohibited plant within the meaning of the *Drug Misuse and Trafficking Act 1985*, and
    - (ii) it would be in the interests of rehabilitation, and appropriate in all the circumstances, to deal with the matter under this Act.

### [3] Schedule 3 Savings and transitional provisions

Insert at the end of clause 1 (1):

*Criminal Legislation Amendment Act 2001*, to the extent that it amends this Act