



New South Wales

Crimes Legislation Amendment Bill 2012

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to make various amendments to the *Crimes Act 1900*, including by creating a new offence of kidnapping with intent to commit a serious indictable offence,
- (b) to amend the *Criminal Procedure Act 1986* in relation to sensitive evidence,
- (c) to amend the *Crimes (Domestic and Personal Violence) Act 2007* to enable the guardian of a person under the *Guardianship Act 1987* to make an application for an apprehended violence order on behalf of that person,
- (d) to amend the *Crimes (Sentencing Procedure) Act 1999* and the *Crimes (Sentencing Procedure) Regulation 2010* in relation to the signing of lists of additional charges and certificates relating to charge negotiations in various prosecutions,
- (e) to amend the *Crimes (Serious Sex Offenders) Act 2006* to provide that certain criminal offences are serious sex offences under that Act,
- (f) to amend the *Young Offenders Act 1997* and the *Young Offenders Regulation 2010* to enable records of warnings, cautions and conferences given to

children under the Act to be disclosed to the Bureau of Crime Statistics and Research for statistical and research purposes,

- (g) to repeal the *Law Enforcement (Powers and Responsibilities) Amendment (Detained Person's Property) Act 2008* and the *Sporting Venues (Offenders Banning Orders) Act 2005*.

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 the date of assent to the proposed Act.

Schedule 1 Amendment of Crimes Act 1900 No 40

Schedule 1 [3] creates a new offence of kidnapping with intent to commit a serious indictable offence.

Schedule 1 [4] abolishes the common law rule that a person cannot be found guilty of an offence involving failing to disclose a crime committed by the person's husband or wife or de facto partner.

Schedule 1 [2] extends the meaning of a relationship of special care for the purposes of the offence of sexual intercourse with a child between 16 and 18 under special care to include circumstances in which the offender is the de facto partner of a parent, guardian or foster parent of the victim.

Schedule 1 [1] updates a reference to de facto partner (which is defined in section 21C of the *Interpretation Act 1987*).

Schedule 1 [5] is a transitional provision.

Schedule 2 Amendment of Criminal Procedure Act 1986 No 209

Schedule 2 [1] amends the *Criminal Procedure Act 1986* to extend the meaning of *sensitive evidence* to include, as well as images, an audio recording of a person committing an offence against another person that is obscene or indecent, or the release of which would interfere with the victim's privacy. Under the Act, an accused person has restricted access to sensitive evidence in criminal investigations and proceedings. **Schedule 2 [2]–[6]** are consequential amendments. **Schedule 2 [7] and [8]** are savings and transitional provisions.

Schedule 3 Amendment of other legislation

Crimes (Domestic and Personal Violence) Act 2007 No 80

Schedule 3.1 enables the guardian of a person under the *Guardianship Act 1987* to make an application for an apprehended violence order on behalf of that person.

Crimes (Sentencing Procedure) Act 1999 No 92 and Crimes (Sentencing Procedure) Regulation 2010

Schedule 3.2 amends the *Crimes (Sentencing Procedure) Act 1999* to provide that lists of additional charges and certificates relating to charge negotiations that are filed by the prosecution in proceedings may be signed either by or on behalf of the Director of Public Prosecutions or by a person, or a person who belongs to a class of persons, prescribed by the regulations. Previously, the prescribed persons were required to sign the documents on behalf of the Director of Public Prosecutions.

Schedule 3.3 makes consequential amendments to the *Crimes (Sentencing Procedure) Regulation 2010* and also provides that the Chief Executive Officer of the Food Authority is authorised to sign a list of additional charges for the purposes of prosecutions under the *Food Act 2003*.

Crimes (Serious Sex Offenders) Act 2006 No 7

Schedule 3.4 amends the *Crimes (Serious Sex Offenders) Act 2006* to provide that the new offence of kidnapping with intent to commit a serious indictable offence (proposed section 86 (1) (a1) of the *Crimes Act 1900*) and the offences under section 114 (1) (a), (c) and (d) of the *Crimes Act 1900* relating to being armed with intent to commit an indictable offence are serious sex offences. As a result, a person who is sentenced to imprisonment for these offences may be subject to extended supervision orders and continuing detention orders under the *Crimes (Serious Sex Offenders) Act 2006*.

Young Offenders Act 1997 No 54 and Young Offenders Regulation 2010

Schedule 3.5 [3] and [4] amend the *Young Offenders Act 1997* to authorise the disclosure of information relating to warnings, cautions and conferences under the Act to the Bureau of Crime Statistics and Research, subject to any regulations. **Schedule 3.5 [2]** provides that the requirement that records of warnings must be destroyed when the child concerned reaches the age of 21 years does not apply to records held by the Bureau. **Schedule 3.6 [3]** amends the *Young Offenders Regulation 2010* to provide that records relating to warnings, cautions and conferences may be divulged to the Bureau of Crime Statistics and Research if the information will be used for research and statistical purposes only and if publication of the information by the Bureau will not identify the children to whom the records relate. **Schedule 3.5 [1] and 3.6 [1], [2] and [4]** update references to the Department of Attorney General and Justice to reflect changes to administrative arrangements that occurred in 2011. **Schedule 3.5 [5] and [6]** contain savings and transitional provisions and a validation.

Schedule 4 Repeal of legislation and consequential amendments

Schedule 4.3 repeals the *Law Enforcement (Powers and Responsibilities) Amendment (Detained Person's Property) Act 2008*, which contains amendments relating to dealing with the property of a detained person. These amendments are no longer proceeding and the existing provisions will continue to apply.

Schedule 4.4 repeals the *Sporting Venues (Offenders Banning Orders) Act 2005* following a statutory review of the Act. **Schedule 4.1 and 4.2** make consequential amendments on the repeal of that Act.